

# Compliance Manual

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**

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## 1.0 Compliance Manual

### 1.1 Stage 1-Monthly Intervention Selection & Carrier Assignment

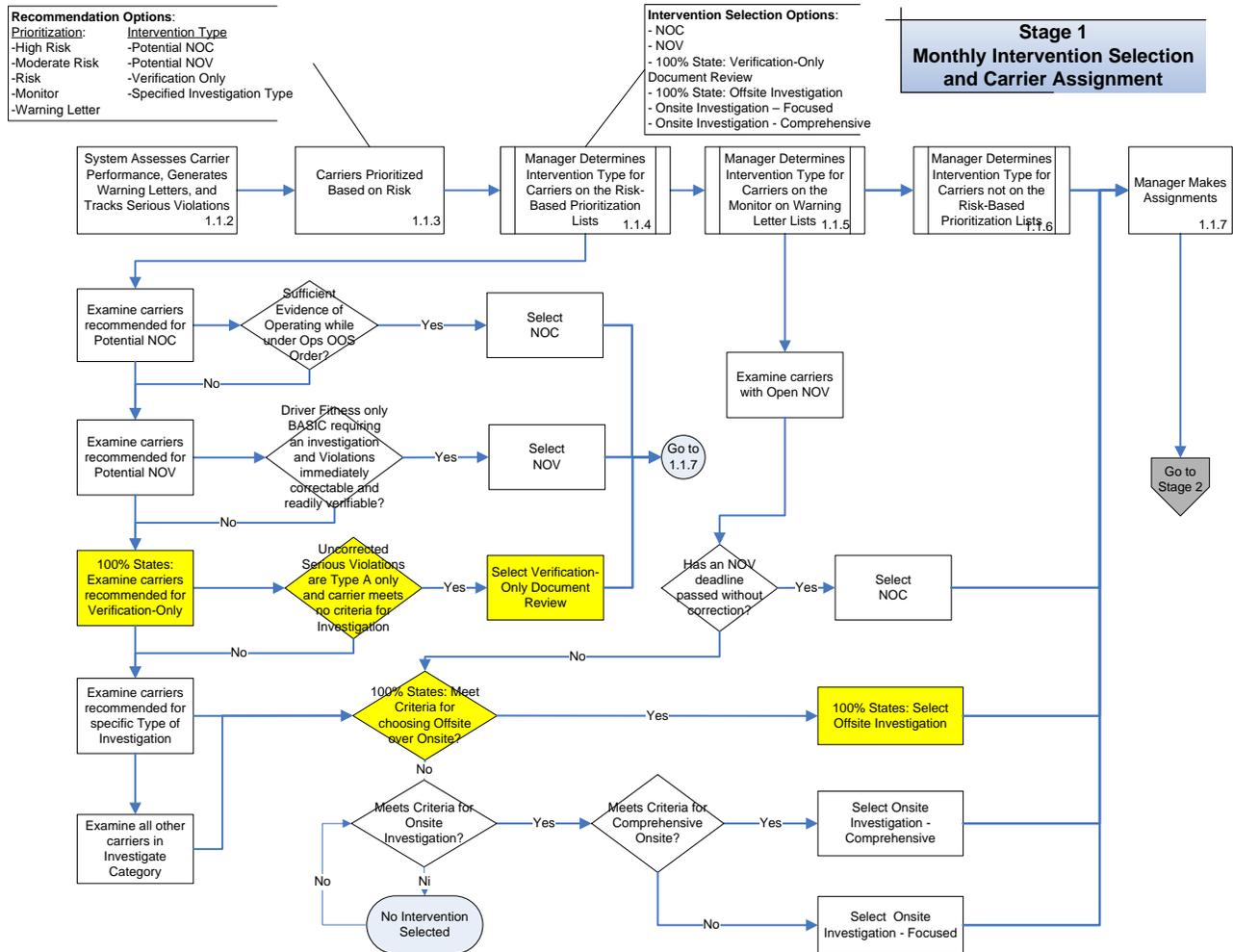
#### 1.1.1 Stage 1 - Introduction

Stage 1 identifies carriers in need of Intervention. These carriers are prioritized and SI-specific assignments can be made. This Stage is the responsibility of the Manager; however, the eFOTM Investigator Manual provides you, the Investigator, with details surrounding this stage to familiarize you with the process.

The FMCSA Portal provides the Manager with access to the necessary information to conduct the activities in this Stage. This manual provides details on the system recommendations and the criteria that govern those recommendations. The Manager uses the system recommendations as a foundation for making decisions; but, the Manager has discretion to take many other experiential factors into consideration and should document these decisions in the FMCSA Portal.

- On a monthly basis, the [Safety Measurement System \(SMS\)](#) provides quantified performance data and presents Behavior Analysis and Safety Improvement Category (BASIC) percentiles as 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 records and tracks the status of Serious Violations.
- Based on BASIC percentiles, Intervention history, and the status of Serious Violations, the FMCSA Portal prioritizes each carrier for intervention into the following risk-based prioritization categories:
  - High Risk,
  - Moderate Risk,
  - Risk,
  - Warning Letter, and
  - Monitor.
- The process of assigning carriers to SIs for an Intervention is done in conjunction with determining the appropriate Intervention Type.
- The Manager reviews and validates information accessible through the FMCSA Portal and selects the appropriate Intervention Type and assigns the Interventions to the SI. These steps are often done together, but are presented sequentially in this manual for ease of presentation and discussion. Once the decision is made that an Intervention will be conducted, the type of Intervention must be selected, planned, and entered in the FMCSA Portal, based on the business rules described in this section. **100% States** The Manager also reviews information on Serious Violations from prior Investigations to determine if corrective action has been taken and updates the records or adjusts assignments based on his or her findings.

The Stage 1: Monthly Intervention Selection and Carrier Assignment process workflow provides a visual representation of the key processes.



**1.1.2 System Assesses Carrier Performance, Generates Warning Letters, and Tracks Serious Violations**

The system assesses performance based on a combination of on-road safety performance data and serious violations found during a previous investigation. Using this information, the system identifies the BASICS that merit attention, identifies candidates for Interventions, generates warning letters, and monitors serious violations.

- [On-Road Safety Performance](#)
- [Warning Letters](#)
- [Serious Violations](#)

**1.1.2.1 On-Road Safety Performance**

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

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

**Table: BASIC Thresholds (Percentiles)**

<b>BASIC</b>	<b>Passenger Carriers</b>	<b>HM Carriers</b>	<b>All Other Motor Carriers</b>
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 system will determine which carriers should receive warning letters. These letters will also be generated and mailed by the system within one month of being designated. No action is required on the part of the Manager. These carriers have at least one Roadside-Identified BASIC and 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 the FMCSA Portal if a carrier contacts the office with questions following receipt of a warning letter. A warning letter is not issued to a carrier with only BASICs subject to intervention based on the discovery of Serious Violations during a previous investigation. Warning letters are not issued to carriers identified as High-Risk.

Carriers that are 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 based on SMS
New Entrant	No
Canada Domiciled	Yes
Mexico Domiciled “Grandfathered”	Yes
Mexico Domiciled “Certificated”	Yes
Mexico Domiciled “Provisional”	No
Mexico Domiciled “Commercial Zone”	No
Non-North American (NNA)	No
Passenger	Yes
HM Permit	Yes
Household Goods	Yes

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. [100% States] If it is determined that a **Cooperative Safety Plan (CSP)** is an appropriate follow-on to a meeting with the carrier, then the SI should follow the standard CSP process described in [Stage 5](#).

### 1.1.2.3 Serious Violations

In addition to on-road performance, the system tracks the status of serious violations<sup>6</sup> cited in previous investigations and indicates whether a carrier requires an intervention based on those violations. This may take place in conjunction with a BASIC investigation or independent of an investigation depending on SMS results. [100% States] If the carrier has not met the corrective action requirement for each serious violation within 12 months of the investigation in which it was cited, then another intervention is required. In such cases, the carrier will be designated for an intervention to verify that the violations have been addressed.

Serious violations include violations of acute, critical, Fundamental, and Essential Safety Management (ESM) regulations cited in an investigation.<sup>1</sup> Serious violations are defined as:

- Violations of **Acute** regulations are those where non-compliance is so severe that they require immediate corrective action by a carrier regardless of its overall safety posture. Discovery of a single acute violation constitutes a Serious Violation.
- Violations of **Critical** regulations are those which relate directly to the carrier’s management and/or operational controls and are indicative of breakdowns in a carrier’s management controls. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) results in a Serious Violation.

- Violations of **Fundamental** regulations are those where non-compliance is so severe that they require immediate corrective action by a carrier regardless of its overall safety posture. Discovery of a single Fundamental violation constitutes a Serious Violation.
- Violations of **Essential Safety Management** regulations are associated with elements of safety management controls necessary to operate. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) results in a Serious Violation.

**[100% States]** Serious violations require corrective action by the carrier either through specific evidence of correction or by improved, sustained on-road performance. Accordingly, there are two types of Serious Violations:

- **Type A Violations**—Serious violations for which corrective action can be demonstrated through carrier-submitted documentation.
- **Type B Violations**—Serious violations for which corrective action can only be demonstrated through a carrier's sustained on-road performance. Corrective actions for all serious violations are listed in [Appendix L-1: Serious Violations—Corrective Action Requirements](#). If serious violations remain uncorrected for 12 months following the closeout date of the investigation, an intervention to verify whether the violation has been corrected is recommended. The system may recommend a Verification-Only Intervention or a specific type of Investigation that should also include the verification process.

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 Serious Violations documented during previous investigations. Each type of status is defined below, followed by a screenshot that shows how the BASIC status is depicted in the FMCSA Portal.

#### Screenshot: BASICs Safety Measurement Summary\*

BASIC	ON-ROAD <sup>6</sup>	INVESTIGATION <sup>6</sup>	BASICs STATUS
Unsafe Driving <sup>1</sup>	69.1 %	=	Warning
Hours-of-Service (HOS) Compliance	77.4 %	1	Warning
Driver Fitness	92.4 %	=	Warning
Controlled Substances and Alcohol	0%	=	Warning
Vehicle Maintenance	93.4 %	1	Warning
Hazardous Materials (HM) Compliance	99.2 %	=	Warning
Crash Indicator <sup>2</sup>	42.2 %	N/A	Intervention
Insurance / Other	N/A	=	Intervention

(\* ) screenshot from the FMCSA Portal

<sup>6</sup> Violations of Acute and Fundamental regulations found during an **Onsite** or **[100% States] Offsite Investigation** do result in a Serious Violation. Violations of Critical and ESM regulations found during an **Onsite** Investigation do result in a Serious Violation if they exceed the 10% threshold and there is a pattern (more than one occurrence). Violations of ESM and Critical regulations found during an **Offsite Investigation** do not result in a Serious Violation.

Unlike on-road performance measures, status updates for Serious Violations cited in previous investigations are not managed automatically. It is the responsibility of the Manager to review corrective action for Serious Violations. Prior to making an assignment the Manager should update their status according to available evidence of corrective action. This review may take place as evidence of corrective action is received from the carrier as a follow-up action to the prior intervention and/or just prior to assignment of a subsequent intervention.

### 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, Serious Violation status, 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 govern the risk based lists, and the tools to support prioritizing carriers for interventions beyond those identified as High-Risk.

#### [System Prioritizes Carriers Based on Risk Intervention Types](#)

##### 1.1.3.1 System Prioritizes Carriers Based on Risk

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

Based on BASIC percentiles, intervention history, and the status of Serious Violations, the FMCSA Portal prioritizes carriers for intervention into the following risk-based prioritization lists:

[High-Risk](#)

[Moderate-Risk](#)

[Risk](#)

[Warning Letter](#)

[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 order based on their measurement of risk (See Primary Lists below) to help the Manager determine appropriate assignments. This sort order is further displayed on secondary level lists (See Secondary Level Lists below e.g., the estimated risk of carriers designated Moderate-Risk 1 are greater than those on Moderate-Risk 2).

After the carriers identified as High-Risk are assigned, Division Offices can use discretion in deciding which carriers to investigate beyond those identified as High-Risk. Use the FMCSA Portal assignment grid 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, in making and managing assignments.

#### **Criteria for Risk-Based Prioritization within Primary Lists**

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
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Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
<b>High-Risk</b>	2 or more of the following BASICS at or above the 90 <sup>th</sup> percentile for 2 consecutive months (passenger carriers: 1 month): Unsafe Driving, Crash Indicator, Hours-of-Service (HOS) Compliance, Vehicle Maintenance	Passenger carriers: no onsite comprehensive investigation in last 12 months. All other carriers: no onsite intervention in last 18 months.	None excluded
<b>Moderate-Risk</b>	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 <i>AND</i> 2. No warning letter in last 6 months	Excludes the following: 1. High-Risk 2. Warning Letter 3. New Entrant Carriers
<b>Risk</b>	1 or more BASICS at or above intervention threshold or with unresolved Acute or Critical Violation(s)	1. No intervention in last 12 months <i>AND</i> 2. No warning letter in last 6 months	Excludes Moderate-Risk
<b>Warning Letter</b>	1 or more BASICS at or above threshold	1. No intervention or warning letter in last 18 months <i>AND</i> 2. If there was a previous intervention, then no BASICS or unresolved Acute or Critical Violations in prior 12 months	Excludes High-Risk  <i>Note:</i> criteria for New Entrant warning letters are specified in a forthcoming separate policy
<b>Monitor</b>	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 <i>OR</i> 2. New entrant motor carrier that has had a Safety Audit or Investigation	Excludes the following carrier designations/types: 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

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

Primary List	Secondary List	SMS BASIC Performance
--------------	----------------	-----------------------

Primary List	Secondary List	SMS BASIC Performance
<b>Moderate-Risk</b>	<b>Moderate-Risk 1</b>	3 or more of the following BASICS at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	<b>Moderate-Risk 2</b>	2 or more of the following BASICS at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
<b>Risk</b>	<b>Risk 1</b>	1 of the following BASICS at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	<b>Risk 2</b>	1 or more of the following BASICS at or above intervention threshold: Driver Fitness, Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance
	<b>Risk 3</b>	0 BASICS at or above intervention threshold and 1 or more BASICS with unresolved Acute or Critical violations
<b>Monitor</b>	<b>Monitor 1</b>	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
	<b>Monitor 2</b>	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
	<b>Monitor 3</b>	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 will be subject to immediate action and should be assigned for an Onsite Investigation, which should be completed within 90 days from the release of the prioritization list. Division Offices should work across state borders, as needed, to address these High-Risk carriers.

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

Criteria	High-Risk – Passenger Carrier	High-Risk – Non-Passenger Carrier
<b>SMS BASIC Performance</b> <ul style="list-style-type: none"> <li>Two or more of the following BASICS at or above the 90<sup>th</sup> percentile: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance.</li> </ul>	Occurs in any one month	Occurs in two consecutive months
<b>Time Since Last Onsite Investigation</b>	12 months since last onsite comprehensive investigation	18 months since last onsite focused or comprehensive investigation
<b>Target Date</b>	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 succeeding months.

#### ***1.1.3.1.2 Moderate-Risk and Risk Carriers***

After the carriers identified as High-Risk are assigned, Division Offices are to use the tools provided in the assignment grid described in Section 1.1.3.1.4 and to consider the availability of resources and other Agency initiatives, in making and managing assignments. Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk. Carriers are placed in the Moderate-Risk or Risk categories based on the criteria below:

<b>Primary List</b>	<b>SMS BASIC Performance</b>	<b>Time Since Last Intervention</b>	<b>Carrier Types Excluded</b>
<b>Moderate-Risk</b>	2 or more of the following BASICS at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance	<ol style="list-style-type: none"> <li>1. No intervention in last 12 months <i>AND</i></li> <li>2. No warning letter in last 6 months</li> </ol>	Exclude the following: <ol style="list-style-type: none"> <li>1. High-Risk</li> <li>2. Warning Letter</li> <li>3. New Entrant Carriers</li> </ol>
<b>Risk</b>	1 or more BASICS at or above intervention threshold or with unresolved Acute or Critical Violation(s)	<ol style="list-style-type: none"> <li>1. No intervention in last 12 months <i>AND</i></li> <li>2. No warning letter in last 6 months</li> </ol>	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. Division Offices are to use the tools provided in the assignment grid described in Section 1.1.3.1.4 and to consider the availability of resources and other Agency initiatives, in making and managing assignments. Carriers are placed in the Monitor category based on the criteria below:

<b>Primary List</b>	<b>SMS BASIC Performance</b>	<b>Time Since Last Intervention</b>	<b>Carrier Types Excluded</b>
---------------------	------------------------------	-------------------------------------	-------------------------------

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
<b>Monitor</b>	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 <i>OR</i> 2. New entrant motor carrier that has had a Safety Audit or Investigation	Exclude the following carrier designations/types: 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

#### *1.1.3.1.4 Managers Utilize Tools to Support the Assignment Process*

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

These tools include:

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

#### **Example**

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

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

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

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

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

Primary List	Secondary List	SMS BASIC Performance
<b>Moderate-Risk</b>	<b>Moderate-Risk 1</b>	3 or more of the following BASICS at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	<b>Moderate-Risk 2</b>	2 or more of the following BASICS at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
<b>Risk</b>	<b>Risk 1</b>	1 of the following BASICS at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance

Primary List	Secondary List	SMS BASIC Performance
	<b>Risk 2</b>	1 or more of the following BASICs at or above intervention threshold: Driver Fitness, Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance
	<b>Risk 3</b>	0 BASICs at or above intervention threshold and 1 or more BASICs with unresolved Acute or Critical violations
<b>Monitor</b>	<b>Monitor 1</b>	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
	<b>Monitor 2</b>	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
	<b>Monitor 3</b>	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 Intervention Types

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

- **Direct NOCs and NOV**s Certain carriers may require an NOC or an NOV without an Investigation. The Manager will consider the guidelines provided in [Stage 3, Section 1.3.11](#) to determine if an NOC or an NOV is appropriate.
- **[100% States] Verification Only** Carriers that have Serious Violations that occurred more than 12 months ago require verification of corrective action and do not have a Roadside-Identified BASIC, may be assigned Verification Only intervention type. Though depending on the type of Serious Violation, this recommendation may result in assignment and performance of an Investigation. However, under certain conditions, a **Verification-Only Document Review** assignment may be made if the corrective action for all the Serious Violations could be demonstrated through carrier-submitted documentation.
- **Specified Investigation Types** The Manager determines Investigation Types (i.e., **[100% States] Offsite**, Onsite Focused, or Comprehensive) using business rules (See Guidance for Selecting Investigation Type) and makes the assignment in the Portal:
  - **[100% States] 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.
  - **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 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.

### 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 prescribed below and makes the assignment in the Portal. The primary objective is to more effectively

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

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

[Assigning Direct NOCs](#)

[Assigning Direct NOVs](#)

[Assigning Verification Only](#)

[Guidance for Selecting Investigation Types](#)

#### 1.1.4.1 Assigning Direct NOCs

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

#### 1.1.4.2 Assigning Direct NOVs

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

- The carrier is Roadside-Identified in the Driver Fitness BASIC only. However, an NOV should only be issued for Driver Fitness violations that are immediately correctible and readily verifiable, such as driving without valid medical certificates or proper CDLs. If the carrier has any drivers with Red Flag Violations ([see Section 1.3.6 in Stage 3](#)), these violations should be included in the Direct NOV and do not require further investigation. Issuing an NOV does not preclude FMCSA from issuing an NOC. An NOC may be issued for the violations cited in the NOV. FMCSA may consider whether adequate evidence of corrective action was submitted in response to the NOV, in deciding whether to issue an NOC.
- The carrier has been prioritized for an intervention because of previous serious 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 serious 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 Assigning Verification Only

**100% States** The Manager may assign a Verification Only for carriers that require verification of Serious Violations that are older than 12 months but do not have a Roadside- Identified BASIC. All Serious Violations are listed in [Appendix L-1: Serious Violations - Corrective Action Requirements](#).

A Verification-Only Document Review should be selected when the only reason for intervening is to verify whether Type A Serious Violations have been corrected. This review should be completed offsite. However, findings that show that the Serious Violations are continuing will require reassignment to an Onsite Focused or Onsite Comprehensive, depending on the number of associated BASICS. ([See Section 1.2.2.2](#))

#### 1.1.4.4 Guidance for Selecting Investigation Types

[High-Risk Motor Carrier Definition](#)

[Improved Oversight of Motorcoach Providers](#)

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 Serious Violations, and/or associated with a complaint. Scope considerations for a complaint are discussed in [Section 1.1.4](#).

**[100% States]** The following guidance is related to motor carriers requiring an investigation based on having one or more Serious Violations discovered during a previous investigation.

Prior to assigning an intervention, the Manager first verifies the status of each Serious Violation to determine if corrective action has been submitted or demonstrated. The specific corrective action for each Serious Violation (Types A and B) is detailed in Appendix L – Serious Violations – Corrective Action Requirements **(100% States)**. If the carrier has not met the requirements stated in this reference the Manager should NOT update the violation correction status and should include the verification of correction of this violation in the SI assignment. The Manager should consider the following two scenarios before possibly updating the status of the Serious Violation:

**Previous Investigation did not produce an adverse (UNSAT or COND) rating AND did not result in a NOC**

The following applies when the Serious Violation(s) resulted from an investigation that did not produce an adverse (UNSAT or COND) rating AND did not result in a NOC:

- For Type A Serious Violations, a carrier can supply the evidence of corrective action at any time. When corrective action is submitted by the carrier, the Manager should determine whether it is sufficient based on the standards outlined in Appendix L – Serious Violations – Corrective Action Requirements **(100% States)**. If the evidence is deemed sufficient, then the Manager will update the violation status in the system and ensure that the documentation is scanned into EDMS.
- For Type B Serious Violations, the Manager verifies whether the on-road performance data standard has been met. Correction of Type B Serious Violations can only be demonstrated through a carrier's sustained on-road performance. Type B Serious Violations are primarily related to HOS Compliance or 392.2 (any BASIC), and 392.9(a)(1) (within the Vehicle Maintenance BASIC). For these Serious Violations submitting corrective documentation may not provide sufficient evidence of correction. Proof of corrective action may be found by reviewing inspection data. Type B Serious Violations are generally checked after the system prioritizes and recommends the carrier for Intervention. However, Type B violations may also be checked during monitoring of carrier performance or at a carrier's request. See the standards outlined in Appendix L – Serious Violations – Corrective Action Requirements **(100% States)**.

**Previous Investigation that resulted in an adverse (UNSAT or COND) rating OR a NOC**

- The following applies when the Serious Violation(s) resulted from an investigation that resulted in an adverse (UNSAT or COND) rating OR a NOC:

Prior to making any updates to the Serious Violations, the Division Office should first verify with the Service Center that any rating upgrade process or NOC associated with the investigation has been resolved. If the Service Center confirms that the Division can proceed with the potential update of Serious Violation(s), the Manager should continue his or her research to determine whether to update the Serious Violation status. Division Offices should note that it is possible that evidence of corrective action meeting the standards in Appendix L – Serious Violations – Corrective Action Requirements

(100% States) may have been submitted through a rating upgrade process and may be contained in EDMS.

Following any updates of Serious Violations, the Manager should determine if there are any remaining BASICs requiring investigation. If there are BASICs requiring investigation, the Manager should review the remaining BASICs requiring investigation for the carrier in conjunction with the guidance outlined below to determine whether to assign an Onsite Comprehensive, Onsite Focused, or Offsite Investigation (100% States Only).

The first step in the process for selecting an Investigation Type is to determine if the Investigation should be conducted (100% States) Offsite or Onsite. For Onsite Investigations the Manager will also need to determine whether the Investigation will be Focused or Comprehensive.

- **(100% States) Reasons for choosing an Offsite Investigation (over an Onsite Investigation)**
  - Offsite Investigations are generally performed when a carrier has three or fewer BASICs requiring an investigation.<sup>7</sup> Offsite Investigations are an assessment of a carrier's Safety Management Processes related to these BASIC(s) from a location other than the carrier's place of business. Offsite Investigations are voluntary on the carrier's part. If the carrier does not want to have the Investigation performed Offsite, the SI must convert the Investigation to an Onsite Focused Investigation (refer to Section 1.2.2.2 in Stage 2). The Offsite Investigation is a desktop Investigation that involves pre-investigation research and communication with the carrier via phone, fax, email, and postal mail. However, an Offsite Investigation is not recommended if a Follow-on Intervention has failed to address the problem. If this is the case, an Onsite (Comprehensive or Focused) Investigation is generally recommended.
- The SI, after consulting with the Manager, has the option of escalating to an Onsite Focused Investigation if the Offsite Investigations are not effective. The SI should consider switching to an Onsite Focused Investigation that provides additional access to the necessary records, equipment, and personnel if data collected from an Offsite Investigation are insufficient to identify specific violations. The SI should not switch the Investigation from an Offsite to an Onsite solely because no violations have been discovered. If the Offsite Investigation is not effective due to denial of access to records (motor carrier is uncooperative), then convert to an Onsite Investigation. If the motor carrier continues to deny access to records, 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. Motor carriers who deny access will be subject to civil penalties. Additionally, For-hire motor carriers who deny access 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).
- **Reasons for choosing an Onsite Investigation** – There are some instances when an Onsite Investigation should be performed. Among these are:
  - High-Risk Carriers
  - Carriers with a Crash BASIC at or above the Intervention Threshold<sup>8</sup>
  - Carriers with a HOS Compliance Roadside-Identified BASIC<sup>9</sup>
  - Carriers with at least one Roadside-Identified BASIC AND at least one Serious Violation.
  - Carriers with a Vehicle Maintenance BASIC at or above Intervention Threshold.
  - Passenger carriers with BASICs requiring an investigation, unless they qualify for a Direct NOV.
  - Carriers requiring an HM Safety Permit that do not already hold a Satisfactory Safety Fitness Rating<sup>10</sup>

- Carriers requiring an HM Safety Permit with a Satisfactory Safety Fitness Rating that is more than 10 years old <sup>10</sup>
- Carriers with an Unsatisfactory Safety Fitness Rating issued prior to 2001 <sup>10</sup> (Those carriers with an Unsatisfactory Safety Fitness Rating issued after 2001 are placed in the Intervention Reason category (OOS with Activity) as NOC candidates due to activity while under an OOS Order.)
- **Reasons for choosing an Onsite Comprehensive over an Onsite Focused Investigation-**  
The following provide the criteria for selecting a Comprehensive Investigation. Onsite Investigations that are not on this list should be performed as Onsite Focused Investigations.
  - New Entrant carriers that have been designated as High-Risk and have not received a safety audit <sup>8</sup>
    - Note: When assigning an investigation to a carrier in the New Entrant monitoring program, ensure that there are no pending Safety-Audit-related actions. If there is a pending Safety-Audit-related action, forgo assigning the carrier for an investigation until the completion of the pending Safety-Audit-related action; for example, review letter history for the carrier in the Motor Carrier Management Information System (MCMIS) to ensure that there are no pending Expedited Actions.
  - Carriers with 4 or more BASICS requiring an investigation <sup>11</sup>
  - Passenger carriers with BASICS requiring an 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 a Unsatisfactory rating, then the review should be uploaded as a ratable review.
  - Carriers requiring an HM Safety Permit that do not already hold a Satisfactory Safety Fitness Rating.
  - Carriers requiring an HM Safety Permit with Satisfactory Safety Fitness Rating more than 10 years old.
  - Carriers with an Unsatisfactory Safety Fitness Rating issued prior to 2001.

#### Impact of Prior Serious Violations on Selection of Investigation Type

- Carriers with four or more BASICS requiring an investigation - including any combination of Roadside-Identified and Investigation- Identified BASICS - are assigned an Onsite Comprehensive Investigation.
- **100% States** Investigation of carriers with Roadside-Identified BASICS that also require verification of corrective action for Serious Violations, must be performed Onsite--regardless of the number of BASICS requiring an investigation.
- Carriers having no Roadside-Identified BASICS and any Type B Serious Violations requiring verification of corrective action also must be performed Onsite.
- For a carrier having no Roadside-Identified BASICS and only Type A Serious Violations, an Investigation may be deferred by selecting a Verification-Only Document Review, which is performed offsite. If this review reveals continuing or additional violations, then it should be converted to an Onsite Investigation of all BASICS associated with those violations.
- NOTE: Any uncorrected Serious Violation from a prior investigation, regardless of the time elapsed since the investigation, is subject to verification during a subsequent investigation.

<sup>7</sup> An Onsite investigation may be more appropriate depending on the specific BASICs requiring an investigation. Additionally if one or more of the BASICs requiring an investigation is due to a previous Serious Violation then the investigation must be performed Onsite.

<sup>8</sup> If the carrier is Roadside-Identified in the Crash BASIC and has had two or more crashes in the previous 365 days then the investigation must be assigned as an Onsite Investigation. **100% States** If the carrier has had only one crash in the previous 365 days then the investigation can be assigned as an Offsite depending on the carrier's other BASIC requiring an investigation.

<sup>9</sup> If the carrier has 3 or fewer BASICs requiring an investigation, one of which is HOS Compliance, the investigation may be performed more efficiently Onsite depending on the size of the carrier and the number of documents that require review.

<sup>10</sup> Current policy mandates an Onsite Comprehensive for these carriers.

<sup>11</sup> 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 a Focused or Comprehensive Investigation is appropriate.

#### 1.1.4.4.1 High-Risk Motor Carrier Definition:

See section 1.1.3.1.1 for information on High-Risk Carriers.

#### 1.1.4.4.4 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 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.)

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

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).

#### 1.1.5.1 Carriers with Open NOV Interventions

Carriers with Open NOVs whose deadline has passed should be prioritized for action, although typically they will appear on the Monitor list. The Manager should review all Open NOVs for carriers whose deadline has passed and consider appropriate action. An escalation is warranted if the carrier has not responded to the NOV, or if the response is either inadequate or fails to meet the terms of abatement in the NOV. If there is not sufficient evidence for an NOC, then a Focused Onsite Investigation should be

assigned. In some cases, such as Passenger Carriers not investigated within 12 months, a Comprehensive Onsite Investigation should be assigned. The Manager should review the guidance for selecting an Investigation Type presented in Stage 1.1.3

### 1.1.6 Manager Determines Intervention Type for Carriers not on the Risk-Based Prioritization 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 requiring a Security Contact Review (SCR). Current policy requires that these carriers should have Onsite Investigation (may be Focused or Comprehensive).
- Carriers receiving complaints (Detailed guidance for evaluating investigation type for these carriers can be found in the box below.)
- Carriers with Serious Violations discovered within the previous 12 months.

**Selecting the Appropriate Investigation for Carriers receiving Complaints** - Carriers that receive a non-frivolous complaint require an Investigation. The Investigation, however, can be **[100% States] 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 Onsite Focused Investigation. **[100% States]** In cases where the carrier subject to the complaint is Roadside-Identified or has Serious Violations in any other BASICs, these BASICs should determine whether to perform the Investigation Onsite vs. Offsite. 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.”

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

[Identifying a Significant Crash](#)

[Crashes Requiring an Investigation](#)

[Division Responsibilities](#)

[When to Conduct a Preliminary Crash Investigation \(PCI\)](#)

[PCI Components](#)

[Enforcement](#)

[Crash/HM Incident Notification Report](#)

##### 1.1.6.1.1 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 which 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.

##### 1.1.6.1.2 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/State Director (SD), in the exercise of his or her discretion, determines that a significant crash merits an investigation. Where guidance is required, the DA/SD will consult with his/her FA to determine the best course of action.

#### 1.1.6.1.3 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/SD of the motor carrier's State of domicile must be sent the significant crash/incident report when completed. Copies of the crash/incident report must also be forwarded to Automated Hazardous Material Incident (AHMI) and your respective FA when the report has been completed. Please use the following number to report crashes and other significant events after normal business hours: 202-366-5373. This number is answered 24 hours/7 days a week and you are also able to leave detailed messages. During normal business hours, please use 202-366-0177 and continue to email your information to AHMI.

#### 1.1.6.1.4 When to Conduct a Preliminary Crash Investigation (PCI)

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

#### 1.1.6.1.5 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.

#### 1.1.6.1.6 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).

#### 1.1.6.1.7 Crash/HM Incident Notification Report

##### **Download PDF Form: [Crash/HM Incident Notification Report](#)**

1. WHY IS THIS A SIGNIFICANT CRASH/HM INCIDENT?
2. TYPE OF CRASH/HM INCIDENT (Passenger, HM, Railroad Grade Crossing, Work Zone, etc.):
3. LOCATION OF CRASH/HM INCIDENT (State/City/County/Route/Milepost/ Railroad, etc.):
4. DATE AND TIME OF CRASH/HM INCIDENT:

5. NUMBER OF INJURIES/FATALITIES:
6. DESCRIPTION OF CRASH/HM INCIDENT:
7. WEATHER AND ROAD CONDITIONS:
8. CARRIER(S) INVOLVED (Name, Address, City, State, Telephone #, DOT #, Current Rating, date of last contact and any additional information that the Division Administrator deems appropriate):
9. VEHICLE(S) INVOLVED (By number and type of configuration, e.g., Tractor & Trailer, Tractor & Cargo Tank, Straight Truck, etc.):
10. DRIVER INFORMATION (Include driving record and additional information which the Division Administrator deems appropriate):
11. HM INVOLVED (Type and Extent):
12. INVESTIGATING AGENCIES (Federal, State, Local, NTSB, etc.):
13. REPORTING OR ASSIGNED DIVISION ADMINISTRATOR (Name, Telephone #, name of on-site Investigator, and cell phone #):
14. STATUS OF INVESTIGATION (Keep headquarters advised of the situation):
15. CARRIER OPERATION (Interstate vs. Intrastate):

Please use the following numbers to report crashes and other significant events after normal business hours: 1-866-875-4447 or 202-366-5373. These numbers are answered 24 hours a day/7 days a week and you are able to leave detailed messages. During normal business hours, please call 202-366-0177 (office), 202-997-5404 (cell), 202-465-5640 (cell), and continue to email your information to the accident/incident mailbox (AHMI). Please send all Crash/HM Incident Notification Reports to [Alex.Keenan@dot.gov](mailto:Alex.Keenan@dot.gov).

### 1.1.7 Manager Makes Assignments

#### [Discovering a Suspected Reincarnated or Affiliated Motor Carrier](#)

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

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 the Portal 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 5 years
- Carrier had a serious violation of Part 382 during the most recent investigation
- Carrier provided adverse responses to Controlled Substances/Alcohol-related questions during a New Entrant Safety Audit.

**NOTE:** Both SMS and the FMCSA Portal identify any carriers that have met these criteria.

HM Supplemental Review - A motor carrier is not subject to an HM Supplemental Review if the HM Compliance BASIC is investigated as part of an Onsite Comprehensive Investigation or an Onsite Focused Investigation. For all other motor carriers that transport HM, an HM Supplemental Review is required if the carrier has not had an investigation that examined HM compliance (as determined by reviewing [Part C](#) from previous investigations) within the last 24 months.

When making an assignment the Manager should consider the SI's existing workload and location and travel requirements. Assignments are made through the FMCSA Portal. 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. The Portal will require a due date for 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 (See section [\*\*1.1.3.1.1 High-Risk Carriers for additional information\*\*](#)).

### **1.1.7.1 Discovering a Suspected Reincarnated or Affiliated Motor Carrier**

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

A3: Often a suspected reincarnated or affiliated motor carrier is discovered by the Investigator assigned to review a motor carrier's compliance with the applicable regulations. The Investigator may recognize a similarity between the motor carrier assigned for investigation and another motor carrier. The NAS 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.

### 1.1.8 Types of Carriers that Can be Investigated

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

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

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

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

"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

Pre-Investigation is a critical preparatory stage of the investigative process for both Onsite and 100% States Offsite Investigations. The investigation begins here at the pre-investigation phase, not when you walk through the door. Pre-investigation no longer means obtaining just a list of drivers/equipment and a document preparation list. You will be using multiple resources, both internal and external, to learn as much as possible about the carrier before you present your credentials. You will use the pre-investigation phase to:

- Gain an understanding of the nature and scope of the carrier's business
- Review the carrier's past history with FMCSA
- Identify potential safety management breakdowns

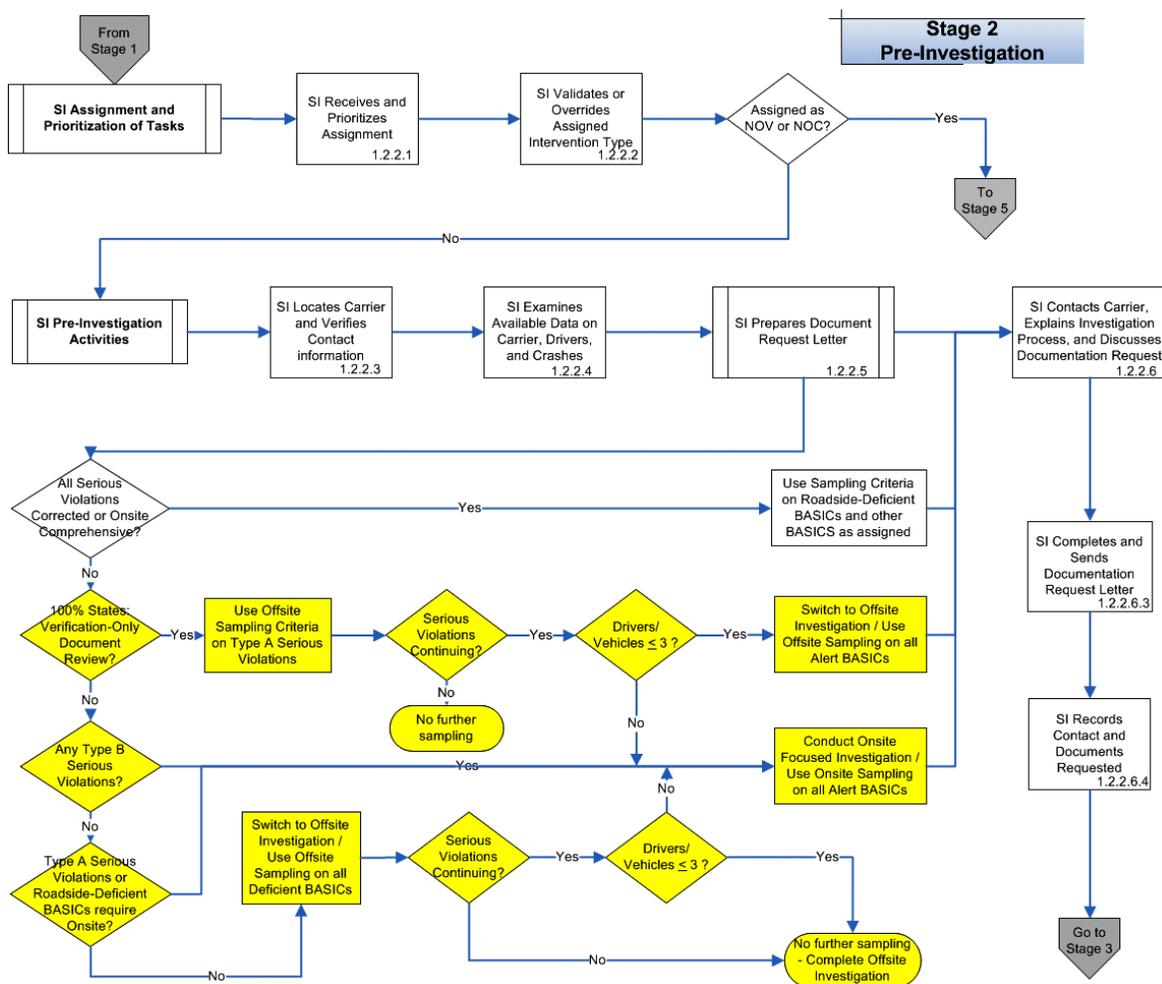
- Begin picking up clues to guide your investigation

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

In this Stage, your responsibilities are summarized as follows:

- You receive and prioritize new assignments. On occasion, you may have reasons to change the assignment following business rules described in this section. If this is the case, the Manager must approve the change and it must be fully documented.
- Prior to making the initial contact with the carrier, you examine all the available data about the carrier.
- Using record sampling criteria explained in this section, you identify the type and number of documents to request from the carrier. This will vary based on the type of Investigation, the size of the carrier, and which BASICS or Serious Violations are being investigated.
  - Investigation scope is based on BASICS:
    - That exceed intervention threshold (roadside)
    - With serious violations (prior investigation findings)
    - 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.)

The Stage 2 Pre-Investigation process workflow provides visual representation of the key processes.



## 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 via the FMCSA Portal. The assignment will include the carrier name and DOT number along with the type of Intervention that has been assigned and a due date, if applicable. In many circumstances, Managers will assign a batch of Interventions to SIs 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 an investigation at the time the investigation is initiated. Interventions should be initiated in the system only when substantive work has begun rather than when the SI receives the assignment.

SIs must schedule time effectively 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 practical, Investigations should be initiated in priority order starting with High Risk carriers, followed by carriers in the Moderate-Risk, Risk, and Monitor categories. 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 getting the work done. (e.g., does it involve travel?)

**[100% States]** Offsite Investigations allow for flexibility, and SIs can be more productive because they can have more than one Investigation open at one 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 immediately without undue delay related to waiting for documentation.

Enforcement actions that do not require an Onsite **[100% States]** or Offsite Investigation also lend flexibility to the SI's workload. These include Direct NOCs or NOV's, as described in [Section 1.1.3 of Stage 1](#). After assignment by 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 Validates or Overrides the Assigned Intervention Type*

#### *1.2.2.2.1 Process for Changing Intervention Type*

The SI should validate the assigned Intervention Type. The Intervention Type is determined by adherence to business rules described in [Section 1.1.3 of Stage 1](#). However, if at any time during Pre-Investigation or Investigation the SI has reasons why an Intervention cannot be conducted as assigned by the Manager, the Intervention Type can be modified. The SI must contact the Manager to request an override of the initially selected Intervention Type. If the Manager does not approve the override, the SI must continue with the original Intervention selection. If the Manager approves the override, the change must be fully documented in Part C of CAPRI and the SI should verify that the Intervention Type listed in the system is updated to reflect the change. The SI can change the Intervention Type following these guidelines at any time during the intervention process.

#### *1.2.2.2.2 Reasons for Changing Intervention Type*

An assigned Intervention selection 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 the application of the business rules on Investigation Type selection
- 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 Onsite Comprehensive Investigation based on the lower thresholds, then discuss with the Manager whether to change the investigation assignment.
- **[100% States]** An Investigation based on a Roadside-Identified HOS Compliance BASIC is normally conducted as an Onsite Investigation. However, the SI has the option of recommending a change to an Offsite Investigation if it can be done effectively; for example, if the carrier has just one driver or is owner operated. The goal is to conduct the least resource-intensive intervention that achieves the necessary safety benefit.
- If the SI is assigned an Onsite Focused Investigation for a carrier selected for investigation due only to a Crash BASIC at or above the Intervention Threshold and MCMIS shows only one crash within the previous 12 months, then the SI should obtain the Accident Register from the carrier and check with the carrier's insurance company to see if the carrier has been involved in additional crashes. If the SI is reasonably certain that there are no other crashes, then the Investigation may be conducted Offsite. Otherwise, the Investigation should be performed Onsite.
- If an Investigation has been assigned as an Offsite and the SI has historical knowledge of this carrier and knows the carrier has been uncooperative and evasive and that pre-notification of the Investigation might have an adverse effect, then the SI should switch to an Onsite Investigation.

- If, during an Offsite Investigation, the carrier is uncooperative or fails to submit documentation in a complete and timely manner or by an established due date, the Division Office should modify the intervention to an onsite investigation. If the carrier continues to deny access, the Division Office should initiate the Denial of Access procedures and serve the motor carrier with a Demand to Inspect and Copy Records and/or Demand to Inspect and Examine Equipment, Lands, Buildings, or Other Property. Motor carriers who deny access will be subject to civil penalties. For-hire motor carriers will be placed Out-of-Service and additional enforcement penalties may be issued. For more information on the policies and procedures see the Penalties for Denial of Access Policy (MC-ECE-2015-002).
- If, after contacting the carrier, the Roadside-Identified BASIC is no longer Roadside-Identified, that BASIC should continue to be investigated.
- 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.
- **100% States** If a Verification-Only Document Review reveals continuing or additional violations, then it should be converted to an Onsite Investigation of all BASICs associated with those violations.

### 1.2.2.3 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 MCS-150 information.

If it is discovered that a motor carrier, or representative of the motor carrier, failed to designate a qualifying PPOB based on the information in MCMIS, you should provide the motor carrier a copy of the [July 2009 Regulatory Guidance on the Definition of Principal Place of Business](#). The Regulatory Guidance informs the company that FMCSA requires companies to designate a qualifying PPOB.

In addition, you should advise the motor carrier to update its MCS-150 using a qualifying PPOB. If the motor carrier updates its PPOB before the start of the investigation, you should conduct your investigation at the newly designated PPOB. If the motor carrier does not agree to correct its PPOB designation, they will be subject to enforcement or even revocation of U.S.DOT Registration and/or Operating Authority. Refer to the 10/31/12 policy: [Principal Place of Business Requirements](#).

You may use the following guidance to help determine if a location designated by a motor carrier is a qualifying PPOB: [Guidance for Determining PPOB, PPOB Requirements Questions and Answers](#)

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 the FMCSA NAS Tool and search phone numbers, plate numbers or VIN of company vehicles
- Your 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 1.3.6](#).

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

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

*1.2.2.4 SI Examines Available Data on Carriers, Drivers, and Crashes*

[The Impact of an Emergency Condition Requiring Immediate Response on the Review](#)

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

The pre-investigative process requires preparation which includes reviewing carrier data. Before ever making the initial contact, it is critical for the SI to understand the carrier's:

- Operation
- Cargo and segment classifications
- Exposure to safety risks
- Insurance coverage
- Current authority, if applicable
- Crash history
- Issues related to Intervention and contact history, pseudonyms, and annual inspection reports

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

- "C" – Commercial Driver's License Information System (CDLIS) –

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

There are many data sources and information including roadside inspections, crash information, and enforcement, which can help inform you 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. Review the information to identify Serious Violations identified in previous investigations and drivers with Red Flag Violations.

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

- Review the motor carrier's BASIC percentiles at <https://portal.fmcsa.dot.gov>. By identifying data that contributed to a high BASIC percentile, you will be able to concentrate on those areas for which the carrier has demonstrated problems, such as false RODS. Note the drivers and vehicles that experience repeated violations and include them in your sampling during the review.
  - In general, drivers who pose the highest potential safety risk should be selected first as part of the sample.
  - Selecting drivers should be based on drivers with the highest DSMS percentiles within each driver-related BASIC under investigation.

- After the drivers with the highest DSMS percentiles are selected, the sample should include drivers or vehicles involved in crashes, and then random selection within the applicable criteria/timeframe for the particular part.
- For carriers above the Intervention Threshold in the Crash BASIC the SI should also review the crash analysis system tool at the onset of the Investigation. The historical data should be examined at this point because it might aid the SI in determining initial lines of questioning when interviewing the carrier and what specific documents to request.
- 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. A checkered insurance history is worthy of additional investigative actions as to 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)
- Query Central (QC)
- New Applicant Screening (NAS) tool
  - NAS identifies potential "chameleon carriers" within FMCSA's past and present carrier population. This tool provides you with the ability to search for specific carriers and identify relationships to other past and present carriers. Running the NAS tool prior to the start of the investigation can help to tailor the questions during the initial interview, even if it 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.
  - NAS 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.
    - NAS relies on data. If there is no data, an affiliation may still exist
    - Remember that NAS casts a wide net. The inquiry you use could return extensive results that you will need to analyze.
    - NAS uses a broad range of identifiers such as partial names, etc.
  - Please click the link for additional guidance on [\*Discovering a Suspected Reincarnated or Affiliated Motor Carrier\*](#)
  - Please click the link for [\*Record Consolidation Order \(RCO\)\*](#)
- State systems and records, as applicable
- Secretary of State or State Corporation Commission information

- Corporations are required to register in every state where they have official operations. For example, a PPOB is listed in Georgia. This is where the primary records of incorporation are filed. If the company is also doing business in New York and has offices there, such as ticket sales locations/bus terminals where it is selling its product, it has to register the corporation in that state as well. This may be done for tax accounting purposes, to ensure each state gets its share of taxes on services sold. Compare the filings. Look for similarities and differences. An official listed in the New York office may be a completely different person than the person listed on the original records of incorporation where its primary business is based, and may not show up in any other company records.
- The state filing may be an indicator of a secret owner/partner, especially when the person is not listed on the MCS-150 as an officer of the company.
- **Note:** If a company files a corporation name change, most states require a new Tax Identification Number to be issued. Look at corporation records to determine if the prior name/entity has been dissolved or is still operating within the state. Website assistance is at <http://www.secstates.com>
- DOD Audit Reports:
  - DOD conducts Audit Reports on carriers that are hired to transport military personnel through a contractor (Consolidated Safety Services) using a different platform than CAPRI. Military contractors are reviewed by DOD every 2 years and are scored 1-5, 1 being the highest level of compliance.

These reports evaluate each carrier based on the company's compliance with the FMCSR. Through a memorandum of understanding (MOU) with DOD, these reports are sent to FMCSA and are uploaded into the carrier file in EDMS. Investigators should check EDMS for these reports, and they should be reviewed as part of your pre-investigation to identify potential problem areas.

- Performance Registration Information Systems Management (PRISM)
- HM Portal (HIP)
- Review of the Company File
  - You should review the field office file and all previous enforcement reports to become familiar with the company's previous safety and regulatory problems. In addition, determine whether safety, financial, drug and alcohol, commercial, and HM regulations apply. The MCMIS reports may also be reviewed. [MCMIS now provides a facsimile of the latest investigation and a summary of previous investigations, roadside inspections, and crashes.]
  - Review all previous safety investigations
    - Check EDMS and any old hard copy files.
    - Do not limit your research to the most recent review
    - Look for patterns of non-critical and non-acute violations
    - Look for §385.17 upgrade requests
- Review of the Company Profile
  - You must obtain and review the motor carrier's profile. The company profile must be obtained no more than seven 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 (OOS) rate higher than the national average. In this situation, your investigation should be focused on the carrier's vehicle maintenance program.
    - When you discover potential violations on the company profile, identify and record the drivers and/or vehicles that had the most violations. Include these in your sampling. Also, if the carrier doesn't have at least three Levels I, II, and/or V driver/vehicle inspections within the previous 12 months, inform the carrier that vehicles will need to be made available for inspections during your investigation.
    - You should also download the XML file for the carrier at the same time you obtain the company profile. Importing this XML file into CAPRI will ensure you have

the most accurate data available for this company and prevent data upload errors upon completion of the review. Importing this data is also a time saver, since many sections of Part A and Part C will be automatically filled in, requiring you to only verify the accuracy of the data and not have to fill it in yourself.

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

A review of the National Consumer Complaint Database (NCCDB) may identify safety issues or identify types of services provided. Investigators may access the NCCDB through the portal. Your FPM may already have access to this tool.

#### 1.2.2.4.1 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 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.

*1.2.2.4.1.1 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 Compliance Analysis & Performance Review Information (CAPRI). An explanation should be included in [Part C](#) of the investigation report explaining why the exemption does not apply. The time periods for the review of various records are outlined within the eFOTM.

#### *1.2.2.5 SI Prepares Document Request Letter*

To prepare a document request letter for the carrier prior to an Investigation, the SI should go through the following three-step process:

[Identify Documents to Request from the carrier based on BASICs requiring review and those required for verification of Serious Violations.](#)

[Determine Number of Documents to Request based on Investigation Type and Sampling Requirements for the BASICs requiring review.](#)

[Identify Drivers and Vehicles that should be included in the sample of documents that apply to individual drivers and vehicles.](#)

##### 1.2.2.5.1 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 needs to be specific enough to ensure the appropriate documents are available when the SI arrives for an Onsite Investigation **[100% States]** or are provided via mail, fax or email during an Offsite Investigation.

The type of records needed to conduct an Investigation depends on which BASICs or Serious Violations are investigated as determined by the assignment.

- An Onsite Comprehensive Investigation and Focused Investigation that include a Crash BASIC investigation require a review of all BASICs.
- A Focused Investigation, whether performed Onsite **[100% States]** Offsite Investigation, 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.
- **[100% States]** When verification of corrective action related to Serious Violations is included in the scope of an assignment the types of documents to request will vary depending on whether the serious violations were Type A or Type B. Only verification of Type B violations requires documents associated with all Parts for the associated BASIC as described in [Appendix J: Investigating CFR Parts by BASIC](#). Verification of Type A violations requires only documents attesting to correction of the specific violation cited. These documents are listed in [Appendix L: Serious Violations-Corrective Action Requirements](#).
- If the SI is assigned to conduct a Controlled Substances/Alcohol and/or an HM Supplemental Review based on the criteria described in [Section 1.1.7](#), 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 review, and the Serious Violations requiring verification. There are three different 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).
  - Document 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.

#### 1.2.2.5.2 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 for [100% States] Offsite, Onsite Focused, Onsite Comprehensive Investigations, and [100% States] 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, number of drivers/vehicles.

[100% States] There are some special considerations when the assignment includes the verification of Serious Violations. SIs should use the following procedures to determine the appropriate sampling scheme if verification of Serious Violations is required:

- If the assignment is an Onsite Comprehensive Investigation, any Serious Violations will be verified in the course of investigating all BASICs using Onsite sampling criteria provided in [Appendix N: Record Sampling](#)
- If the assignment is a Focused Onsite Investigation requiring verification of Type B, and no Type A, Serious Violations, then the SI should request records according to Onsite sampling criteria for all BASICs requiring review, including the BASICs associated with the Type B Serious Violations, using Onsite sampling criteria provided in [Appendix N: Record Sampling](#)
- If the Intervention is assigned as a Verification-Only Document Review, the SI should request those records necessary to verify that Type A Serious Violations have been addressed. The SI should use [Appendix L: Serious Violations-Corrective Action Requirements.](#)
- If the assignment is a Focused Onsite Investigation requiring verification of Type A Serious Violations, then the SI should use the following guidance:
  - If the BASIC associated with the Type A Serious Violation is also Roadside-Identified and/or associated with a complaint, then the Serious Violations will be verified in the course of investigating all BASICs within the scope of the Investigation, using Onsite sampling criteria provided in [Appendix L: Serious Violations-Corrective Action Requirements.](#)
  - If the BASIC associated with the Type A Serious Violation is neither Roadside-Identified nor associated with a complaint, the SI should request those records necessary to verify that Type A Serious Violations have been addressed, using [Appendix L: Serious Violations-Corrective Action Requirements.](#)

#### 1.2.2.5.3 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. 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 that requires review.

- **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 in violation during roadside inspections.
- **Crash**—In the case of the CBI for any BASIC where the carrier is below the Intervention Threshold, the SI should sample all drivers and vehicles involved in crashes during the prior 365 days using the sampling criteria detailed in [Appendix N: Record Sampling](#)—the number of crashes determines the sample size. If the carrier is at or above the Intervention Threshold in other BASICs the above sampling criteria should be used; however, the vehicles and drivers involved in crashes should be included in that sample.

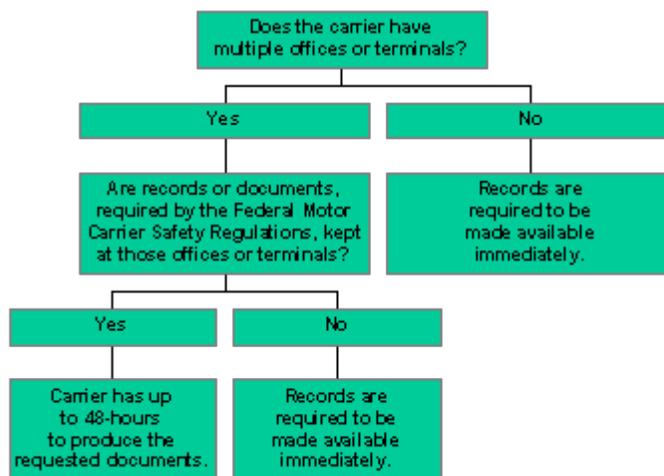
The SI has some flexibility and discretion in this selection process and should use his or her judgment. For example, if two drivers have BASIC percentiles that are very close to each other but one has been involved in more crashes, then the SI could decide to include the driver who has been involved in 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 FMCSA Portal for 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 1.3.6 of Stage 3](#).

#### 1.2.2.5.4 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, upon request. Notwithstanding this restriction, the motor carrier and an authorized representative of FMCSA may agree that a CR or other investigation of a motor carrier may be conducted at a mutually acceptable location other than the motor carrier's PPOB, if all necessary documents are made available.

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



[Description of Does the carrier have multiple offices or terminals? diagram](#)



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

### 1.2.2.6 SI Contacts the Carrier, Explains the Investigation Process, and Discusses Document Request

#### 1.2.2.6.1 SI Contacts the Carrier

Under normal circumstances, the SI should attempt to contact the carrier official to request documentation and make an appointment to conduct the [100% States] Offsite or Onsite Investigation. This will ensure that the records are sent to the SI or are available upon arrival at the place of business.

Before contacting the carrier, the SI should decide if this contact will have an adverse effect on or compromise the quality of the Investigation. Or, for example, the SI has historical evidence that the Agency had previously contacted the carrier and the carrier was unresponsive or uncooperative. In this case an Onsite Investigation is appropriate and the SI should contact his or her Manager to have the [100% States] Offsite converted to an Onsite Investigation. Then the SI should proceed with the Onsite Investigation process described in Stage 3 without contacting the carrier. **For HHG Carriers:** SI should conduct background research, complaint history, response to previous investigations, and any additional information available from other agencies that have interacted with a HHG motor carrier to determine if he or she should refrain from making an appointment. HHG motor carriers with an extensive complaint history, were difficult or outright belligerent during previous investigations, or evasive with other agencies are likely to be evasive and not appear if given advance notice of a site visit.

Immediately before making initial contact with the carrier, the SI should verify that there has not been any change to the status of the BASICS that were designated at assignment as Roadside-Identified, or the status of any Serious Violation. Any changes may affect the Investigation Type, which should be based on the most recent posting of carrier data as of the date that the SI initially contacts the carrier. However, a carrier designated as High Risk should receive an Onsite Investigation, even if there has been improvement in on-road performance since the assignment was made.

If the SI cannot reach the carrier the SI should mark the intervention as “closed but not completed” in the FMCSA Portal, and select a reason why, such as out-of-business or inactive. If possible the SI should make three 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 the 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.

### 1.2.2.6.1.1 Schedule an Appointment

When you schedule an appointment, identify yourself and explain the purpose of your visit to the appropriate motor carrier official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc.). When making the initial contact, the SI should be prepared to explain the Intervention process, and respond to specific questions; e.g., how carriers are selected, what data contributes to the BASIC percentile, and what happens next. The SI should provide the carrier with the program website - <http://csa.fmcsa.dot.gov/about/default.aspx>

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

- Interstate shipments
- Use of commercial motor vehicles
- Physical location of carrier's office(s)/maintenance facilities, including directions
- Determine if the facility has a lift or pit
- Name/Title of a responsible contact within the company
- Notify the carrier that CMVs need to be available for inspection during review

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 and talks the carrier through the SMS website and where they can find their safety data if they have not looked in SMS.
- The SI describes the purpose and process of the Intervention and explains the emphasis on the Safety Management Cycle.
- The SI answers any questions the carrier may have about the process.
- The SI informs the carrier that they will receive a Documentation Request Letter and establishes the preferred method to obtain requested data. 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 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 [100% States] and for an Offsite Investigation it should be included in the carrier provided documentation. 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. Prior to making the carrier contact the SI should review the Licensing & Insurance website (<http://li-public.fmcsa.dot.gov>) to check the carrier's insurance and authority status (if applicable).
- 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 CAPRI.

- **[100% States] For Offsite Investigations**
  - The SI explains that the more documentation the carrier can send in electronic form the better. However, the SI should be as flexible as possible while still maintaining the integrity of the investigative process. The SI explains that documents can be sent by fax, email, mail, or physical pickup/delivery (when practical because of close proximity). The SI should also 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. A small amount can be easily faxed or scanned and emailed. A large amount may be better shipped or delivered. The SI should consider that the carrier may have limitations as well, such as no email or fax capability and should keep in mind that not all carriers have administrative staff available to copy/fax/mail documents.
  - 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 carriers; 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**
  - The SI suggests staff that should be present for the Investigation and schedules a date and time.
  - The SI should ask for the documents to be available at the time of the onsite visit.

#### 1.2.2.6.2 Other Items for Discussion with Carrier or SI Action

- **[100% States]** The carrier does not choose to cooperate with the Offsite Investigation-If the carrier does not choose to cooperate with the Offsite Investigation by not providing the requested records, the Division Office should modify the intervention to an onsite investigation. If the carrier continues to deny access, 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. Motor carriers who deny access will be subject to civil penalties. For-hire motor carriers will be placed out-of-service and additional enforcement penalties may be issued. For more information on the policy and procedures see the Penalties for Denial of Access Policy (MC-ECE-2015-002).
- **The carrier states that previously cited Serious Violations have been corrected-**If the carrier asserts that the previously cited Serious Violation has been corrected and the violation still appears in the FMCSA Portal, then the SI should include a request for documentation to verify this correction in the Document Request Letter.
- **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.

#### 1.2.2.6.3 SI Completes and Sends Document Request Letter



Once the appointment is scheduled, the SI should send a confirmation letter and questionnaire to the carrier. To ensure that the carrier receives this information in a timely fashion, it is preferable that the letter and questionnaire are faxed or emailed to the carrier. The confirmation letter informs the carrier of the place, time, and date of the investigation. When the carrier completes the questionnaire and returns it, it will assist you in the completion of Part A of the investigation report and prepare you for your investigation. Refer to [Illustration SA-1](#) for a sample confirmation letter and questionnaire. You may find it necessary to modify these documents to meet your needs.

The SI fills out the Document Request Letter listing the required documents as determined through the Pre-Investigation process. **[100% States]** If the Investigation is Offsite, the SI should include the desired method of delivery. The request should include the date that the documents are required to be submitted or available and should inform the carrier of the number of records required and applicable drivers and vehicles. Under normal circumstances the SI provides the carrier with the Document Request Letter prior to starting the Investigation. However, if the Investigation proceeds without giving the carrier advanced warning, then the documents are requested at the onset of the Onsite Investigation.

#### *1.2.2.6.4 SI Records Contact 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 allows future Investigations to benefit from the knowledge of how the Investigation progressed and may help to provide insights, indications, expectations, and outcomes.

#### *1.2.2.7 Prepare for Drivers with Red Flag Violations Investigation*

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

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

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

		operated
Driver Fitness	391.11(b)(7)	Driver disqualified from operating CMV
Driver Fitness	391.15(a)-SIN <sup>1</sup>	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 <sup>1</sup>	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
Controlled Substances/Alcohol	392.4(a)	Driver possesses, uses, or is under the influence of controlled substance(s)
Controlled Substances/Alcohol	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty
HOS Compliance	395.13(d)	Driving after being declared out-of-service (OOS) (Violating Part 395 OOS Order)
Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle before making repairs

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

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

<sup>1</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

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

#### *1.2.2.8 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.

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

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

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

Prior to conducting the review you should:

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

For Controlled Substances/Alcohol Supplemental Review investigative procedures, see [Part 382 – Investigative Procedures](#).

### *1.2.2.9 Prepare for a Hazardous Materials (HM) Supplemental Review*

FMCSA incorporated the HM Supplemental Review into its investigative process to continue the Agency's focus on examining motor carriers that transport HM. A motor carrier is subject to an HM Supplemental Review if:

- The HM Compliance BASIC will not be investigated as part of an Onsite Comprehensive Investigation or an Onsite Focused Investigation;
- The motor carrier transports HM; and
- The motor carrier has not had an investigation that examined HM compliance (as determined by reviewing [Part C](#) of the Investigation) within the last 24 months.

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

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

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

For HM Supplemental Review investigative procedures, see [HM Supplemental Review](#).



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.

### *1.2.2.10 Before Arrival at Carrier's Office*

Think safe, Be safe:

- Complete Google GIS location searches prior to going to the location or do a drive-by prior to the date you begin your Investigation.
- If at any time you are uncomfortable, leave the premises. Contact the DA and ask for state partner law enforcement assistance.
- Ensure that you communicate your schedule with the Division Office.

- Identify escape routes: park car facing out, when inside a facility know all exits, etc.

### *1.2.2.11 Ensure You Have the Most Recent Software*

You should ensure, prior to the initiation of an Investigation, that you have the latest versions of FMCSA software on your laptop computer. The latest versions are available by logging into <http://infosys.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>). If there is an updated version of the software available, you should download the version and update your computer with the most recent version of the software.

## 1.3 Stage 3-Investigation

### 1.3.1 Introduction:

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 identify corrections to Serious Violations.
- 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 CAPRI.
- The CBI takes place when a carrier is identified as 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 included in the assignment from the Manager.
- An HM Supplemental Review should be performed if required.
- Violations documented during the investigation process are entered in CAPRI 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.
- 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), Notice of Violation (NOV), and/or **[100% States] Cooperative Safety Plan (CSP)**.

- Based on the carrier data and violations entered into CAPRI, the Carrier Investigative Report is generated. This is used in the Investigation Feedback and Closeout described in Stage 4.

### 1.3.2 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 1.3.9](#) and is important for the SI to understand the model and associated processes. Process Breakdown is the term used to describe when an SMP is not working as it should; it represents each part of the Safety Management Cycle, 1 thru 6. The **Collaborative Questioning Cycle has the added goal of discovering why the carrier violates the regulations and how they can stop, from both the carrier and the Agency’s perspective**. A key to this process is the concept of “guided self-discovery” to assist the carrier in identifying remedies. The Safety Investigator plays a key role in facilitating this discussion and should focus on the carrier responses to assist in using the information the carrier provides to write the Process Breakdown and Remedy that will efficiently and effectively eliminate or reduce the documented violation(s).

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

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

### 1.3.3 Overview of the Safety Management Processes (SMPs)

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

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

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

#### 1. Policies and Procedures

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

#### 2. Roles and Responsibilities

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

#### 3. Qualification and Hiring

Once the Roles and Responsibilities are defined, then the carrier can explore who will carry these out. The Qualification and Hiring process is about successfully finding and qualifying people for the various roles within the carrier's organization whether it is an external or internal candidate. A successful Qualification and Hiring process should be able to identify and attract the proper candidates to fulfill the Roles and Responsibilities of the various positions. Signs that this process is breaking down are: the existing staff's skillsets do not align with the needs of the job(s) or the carrier is having trouble filling an open position. A carrier can hire someone who is not fully qualified for a position so long as they have a training program ready to bring the employee up to speed with the skills and knowledge they need to carry out the responsibilities of the position successfully.

#### **4. Training and Communication**

Once an employee is placed in the proper position, the carrier needs to communicate to that employee all the policies, procedures, roles, and responsibilities so that the employee understands the expectations. Employees must communicate with each other clearly, effectively, and in a timely manner such that all the procedures can be successfully carried out. The carrier is also responsible for training and retraining employees when it is discovered, through the monitoring and tracking process, that they do not have the adequate skills and knowledge. Training and Communication are an ongoing process. Employees who are unaware of their Roles and Responsibilities, the carrier's policies and procedures, and/or employees who do not have the proper skills and knowledge to complete their jobs reflect inadequacies in this area.

#### **5. Monitoring and Tracking**

Once employees receive the proper Training and Communication, they are ready to attempt to fulfill their Roles and Responsibilities. The carrier must monitor and track the employees' performance to ensure that they are in compliance with the policies and procedures and that they are fulfilling their Roles and Responsibilities. Monitoring can be a formal or informal process. Sometimes monitoring should be tracked (e.g., documented) and sometimes that is not necessary. Performance evaluations are an excellent example of Monitoring and Tracking. The frequency of the Monitoring and Tracking depends on the situation. To the extent possible, all aspects of the organization should be monitored and tracked to ensure that they are functioning as intended. The goal of Monitoring and Tracking is to ensure that the carrier is aware of what is happening in their organization. The SI can identify inadequacies if the carrier is either not executing monitoring and tracking or not executing it well. Carriers who monitor and track their employee performance become aware of, and can address problems through taking Meaningful Action.

#### **6. Meaningful Action**

Meaningful Action provides positive reinforcement for, or is aimed at improving or correcting, employee behavior. Positive Meaningful Action can involve setting up incentives, such as bonuses and other rewards that motivate employees to execute their Roles and Responsibilities properly and reinforce the actions and behaviors that the carrier wants to encourage. Corrective Meaningful Action refers to the carrier's reaction when the monitoring activity reveals that an employee is not executing his/her roles and responsibilities. In these situations, the carrier must perform the appropriate action whether it is simple feedback, offering refresher training, or giving a verbal warning, written warning, suspension, or dismissal. The SI can identify when a carrier does not take adequate corrective Meaningful Action when the carrier either does not have any reaction to an employee who is not performing or has an inappropriate reaction.

#### **1.3.4 Investigation process workflow provides a visual representation of the key processes.**

[Steps to Take Upon Arrival at the Motor Carrier's Office](#)

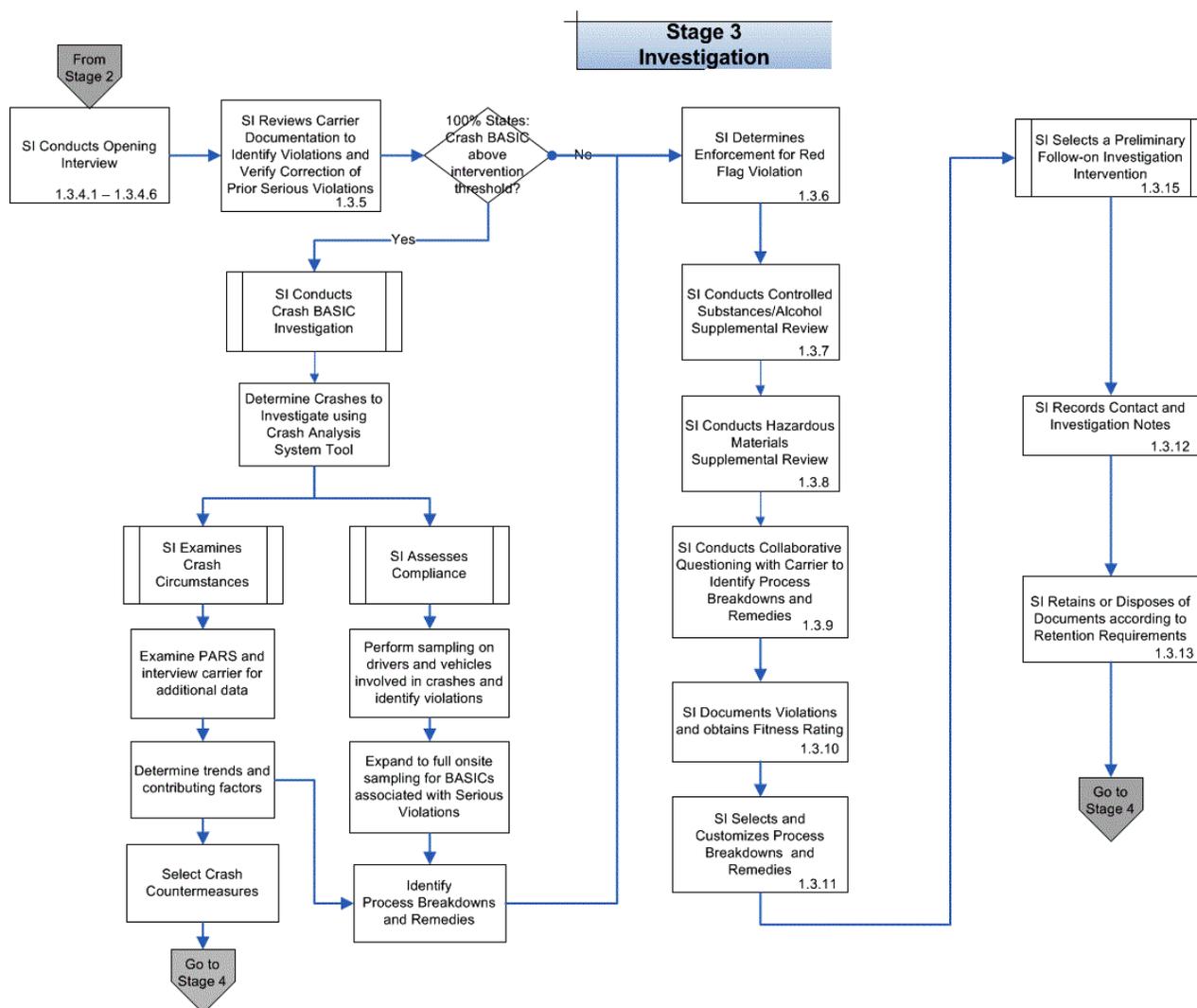
[Areas that Should be Covered during the Opening Interview](#)

[Operating Characteristics](#)

[Driver Issues](#)

[Tour of the Facility](#)

[Completing Part A of the Investigation after Interviewing the Motor Carrier](#)



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

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

7.  Explain to the motor carrier how long the review is expected to take and at what time certain records and carrier employees are needed. This allows you and the motor carrier to most efficiently complete the review process.

#### *1.3.4.2 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 an Onsite Investigation, the SI should fill in as much data as possible in CAPRI before the visit, and verify this information during the Investigation. This data gathering is not finalized until the Investigation is complete. In particular, the system will determine what performance data are required later in the investigative process—based on the outcome of the Investigation.

#### *1.3.4.3 Operating Characteristics*

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



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

#### *1.3.4.4 Driver Issues*

Ask the appropriate motor carrier official about the company's procedures for hiring drivers, driver qualifications and training, and request a list of drivers employed in the last 365 days. This list should include their hire and termination dates. After the motor carrier provides you with the information, verify the accuracy of the list by reviewing the motor carrier profile, payroll records, dispatch records, bills of lading, and/or shipping documents during your investigation.

#### *1.3.4.5 Tour of the Facility*

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

Make note of and identify individuals you may need to speak with during the course of the investigation. For larger carriers, speak with dispatchers once again, looking for body language, driver notices, etc., posted on the walls/dispatch windows. Visit the charter department to identify individuals to interview.

Pose open-ended questions about how the charter department assesses if a charter can be completed within a driver's HOS.

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

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

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

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

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

#### *1.3.4.6 Completing Part A of the Investigation after Interviewing the Motor Carrier*

If a questionnaire was used in the phone interview with the motor carrier prior to your arrival, you should use it to complete Part A. If a phone interview of the motor carrier was not conducted prior to your arrival, conduct an interview with the appropriate official to complete Part A of the investigation report. Complete Part A as follows:

##### ***Legal Name of Motor Carrier/Shipper***

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



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

##### ***Doing Business As (DBA)***

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

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

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

##### ***Gross Revenue***

You will need to enter all revenue generated by the legal entity being reviewed (ensure that you include all non-transportation revenue as well). If the motor carrier refuses to release this figure, or the figure is for less than 12 months, document this information in [Part C](#) of the investigation report. When a carrier refuses to provide the gross revenue figure, consult with your Supervisor, DA/SD, or SC to estimate the gross revenue. If no figure was provided, estimate the gross revenue using the following:

**Mileage (previous 12 months) X \$1.50 = Estimated Gross Revenue**

Remember to convert foreign currency into dollars.

### ***Mileage (Previous 12 Months)***

For motor carriers domiciled in the United States, enter total CMV mileage for all power units under the carrier's control recorded on Part A. Include mileage in interstate and intrastate commerce, and mileage in Canada and Mexico.

 For motor carriers domiciled in Canada and Mexico, you will need to enter the total mileage: (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 into miles. However, for Mexico domiciled motor carriers, if data on recordable accidents cannot be gathered, then the carrier's mileage in Mexico should be excluded from the determination of recordable accident rate.



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:

<b>Annual Mileage Estimate = <math>\frac{(12 \times \text{Miles Operated})}{\text{Months Operated}}</math></b>
<b>For this example:</b> <b>Annual Mileage Estimate = <math>\frac{(12 \times 800,000)}{8} = 1,200,000</math></b>

### ***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, MSDSs, 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***

The data you enter should reflect the vehicles that are, or could be, operated at the time of the investigation with the exception of trip-leased vehicles. You should enter an average of trip-leased vehicles per month. If the same vehicle is used several times in a month, count each trip separately. "Term-leased" equipment is often used interchangeably with the term "permanent-leased." A term-lease lasts for 30 days or longer. A trip-lease lasts for less than 30 days.

### ***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*

Ask the motor carrier to provide you with the number of drivers it used, or who operated under its United States Department of Transportation (U.S.DOT) number during the 365-day period prior to the start of the investigation. The total number of drivers who are subject to the FMCSR include company drivers, owner-operators, leased drivers, and multiple-employer drivers. Although a driver may fit into more than one category, identify the driver in only one category and count the driver only once.

### *Computation of the Motor Carrier’s Interstate/Intrastate Recordable Accident Rate*

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

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

CAPRI computes the motor carrier's recordable accident rate (Factor 6) for you. However, if manual calculation is necessary, multiply the motor carrier’s number of recordable interstate and intrastate accidents in the previous 12 months by 1,000,000. Then divide that result by the motor carrier’s fleet mileage during the previous 12 months. For example, a motor carrier had two recordable interstate and intrastate accidents and a fleet mileage of 3,000,000 during the previous 12 months. The motor carrier’s recordable accident rate is  $(2 \times 1,000,000)/3,000,000$  which equals 0.67. 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/run reports). Note: In some cases, the carrier’s Accident Register will have more up- to-date information than MCMIS

 The process of obtaining accident information for a Mexico domiciled motor carrier involves self-reporting by the carrier. No database link exists to Mexico online data regarding crashes occurring in Mexico. An alternate source of information may be the carrier’s insurance company, which might provide a loss-run report. If recordable accidents are found and used, then the carrier’s mileage in Mexico should be included to determine the recordable accident rate. If accidents are not used, then the carrier’s mileage in Mexico should be excluded from the mileage total for calculation.

### 1.3.5 SI Reviews Carrier Documentation to Identify Violations [100% States] and Verify Corrections of Serious Violations

Once the documentation requested from the carrier has been received, it should be evaluated. The goal of this evaluation is identifying violations [100% States] and verifying the correction status of prior Serious Violations.

#### Identifying Violations

#### Verifying Correction of Prior Serious Violations

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

#### Discovering Serious Violations Outside of BASICs Requiring an Investigation

##### *1.3.5.1 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 [100% States] Offsite or Focused Onsite Investigation the SI should be concerned primarily with identifying violations in CFR Parts associated with the BASICs requiring an 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 CAPRI.
- Evaluate the carrier's Safety Management Processes (by applying the Safety Management Cycle to identify Process Breakdowns and document Remedies as discussed in [Section 1.3.9](#)) 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;
  - 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](#).

##### *1.3.5.2 [100% States] Verifying Correction of Prior Serious Violations*

In addition to identifying violations associated with the Roadside-Identified BASICs (or the BASICs associated with complaints), the SI must also verify the correction of Serious Violations previously cited during prior Investigations.

- The SI should perform sampling related to the Serious Violation(s) according to the guidelines in Section 1.2.2.5 to ensure that the issue has been adequately addressed and did not continue beyond the Investigation in which it was originally discovered.
- If the Serious Violation has not been adequately corrected, is ongoing, or has been repeated since the prior Investigation, then the SI should cite the violation and initiate appropriate enforcement. In addition, for such continuing Serious Violations that are Type A, the SI should expand to full Onsite sampling of the associated BASICs using the criteria in [Appendix L-3: Record Sampling](#).

The following scenarios illustrate the various paths for sampling and identification of new violations based on prior Serious Violations:

#### **[100% States] Scenarios Involving Verification of Serious Violations**

##### **Showing progressive Sampling Requirements to Identify New Violations**

##### **Carriers under investigation Based Solely on Serious Violations**

- Scenario 1-The carrier has Type B, and no Type A, Serious Violations and meets none of the criteria for selecting an Investigation (e.g. has no Roadside-Indicated BASICs, is not a passenger

carrier, has not received non-frivolous complaint, etc.). The Manager should assign a Focused Onsite Investigation of the BASICS associated with the Type B Serious Violations. ([See Appendix L: Serious Violations-Corrective Action Requirements to determine the applicable BASIC.](#)) Sampling of records/documents for all Parts associated with these BASICS will follow Onsite Sampling criteria in [Appendix N: Record Sampling](#).

- Scenario 2-The carrier has Type A, and no Type B, Serious Violations and meets none of the criteria for selecting an Investigation. These are the conditions for selecting Verification-Only Document Review. Verification of correction of the violations should be performed Offsite. Selection of records/documents will follow corrective action requirements for Type A Serious Violations. (See [Appendix L: Serious Violations-Corrective Action Requirements](#).) If the violations are found to be continuing, then the intervention will convert to a Focused Onsite Investigation on the BASICS associated with the violations. The sampling of records/documents for all Parts associated with these BASICS will follow Onsite Sampling criteria.

#### **Carriers under investigation Based on both Serious Violations and On-road Performance (Investigation-Identified and Roadside- Identified)**

- Scenario 3-The carrier has Type A and/or Type B Serious Violations and meets the criteria for selecting a Comprehensive Onsite Investigation or CBI. The Manager should assign a Comprehensive Onsite Investigation or CBI during which the SI will verify the Serious Violation in the course of investigating all BASICS, using the sampling criteria for either Investigation Type in [Appendix N: Record Sampling](#). If it is a CBI, then the sample of records or documents requested for each BASIC are enhanced to include those necessary to verify the Serious Violations.
- **Scenario 4**-The carrier has Type B Serious Violations, no Type A Serious Violations, and does not meet the criteria for selecting an Onsite Comprehensive Investigation. The Manager should assign a Focused Onsite Investigation of all BASICS requiring an investigation. Sampling of records/documents for all Parts associated with these BASICS will follow Onsite Sampling criteria.
- **Scenario 5**-The carrier has Type A Serious Violations not associated with a Roadside-Identified BASIC or complaint and does not meet the criteria for selecting an Onsite Comprehensive Investigation. In this case the Manager should assign a Focused Onsite Investigation of the BASICS requiring an investigation. Verification of Type A Serious Violations should be performed Onsite. Selection of records/documents will follow corrective action requirements for Type A Serious Violations. (See [Appendix L: Serious Violations-Corrective Action Requirements](#)). Sampling of records/documents for all Parts will follow Onsite Sampling criteria for BASICS associated with Type A Serious Violations that are found to be continuing and for all BASICS requiring an investigation as assigned.

#### *1.3.5.3 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 CAPRI 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 CAPRI](#).

For guidance on citing cargo-related within the Vehicle Maintenance BASIC related violations please see [Guidelines for Recording Cargo-Related Violations within the Vehicle Maintenance BASIC in CAPRI](#).

#### *1.3.5.4 Discovering Serious Violations Outside of BASICS Requiring an Investigation*

If the SI discovers occurrences of Serious 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 Serious Violation discovered.

For example, a motor carrier has 20 vehicles subject to the FMCSRs and the SI is conducting an Onsite Focused Investigation on HOS Compliance, but the SI subsequently discovers two occurrences of 396.11(a) violations, a Vehicle Maintenance-related Serious Violation, The SI should not ignore these violations, but instead document them in CAPRI. 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.

### 1.3.6 SI Determines Enforcement for Red Flag Violations

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

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

Note: The SI should have obtained good contact information for drivers under investigation in the pre-investigation and investigation stages.

#### [Red Flag Violation](#) [Guidelines for Enforcement of Red Flag Violations](#)

##### 1.3.6.1 Red Flag Violations

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

BASIC	FMCSR Part	Violation Description
Driver Fitness	383.21	Operating a commercial motor vehicle (CMV) with more than one driver's license
Driver Fitness	383.23(a)(2)	Operating a CMV without a valid commercial driver's license (CDL)
Driver Fitness	383.51(a)-SIN <sup>2</sup>	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance

<sup>2</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-

Driver Fitness	383.51(a)-SOUT <sup>2</sup>	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 <sup>2</sup>	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 <sup>2</sup>	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
Controlled Substances/Alcohol	392.4(a)	Driver possesses, uses, or is under the influence of controlled substance(s)
Controlled Substances/Alcohol	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty
HOS Compliance	395.13(d)	Driving after being declared out-of-service (OOS) (Violating Part 395 OOS Order)
Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle before making repairs

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 (e.g., citation), the violation was corrected in a timely manner, or the violation continued, or was repeated. For example, if a driver has been cited for operating without a valid CDL (Part 383.23(a)(2)), and if this violation was not corrected and the driver continued to operate, the SI should initiate enforcement action.

The decision to pursue driver enforcement may impact the scope of the assessment of the carrier's Safety Management Processes. When driver violations are discovered and are recommended for enforcement against the driver, the SI should determine if the carrier has the SMPs in place related to that violation. If the SMPs are not in place, then the SI should include the Process Breakdowns and Remedies in the Investigative Report in CAPRI. 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 1.3.9](#)) with the carrier.

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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.

<sup>3</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension. During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

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.

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

Any enforcement action for a violation discovered in an investigation should follow the general guidelines for selecting a follow-on intervention discussed in [Section 1.3.15](#).

### *1.3.6.2 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<sup>3</sup>, 383.51(a)-SOUT<sup>3</sup>, 391.11(b)(7), 391.15(a)-SIN<sup>3</sup>, and 391.15(a)-SOUT<sup>3</sup>], enforcement normally depends on whether the disqualification was for a safety-related reason.
    - NOV's are an option only for two violations [383.23(a)(2) and 391.11(b)(5)], as long as they are immediately correctible and readily verifiable.
    - If there was no original enforcement on the Red Flag Violation at the roadside, the SI will normally issue an NOC (or NOV in the case of the two violations listed above). If there already was a citation, then the SI should consult with the Manager before initiating enforcement against the driver.
  - Controlled Substances and Alcohol Red Flag Violations
    - Normally, discovery of the two designated Red Flag Violations [392.4(a) and 392.5(a)] will result in an immediate driver disqualification. If the SI finds evidence that the driver operated while disqualified, he should cite one of the Driver Fitness Red Flag Violations listed above for operating while disqualified and pursue enforcement against the driver.
    - If there was no disqualification, the SI should check to see if there was a subsequent conviction for the violation. If the driver was convicted, then the SI or Manager should refer the matter to the Service Center to pursue driver disqualification, and should not initiate an NOC.
    - If there was no disqualification, no conviction, and no original citation, then the SI should verify the violation in the course of the investigation, and initiate a driver and/or carrier NOC. If there was an original citation, then the SI should consult with the Manager before initiating enforcement.
  - Vehicle Maintenance and HOS Compliance Red Flag Violations
-

- The two designated Red Flag Violations [395.13(d) and 396.9(c)(2)] are cited when the driver has been found operating while the driver or vehicle was placed out-of-service (OOS). Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either the driver or the carrier, or both.
- Once the violation is verified, if there was no original enforcement on the Red Flag Violation at the roadside, the SI will normally issue an NOC.

### 1.3.7 SI Conducts Controlled Substances/Alcohol Supplemental Review

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

### 1.3.8 SI Conducts Hazardous Materials Supplemental Review

FMCSA incorporated the HM Supplemental Review into its investigative process to allow the Agency to continue its focus on examining motor carriers that transport HM. A motor carrier is not subject to an HM Supplemental Review if the HM BASIC is investigated as part of an Onsite Comprehensive Investigation or an Onsite Focused Investigation. For all other motor carriers that transport HM, an HM Supplemental Review is required if the carrier has not had an investigation that examined HM compliance (as determined by reviewing [Part C](#) of the investigation) within the last 24 months.

For guidance on when an HM Supplemental Review is assigned, please refer to [Section 1.1.7](#). If an HM Supplemental Review is not included in the assignment, the SI should verify that the motor carrier does not meet the criteria described in [Section 1.1.7](#). If the motor carrier does meet the criteria, the SI should confirm with the Manager that an HM Supplemental Review should be performed.

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

- Marking, labeling, and placarding requirements
- Cylinder, IBC, and cargo tank requirements (beyond the cargo tank testing and inspection records noted below)
- State and local routing requirements
- HM driving and parking regulations

To conduct an HM Supplemental Review, the SI needs to check the following items:

- Shipping papers: **Check one HM shipping paper per Class/Division**, up to a **maximum of three different Classes/Divisions** of HM transported, including emergency response information and phone numbers.
- Training records: Check that HM Training Materials and Records are in compliance with Part 172, Subpart H for **three employees** that meet the definition of an HM employee in accordance with §171.8. (Note: All employees should be checked if the motor carrier has fewer than three employees that meet the HM employee definition per §171.8.) The SI should review the materials and verify the date of the last training and testing for a **maximum of three employees** against 172.704.
- Security plans: The SI should review security plans and conduct a Security Contact Review (SCR), as applicable, per current eFOTM guidance.
- Cargo tank testing and inspection records (if applicable): Check **one cargo tank type** testing and inspection record up to a **maximum of three different cargo tank types** as required in Part 180.417. (Notes: If the SI also includes the Vehicle Maintenance BASIC, he or she should utilize the vehicles checked to select the cargo tank testing and inspection records for review. If self-testing and/or inspecting, check Cargo Tank Facility registration per § 107.501)
- HM incident reporting: Inquire about HM incidents that occurred in the previous 12 months and verify that these were properly reported using DOT Form F 5800.1 (01/2004).

If violations are discovered during the HM Supplemental Review, these violations should be recorded in CAPRI. If Serious Violations are discovered during the HM Supplemental Review, a full investigation of the HM Compliance BASIC should be conducted. The discovery of other non-serious violations does not require the expansion of the supplemental review. Based on the specific circumstances, the DA may require a full investigation of the HM Compliance BASIC.

### **1.3.9 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 CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the SMP Breakdowns and Remedies.

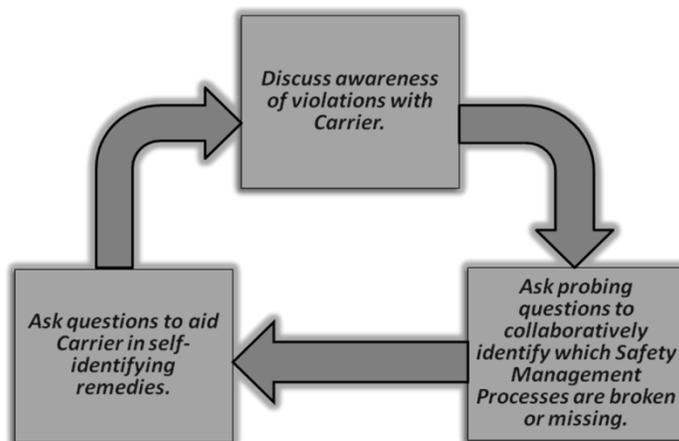
In addition to the traditional enforcement role, the SI helps the carrier to become more compliant and to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the investigative process should be more of a collaborative process. The SI should frame the questions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

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

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

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

#### INVESTIGATIVE QUESTIONING CYCLE



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

### Tips on Finding Process Breakdowns

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

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

- The SI should consider the entire cycle; by doing this, the SI is able to eliminate the need to review SMPs not related to either the violations or BASIC under investigation.
- Since Policies and Procedures are the basis for the SMC, the SI should consider this first and then work through the remaining SMPs.
- During the Investigative Questioning Cycle, the SI should listen for the “action” word(s) the carrier uses in their description of why they think their violations discovered are occurring. This will assist the SI in gaining the desired “buy-in” from the carrier, select the most applicable Process Breakdown, and ultimately assist in documenting the remedy by using the information provided by the motor carrier. The SI should not write the Process Breakdown(s) Remedy autonomously. The SI should write the Process Breakdown and Remedy with the carrier’s information included.
- When trying to choose a specific SMP to focus on, the SI should consider the extent to which the process is broken. For example, a carrier might have a verbal policy, but no roles and responsibilities defined. In this case it might be better for the carrier to address the process with the most prominent breakdown (e.g., in this case it is Roles and Responsibilities).
- The SI should not assume that just because a carrier provides evidence that they are doing something in a given SMP that they are doing it well. The SI should ask deeper questions to try and

determine if their implementation of a SMP produces the desired results. The SI should ask questions such as “Can you provide more details?” or ask “who, what, when, where, why, how, and/or show me...”

- Different carriers need different levels of implementation in each SMP. For example, large carriers will probably have detailed written policies and procedures, whereas a medium carrier may only need a shorter version of the policy, and the owner-operator might be able to satisfy the requirement with verbal policies and procedures.
- The SI should not ask the carrier to implement too many changes at once. Asking a carrier to go from no policies and procedures to a fully written, detailed procedural manual might be too intimidating. The SI should suggest that a good first step would be to determine what the policy and procedures are and create a brief first draft.
- When choosing Safety Improvement Practices, the SI should evaluate which will best help the carrier address their safety compliance issues.
- Sometimes it can be difficult to precisely identify which SMP a particular issue or breakdown is linked to because there seems to be overlap. The following scenarios provide examples of this:
  - If a carrier is not *monitoring and tracking* their training process, then the breakdown is in the “Monitoring and Tracking” SMP because that is the main activity that is missing, not the training process. Generally, the SMP that is chosen is the *action* (i.e., it is the verb).
  - If a carrier is not requiring an employee to take refresher training after repeatedly not following policies and procedures, the Process Breakdown is in “Meaningful Action” because the main issue (action) is that the carrier did not *ensure* that he or she took the refresher training following the discovery of lack of adherence to policy.
  - If the carrier has an *ineffective refresher training* program then the Process Breakdown would be in “Training and Communication” and the remedy would be to improve the refresher training program.
  - It is more important that the remedy reflect the recommended action the carrier should take to target their safety problem than to become overly concerned with the selection of the SMP.
- During closeout, the SI should walk the carrier through the SMC and explain how it works so that the carrier is empowered to assess its own safety issues in the future. It becomes a problem-solving tool for the carrier when the Investigator is not there.

### 1.3.10 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. Following the entry in CAPRI of all violations discovered during the Investigation, a proposed Safety Fitness Rating will be issued where appropriate.

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

- **[100% States] Offsite Investigations cannot result in a Safety Fitness Rating and are recorded in CAPRI as a non-ratable review.**
- 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 Appendix B, have not been examined. If the SI does not find sufficient violations to issue a Conditional or Unsatisfactory rating, the SI should change the investigation to a non-ratable review in CAPRI. Please click on [Additional Steps Needed for Recording Onsite Focused Investigations](#) for more information
- An **Onsite Comprehensive Investigation** examines all factors in 49 CFR Part 385 Appendix B and therefore can result in a Satisfactory, Conditional, or Unsatisfactory rating.

This Investigation Type and resulting Safety Fitness Rating are summarized in the following table.

Investigation Type	Resulting Safety Fitness Rating
100% States Offsite	100% States None
Onsite Focused	Conditional, Unsatisfactory
Onsite Comprehensive	All ratings

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

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

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

If an Onsite Focused Investigation results in a Proposed Conditional or Unsatisfactory rating of a motor carrier with an existing safety rating from a prior compliance review, the SI shall advise the motor carrier that any subsequent corrective action upgrade request filed per 385.17 must address all violations from both the current Onsite Focused investigation and the previous investigation as well as the vehicle OOS rate and/or crash rate from each investigation if either affected the safety rating.

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

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

The table below further delineates FMCSA policy related to safety ratings and corrective action upgrade requests following Onsite Focused Investigations. The dates in the table represent the following:

Date 1 = Original safety rating date

Date 2 = Most recent Focused Investigation date

Date 3 = 385.17 upgrade request decision date

Date 2+ = Date 2 + (45 or 60 days) 17

### Safety Ratings and Corrective Action Upgrade Request

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

<sup>17</sup> 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 1.3.9](#)), the SI follows the process outlined below to select and customize the appropriate Process Breakdowns and Remedies that best fit the carrier in CAPRI. Process Breakdowns are defined as SMPs that have not been implemented by the carrier. Remedies are steps that the carrier should take to reduce the likelihood of future violations. They may be identified or derived from the SIPs associated with each Process Breakdown. Both Process Breakdowns and Remedies should specify and incorporate defects in SMPs and corrections which may have been identified during the Investigation.

- [Process Breakdown Selection](#)
- [Mandatory Recommendation](#)
- [Process Breakdown Customization](#)
- [Guidelines for the Investigation Report](#)

## Remedy Customization

### *1.3.11.1 Process Breakdown Selection*

If SMPs are not in place, are broken, or do not encourage safety compliance, the SI should select the corresponding Process Breakdown(s) in CAPRI. 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 CAPRI 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.

#### **Excerpt from MANDATORY RECOMMENDATIONS**

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

### *1.3.11.3 Process Breakdown Customization*

CAPRI is 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 in CAPRI 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 CAPRI and the SI should use it for customizing Process Breakdowns and Remedies.

### **HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Qualification and Hiring Process**

#### ***Description of Safety Management Process Breakdowns***

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

**BASIC-SPECIFIC RECOMMENDATIONS** *[SI: Review the following pre-populated remedies and customize as appropriate.]*

#### ***Implement the following Safety Improvement Process related to Qualification and Hiring:***

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

#### ***Seek Out Resources:***

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

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

#### ***1.3.11.5 Remedy Customization***

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

- Ask: Is this an individual problem (e.g., one driver) or is it a systematic, management problem (e.g., multiple drivers with the same issue)?
- Customize the SIPs accordingly. SIPs are geared towards systematic problems. Customize and target the SIPs that are pre-populated in the template accordingly. In general, be specific if there are certain topics, tools, or staff you would like the carrier to focus on.
- The Recommended Remedies should be to the point, bulleted, and structured in a way that the carrier will find easy to follow.
- Remedies should be action-oriented.
- The remedies appearing in CAPRI 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 (**100% States** CSPs, NOV's, NOCs)

- SI notes should be retained, but not scanned in EDMS
- [100% States] For Offsite Investigations Scope of documents that should be retained includes those documents:
  - Outlined per existing e-FOTM and EDMS guidance
  - Related to Follow-on Interventions (CSPs, NOVs, NOCs)
  - Submitted by the carrier via fax or mail (documents cannot be returned to the carrier)
  - SI notes should be retained, but not scanned in EDMS
- For Corrective Action
  - [100% States] Documentation of Corrective Action for violations cited in an Investigation may be received after the Investigation. These documents should be scanned and uploaded into EDMS with a file name containing the words “Corrective Action.” Prompt entry and labeling of these documents are necessary to allow the Service Center to consider adjustment of penalties for any pending NOCs.
- Federal and State Methods and Duration for Document Retention
  - All documents related to Follow-on Interventions should be uploaded into EDMS.
  - [100% States] Documents collected during Offsite Investigations, including documents submitted by the carrier via fax or mail, not related to Follow-on Interventions will be maintained as hard copy or scanned and uploaded into EDMS.
  - In accordance with EDMS procedures, hardcopies of documents may be shredded **after** they have been electronically scanned and uploaded.

### 1.3.14 Discovering Violations by BASIC

#### 1.3.14.1 Controlled Substances/Alcohol BASIC

##### 1.3.14.1.1 Introduction to Controlled Substances/Alcohol BASIC

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

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

If you are assigned an Onsite Focused Investigation or [100% States] 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.

● review of full part

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

<b>Safety</b>		
40 – Drug & Alcohol Testing	●	<b>Required:</b> Controlled Substances and Alcohol BASIC
380 – Special Training		
382 – Drug & Alcohol Testing	●	<b>Required:</b> Controlled Substances and Alcohol BASIC
383 – Commercial Driver’s License	⊗ Part of CAIR	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.

390 – FMCSR General	⊗ .15	390.15 – accident register – <b>Required</b> to determine which crashes required post-accident controlled substance and alcohol testing. Additionally, <b>Required if</b> 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 – <b>Required</b> 391.41, .43, .45 – Physical qualification for drivers, specific to controlled substances and alcohol issues. <b>Required if</b> driver tested positive.
392 – Driving of Motor Vehicles	⊗ .9a(a)	392.9a(a) Authority – <b>Required</b> as part of the CAIR process
393 – Vehicle Parts and Accessories		
395 – Hours-of-Service		
396 – Vehicle Maintenance		
<b>Hazardous Materials</b>		
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		
<b>Other</b>		
325 – Noise Emission		
387 – Financial Responsibility	⊗ As applicable	<b>Required</b> 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		
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### 1.3.14.1.2 Part 382 – Control Substances/Alcohol Use and Testing

#### 1.3.14.1.2.1 Part 382 – Investigative Procedure

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

[Pre-Employment Testing](#)

[Post-Accident Testing](#)

[Random Testing](#)

[Reasonable Suspicion](#)

[Drivers with Positive Tests](#)

[Drug and Alcohol Policies](#)

[Clarification of Safety-Sensitive Function](#)

[Private Motor Carriers of Passengers \(PMCP\)](#)

[Conducting a Controlled Substances/Alcohol Supplemental Review](#)

[Controlled Substances and/or Alcohol Agent Reviews](#)

#### ***Procedures to Follow During Investigation of Part 382***

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

- Identify key personnel in the motor carrier's controlled substance and alcohol program,( e.g. the name of the collector, the DER, the consortium, the MRO.)
- Ask the motor carrier to describe their controlled substance and alcohol testing program, for example what is the notification process for informing drivers of their random selection.
- Review background checks and previous employment responses.
- Identify positive tested and refusal drivers who have no evidence of completing the return-to-duty process.
- Ask for a list of drivers who operate vehicles that require operator to possess a CDL, with their dates of hire.
- Request a list of all drivers' selected for random controlled substances and alcohol testing.
- Review payroll, inspections, accident, etc. to be sure all drivers are included.
- Request a list of all controlled substances/alcohol tests performed, with results, for the past 12 months.
- Ensure controlled substances/alcohol tests were performed in accordance with Part 40.
- Check that controlled substances and alcohol random testing rates were met for the previous calendar year or employer designated 12 month drug and alcohol testing year.
- If the carrier uses a 3rd party to select drivers for random testing, obtain a list of the carrier's drivers in the pool from the consortium.
- Ensure the carrier is performing the required Controlled Substance Test (CST) background checks on all newly hired CDL drivers.
- Ensure the carrier has the summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year available for the management information system (MIS).

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

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

BASIC	Part 382	Description
Driver Fitness		
Controlled Substances/Alcohol	●	<b>Required:</b> 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 may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

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

### ***Request Driver List***

Request the motor carrier's driver list. The list should include the drivers hired within the previous 365 days, full legal name, date of birth, and driver's license number for each driver listed, date of hire, and date of termination (if applicable). The list will need to be verified for accuracy and completeness, by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.



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

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

Request a list of all positive controlled substance and alcohol tests performed during the past five (5) years and a list of negative test performed during the previous year. This list may be requested from the motor carrier, the motor carrier's consortium, and or the MRO. The list should include the drivers' names, the type of controlled substance and/or alcohol test, and the test result. You may also request the drivers' social security number to verify against other controlled substance and alcohol testing records.

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

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

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

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

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

## Part 382 - 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 table below:

### Sampling Requirements

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

CFR Parts : 382 - Drug & Alcohol Pre-employment					
<b>Considerations:</b> Review the carrier records to determine the drivers hired within the past 365 days. Select drivers with the highest BASIC percentiles first, and then select the ones that were involved in accidents.					
Onsite		[100% States]	Offsite	CBI	
# of Drivers Employed	# of Pre-employment Tests to Review	# of Drivers Employed	# of Pre-employment Tests to Review	# of drivers to review	Sample Size: # of Pre-employment Tests to Review
1-5	All	1	1	All drivers involved in <b>RECORDABLE</b> crashes that were <b>hired in the last 365 days</b>	All pre-employment tests of drivers involved in <b>RECORDABLE</b> crashes that were hired in the last 365 days.
6-25	5	2	2		
26-50	8	≥ 3	3		
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				

### Determining Which Drivers to Sample

Select drivers with the highest Controlled Substances/Alcohol BASIC percentiles according to the DSMS, which can be accessed using the SMS Online. On the page for the motor carrier being investigated, click on

the Driver Tab to obtain a list of drivers who have operated for that motor carrier and the driver's related DSMS performance percentiles in each BASIC. Sample from those drivers with the highest percentile rankings within the Controlled Substances/Alcohol BASIC down to the 50th percentile. The driver sample should include currently employed drivers. There are circumstances where you may need to select drivers recently terminated by the motor carrier. This practice is acceptable if properly articulated in Part C.

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

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

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain in Part C of the investigation report why you did not meet your sample. You must also explain in Part C if you exceed the required sampling beyond the number set forth in the chart above.

***Procedures to Follow When Pre-Employment Testing Problems are Encountered***

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

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

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

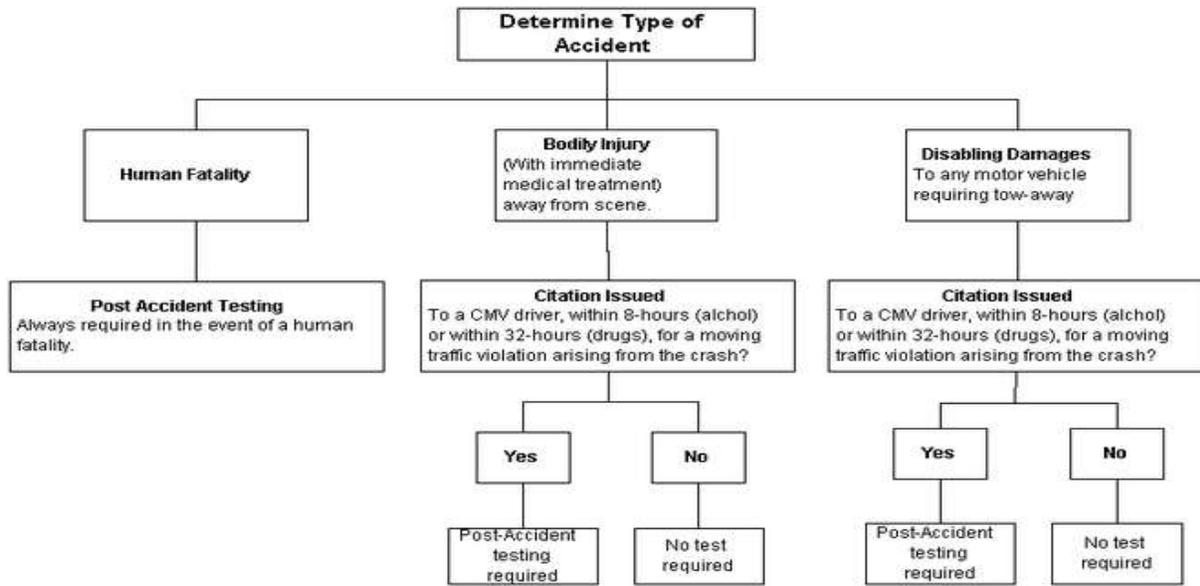
***Part 382 - Post-Accident Testing***

***Procedures for Reviewing Post-accident Test Results***

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

***Circumstances Under Which Post-Accident Testing is Required***

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



[Description of Determine Type of Accident flowchart](#)

CFR Parts - 382 Post Accident Testing			
Onsite	Offsite	CBI	
# of Post-Accident D&A Tests to Review	# of Post-Accident D&A Tests to Review	# of Post-Accident D&A Tests to Review	Sample Size: #
All drivers involved in recordable crashes require post-accident testing regardless of # of drivers employed.	Same as Onsite.	All drivers involved in recordable crashes that require post-accident testing regardless of # of drivers employed.	All drivers

**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 1 = 10 Drivers
Quarter 2 = 30 Drivers	Quarter 2 = 30 Drivers

Quarter 3 = 300 Drivers Quarter 4 = 10 Drivers 350 Drivers	Quarter 3 = 300 Drivers Quarter 4 = 10 Drivers 350 Drivers
T = 0.5 X D/P T = 0.5 X 350/4 T = 0.5 X 87.5 T = 43.73 (Round up) T = 44	T = 0.1 X D/P T = 0.1 X 350/4 T = 0.1 X 87.5 T = 8.75 (Round up) T = 9
How many drivers have to be tested in order to meet the 50 percent CST rate for the year? The answer is 44, which must be reasonably spread throughout the year.	How many drivers have to be tested in order to meet the 10 percent Alcohol rate for the year? The answer is 9, which must be reasonably spread throughout the year.

CFR Parts - 382 – Random Testing			
Onsite		[100% States] Offsite	
# of Random Tests (T)		# of Random Tests (T)	
Controlled Substances	Alcohol	Controlled Substances	Alcohol
T = 0.5 X D/P	T = 0.1 X D/P	Same as Onsite.	
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			

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

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:

<b>Examples -Test Period Rate (Controlled Substances)</b>			
<b>Carrier with four testing periods per year using drivers subject to be tested by employer or employer's C/TPA.</b>			
<b>Testing Period</b>	<b>Number of Drivers</b>	<b>Formula</b>	<b>Drivers to be tested during period.</b>
1	10	$T = .5 \times 10/4$	1
2	30	$T = .5 \times 30/4$	4
3	300	$T = .5 \times 300/4$	38
4	10	$T = .5 \times 10/4$	1
<b>Annual Total</b>			<b>44</b>
<b>Carrier with six testing periods per year using drivers subject to be tested by employer or employer's C/TPA.</b>			
1	10	$T = .5 \times 10/6$	1
2	30	$T = .5 \times 30/6$	3
3	300	$T = .5 \times 300/6$	25
4	10	$T = .5 \times 10/6$	1
5	20	$T = .5 \times 20/6$	2
6	10	$T = .5 \times 10/6$	1
<b>Annual Total</b>			<b>33*</b>

\*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 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 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 part C of the investigative report. Ensure that random tests are reasonably spread throughout the year, as shown in example one, and the carrier is utilizing a scientifically valid random selection method.

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

### ***Part 382 - Reasonable Suspicion***

#### ***Procedures to Use if Reasonable Suspicion Tests were Conducted***

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

### ***Part 382 - Drivers with Positive Tests***

#### ***Procedures to Use if Positive Test Results are Found***

- Determine the identity of drivers who tested positive for alcohol or controlled substances in the previous 5 years, or since the last investigation.
- Review the motor carrier's Semi-Annual Laboratory Statistical Summaries and their Annual Calendar Summary of urinalysis testing to verify that the identities of all drivers, who tested

positive for controlled substances in the previous 5 years, or since the last investigation, are accounted for.

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

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

The following policy and procedures explain how to conduct FMCSA investigations of CMV drivers who continue to operate CMVs on public roadways after testing positive and failing to comply with the return-to-duty requirements of 49 CFR Part 40 Subpart O. Since these drivers are typically working for new employers we call them “job hoppers.” This policy addresses drivers with retests within a short period of time (15 days), believed to be insufficient for the driver to have complied with the return-to-duty process prescribed by 49 CFR Part 40 Subpart O. It also includes other drivers who fail to complete the return-to-duty process before returning to driving CMVs for other employers. The policy also identifies recommended activities following the investigation, such as enforcement and disqualification actions, against drivers who have violated 49 CFR parts 40 and 382.

In addition, the FMCSA will take enforcement action against motor carriers that used a driver to perform safety-sensitive functions, when it can be determined that the motor carrier knew or should have known that the driver did not comply with return-to-duty requirements, after a verified positive test for alcohol or controlled substances.

#### **I Initial Activity**

In conducting an investigation of a motor carrier “employer,” Investigators should identify all verified positive test results that occurred in the preceding five (5) years. They should also obtain the following information and documentation for each positive test result or refusal:

- Driver’s legal name, SSN (if available), CDL number (if available), and company-assigned employee number;
- The driver’s employer or prospective employer at the time of the test (name and address).
- The same info for driver’s current employer (if known);
- Copies of the custody and control form, and the MRO verification of a positive result;
- Copies of any available evidence, including statements, relating to a driver’s refusal; and
- Review any background checks received for the positive-tested driver and determine whether they received a proper response. Obtain copies of each.

In conducting a **service agent review** of a consortium, third-party administrator (TPA) or MRO, Investigators should identify a listing of all verified positive test results and refusals that occurred in the preceding 12 months. They should also, if available, obtain the following information and documentation for each positive test result or refusal:

- Driver's legal name, SSN (if available), CDL number (if available) and company assigned employee number;
- The name and address of the driver's employer or prospective employer at the time of the test;
- Copies of the custody and control form, and the MRO verification of a positive result; and
- Copies of any available evidence, including statements, relating to a driver's refusal.

## II Locating Driver and Current Employer

Information provided by previous employers and/or service agents may reveal the driver's current whereabouts and current employer. Another way to locate the driver is to check available FMCSA databases, including DIR and QC, to determine if the driver has resumed driving CMVs, and has been involved in a recent accident or roadside inspection. If so, the SI should note the associated motor carrier at the time of the recent incident.

## III Reviewing the Current Employer

Due to the focused nature of this investigation, the Investigator will conduct a non-rated Special Study Review (see [Attachment A](#)) of each motor carrier suspected of employing a "job hopper," unless an investigation is being conducted for other reasons. This will ensure FMCSA has an official record of the investigation. The review will be uploaded when completed, and should be scanned into EDMS.

**Note: The intended scope of this type of investigation is only to identify drivers with verified positive controlled substances tests that are performing safety-sensitive functions in violation of the controlled substances regulations. If serious violations beyond the scope of the Special Study Review, including violations of the drug and alcohol regulations, are discovered, the SI should discuss expanding the investigation with the Division office managers.**

After the current (or last) employer of the positive-tested driver has been located, the Investigator will contact the motor carrier and schedule an appointment. The motor carrier should be informed that you are conducting a limited investigation on a specific driver or drivers, to determine if the driver(s) are in violation of the FMCSR.

Ask the motor carrier to provide identifying information, including a list, if available, of all current drivers and drivers hired by the motor carrier within the previous twelve months. If the driver(s) of concern are not included in the listing, ask the carrier for a list of all drivers the motor carrier has pre-employment tested within the last twelve months. If a motor carrier fails to cooperate with the investigation, the Investigator should follow the guidance found in the "Denial of Access to Records" policy.

During the investigation, review the pre-employment background checks to determine whether the employing motor carrier knew or should have known that the driver was not qualified to be used for safety-sensitive functions.

- If the motor carrier employer did not perform the background check, consider enforcement action against the employer. The violation is 49 CFR Section 382.413 [40.25(a)] for intrastate carriers or 49 CFR Section 391.23(e) for interstate carriers.
- If the motor carrier employer performed the background check, but the previous employer (having knowledge of the positive drug test), failed to respond or failed to accurately respond, consider enforcement action against the previous employer. This is a violation of 49 CFR Section 382.405(f) for interstate and intrastate carriers. It is also a violation of 49 CFR Section 391.23(g) for interstate carriers.
- If the motor carrier did not know, or could not have known, that the driver had tested positive, due to the driver's failure to list the previous employer on his application, do not cite the motor carrier employer with a violation. Instead, note in Part C of the investigation report that the driver was found in violation, but the employer was unaware of his noncompliance. Also, note in Part C of the investigation report, that an enforcement case will be initiated against the driver only.

- If it is determined the motor carrier employer knowingly permitted a job-hopper driver to perform or continue to perform safety-sensitive functions, the motor carrier employer should be cited in Part B of the Special Studies Review Report for one of these motor carrier violation(s):
  - If a motor carrier knowingly employs a driver who tested positive, and no part of the return-to-duty process has been followed, the motor carrier should be cited under 49 CFR Section 382.215.
  - If a motor carrier knowingly employs a driver who has tested positive, but the driver has made an effort to comply with the return-to-duty process, but failed to complete all requirements, the motor carrier should be cited as violating 49 CFR Section 382.503/382.605.

#### **IV Contacting the Driver**

To determine that the positive-tested driver did not complete the return-to-duty process, the driver must be interviewed. The interview may take place at the motor carrier's place of business, provided that the interview is conducted in a room that ensures the driver's privacy. At the beginning of the interview, a copy of the driver's CDL should be made. The driver should be presented with a copy of the MRO's verified positive test result, and any other evidence which proves that the driver tested positive. The driver should be asked if the documents of his positive test result were true, and whether the driver completed the return-to-duty process. If the driver confirms that he had not completed the return-to-duty process, secure a written voluntary statement to that effect, and ask the driver to inform the motor carrier employer, as he should have done during the interview process.

At the conclusion of the interview with the driver, a record (e.g., voluntary statement) of the appropriate driver violations and appropriate requirements and recommendations should be made to provide notice of violations to the driver. The findings should be reviewed with the driver and he should be asked to sign acknowledging receipt of the record. A copy of the record should be left with the driver and the original should be scanned and uploaded into EDMS.

Where the evidence developed during the investigation does not indicate the motor carrier knew or could have known through exercising reasonable diligence of the driver's positive controlled substances test, and was not knowingly permitting a positive-tested driver to perform safety-sensitive functions, the SI should initiate a NOC against the driver only. The NOC should cite the driver under 49 CFR Section 382.215/382.501 or 49 CFR Section 382.503.

**Note: Drivers that have been documented as failing to comply with the return-to-duty requirements must result in a [Letter of Disqualification \(Attachment E\)](#).**

#### **V Procedures for drivers the SI is unable to contact or who refuse to provide information.**

If a driver cannot be contacted, or refuses to meet with the Investigator and provide information, the Division may issue a NOV to the driver. The NOV is an informal enforcement action (see [Attachment D](#)) the Agency can use to inform the driver he or she is suspected of being in violation of the requirements in 49 CFR Parts 40 and 382. 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 or she is prohibited from performing or continuing to perform safety-sensitive functions after a positive controlled substances test, until the driver completes a SAP evaluation and the other return-to-duty requirements of 49 CFR Part 40, Subpart O. The issuance of the NOV does not preclude the Agency from issuing a NOC.

If the driver fails to respond to the NOV or does not submit evidence documenting his or her compliance with 49 CFR Parts 40 and 382, the Division may consider initiating enforcement action against the driver, along with a Letter of Disqualification.

#### **VI Providing Immediate Notice to the Driver's Current Employer**

The primary safety objective of conducting "job hopper" investigations is to reduce the public risk of having illegal drug and alcohol abusers operating CMVs on the highways. Consistent with the Departmental policy issued November 13, 2006 (see [Attachment G](#)), the motor carrier employer is informed of the

circumstances of its driver testing positive (or refusing) and failing to complete the return-to-duty process whenever the evidence is not in dispute.

This means that if the Investigator possesses a copy of the MRO's verified positive notification, and the job hopper agrees it is true, and willingly confirms he/she did not complete the return-to-duty process, the Investigator should ask the driver to sign a voluntary statement, which confirms that the driver did not complete the Return-to-Duty Process required by 49 CFR Part 40 Subpart O. If the driver refuses to sign the statement, ask him/her if it is true and correct, and if he/she would like to change some of the language. If the driver still refuses to sign the statement, indicate on the document that the driver agrees with the statement, but refuses to sign it. The Investigator should sign and date the statement in front of the driver, if possible.

At this point, the motor carrier employer is informed by the driver, or by the FMCSA Investigator, that the driver cannot be used to operate CMVs on public roadways. The motor carrier employer should be further informed that continued use of the driver for safety-sensitive functions will subject the employer to penalties prescribed in 49 CFR Section 382.507, and could result in a declaration of the motor carrier employer's operation as an imminent hazard. This verbal notice must be documented on Part C of the report or the Special Studies Review.

If the evidence is unavailable, in dispute, or the driver is less than cooperative, the employer will not be notified onsite. The Investigator will immediately initiate a Notice of Disqualification proceeding upon returning to his/her office, in addition to any appropriate enforcement action against the driver and/or motor carrier employer.

### **Related Guidance**

**Note:** These files were attachments to archived policy memo *Controlled Substances Subpart O Enforcement Initiative*.

[Attachment A: CAPRI Setup for Conducting Controlled Substances](#)

[Attachment B: Release of Information Form - 49 CFR Part 40 Drug and Alcohol Testing.pdf](#)

Attachment C: U.S.DOT Controlled Substances Regulations Form (no longer used as of eFOTM 2.8)

[Attachment D: Notice of Violation](#)

[Attachment E: Letter of Disqualification](#)

[Attachment F: Procedures for Reviewing Driver Compliance Investigation Reports and Enforcement Cases](#)

[Attachment G: Letter to Carrier with Driver Disqualification](#)

[Attachment H: Controlled Substances Subpart O Enforcement Initiative Q&As](#)

### ***Part 382 - Drug and Alcohol Policies***

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

### ***Part 382 - Clarification of Safety-Sensitive Function***

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

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

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

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

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

### ***Part 382 - Private Motor Carriers of Passengers***



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

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

#### ***Part 382 – Conducting a Controlled Substances/Alcohol Supplemental Review***

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

- Sample any three pre-employment controlled substances tests (382.301) within the previous 365 days of the start date of the investigation.
- 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**

<b>Crashes Requiring Post-Accident Testing</b>	<b>Number of Post-Accident Tests to Review</b>
1	1
2	2
≥3	3

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

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

When conducting a Controlled Substances/Alcohol Supplemental Review, the “382 – Drug & Alcohol Testing” box should be selected in the Parts Reviewed tab of CAPRI. Additionally, in the Part C Remarks, you should indicate:

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

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

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

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

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

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

#### ***Service Agent Reviews: Collection Sites***

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

#### ***Initiating a Public Interest Exclusion (PIE) Proceeding***

At the request of the DA/SD 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 serious service agent violations. Following Agency procedures for handling safety complaints, close complaints with service agent review, if investigation is undertaken.

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

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

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

[Recording Violations of Part 382 Critical/Acute Regulations](#)  
[Ensuring the Appropriate Cite is being Used](#)

### Recording Violations of Part 382 Critical/Acute Regulations

#### Part 382 - Acute and Critical Regulations

Citation	Type	Description
<b>382.115(a)</b>	<b>Acute</b>	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier).  <b>Note: There must be no evidence of actually testing drivers for drugs or alcohol within the previous 12 months.</b>  <b>Number Checked: One program.</b>
<b>382.115(b)</b>	<b>Acute</b>	Failing to implement an alcohol and/or controlled substance testing program (foreign motor carrier).
<b>382.201</b>	<b>Acute</b>	Using a driver known to have an alcohol concentration of 0.04 or greater.  <b>Number Checked: The number of drivers who were found to have an alcohol concentration of 0.04 or greater.</b>
<b>382.211</b>	<b>Acute</b>	Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382.  <b>Number checked: The number of drivers who refused to submit to an alcohol or controlled substances test required under Part 382.</b>
<b>382.213(c)</b>	<b>Acute</b>	Using a driver who the employer has "actual knowledge" of using an illegal controlled substance while on duty.  <b>Number checked: The number of drivers known to have used a controlled substance.</b>
<b>382.215</b>	<b>Acute</b>	Using a driver known to have tested positive for a controlled substance.  <b>Number checked: The number of drivers who tested positive.</b>
<b>382.301(a)</b>	<b>Critical</b>	Using a driver before the motor carrier has received a negative pre-employment CST result.  <b>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.</b>

<b>382.303(a)</b>	<b>Critical</b>	Failing to conduct post-accident alcohol testing for each surviving driver. <b>Number checked: Number of drivers required to be post-accident tested.</b>
<b>382.303(b)</b>	<b>Critical</b>	Failing to conduct post-accident controlled substances testing for each surviving driver. <b>Number checked: Number of drivers required to be post-accident tested.</b>
<b>382.305</b>	<b>Acute</b>	Failing to implement a random controlled substances and/or an alcohol-testing program. <b>Number checked: One random testing program.</b>
<b>382.305(b)(1)</b>	<b>Critical</b>	Failing to conduct random alcohol testing at an annual rate of not less than 10 percent of the average number of driver positions. <b>Number checked: The number of tests required to meet applicable rate.</b>
<b>382.305(b)(2)</b>	<b>Critical</b>	Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent rate of the average number of driver positions. <b>Number checked: The number of tests required to meet applicable rate.</b>
<b>382.309</b>	<b>Critical</b>	Using a driver without a return-to-duty test.
<b>382.503</b>	<b>Critical</b>	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. <b>Number checked: Number of drivers who were required to complete the return-to-duty process.</b>
<b>382.505(a)</b>	<b>Acute</b>	Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater, but less than 0.04. <b>Number checked: Number of drivers who tested positive for alcohol with a concentration of 0.02 or greater but less than 0.04.</b>

### *Ensuring the Appropriate Cite is being Used*

#### **a. When it is Discovered that the Carrier has Used a Driver who Tested Positive**

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

- **382.201 (Acute)** - Limited to situations where the carrier knows the driver currently has an alcohol concentration of 0.04 or greater and uses the driver anyway.
- **382.211 (Acute)** - Must be cited for a carrier that uses a driver who has refused to submit to a required test.
- **382.213(c)(Acute)** - To be used for situations involving actual knowledge, as defined by 382.107.

- **382.215 (Acute)** - To be used for situations involving a driver with a positive, adulterated, or substituted test.
- **382.503 (Critical)** - To be used in place of 49 CFR Section 382.211, 382.213(b), or 382.215 when the carrier has made some effort to follow the referral process, but used the driver before all the steps were completed.

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

#### *Proper Ways to Cite Random Testing Violations*

- **382.305 (Acute)** – To be used in situations where the carrier did not conduct any functions of a random testing program within the previous calendar year.  
\*The use of this violation includes situations when a carrier previously implemented a random testing program, in part or in whole, but abandoned all aspects of the random testing program for the entire previous calendar year.
- **382.305(b)(1) (Critical)** – To be used when a carrier implements any aspect of a random testing program, but does not conduct the required number of random alcohol tests, according to the applicable rate and the average number of driving positions.
- **382.305(b)(2) (Critical)** – To be used when a carrier implements any aspect of a random testing program, but does not conduct the required number of random controlled substances tests, according to the applicable rate and the average number of driving positions.

#### *1.3.14.1.2.3 Part 382 – Process Breakdowns/Remedies-SMC*

Once you have discovered the violations relating to Part 382, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns are occurring in the motor carrier's processes, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the [General Guidelines for Using the Safety Management Cycle \(SMC\) to Help Diagnose a Breakdown in Safety during an Investigation](#). For CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the SMP Breakdowns and Remedies.

#### *1.3.14.1.2.4 Part 382 – Enforcement Procedures*

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

#### *Part 382 – Enforcement Violations*

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

#### *Part 382 – Documentation*

[Evidence that is Required to Prosecute a Violation of Part 382](#)

[Important Issues to Remember when Documenting Violations of Part 382](#)

[Facts that Should be Present in Order to Prove Knowledge and Willfulness](#)

[Information that Should be Documented in an Exhibit to Prove Violations of Part 382](#)

[How to Cite Drug and Alcohol Violations](#)

#### *Evidence that is Required to Prosecute a Violation of Part 382*

- Evidence that the driver was subject to Part 383 - CDL requirements (e.g., GVWR >26,000 lbs., placarded HM, or a vehicle designed more than 15 passengers), such as vehicle registration.

- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the CMV was operated (used) by the employer.
- Evidence that the vehicle was operated in commerce on a certain date.
- Evidence that a specific violation of Part 382 occurred.

### ***Important Issues to Remember when Documenting Violations of Part 382***

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

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

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

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

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

- Obtain a RODS/time record and a corresponding shipping document to show that the CMV was used in commerce.
- **Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?**
  - Statement(s) of driver and/or responsible employer official are necessary, especially when the violation involves the employer's/driver's failure to act or failure to maintain records. See [Illustration E-2](#).

### ***How to Cite Drug and Alcohol Violations***

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

### ***Part 382 - Enforcement Action Against Drivers***

#### [Factors that should be Considered when Contemplating Enforcement Action for Driver Violations](#) [Violations that Warrant Consideration of Enforcement Action Against a Driver](#)

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

- How long has the driver been driving a CMV?
- Does the carrier have a disciplinary plan in place that's holds the driver accountable for his actions?
- If so, what actions does the carrier take to ensure the driver will comply with the FMCSR?
- It is recommended that different trip dates and documents are used when preparing enforcement actions against the driver and motor carrier.

#### ***Violations that Warrant Consideration of Enforcement Action Against a Driver***

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

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

##### **1.3.14.1.3.1 Part 383 – Investigative Procedure**

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

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

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

- Requesting a driver list,

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

### ***Ensuring you have an accurate driver roster***

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

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

- The table below identifies each BASIC by Part 383 and includes guidance on whether the investigation should include a review of the full part or subpart.
  - The table also includes additional guidance on when each is required or should be considered based on investigative findings.
- full review of part
  - ⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

<b>BASIC</b>	<b>Part 383</b>	<b>Description</b>
Driver Fitness	●	<b>Required</b> 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	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
Vehicle Maintenance	⊗ Part of CAIR	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
HOS Compliance	⊗ Part of CAIR	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
HM Compliance	⊗ Part of CAIR	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
Unsafe Driving	⊗ Part of CAIR	<b>Required</b> 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 may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

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

- The official State of Record (SOR) for a CDL holder is considered to be the true source of information on that driver; this is true even if the driver presents a CDL from another State (which is a violation of 383.21).

- To ensure that you are reviewing the most accurate driver history record, you should use the CDLIS functionality to establish which State is actually the official SOR.

With QC, you can use the AKA function to ensure that the license information presented by the driver is from the current SOR. QC will return the State and driver's license number of possible matches. Choose the driver that matches the information you have. Once that is established, you can conduct a History check directly to that State. With <http://cdlis.dot.gov>, you should always use the "Current" application. When using CAPRI, use the AKA function from the drop-down menu to verify that the license information you entered is for the SOR. You should not use QC, or the previous version of <http://cdlis.dot.gov>, or CAPRI, when conducting a History check, without using the AKA check first to determine the official SOR.



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](http://cdlis.dot.gov). The "status" query includes only convictions and/or withdrawals for events occurring during operations in the U.S. (as part of the FMCSA's Federal Conviction and Withdrawal Database, or FCWD), plus the MX/CN driver's status from the driver's licensing jurisdiction as an online, real-time response at the time the query occurs.

Following this review, you should:

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

### ***Part 383 – Red Flag Violations***

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

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

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

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

Part 383 Red Flag Violations include:

<b>BASIC</b>	<b>FMCSR Part</b>	<b>Violation Description</b>
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 <sup>4</sup>	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 <sup>4</sup>	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance
Driver Fitness	383.91(a)	Operating a CMV with the improper CDL group

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

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

#### **49 CFR Part 383 - CDL Status**

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

#### **Check the License Status and Driving Records of Drivers**

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

The preferred method of using CDLIS for checking CDL licenses is an AKA search using the driver's name and date of birth. [Note that for MX/CN drivers, an AKA search is not available.]

- Verify that drivers have the proper class license and endorsements and then check for any disqualifying offenses.
- At a minimum, these verifications should be done on all drivers who are selected during your sampling of 49 CFR Part 391, Qualification of Drivers.

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

<b>CFR Parts - Part 383 - CDLIS Checks</b>					
<b>Criteria/Timeframe:</b> All drivers employed who are subject to CDL requirements.					
<b>Onsite</b>		<b>[100% States] Offsite</b>		<b>CBI</b>	
<b># of Drivers Subject to CDL Requirements</b>	<b># of CDLIS Records to Check</b>	<b># of Drivers Subject to CDL Requirements</b>	<b># of CDLIS Records to Check</b>	<b># of drivers subject to CDL requirements</b>	<b>Sample Size: # of CDLIS Records to Check</b>
1-20	All	1-20	All	1-20	All drivers employed by carrier
21-150	20	21-150	20	21-150	20
151-280	32	151-280	32	151-280	32
281-400	50	281-400	50	281-400	50
401-500	68	401-500	68	401-500	68
501-1200	80	501-1200	80	501-1200	80
1201-3200	125	1201-3200	125	1201 and above	125
3201-10,000	200	3201-10,000	200	<b>Sample Selection:</b> Follow existing CDLIS Policy on sample size, but prioritize drivers involved in crashes.	
10,001-35,000	315	10,001-35,000	315		
35,001-150,000	500	35,001-150,000	500		

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

**Methods for Enforcement Personnel to Run a CDLIS Check**

<b>NAME</b>	<b>DESCRIPTION</b>
<b>CDLIS Application</b>	Allows batches of drivers to be run from DQ file worksheet in CAPRI
<b>CDLIS Web (<a href="http://cdlis.dot.gov">http://cdlis.dot.gov</a>)</b>	Can run one driver at a time
<b>QC</b>	Can run one driver and one co-driver at a time

**Discovery of a Revoked or Suspended CDL**

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

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

### ***Requirement to Check the Status of Mexican LFC***

Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR Part 383, in the United States, must have a valid LFC issued by the Secretaria de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS), with the proper vehicle class, and without any restriction for operating in the United States. Mexican LFC records are available via CDLIS.

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](#)***

## ***🇨🇦 Canadian Commercial Drivers 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.

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

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

### ***49 CFR Part 383 - CDL Problems***

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

##### ***Carrier Had Knowledge (Known)***

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

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

##### ***Carrier Did Not Have Knowledge***

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

- Inform the carrier about the driver’s licensing problem and advise them that continued use of the driver will constitute a violation.
- Do not cite the motor carrier in CAPRI.

- Initiate an enforcement action against the driver, not the motor carrier.
- Document in [Part C](#) why there is no enforcement action taken against the motor carrier.

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

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

**1.3.14.1.3.2 Part 383 – CAPRI Procedure**

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

**Recording Violations of 49 CFR Part 383 Critical/Acute Regulations**

**Part 383 - Acute and Critical Regulations**

Citation	Type	Description
<b>383.23(a)</b>	<b>Critical</b>	Operating a commercial motor vehicle without a commercial driver's license.
<b>383.3</b>	<b>Acute</b>	Knowingly using a driver who does not possess a valid CDL.
<b>383.37(a)</b>	<b>Acute</b>	Allowing, requiring, permitting, or authorizing an employee who is disqualified to operate a commercial motor vehicle or whose commercial driver's license is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle or who does not have the proper endorsements.  <b>Note:</b> Enforcement recommended only when suspended, revoked, canceled, disqualified for a safety-related reason. Safety-related reasons include, but are not limited to, a disqualifying offense, serious traffic violation, multiple-moving violations, etc.
<b>383.37(c)</b>	<b>Acute</b>	Allowing, requiring, permitting or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle.
<b>383.51(a)</b>	<b>Acute</b>	Allowing, requiring, permitting or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.

### ***1.3.14.13.3 Part 383 – Process Breakdowns/Remedies-SMC***

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

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

### ***1.3.14.1.3.4 Part 383 – Enforcement Procedures***

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

#### ***Evidence Required to Prosecute a Violation of Part 383***

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

#### ***Part 383 - Guidelines for Enforcement of Red Flag Violations***

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

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

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

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

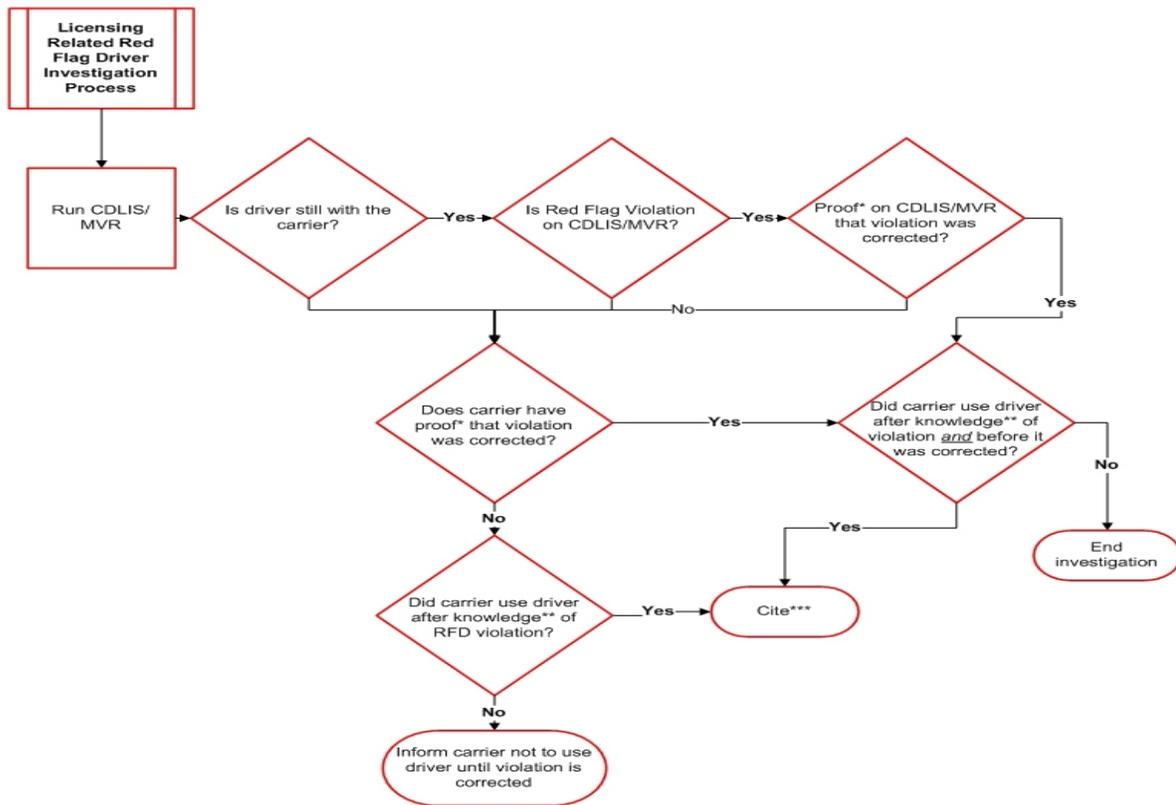
**Driver vs. Carrier Enforcement**

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

**Part 383 - Red Flag Violations**

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

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



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

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

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

[Description of Licensing Related Red Flag Driver Investigation Process](#)

***Part 383 - Documentation***

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

- **Does FMCSA have jurisdiction?**
  - GVWR markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating MSDS 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-5](#).
- Driver's RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle meets the definition of a CMV in Part 383.
- State vehicle inspection report.
- Motor vehicle record from the State that issued the CPL/CDL showing suspension/cancellation/disqualification or being invalid. A CDLIS printout is acceptable.
- **Note:** A CDLIS printout is acceptable for the MX/CN driver. Note that the CDLIS printout will only display a status for the driver as of the date of the status query, and not a history for the compliance review period.
- Photograph or copy of current CDL or other photographs that support the violation.

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

***Part 383 - Enforcement Action Against Drivers***

The following violations warrant considering enforcement action against a driver:

- 383.21 - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.\*
- 383.23(a) (2) - Operating a commercial motor vehicle without a valid commercial driver's license.\*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.

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

(\* ) denotes Red Flag Violation

#### 1.3.14.1.4 Part 387- Insurance Requirements

##### 1.3.14.1.4.1 Part 387 – Investigative Procedures

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

#### ***Procedures to Follow During an Investigation of 49 CFR 387***

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

- 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.

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

<sup>6</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

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

<sup>6</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

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

**Note:** The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

Following this review, you should:

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

### ***Verifying the Motor Carrier's Compliance with 49 CFR 387***

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

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

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

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

### ***Insurance Requirements for Motor Carriers of Passengers***

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

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

 – Mexico-Domiciled/Canadian Motor Carriers

### ***Insurance Requirements for Mexico-Domiciled/Canadian Motor Carriers***

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

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

### ***Financial Responsibility Violations***

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

An Investigator must:

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

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

The Investigator should:

- Cite the motor carrier in CAPRI Part B - 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 a FTA Grantee:

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

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

The Investigator should:

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

***Insurance Filing versus MCS-90/90B***

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

***Insurance Filing versus MCS-90/90B***

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

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

-  Mexico-domiciled motor carriers with long-haul authority are required to have proof of financial responsibility on file with FMCSA. Other Mexico-domiciled motor carriers are not required to make an insurance filing at this time.

### *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 – CAPRI Procedures*

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

### *Recording Violations of Part 387 Critical/Acute Regulations*

#### **Part 387 – Acute and Critical Regulations**

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

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

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

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

#### 1.3.14.1.4.4 Part 387 – Enforcement Procedures

### Documents that Should be Gathered to Initiate an Enforcement Action

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

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



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

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

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

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

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

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

#### ***Authority and Insurance Filing Requirements***

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

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

- **MX FLAG:** 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**

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

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 U.S. state.

Citing a Violation of the Process Agent Requirement

[Policy: Post Pilot Program Inspection Requirements for Mexico Domiciled Carriers with Long-Haul Operating Authority (MC-ESB-2015-0001), October 6, 2014.] U.S.DOT Number Identification (§ 390.21(a))

**U.S. DOT Number Identification:**

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

### ***Citing a Violation of the Identification Requirement***

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

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

### **CVSA Inspection Decal Requirements**

A Mexico domiciled motor carrier with authority to operate beyond the commercial zones is required to ensure that each power unit operated in the U.S. displays a current CVSA inspection decal during the provisional operating authority period and then an additional 36 consecutive months after receiving standard operating authority (post-Pilot operations). This includes power units used solely within the commercial zones. Non-CMV's are not required to display CVSA decals to operate in the U.S..

#### **Citing a Violation of the CVSA Decal Requirement**

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

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

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

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

#### **1.3.14.1.5 Part 390: General Requirements**

##### ***1.3.14.1.5.1 Part 390 - Investigative Procedures***

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

[49 CFR - Accidents](#)

[49 CFR - Markings](#)

[49 CFR - Biennial Update](#)

### ***Procedures to Follow During an Investigation of 49 CFR 390***

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

- Accident information
- Marking of vehicles
- Biennial update of the MCS-150

If you are assigned an Onsite Focused Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 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 - <b>Required</b> 390.15 – Accident Register - <b>Required if</b> Crash BASIC Investigation is performed. 390.23/25 – Relief – <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration or emergency condition.
Controlled Substances/Alcohol	⊗ .15	390.15 – Accident Register – <b>Required</b> to determine which crashes required post-accident controlled substance and alcohol testing. Additionally, <b>required if</b> Crash BASIC Investigation is performed.
Vehicle Maintenance	⊗ .3, .15, .21, .23, .25	390.3 – General Applicability - Ensures drivers are subject to regulations - <b>Required</b> 390.15 – Accident Register - <b>Required if</b> 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 – <b>Consideration</b> when present on profile. 390.23/25 – relief – <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration.
HOS Compliance	⊗ .3, .15, .23, .25	390.3 – General Applicability - Ensures drivers are subject to regulations - <b>Required</b> 390.15 – Accident Register - <b>Required if</b> Crash BASIC Investigation is performed. 390.23/25 – Relief – <b>Required if</b> 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 - <b>Required</b> 390.15 – Accident Register - <b>Required if</b> Crash BASIC Investigation is performed. 390.23/25 – Relief – <b>Required if</b> 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 may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

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

#### **49 CFR – Accidents**

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

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

The term accident does not include:

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

#### ***Time Period Covered in Review of Accidents***

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

#### ***Procedures to Follow to Obtain Information on Accidents***

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



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

#### ***Procedures to Follow Once Interstate and Intrastate Recordable Accidents are Identified***

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

#### ***Interstate and Intrastate Recordable Accident Data to Record***

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

Additionally, this data will be needed by the DA/SD 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/SD within five days of completion of the investigation.

The review of non-preventable accidents should be handled as outlined in the Manager Manual.

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

### ***Information Required on a Motor Carrier's Accident Register***

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

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

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

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

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

### ***🇨🇦🇲🇽 Calculation of Canadian or Mexican Accidents***

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

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

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

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

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

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

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

### **49 CFR 390 - Markings**

To ensure the motor carrier has properly marked all of its vehicles, the SI must, if possible or available, visually inspect the vehicles for proper markings.

### **49 CFR 390 - Biennial Update**



To verify that the motor carrier has submitted its biennial MCS-150 update, you should ask the motor carrier if it has made the required update filing and verify an affirmative response. Additionally, you should check the MCS150 date shown in Federal Motor Carrier System The Motor Carrier Management Information System (MCMIS), Safety and Fitness Electronic Records (SAFER) system, and Query Central. Additionally, you need to verify that the carrier has not been cited during roadside inspections and previous compliance reviews for not having an updated MCS-150. Remember: If a motor carrier registers its vehicles in a PRISM state, it may be exempt from this requirement. Please see 49 CFR 390.19(g) for more information.

### PRISM States Eliminating Validating the MCS-150

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

#### 1.3.14.1.5.2 Part 390 - CAPRI Procedures

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

#### **Record Violations of Part 390 Critical/Acute Regulations**

##### **Part 390 - Acute and Critical Regulations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>390.15(b)(2)</b>	<b>Critical</b>	Failing to maintain copies of all accident reports required by the State or other governmental entities or insurers.  <b>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.</b>
<b>390.35*</b>	<b>Acute</b>	Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records.  <b>False Records:</b> In this scenario, the number checked is the number of records checked in which false records were discovered. (Example: If you check 5 maintenance records, and you discover that a mechanic has falsified 3 maintenance reports, it would be written as 3 violations discovered of 5 records checked)  <b>False Statements:</b> In this scenario, the number checked is the number of statements found to be false [Example: If you discover that a motor carrier representative or driver has submitted a falsified document ( <i>other than medical examiner's certificate and records of duty status</i> ), this is generally written as 1 violation discovered of 1 false statement checked.]

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

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

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

#### *1.3.14.1.5.4 Part 390 - Enforcement Procedures*

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

#### ***Part 390 - Documentation***

##### ***Documents that Should be Gathered to Initiate an Enforcement Action***

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

##### ***Some Examples of Documents that May be Used to Prove Violations of Part 390***

- Statement from motor carrier official, driver or other person responsible for compliance with Part 390. See [Illustration E-2](#).
- Driver's RODS, and corresponding shipping paper/bill 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 you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

#### ***Part 390 - Enforcement Action Against Drivers***

##### ***Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for violating:

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

#### ***1.3.14.1.6 Part 391 – Driver Qualifications***

##### ***1.3.14.1.6.1 Part 391 - Investigative Procedures***

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

[Part 391 – Red Flag Violations](#)

[Part 391 - Driver Lists](#)

[Part 391 - Determine DQ File Sample](#)

[Part 391 - Select DQ Files](#)

[Part 391 - Review DQ Files](#)

[Part 391 - DQ Problems](#)

***Procedures to Follow During an Investigation of 49 CFR 391***

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

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

If you are assigned an Onsite Focused Investigation or **100% States Offsite Investigation**, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 391 and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes additional guidance on when each is required or should be considered based on investigative findings.

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

BASIC	Part 391	Description
Driver Fitness	●	<b>Required:</b> 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 - <b>Required</b> 391.41, .43, .45 – Physical Qualification for Drivers - Specific to controlled substances and alcohol issues - <b>Required if</b> 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 – <b>Consideration</b> in those cases where multiple employers may be contributing to the HOS Compliance BASIC. 391.41 – Physical Qualifications of Drivers – <b>Consideration</b> in those cases where physical qualifications may be impacting the HOS Compliance BASIC. 391.43 – Medical Exam - <b>Consideration</b> 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. <b>Example:</b> 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	⊗	<p>A review of the driver qualification regulations should be a <b>consideration</b>, 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.</p> <p><b>Example:</b> 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.</p>

*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

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

### **Part 391 – Red Flag Violations**

A key aspect of the investigation process is the driver's role in carrier safety. Data has shown that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor. As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior, but also on carrier enforcement and education regarding their responsibilities for driver compliance. The drivers with Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity, and the drivers receiving these violations, are examined and addressed in conjunction with motor carrier investigations.

As part of the CAIR process, a review of the motor carrier's SMS record for the presence of drivers with Red Flag Violations is part of every motor carrier-based investigation. Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months, and should request documents to confirm these drivers with Red Flag Violations have been corrected. A complete list of the Red Flag Violations can be found in [Appendix G](#). Part 391 Red Flag Violations include:

<b>BASIC</b>	<b>FMCSR Part</b>	<b>Violation Description</b>
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 <sup>7</sup>	Driving a CMV while disqualified. Suspended for safety-related

<sup>7</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers

		or unknown reason and in the state of driver's license issuance
Driver Fitness	391.15(a)-SOUT <sup>7</sup>	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance.

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

1. Has the Red Flag Violation been corrected or is it continuing?
2. If corrected, was the correction timely? (Did the driver operate between the time of the violation and when it was corrected)?
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 requested before the investigation or during the opening interview, you should request a list of drivers employed in the last 12 months, and the date they were hired and/or terminated. The list will need to be verified. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

#### ***Ensuring you have an accurate driver roster***

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

### ***Part 391 - Determine DQ File Sample***

#### ***Sampling Requirements for the Minimum Number of DQ Files to be Reviewed***

You must follow the sampling requirements for the minimum number of DQ files as set forth below based on their current number of driver positions:

#### **Minimum number of DQ Files**

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when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

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

<b>CFR Parts - Part 391 - DQ Files</b>					
<b>Considerations:</b> Select Driver Qualification files for drivers with the highest percentiles within the BASIC requiring an investigation and drivers who were involved in recordable crashes.					
<b>Onsite</b>		<b>[100% States] Offsite</b>		<b>CBI</b>	
<b># of Drivers Subject to the FMCSR</b>	<b># of DQ Files to Review</b>	<b># of Drivers Subject to the FMCSR</b>	<b># of DQ Files to Review</b>	<b># of drivers involved in recordable crashes</b>	<b>Sample Size: # of DQ Files to Review</b>
1-5	All	1	1	1-5	All
6-25	5	2	2	6-25	5
26-50	8	≥3	3	26-50	8
51-90	13			51-90	13
91-150	20			91-150	20
151-280	32			151-280	32
281-400	50			281-400	50
401-500	68			401-500	68
501-1,200	80			501-1,200	80
1,201-3,200	125			1,201 and above	125
3,201-10,000	200			<b>Sample Selection:</b> Select from drivers involved in crashes.	
10,001-35,000	315				
35,001-150,000	500				

### *Part 391 - Select DQ Files*

#### *Selecting the Driver's Files Once the Sample Size has been Determined*

Select drivers with the highest percentiles for the driver-related BASICs being investigated according to DSMS, which can be accessed using SMS Online. On the page for the motor carrier being investigated, click on the Driver Tab to obtain a list of drivers who have operated for that motor carrier and each driver's related DSMS performance percentiles in each BASIC. Sample from those drivers with the highest percentile rankings within the BASIC being investigated down to the 50th percentile. The driver sample should include currently employed drivers. There are also circumstances where you need to select drivers recently terminated by the motor carrier. This practice is acceptable if properly articulated in [Part C](#). If this does not produce enough drivers to reach the required sample size for the BASIC, then as additional criteria the SI should select drivers who have been involved in crashes, and then select drivers with high violation rates.

You have some flexibility and discretion in this selection process and should use your best judgment, for example, if two drivers have Driver Fitness BASIC percentiles that are very close to each other, but one has been involved in one or more crashes, then you could decide to include the driver who has been involved in crashes, regardless of which driver has the higher BASIC percentile rank. These deviations should be explained in [Part C](#).

**Note:** Drivers with Red Flag Violations may not have poor DSMS percentiles; therefore, a driver with Red Flag Violations may not necessarily be selected for sampling related to the BASIC under investigation.

Regardless of whether the driver is selected for sampling during a motor carrier investigation, drivers with Red Flag Violations should be examined and the Red Flag Violations addressed. Drivers are held accountable for safe practices across all motor carriers throughout their employment.

### ***Steps to Take if the Minimum Number of DQ Files Cannot be Reviewed***

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain, in [Part C](#) of the investigation report, why you did not meet your sample. You must also explain, in [Part C](#), if you exceed the required sampling beyond the number set forth in the chart above.

### ***Part 391 - Review DQ Files***

#### ***Complete a comprehensive investigation of the driver qualification process***

The process should include interviews with management, employees, drivers, and agents. The carrier's hiring process should be investigated as it may lead the discovery of violations. Examples of some questions to ask include:

- Does it conduct background investigations?
- What qualifications does it require?
- Does it require a minimum number of years with experience driving a CMV?
- Does it have an in-house driver training program?

#### ***DQ File Documents that Should be Reviewed***

The motor carrier is required to prepare and maintain DQ files in accordance with Section 391.51(b)(1-8). Below you will find guidance when reviewing each DQ file document:

- **Employment Application** - You should ensure the employment application contains all the elements required by Section 391.21(b), all fields are completed or noted as non-applicable, and the application is signed by the driver/applicant.
  - **Note:** Applications for drivers of vehicles requiring CDLs (Part 383) must show previous 10 years employment history.
- **Previous Employment History Inquiry** - You should ensure the motor carrier has contacted the driver's/applicant's previous employers, by means of either written document or noting employment verification by telephone, within 30 days of date of hire. The motor carrier must make a good faith effort to contact the driver's/applicant's previous employers regarding employment history, and document its good faith effort.
- **Copy of Driver's License History Inquiry** - You should ensure the motor carrier has contacted each state agency where the driver/applicant holds an operator's license, AND obtained a copy of the driver's license history for the previous 3 years within 30 days of date of hire.
- **Road Test/Certificate or Equivalent (Copy of Valid CDL)** - You should ensure the motor carrier has performed a road test for each driver/applicant on a company vehicle, documented the results of the road test, and issued a road test certificate. The motor carrier may accept a copy of a valid CDL in lieu of the road test/certificate requirement.
- **Medical Examiner's Certificate** - You should ensure the motor carrier has obtained a current copy of the driver's medical examiner's certificate. While reviewing the driver's medical examiner's certificate, 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 [Part C](#) of the investigation report, that you have notified the motor carrier official, in the event the motor carrier continues use of a medically unqualified driver.

 **In lieu of a medical certificate, the Mexican Licencia Federal and the Canadian CDL serve as proof that a driver is physically qualified. 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).**

 **RESTRICTION** – 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 391.15(a) and placed out-of-service for operating in violation of the restriction.

The Provincial Canadian Commercial Driver’s License Reference Guide can be viewed through the following link: [Canadian Commercial Driver’s License Reference Guide](#)

Verification of information on a Canadian CDL can be accomplished through contacts that are located on the Knowzone link at: [Verification of information on a Canadian CDL can be accomplished through contacts](#)

- **Annual Review of Driver Record Inquiry (AKA Annual Driver’s License Check)** - If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained a copy of the annual driver’s license check from the state agency where the driver holds a license.
- **Annual List/Certification of Violations of Motor Vehicle Laws** - If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained the annual list/certification of violations of all motor vehicle laws (except parking) from each driver.
- **Annual Review of Driver’s Qualification** - If the driver has been employed a year or more, you should ensure the motor carrier has performed the annual review of the driver, and has a document reflecting the annual review was performed.
  - **Note:** As you perform your investigation, you may wish to advise the motor carrier to perform the Annual Review for each driver, after obtaining and reviewing the Annual Driver’s License Check and the Annual List/Certification of Violations of Motor Vehicle Laws. By performing the Annual Review in this manner, the motor carrier will ensure the Annual List/Certification of Violations of Motor Vehicle Laws, submitted by the driver, reflects the same data as the Annual Driver’s License Check obtained from the state of license.



**Proper Citations: You must determine whether the document was never prepared, or that the document was prepared and not maintained, before you can choose the correct citation.**

### ***Part 391 - DQ Problems***

#### ***Steps to Take if Substantial Noncompliance is Discovered***

You may expand your sampling and select additional DQ files to establish the degree and extent of noncompliance. This will also allow you to determine whether enforcement action is appropriate for the

noncompliance you discovered in this Part. **If you do expand your sampling for Part 391, you must explain why in [Part C](#) 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<sup>8</sup>, 391.15(a)-SOUT<sup>8</sup>, and 391.49(i)], and verify whether the driver complied with the OOS order.

***1.3.14.1.6.2 Part 391 - CAPRI Procedures***

Once you have completed your investigation of compliance with Part 391, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

***Citing a Violation where the Carrier Fails to have a DQ File on a Specific Driver***

Section 391.51 requires a motor carrier to maintain a DQ file for each driver it employs, and Section 391.51(b) (1-8) specifies all documents that must be included within the DQ file. **For that reason, it is recommended you cite DQ file violations under the individual document cites listed within Section 391.51(b) (1-8).**

***Citing a Violation of a False Medical Certificate***

All false medical violations cited during an investigation should be cited as a violation of Section 390.35 with a secondary cite of Section 391.45. As in this case, the violation should be - "Fraudulently or intentionally making a false entry on a required medical examiner's certificate."

** *Citing a Violation of a Mexico-Domiciled Motor Carrier Operating a CMV with a GVWR Between 10,001lbs. and 26,000lbs. without a Mexican Licencia Federal***

Mexico-domiciled drivers operating in violation of 49 CFR 391 should be cited for a violation of 49 CFR 391.11(b)(5).

***Recording Violations of Part 391 Critical/Acute Regulations***

You should record the number checked as follows:

**Part 391 - Acute and Critical Violations**

Citation	Type	Description
391.11(b)(4)	Acute	Using a physically unqualified driver. <b>Number checked: Number of interstate drivers sampled and required to be physically qualified.</b>
391.15(a)	Acute	Using a disqualified driver. <b>Number checked: Number of interstate drivers sampled and required to be qualified.</b>
391.45(a)	Critical	Using a driver not medically examined and certified.

<sup>8</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

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

		<b>Number checked: Number of interstate drivers sampled and required to be medically certified.</b>
<b>391.45(b)(1)</b>	<b>Critical</b>	Using a driver not medically examined and certified during the preceding 24 months. <b>Number checked: Number of interstate drivers sampled and required to be medically certified.</b>
<b>391.51(a)</b>	<b>Critical</b>	Failing to maintain a driver qualification file on each driver employed. <b>Number checked: Number of interstate drivers sampled and required to have a driver qualification file.</b>
<b>391.51(b)(2)</b>	<b>Critical</b>	Failing to maintain inquiries into driver's driving record in driver's qualification file. <b>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).</b>
<b>391.51(b)(7)</b>	<b>Critical</b>	Failing to maintain medical examiner's certificate in driver's qualification file. <b>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).</b>

### ***Recording Violations of Part 391 ESM/Fundamental Regulations***

ESM/Fundamental Violations are not Acute or Critical Violations, but they are subject to the same policy and procedures related to required enforcement action and will not impact the motor carrier's formal safety rating. If enforcement action is not taken, it must be documented, in the [Part C](#) of the investigation, to explain why enforcement was not initiated.

- Violations of Fundamental regulations are those where noncompliance is so severe, that they require immediate corrective action by a carrier, regardless of its overall safety posture.
- Violations of ESM regulations are associated with elements of safety management controls necessary to operate. Discovery of violations in at least 10% of the records checked would result in a Serious Violation.

### **Part 391 – ESM and Fundamental Violations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>391.11(b)(5)</b>	<b>Fund</b>	Using a driver without a currently valid motor vehicle operator's license or permit
<b>391.23(a)</b>	<b>ESM</b>	Failing to investigate a driver's background

#### ***1.3.14.1.6.3 Part 391 - Process Breakdowns and Remedies – Applying the SMC***

Once you have discovered the violations relating to Part 391, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the [General Guidelines for Using the Safety](#)

[Management Cycle \(SMC\) to Help Diagnose a Breakdown in Safety during an Investigation](#) section. For CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the SMP Breakdowns and Remedies.

#### *1.3.14.1.6.4 Part 391 - Enforcement Procedures*

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 391 violations, you should use the following guidelines when submitting an enforcement report for Part 391 violations.

#### ***Part 391 - Guidelines for Enforcement of Red Flag Violations***

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

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

#### ***Driver vs. Carrier Enforcement***

The Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

#### ***Part 391 - Red Flag Violations***

- For Red Flag Violations which were originally cited for operating while disqualified [391.11(b)(7), and 391.15(a)-SIN<sup>9</sup>, 391.15(a)-SOUT<sup>9</sup>], enforcement normally depends on whether the disqualification was for a safety-related reason.
- NOV is an option for 391.11(b)(5), as long as they are immediately correctible and readily verifiable.
- If there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC (or NOV in the case of the two violations listed above). If there already was a citation, then you should consult with the Manager before initiating enforcement against the driver.

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<sup>9</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

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

## ***Part 391 - Documentation***

### ***Documents that Should be Gathered to Initiate an Enforcement Action***

You should gather documentation to initiate an enforcement action, which establishes the following:

- The vehicle used falls within FMCSR jurisdiction for Part 391.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.
- A violation of Part 391 occurred.

### ***Some Important Issues to Remember when Documenting Violations of Part 391***

- When considering enforcement for a violation that charges the motor carrier with using a driver not physically examined, it is best to obtain a statement from the driver affirming that fact.
- Best practice requires that you obtain statement(s) from motor carrier officials affirming that the required documents were not in the DQ file or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See *Illustration E-2*.
- Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for “failing to maintain” the driver’s state driving record abstract should not be described in the case report as “failing to make an inquiry” from the state licensing agency.

### ***Precautions that Should be Taken when Preparing a Statement for Carriers Who Do Not Have the Appropriate Records***

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, is included as part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose medical certificates are not in the carrier’s files to determine whether they have been examined and, if so, when, where, and by whom. You should obtain the driver’s signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver’s oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.
- In selecting Part 391 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 391 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers

on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).

- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records, therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in [Illustration E-1](#).

### ***Some Examples of Documents that May be Used to Prove Violations of Part 391***

- Examples of documents to support your discovered violations are listed below.
- Statement from motor carrier official, driver or other person responsible for compliance with Part 391.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle was subject to Part 391.
- If copies of documents/certificates required by Part 391 were unavailable or do not exist, obtain a statement from the motor carrier attesting to missing documents or utilize CAPRI DQ Worksheet and have motor carrier verify lack of documents.
- Certified documents from State agencies.
- Photographs that support the violation.

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

### ***Part 391 - Enforcement Action Against Drivers***

#### ***Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for violating:

- 391.11 - Unqualified driver\*
- 391.11(b) (5) - Driving without a currently valid motor vehicle operator's license or permit.\*
- 391.11 (b) (7) - Driver disqualified from operating CMV\*
- 391.15(a)-SIN<sup>10</sup> - 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<sup>10</sup> - Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance\*

<sup>10</sup> ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

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

- 391.45 - Fraudulently or intentionally making a false entry on a required medical examiner's certificate

(\*) denotes Red Flag Violation

#### 1.3.14.1.7 Part 392 – Driving of Motor Vehicles

##### *1.3.14.1.7.1 Part 392 – Investigative Procedure*

When determining compliance with Part 392, you should use the following guidelines to assist in your investigation of motor carriers of property (including placardable HM) and passengers.

[Procedures to Follow during an Investigation of Part 392](#)

[Part 392 – Red Flag Violations](#)

[Reviewing Compliance with Part 392](#)

[Verifying if a Motor Carrier is Operating within the Scope of its Authority as it Relates to its Operations as a Common or Contract Motor Carrier](#)

[Difference Between Operating Without Operating Authority and Operating Beyond the Scope of Operating Authority](#)

##### **1.3.14.7.7.1.1 Procedures to Follow during an Investigation of Part 392**

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

- The existence of extended runs
- Load securement procedures
- Safe driving procedures
- Driver use of alcohol and drugs
- The presence of radar detectors
- Operating authority requirements
- Transporting unauthorized passengers
- Prohibition against texting
- Hand-held mobile telephone usage
- Stopping at railroad crossings with certain Hazardous Materials

If you are assigned an Onsite Focused Investigation or [100% States] Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating.

- The table below identifies each BASIC by Part 392 and includes guidance on whether the investigation should include a review of the full part or subpart.
- The table also includes additional guidance on when each is required, or should be considered, based on investigative findings.

● full review of part

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

BASIC	Part 392	Description
Driver Fitness	⊗ .3, .9(a)(a)	392.3 – Ill and Fatigued Driver – <b>Consideration</b> 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 – <b>Required</b> as part of the CAIR process.

Controlled Substances/Alcohol	⊗ .9(a)(a)	392.9a (a) Authority – <b>Required</b> as part of the CAIR process.
Vehicle Maintenance	⊗ .2, .9, .62, .9(a)(a)	392.2 – Applicable operating rules – <b>Consideration</b> when the profile shows evidence of 392.2 Cargo-Related violations. Use “1 of 1” violation citation logic.  392.9 – Inspection of cargo – <b>Consideration</b> when the profile shows evidence of 392.2 Cargo-Related violations. Use “1 of 1” violation citation logic.  392.62 – Safe operation or buses – <b>Consideration</b> when evidence of violation exists on the profile.  392.9a (a) Authority – <b>Required</b> as part of the CAIR process.
HOS Compliance	⊗ .3, .6, .9(a)(a)	392.3 – Ill and Fatigued Driver – <b>Consideration</b> 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 – <b>Required</b> .  392.9a (a) Authority – <b>Required</b> as part of the CAIR process.
HM Compliance	⊗ .2	392.2 – Applicable Operating Rules – <b>Required if</b> 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 <b>required</b> 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 – <b>Required</b> as part of the CAIR process.

*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

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

#### **1.3.14.7.7.1.2 Part 392 Red Flag Violations**

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

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

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

As part of the CAIR process, a review of the motor carrier's SMS record for the presence of drivers with Red Flag Violations is part of every motor carrier-based investigation.

- Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months and should request documents to confirm that these drivers with Red Flag Violations have been corrected.
- A complete list of the Red Flag Violations can be found in [Appendix G](#). Part 392 Red Flag Violations include:

BASIC	FMCSR	Violation Description
Controlled Substances/Alcohol	392.4(a)	Driver possesses, uses, or is under the influence of controlled substance(s).
Controlled Substances/Alcohol	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty.

Once the Red Flag Driver(s) and violations are identified, you must validate if the violation has been corrected, through requesting relevant documentation and interviewing the motor carrier and/or driver.

For each Red Flag Violation, the investigative responsibility is broken down into three areas:

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

#### **1.3.14.7.7.1.3 Reviewing Compliance with Part 392**

You will probably find yourself limited during your investigation of compliance with Part 392.

Most of the violations of this Part are generally found at the roadside. Review of compliance with Part 392 covers the 365-day period prior to the date of the investigation or since the last investigation, if the period is less than 365 days.

- Violations of the regulations in Part 392 found on the company's profile or on roadside inspection reports must not be cited on the investigation report.
- Violations of Part 392 found during the review are cited for however many violations are found.

#### **Finding new Part 392 violations**

Part 392.6 states that no motor carrier shall schedule a run between points in such period of time as would necessitate the CMV being operated at speeds greater than those prescribed by the jurisdiction in or through which the CMV is being operated. The following is a list of documents that should be reviewed to confirm that the motor carrier is not in violation of 392.6:

- Itinerary, schedules, dispatch records
- Drivers' RODS
- Maintenance Records
- Advertised Schedules
- Permits
- E-Z Pass records

- GPS/ELD type systems that track speeding violations.

The following are tasks that should be performed during unsafe driving investigations:

### [Driver Interviews](#)

#### **Dispatcher Interviews.**

There are times when a 392 violation cited roadside can lead to other areas in which the motor carrier is not in compliance. Violations relating to erratic driving (failure to comply with traffic control, improper lane changes) could be a direct result of a motor carrier's hiring procedures or lack of vetting at the time of hiring. Speeding violations can be an indication of HOS violations.

#### **1.3.14.7.7.1.4 Verifying if a Motor Carrier is Operating within the Scope of its Authority as it Relates to its Operations as a Common or Contract Motor Carrier**

Section 4303 of the Unified Carrier Registration Act prohibits FMCSA from registering carriers as a common or contract carrier, and further prohibits FMCSA from making a distinction on whether the carrier would have been classified as a common or contract carrier; the Agency is not enforcing the distinction between common and contract carrier status. Therefore, until the IT Operations Division can update the L&I System to reflect this change, and as long as the L&I System shows the carrier as having either common or contract authority, the motor carrier is in compliance.

#### **1.3.14.7.7.1.5 Difference between Operating Without Operating Authority and Operating Beyond the Scope of Operating Authority**

There are three distinct types of operating authority for U.S. domiciled motor carriers of property, passengers, and HHG.

Operating without the proper type of operating authority is considered "operating without operating authority." A motor carrier, therefore, is considered to be operating without operating authority [49 CFR section 392.9a (a)(1)] when the motor carrier does not possess the required type of active operating authority; for example, a company with active property operating authority would be operating without authority if the company transported either passengers or HHG for compensation in interstate commerce.

 A Mexico-domiciled motor carrier granted operating authority under 49 CFR 368 that provides transportation beyond the United States-Mexico municipal commercial zones is operating outside the scope of its operating authority [49 CFR 392.9a(a)(2)]. A Mexico-domiciled motor carrier granted operating authority under 49 CFR 365 that provides point-to-point transportation in the United States is also operating outside the scope of its operating authority.

#### **1.3.14.1.7.2 Part 392 – CAPRI Procedure**

Once you have completed your investigation of compliance with Part 392, use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

#### **Recording Violations of Part 392 Critical/Acute Regulations**

Record the number checked as follows:

#### **Part 392 – Acute and Critical Regulations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>392.2</b>	<b>Critical</b>	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.  <b>Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.</b>
<b>392.4(b)</b>	<b>Acute</b>	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.  <b>Note:</b> Enforcement action is required when the motor carrier had knowledge of the violation.  <b>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.</b>
<b>392.5(b)(1)</b>	<b>Acute</b>	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.  <b>Note:</b> Enforcement action is required when the motor carrier had knowledge of the violation  <b>Number checked: Number of drivers found to have been under the influence of or in possession of, an intoxicating beverage.</b>
<b>392.5(b)(2)</b>	<b>Acute</b>	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.  <b>Number checked: Number of drivers who showed evidence of having consumed an intoxicating beverage within 4 hours of operating a motor vehicle.</b>
<b>392.6</b>	<b>Critical</b>	Scheduling a run that would necessitate the vehicle being operated at speeds in excess of those prescribed.  <b>Number checked: Number of runs checked for compliance with posted speeds.</b>
<b>392.9(a)(1)</b>	<b>Critical</b>	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.  <b>Number checked: Number of vehicles checked for cargo being properly distributed and adequately secured.</b>

### Recording 49 CFR 392.9a (a) Operating Authority Violations

You should record the number checked as follows:

<b>Citation</b>	<b>Description</b>
<b>392.9a(a)(1)</b>	Operating without the required operating authority.  <b>Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.</b>

<b>392.9a(a)(1)</b>	Operating without the required operating authority under 49 U.S.C. 14901(d) (3) [Household Goods]. <b>Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.</b>
<b>392.9a(a)(1)</b>	Operating without the required operating authority under 49 U.S.C. 14901(d) (3) [Broker]. <b>Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.</b>
<b>392.9a(a)(2)</b>	Operating beyond the scope of the operating authority granted. <b>Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.</b>
<b>392.9a(a)(2)</b>	Operating beyond the scope of the operating authority granted under 49 U.S.C. 14901(d) (3) [Household Goods]. <b>Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.</b>

### **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 CAPRI**

The Unsafe Driving (e.g., speeding, improper lane changes) BASIC violations generally do not lend themselves to the discovery of new violations during an investigation, since these are violations usually observed at the roadside.

In some cases, you may discover new violations, but in most cases, you will examine available data and review the roadside violations that led to the deficiency. In those cases in which the carrier meets or exceeds the SMS threshold and you do not identify new violations based on the sample, violations should be cited as outlined in the table below and recorded as “1” discovered and “1” checked, so as not to adversely affect the outcome of the motor carrier’s safety fitness rating.

- The table below provides regulations that might be 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.

<b>Unsafe Driving BASIC</b>
Determine the violations which should be cited in the investigation. The relevant citations include: <ul style="list-style-type: none"> <li>• 390.3(e) – Knowledge of, and compliance with, the regulations.</li> <li>• 391.11(b) (3) – “...by reason of experience, training, or both, safely operates.”</li> <li>• 392.1 – “...shall be instructed in and comply with the rules in this part...”</li> <li>• 392.2 – Operating a motor vehicle not in accordance with the laws, ordinances, and</li> </ul>

regulations of the jurisdiction in which it is being operated, should be cited for new violations that are discovered during the investigation.

**Note:** CAPRI provides a BASIC-specific 392.2 violation option for each 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 CAPRI Part B Violation 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:** CAPRI provides a BASIC-specific 392.2 violation option for each BASIC. You must select the appropriate 392.2 option in alignment with the BASIC; for example, you must select the “392.2 Operating a vehicle in violation of local/State laws - Unsafe Driving” when recording violations associated with the Unsafe Driving BASIC.
  - If there are 392.2 violations related to multiple BASICs, you must record only one instance of 392.2 for the BASIC in which the most significant process breakdown was identified.
  - You should then address the other 392.2 “1 of 1” eligible violations when documenting the process breakdown and associated recommendations.

An example of selecting the most significant process breakdown is provided below.

- **Example:** A motor carrier is above the threshold in Unsafe Driving and Vehicle Maintenance BASICs.
  - When reviewing the profile, you find that Unsafe Driving has far more violations, including speeding, lane changes, and reckless driving. Additionally, six out of seven drivers at the company have unsafe driving violations.
  - Upon further investigation, you determine that the carrier is not performing background or DMV checks on 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 breakdown would be those related to Unsafe Driving.
  - You should record 392.2 operating a vehicle in violation of local/State laws – Unsafe Driving – “1 of 1” – in Part B of CAPRI when violations are found on the company profile or from roadside inspections.
  - When 392.2 operating a vehicle in violation of local/state laws – Unsafe Driving are found during the review record all violations found.

However, both process breakdowns could be addressed in the recommendations.

#### *1.3.14.1.7.3 Part 392 – Process Breakdowns/Remedies-SMC*

Once you have discovered the violations relating to Part 392, you should help the carrier become more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier’s processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to [General Guidelines for Using the Safety Management Cycle \(SMC\) to Help Diagnose a Breakdown in Safety during an Investigation](#). For

CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the SMP Breakdowns and Remedies.

#### *1.3.14.1.7.4 Part 392 - Enforcement Procedures*

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 392 violations, use the following guidelines when submitting an enforcement report for Part 392 violations.

[Part 392 - Guidelines for Enforcement of Red Flag Violations](#)

[Part 392 - Documentation](#)

[Part 392 - Enforcement Action Against Drivers](#)

#### *1.3.14.7.7.4.1 Part 392 - Guidelines for Enforcement of Red Flag Violations*

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

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

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

#### *Driver vs. Carrier Enforcement*

The Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

#### *Part 392 - Red Flag Violations*

- Normally, discovery of the two designated Red Flag Violations [392.4(a) and 392.5(a)] will result in an immediate driver disqualification. If you find evidence that the driver operated while disqualified, cite 383.51(a) for operating while disqualified and pursue enforcement against the driver.
- If there was no disqualification, check to see if there was a subsequent conviction for the violation. If the driver was convicted, then you or the Manager should refer the matter to the Service Center (SC) to pursue driver disqualification, and should not initiate an NOC.
- If there was no disqualification, no conviction, and no original citation, then verify the violation in the course of the investigation, and initiate a driver and/or carrier NOC. If there was an original citation, then consult with the Manager before initiating enforcement.

#### ***1.3.14.7.7.4.2 Part 392 – Documentation***

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

You should 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.
- You should 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 your discovered violations are listed below:

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 392. See [Illustration E-2](#).
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to Part 392.
- Documentary evidence proving the violation (e.g., conviction reports, etc.).
- Photographs that support the violation. For example, a photograph of a vehicle's cargo that wasn't properly distributed and adequately secured.

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

#### ***1.3.14.7.7.4.3 Part 392 - Enforcement Action Against Drivers***

##### ***Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated.
- 392.4(a) - Driver uses, or is in possession of, drugs.\*

- 392.4(b) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty. \*
- 392.5(b) (1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.

(\*) denotes Red Flag Violation

***Special Topic: Distracted Driving – Ban on Texting and Hand-held Mobile Telephone Use***

The regulations prohibiting texting and hand-held mobile telephone use should be cited against a driver and/or motor carrier, when warranted, during an inspection or investigation, including, but not limited to, crash investigations and onsite investigations. Situations where the violation may be cited include, but are not limited to, the following:

- CMV drivers and/or motor carriers may be cited at roadside, if enforcement personnel directly observe the CMV driver texting or using a hand-held mobile phone while driving a CMV, while operating in interstate commerce or transporting placardable quantities of HM in intrastate commerce. The violation will apply to drivers observed using hand-held mobile phones when driving in any area that meets the 49 CFR Section 390.5 definition of a “highway.” This includes a rest stop, weigh station or other road, street, or way open to public travel.
- During a crash investigation, enforcement personnel may cite the violation, if the driver acknowledges texting or using a hand-held mobile phone when the crash occurred, or if there is credible and sufficient evidence that the driver was using a hand-held mobile telephone. Such evidence could include eyewitness testimony, or evidence that a text or call was placed at the time of the crash.
- During an investigation at a motor carrier’s PPOB or terminal, the violation may be cited, if sufficient and credible evidence of texting or hand-held mobile phone use while driving is discovered. (Such evidence may be found in crash reports, driver files, letters of reprimand, citations, etc.) The violation should be cited on Part B of the compliance review/investigation report, and a notice of claim may be issued against the driver and/or motor carrier, as appropriate.
- Motor carriers may be held accountable for driver violations of the texting or hand-held mobile telephone prohibition, if there is evidence that the employer allows, or requires, the driver to use a hand-held mobile phone while driving, or routinely places calls to its drivers’ hand-held devices while the drivers are driving a CMV.

When citing a driver or motor carrier for a violation either of these rules, use the appropriate violation citation.

- 392.80(a) - Operating a CMV while texting.
- 392.82(a) (1) - Operating a CMV while using a hand-held mobile telephone.
- 49 CFR Section 392.80(b) - Allowing or requiring a driver to operate a CMV while texting. (Carriers)
- 49 CFR Section 392.82(a) (2) - Allowing or requiring a driver to operate a CMV while using a hand-held mobile telephone. (Carriers)

[\*Frequently Asked Questions Ban on Texting and Hand-held Mobile Phones\*](#)

**Primary and Secondary Violations**

If a State currently has no authority, or only secondary enforcement authority, in this area of distracted driving, the Division Office should strongly encourage the State to seek primary enforcement authority through its legislative or regulatory process.

### ***1.3.14.2 Crash Indicator BASIC***

Introduction to Crash Indicator BASIC

Investigative Procedures

[Carrier Accident Register](#)

[License & Insurance](#)

[Additional Sources-Internet Search](#)

[Document Evidence](#)

[Enforcement Procedures](#)

### **Introduction to Crash Indicator BASIC**

The Crash Indicator BASIC, regardless of a carrier's role in the crashes, is one of the strongest predictors of future crashes and is based on the number and severity of a motor carrier's recordable crashes recorded in the Motor Carrier Management Information System (MCMIS) in the previous 24 months. The Crash BASIC Investigation (CBI) is the investigative procedures to be used during a Comprehensive or Focused 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 during an investigation 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 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.

When any motor carrier with a SMS percentile at or above the intervention threshold in the Crash Indicator BASIC is investigated, a CBI must be conducted by an SI that has received training specific to the investigative procedures outlined below. Per existing policy, the investigation should be performed based on the BASICs requiring review at the time of initial contact, unless the number or type of BASICs above threshold changes. In those cases, the SI should work with the supervisor to identify the needed changes in the investigation. The CBI may be conducted during a Comprehensive or Focused investigation.

In addition, (100% States) CSA 100% States may conduct the CBI as an Offsite investigation if the carrier meets the "special case" criteria outlined in the investigative procedures below.

<b>Crash BASIC Indicator Intervention Thresholds</b>		
<b>Passenger Carriers</b>	<b>Hazardous Material Carriers</b>	<b>All Other Carriers</b>
50%	60%	65%

The CAT must be used during all CBIs to review and analyze carrier crash data. A customized CBI Carrier Summary Report, including Crash BASIC Countermeasures (as described in section 2.3) must be prepared during each investigation and provided to the motor carrier along with the standard Carrier Investigation Report from the Compliance Analysis and Performance Review Information system (CAPRI) given out during investigation closeout. The CBI Carrier Summary Report should be uploaded into the Electronic Data Management System (EDMS) at the conclusion of the investigation.

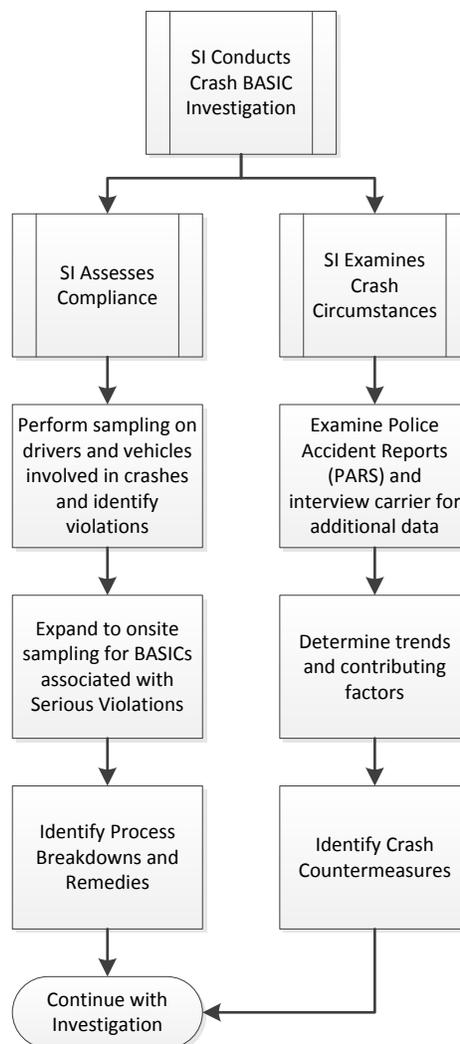
There are three places where crashes may influence the actions taken during a CBI investigation.

1. Determination of Crash Rate for Factor 6 calculations: Conducted as currently outlined in the Section 1.3.4.6 (Completing Part A of the Investigation after Interviewing the Motor Carrier).
2. Sampling for a CBI: Use all recordable crashes to determine size of sample, no change as to when a recordable crash may or may not be excluded as outlined in the eFOTM.
3. Analysis of crashes using CAT - Generally use all recordable 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 a Focused or Comprehensive investigation. The diagram on the right provides a high level outline of the specific steps the SIs should follow during a CBI. The investigation will take a two-pronged approach and examine both regulatory compliance and crash circumstances. A summary of the two sections is included immediately below, followed by more detailed guidance for each section.



### Assessment of Compliance during CBI Process

- **Accident Factor Calculation** – no change in policy for which recordable crashes should be used.
- **CDLIS Checks** - no change in CDLIS sampling policy.
- **Sampling** – The SI will determine the sample size for drivers and vehicles involved in crashes (referred to in this document as CBI sampling). If during the violations investigation any new violation of a **Serious Violation** is discovered, then the sample size **must be expanded to the onsite sample size for the related BASIC**. As with any other investigation, the SI will identify process breakdowns and remedies appropriate to the motor carrier's compliance issues.

- **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 serious 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 serious violations. These two topics will be explained in more detail below.

BASICS Requiring Investigation	Typical Investigation Type <sup>11</sup>	Sampling Approach <sup>12</sup>		Sampling Impact if new Serious Violations are Discovered <sup>13</sup>
		Size of Sample	Selection of Sample	
Crash Indicator Only at or above threshold	Onsite Focused Investigation	CBI sampling	Focus on drivers/vehicles involved in Crashes	Expand to onsite sampling in the BASIC where the serious violation is discovered
Crash Indicator + 1 or 2 Other BASICS at or above threshold(s)	Onsite Focused Investigation	<ul style="list-style-type: none"> <li>• Onsite sampling for other BASICS prioritized for investigation</li> <li>• CBI Sampling in all other BASICS</li> </ul>	Balance focus on drivers/vehicles involved in crashes and Driver Safety Measurement System (DSMS) sampling for BASICS prioritized for	Expand to onsite sampling in the BASIC where the serious violation is discovered and CBI sampling size was used

<sup>11</sup> The "typical investigation type" listed here assumes that the carrier is not subject to any other intervention selection business rule that requires a more intensive investigation (see Compliance Manual - Types of Investigations that Should be Performed). For example, if a carrier requires a Satisfactory rating in order to obtain a Hazardous Materials Safety Permit that carrier will require an Onsite Comprehensive Investigation regardless of what is shown in this table for investigation type. However, the sampling size and sample selection approach in the table still applies

<sup>12</sup> Note that the sampling described with this document fulfills the requirements of a CBI. If other policies dictate a sampling requirement and are applicable to the type of investigation being conducted than those requirements must also be satisfied.

<sup>13</sup> Expand sample as described if any Acute violation is discovered or a Critical violation at a pattern (more than one occurrence) and at a 10% or greater violation rate.

			investigation	
Crash Indicator + 3 or more BASICS at or above the threshold(s)	Onsite Comprehensive Investigation	Onsite sampling for all BASICS	Balance focus on drivers/vehicles involved in crashes and DSMS sampling for BASICS prioritized for investigation	N/A

For 100% states: Special Case for CSA 100% States and all States upon CSA Phase 3 implementation: If the SI is assigned an Onsite Focused investigation for a carrier due only to a Crash Indicator BASIC at or above the intervention threshold and MCMIS shows only one crash within the previous 12 months, then the SI should obtain the Accident Register from the carrier and check with the carrier's insurance company to see if the carrier has been involved in additional crashes. If after checking these, there are no other crashes, then the SI may choose to perform the CBI investigation **offsite**. Otherwise, the investigation should be performed onsite.

#### Assessment of Compliance - Completing Accident Factor (Crash Rate)

The Factor 6 crash rate should be recorded during a CBI. There are no changes as to which crashes should be included in the crash rate, or when a recordable crash may or may not be excluded as outlined in the eFOTM. The SI should use all recordable crash data from the previous 365 days. To obtain an accurate picture of the carrier's crash involvement, the SI should use information from multiple sources, such as MCMIS, the carrier's Accident Register and insurance company information (such as loss reports). Note: In some cases, the carrier's Accident Register will have more up-to-date information than MCMIS.

#### Assessment of Compliance – CDLIS

During CBI process, COLIS sampling should follow existing eFOTM policy (1.3.14.3.4 - Part 383- Investigative Procedures). However, drivers involved in crashes should be prioritized.

CFR Part 383 – CDLIS Checks		
# 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	

#### Assessment of Compliance - CBI Sampling

The SI must determine the sample size for drivers and vehicles involved in recordable crashes during the previous 24 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 Compliance Analysis and Performance Review information (CAPRI) system.

**CBI Sampling Tables by CFR Part**

<b>CFR Part 382 – Drug &amp; Alcohol Pre-employment</b>	
<b># of drivers to review</b>	<b>Sample Size: # # of Pre-employment Tests to Review</b>
All drivers involved in <b>RECORDABLE</b> crashes that were <b>hired in the last 365 days</b>	All pre-employment tests of drivers involved in <b>RECORDABLE</b> crashes that were hired in the last 365 days.

<b>CFR Part 382 – Post-Accident Testing</b>	
<b># of Post-Accident D&amp;A Tests to Review</b>	<b>Sample Size: #</b>
All drivers involved in recordable crashes that require post-accident testing regardless of # of drivers employed.	All drivers

<b>CFR Part 391 – DQ Files</b>		
<b># of drivers involved in recordable crashes</b>	<b>Sample Size: # of DQ Files to Review</b>	<b>Sample Selection</b>
1-5	All	Select from drivers involved in crashes.
6-25	5	
26-50	8	
51-90	13	
91-150	20	
151-280	32	
281-400	50	
401-500	68	
501-1,200	80	
1,201 and above	125	

<b>CFR Parts 393 &amp; 396 – DVIRs*</b>		
<b># of Vehicles Involved in Recordable Crashes</b>	<b>Sample Size: # of Vehicles to Select</b>	<b>DVIRs to Request</b>
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 <b>X = # of Vehicle to Select</b>
6-15	5	
16-50	7	
51-150	11	
150-500	17	
501-Over	27	

<b>CFR Parts 393 &amp; 396 – Maintenance Files</b>		
<b># of Vehicles involved in Recordable Crashes</b>	<b>Sample Size: # of Maintenance Files to Review</b>	<b>Sample Selection</b>
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	
<i>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.</i>		

<b>CFR Part 395 – Hours-of-Service</b>			
<b># of Drivers Involved in Recordable Crashes</b>	<b>Sample Size: # of Drivers Selected</b>	<b>Minimum # of RODS to Review</b>	<b>Sample Selection</b>
1-5	All	# drivers x 15	Select from drivers involved in crashes.
6-15	5	5 x 15 = 75	
16-50	7	7 x 15 = 105	
51-150	11	11 x 15 = 165	
151-500	17	17 x 15 = 255	
501-Over	27	27 x 15 = 405	
<i>Additional Guidance: For <b>each</b> driver involved in a recordable crash for previous 365 days, conduct HOS review for day of crash and previous 14 days from date of crash (15 days total).</i>			
<ul style="list-style-type: none"> <li><i>If crash date &gt; 6 months, RODS may be reviewed if available. If no RODS, select RODS for same driver within previous 6 months.</i></li> <li><i>If carrier has no RODS available for drivers involved in crashes within previous 6 months, first select drivers with the highest percentile in the Hours of Service (HOS) Compliance BASIC (to meet the required sample size) at the carrier's place of business who were placed OOS during roadside inspections and then those found in violation during roadside inspections.</i></li> </ul>			

<b>CFR Part 172 – Shipping Papers</b>
One shipping paper, at a minimum, shall be examined for each proper shipping name or class/division of HM offered for those involved in recordable crashes.

### **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 serious violations are found during the assessment of regulatory compliance in the Vehicle Maintenance based on CBI sampling outlined in the tables below (e.g. DVIRs, maintenance files).

### **Assessment of Compliance - Part 382 Specific Guidance**

In the case of Part 382, if no program is found to exist at the carrier (382.115) this violation should be cited and the SI will continue with the assessment of compliance without expanding sampling to onsite sample size.

If any of the following conditions are found to exist then the investigation should be expanded to include full onsite sampling of the Controlled Substances/ Alcohol BASIC.

- Any or all post-accident tests were not completed as required (382.303a).
- A "positive" (e.g. pre-employment or post-accident test) is found among the drivers that have had crashes (382.2 15).

- Pre-employment testing was not conducted on any drivers involved in crashes that were hired in previous 365 days (382.301).

### **Assessment of Compliance - Identify Process Breakdowns and Remedies**

As with other investigations, the SI should identify process breakdowns and remedies. For the Crash BASIC Indicator the remedies are the Crash Countermeasures that are produced while using the CAT and described in section 2.3 below. If violations are discovered during CBI sampling related to another BASIC, process breakdowns and remedies related to that BASIC should be provided.

### **Examination of Crash Circumstances using CAT – Overview**

The examination of the circumstances surrounding a motor carrier's crashes begins with the examination of any available data including PARs and other crash related documentation interviewing the motor carrier, and collecting other data and information, such as insurance reports, relevant to the crashes. Using the CAT, the SI looks for trends in crash circumstances and then finally identifies appropriate countermeasures. Each of these steps is described in more detail in the sections below.

### **Examination of Crash Circumstances using CAT - Data and Information Collection**

The SI will use the CAT to analyze the motor carrier's MCMIS crash data. The MCMIS data can be supplemented from any number of sources. For example, the SI will need to request any information the carrier may have on those crashes-including relevant PARs. Additional documents from the carrier's insurance company, such as the "Accident/Loss" File or a Loss/Run report, may also be helpful in discovering and obtaining additional information about the carrier's crashes. Finally, the SI should ask the carrier whether it requires its drivers to prepare and submit an internal (carrier-specific) document if they are involved in a recordable crash. It is not necessary to complete every data field in CAT, if it is not deemed useful for the analysis.

### **Examination of Crash Circumstances using CAT - Crash Trends**

The CAT is an integrated component of the CBI process and designed to assist SIs in various stages of their investigation. The SI will use the CAT to examine and analyze non-regulatory circumstances that might have contributed to the crash occurring. Examples of these circumstances include driver experience, driver's familiarity with the route, and/or vehicle type. Beyond examining crash trends, the tool assists SIs with the identification of potential drivers and vehicles to sample, during the CBI, by sorting and filtering available carrier crash data by crash characteristic and time period.

When analyzing crash trends, the SI may tailor the use of the tool to the given situation. For example, SIs can add supplemental carrier crash data to analyze by entering specific data on individual crashes. They may also add crashes into the analysis that are not in MCMIS or remove crashes from the analysis that are not pertinent to the analysis being performed. (Note: If the SI discovers recordable crashes that are over 90 days old, SIs may consider submitting a DataQs to the States to research and add into MCMIS.) The tool provides SIs with the capability of reviewing and analyzing carrier crash data for 6, 12, 24, and 60 month time periods at the discretion of the SI. These varying time periods can be used to see if an issue was isolated to a particular time period. Additionally, these time periods can be used to limit the data being examined to a shorter time period for a carrier with a lot of crashes or to a longer time period for a carrier with few crashes.

### **Examination of Crash Circumstances using CAT - Crash Countermeasures**

Based on the trends discovered and collected crash data, the CAT will recommend specific Crash Countermeasures that may be appropriate to the carrier's crash issues. A list of these countermeasures is presented in the table on the next page and an example is provided at the end of this document. The SI should review the recommended countermeasures and then include additional countermeasures or remove those deemed not appropriate, as needed. The SI should provide the CBI Carrier Summary Report including Crash BASIC Countermeasures to the carrier along with the Carrier Investigation Report from CAPRI

during the closeout. The CBI Carrier Summary Report should also be uploaded into the Electronic Document Management System (EDMS) at the conclusion of the investigation.

### ***Carrier Accident Register***

- Do not rely solely on the information in the carrier accident register
- Review all carrier accident files
  - Recordable and non-recordable
- Review police reports
- Conduct driver interviews
- Question the carrier and maintenance personnel about bus fires
- Investigate “road incidents”
- Walk the yard.

A comprehensive investigation dictates that you do not rely solely on the information in the carrier accident register or crashes listed on the carrier profile. Demand access to all carrier accident files, including those that the carrier did not include on the accident register. Review police reports and any other documentation to verify that the incident does or does not belong on the accident register. Conduct driver interviews in person or by telephone (if appropriate).

When conducting your investigation of accidents, consider whether the carrier has had a fire or explosion meeting the accident criteria as explained in §390.5. A fire or explosion in a CMV operating on a highway in interstate or intrastate commerce would be considered an “accident” if it resulted in a fatality; bodily injuries that require the victim to be transported immediately to a medical facility away from the scene; or disabling damage that requires the CMV to be towed. A collision is not a pre-requisite to an “accident” under §390.5.

Question the carrier and maintenance personnel as to any bus fires that may have occurred within the previous 365 days. Investigate any “road incidents.” Walk the yard and look for damaged or burned-out vehicles, including burned tires in the tire corral. Ask maintenance personnel what occurred.

- “Loss Run” Statement
- Request document from carrier
- Interview the insurance agent
- Review Loss Run carefully
- Watch for high dollar payouts
- Examine property damage claims

Obtaining a “Loss Run” statement from the motorcoach carrier’s insurance company can often prove beneficial in discovering crashes. In many cases, insurance companies are compliant in providing the documents. However, if you are unable to obtain one, then request one from the carrier.

Review it carefully. Typically, high dollar payouts are often an indicator of a significant event. If the event is not on the carrier’s accident register, then question the carrier and/or insurance company to determine if the event was recordable. Look for property damage claims that may be indicative of a bus fire or other event worthy of further investigation.

### ***License & Insurance***

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

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

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

### ***Additional Sources - Internet Search***

Another source that can provide information about potential crashes is the Internet. Google News is an abundant source of news articles from around the globe. To access this site:

- Go to [www.google.com](http://www.google.com)
- Click on "News" on the dashboard
- Type the name of the motorcoach carrier. Enter this slowly, as suggestions will appear below the search bar. Sometimes you might find an item that closely resembles the carrier name. Take a few moments to explore the different suggestions. You never know what you will find.
- Either click a suggestion below or finish typing the name and hit enter or search review articles. While good information can be found on the first page of your search, it sometimes can pay to search on the second and third pages, or beyond.

Additional documents for an internet search:

- Court records:
  - Look for court records during your Google search
  - Verify whether the jurisdiction dockets are available online.
- Police records:
  - Are they available online?

Yelp is another good source for information on customer experience.

Don't limit yourself. Use all information at hand. A simple search can reveal media accounts of crashes and incidents (even bus fires) that may have gone unreported. Also note that any litigation may also appear, depending on the jurisdiction and their posting online.

### **Maintenance Records**

- Review invoices
- Review towing charges
- Review high dollar items
- Review books
- Ask questions.

Be sure to review all maintenance and repair invoices for possible signs of crashes. Typically, if you find towing charges on a bill, then it could mean that the bus had either an extensive breakdown or a crash. Other signs are high dollar amounts for repair, body, and engine work, etc.

When reviewing the books, identify large unexplained expenses. Be sure to match them up with the appropriate invoices. Ask the carrier for further clarification if no invoice can be found.

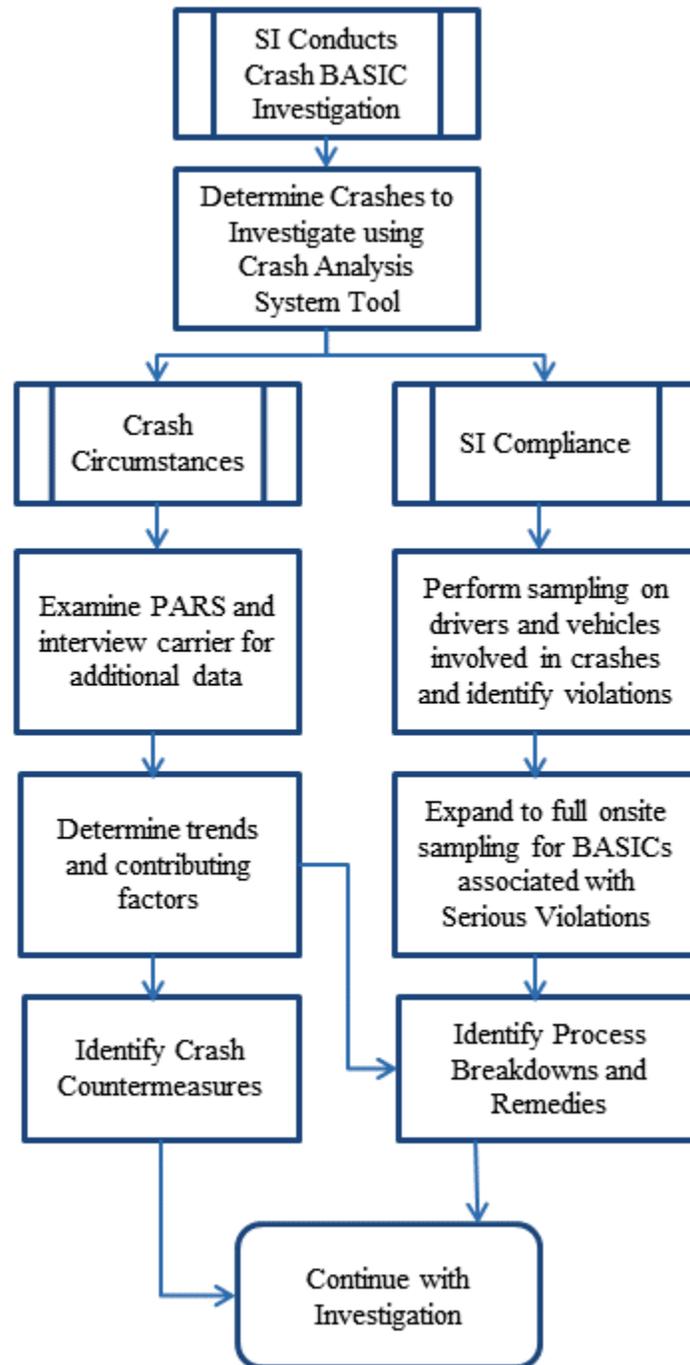
Match the carrier's active list of equipment with equipment actually being used—units that are sitting represent assets to the carrier that are not producing income. Find out why. If a unit is down for mechanical reasons, it could be from some type of incident that had gone unreported.

### ***Document Evidence***

Document your investigative process if you discovered additional crashes that were not on the carrier profile or accident register.

Follow the mandatory recommendation requirements for accident preventability when applicable.

Consult with the Division.



### ***Enforcement Procedures***

The Crash BASIC Investigation results consist of the Crash BASIC Analysis report and the standard Compliance Investigation report completed by the Safety Investigator or State counterpart. Since the Crash BASIC provides the prioritization to conduct the CBI, the results of the CBI do not have an enforcement action connected to them. Regulatory violations discovered during the CBI are cited and documented the same way as previously mentioned in the e-FOTM and enforcement decision making and documentation remains consistent.

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 follow on action called the “Cooperative Safety Plan”. The Cooperative Safety Plan (CSP) is a voluntarily agreed upon document the motor carrier prepares outlining the actions they will take to reduce or eliminate those crashes that caused the Crash BASIC to meet or exceed the threshold and require the Crash BASIC Investigation to occur. The CSP is not an enforcement action and is viewed as a follow on action designed to assist the carrier in committing to the actions discussed with the investigator during the CBI.

### 1.3.14.3 Driver Fitness BASIC

#### 1.3.14.3.1 Introduction to Driver Fitness

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

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

If you are assigned an Onsite Focused Investigation or **100% States** **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.

- review of full part
- ⊗ review of specific regulation within a part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

<b>Safety</b>		
40 - Drug & Alcohol Testing	●	
380 - Special Training		LCV and Entry Level Driver Training Requirements - <b>Required if</b> motor carrier has drivers subject to Part 380 training requirements.
382 - Drug & Alcohol Testing	●	
383 - CDL	⊗ Part of CAIR	<b>Required:</b> 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 - <b>Required</b> 390.15 - accident register - <b>Required if</b> 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. - <b>Consideration</b> when present on profile 390.23/25 - relief - <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration.
391 - Driver	●	<b>Required:</b> Driver Fitness BASIC

Qualifications		
392 - Driving of Motor Vehicles	⊗ .3,.9a(a)	392.2 - applicable operating rules - <b>Consideration</b> when the profile shows evidence of 392.2 Cargo-Related violations. Use “1 of 1” violation citation logic.  392.9 - inspection of cargo - <b>Consideration</b> when the profile shows evidence of 392.2 Cargo-Related violations. Use “1 of 1” violation citation logic.  392.62 - Safe operation of buses - <b>Consideration</b> when evidence of violation exists on the profile.  392.9a(a) Authority - <b>Required</b> as part of the CAIR process
393 - Vehicle Parts and Accessories		<b>Required:</b> 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 <b>Consideration</b> when the profile shows evidence of cargo-related issues. Use “1 of 1” violation citation logic.
395 - HOS		
396 - Vehicle Maintenance		<b>Required:</b> Vehicle Maintenance BASIC  396.3(a) Inspection, repair, and maintenance - <b>Consideration</b> when profile shows evidence that may be related to the maintenance of load securement devices. Use “1 of 1” violation citation logic.
<b>Hazardous Materials</b>		
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 - <b>Required if</b> HM carrier
178 - Package Specifications		
180 - Package Quality and Maintenance		

397 - HM Driving and Parking		
<b>Other</b>		
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> 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. <b>Required if</b> motor carrier transports migrant workers.
399 - Employee Health and Safety		

1.3.14.3.2 Part 172 - HM Communication, Emergency Response Information & Training

1.3.14.3.2.1 Part 172 – Investigative Procedures

[Shipping Papers - Subpart C](#)

[Emergency Response Information - Subpart G](#)

[Marking, Labeling and Placarding - Subparts D, E, and F](#)

[Training - Subpart H](#)

If you are assigned an Onsite Comprehensive Investigation, your investigation should include an investigation of all Parts of 172, as applicable to the HM motor carrier being investigated. If you are assigned an Onsite Focused Investigation or an **100% States** **Offsite Investigation**, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 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. Motor Carriers are cited using a primary cite of Part 177 and a secondary cite of Part 172 of the HMR when a Part 177 cite exists (shipping papers, marking, placarding). Shippers are cited under Part 172 for Part 172 violations. (NOTE: Carriers are also subject to Part 172 however when there is an applicable Part 177 cite use Part 177 as the primary and 172 as the secondary.

- 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 172	Description
Driver Fitness	⊗ .704	172.704 - Training Records - <b>Required if HM Carrier</b>
HM Compliance	⊗ .200 – .205 .300 –.338 .400 –.450 .500 –.560 .600 –.606	172.200 - 172.205, Shipping Paper Requirements – <b>Required</b> as applicable to each proper shipping name or class/division of hazardous material transported or shipped. 172.300 - 172.338, Marking Requirements – <b>Required</b> for each proper shipping name or class/division of non-bulk and bulk packages requiring marking in accordance with Subpart D or Part 172.

	.700 –.704 .800 –.822	<p>172.400 - 172.450, Labeling Requirements – <b>Required</b> 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.</p> <p>172.500 - 172.560, Placarding Requirements – <b>Required</b> 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.</p> <p>172.600 - 172.606, Emergency Response Requirements – <b>Required</b> for each proper shipping name or class/division of hazardous material required to have emergency response information.</p> <p>172.700 - 172.704, Training Requirements – <b>Required</b> for hazardous material employees as defined by Subpart H of Part 172, check all requirements in Subpart H.</p> <p>172.800 - 172.822, Security Plan Requirements – <b>Required</b> for hazardous material transporters and shippers that are required to have a security plan in accordance with Subpart I or Part 172.</p>
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*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

### ***Part 172 - Shipping Papers - Subpart C***

#### ***Procedures for Investigating a Facility for Shipping Paper Compliance***

- Tour the hazardous materials shipper's/carrier's facility and review the materials safety data sheets also known as 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.
- If permanent shipping papers are utilized, ensure information is maintained by the carrier documenting each trip the shipping paper was used.
- 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.
- Ensure there are no current changes or updates in the regulations regarding hazardous materials shipping descriptions.
- See [HM Shipping Paper Checklist](#).

#### ***Retention Shipping Papers***

- Hazardous waste, shipping papers (the hazardous waste manifest) must be retained for three (3) years after the materials are accepted by the initial carrier.

- All other HM, as per shippers must retain HM shipping papers for two (2) 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.
- Carriers using permanent shipping papers must retain the information required in § 177.817(f) for one year.
- Each shipping paper copy must include the date of acceptance by the initial carrier. This requirement is also found in § 172.201(e).
- Keep in mind that shipping papers may be retained electronically.

**Note: The regulatory language for hazardous materials shipping paper retention and recordkeeping is found in 49 CFR §172.201(e) and §177.817(f).**

*The Number of Shipping Paper Documents that Should be Examined for Compliance*

CFR Parts - Part 172 - Shipping Papers				
Onsite		100% States	Offsite	CBI
Variable	# of Documents to Review	Variable	# of Documents to Review	
One shipping paper, at a minimum, shall be examined for each proper shipping name or class/division of HM offered or transported when roadside data has shown HM-related violations.		Same as Onsite.		One shipping paper, at a minimum, shall be examined for each proper shipping name or class/division of HM offered for those involved in recordable crashes.

- Sample shipping papers from the previous 12 months for completeness, content, and accuracy.
- One hazardous materials shipping paper, at a minimum, should be examined for each proper shipping name or class/division of HM offered or transported.
- If substantial noncompliance is discovered from the minimum number of reviewed shipping papers, additional shipping papers should be examined, to better determine the extent of noncompliance.
- Make comments and provide explanations in Part C of the investigation report, as appropriate.
- When performing an investigation on a for-hire motor carrier of HM, document violations by HM shippers which provided improperly prepared shipping papers.
  - Discuss the appropriate handling of these violations with the Division Administrators/State Directors.
- See [HM Shipping Paper Checklist](#).

*Waybills and Manifests May Not be the Same as Shipping Paper*

- Keep in mind that manifests and waybills reviewed at the shipper's or carrier's office may not be the document used as the HM shipping paper for transportation.
- Hazardous materials shippers frequently maintain shipping pros for the facility in their files, in addition to the shipping paper offered to the carrier.
- Hazardous materials carriers often create separate HM shipping papers when loads are combined.
- Ensure the document being reviewed for compliance with the HMR is the one used for transportation.

***The Environmental Protection Agency (EPA) Uniform Hazardous Waste Manifest (UHWM) is a Shipping Paper***

- The EPA and DOT agreed to allow the 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 49 CFR § 172.205.

### ***Part 172 - Marking, Labeling and Placarding - Subparts D, E, and F***

#### ***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:

- 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), packaging, marking, and labeling.
- Record package inspections using HMPIP Software for packages originating at a location other than the shipper or carrier. See [Using HMPIP Software](#).
- 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 [be careful of the exception in § 177.841(e)].
- Inspecting vehicles on the "ready line" for placarding, marking, and shipping paper violations, and if there are shipments ready for transportation:
  - Checking for proper specification packaging and marking
  - Determining whether the package is specified for the HM
  - Determine if proper closure procedures for HM packaging were followed, as applicable.

### ***Part 172 - Emergency Response Information - Subpart G***

- Verify that emergency response information is available during transportation, as required by § 172.600
- This requirement may be met by a number of different ways, including attaching a materials safety data sheet (MSDS) or referencing the Emergency Response Guidebook
- Check the shipping papers for the emergency response telephone number, in accordance with § 172.604. Calling the phone number is highly recommended.
- 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 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
- See Illustration HM-2 – Emergency Response Phone Number Q&A.

#### ***Properly Citing Violations of the Emergency Response Telephone Number Requirements***

For motor carriers and shippers required to comply with the Shipping Paper/Emergency Response Telephone Number requirements under §172.201:

- Cite ERI violations and take appropriate enforcement actions for critical violations
- Cite Motor Carriers using Part 177 and Shippers using Part 172
- For carriers - In CAPRI Part B Recommendations, the process breakdown leading to the emergency response information or telephone number violation, should be described, along with specific remedies the carrier needs to take in order to be in compliance.

### ***Part 172 - Training - Subpart H***

#### ***Employees at a HM Shipper or Motor Carrier Facility Must Have HM Training***

Employees responsible for any aspect of HM compliance must have HM training. This may include the safety director, rate and billing clerks, dockworkers, city pickup and over the road drivers, dispatchers, and any other persons engaged in activities covered by the HMR.

The regulations in 49 CFR § 171.8 define a Hazmat Employee as someone who, during the course of employment:

1. Loads, unloads, or handles HM.
2. Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging's as qualified for use in the transportation of HM.
3. Prepares HM for transportation.
4. Is responsible for safety of transporting HM.
5. Operates a vehicle used to transport HM.

#### ***Determine if Employees who Perform HM Functions are Properly Trained***

1. Interview employees engaged in HM activities.
  - Determine 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 and a violation of 49 CFR § 172.702(b) for shippers.
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 description of the training materials used to meet the training requirements. Review the actual training materials to verify whether all subject areas, required by 49 CFR § 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.

1.3.14. 3.2.2 Part 172-CAPRI Procedures

**Properly Citing Violations of HM Training Requirements**

See [Illustration HM-3](#).

**Violations Types Considered for Enforcement Against HM Shippers (Carrier violations are found in the next section.)**

Enforcement shall be considered against a shipper, if one or more of the **Acute, Critical, or Severe** violations listed below are discovered.

**Acute, Critical and Severe Regulations for Part 172**

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(a)	Severe Level II	Failing to enter on a shipping paper the notation "DOT-E" or "DOT-SP" followed by the Special Permit number. Note: Markings of "DOT-E" are still acceptable for exemptions issued prior to October 1, 2007.
172.203(c)(1)	Severe Level II	Failing to enter the hazardous substance constituent on a shipping paper when not identified by the proper shipping name.
172.203(d)	Severe Level II	Failing to include on shipping papers for a shipment of radioactive material physical and chemical form, activity, and category of label.
172.203(m)	Severe Level I	Failing to enter the words "Poison Inhalation Hazard" or "Toxic Inhalation Hazard" on the shipping paper when required.
172.203(n)	Severe Level II	Failing to enter the word "HOT" on the shipping paper for elevated temperature materials as required.
172.203(o)	Severe Level I	Failing to include the additional required information for organic peroxides or self-reactive materials on shipping paper
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).
172.205(b)	Severe Level II	Failing to prepare the hazardous waste manifest in accordance with 40 CFR Part 262.
172.313(a)	Severe Level I	Failing to mark a package of hazardous materials with the words "Inhalation Hazard" when required.
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.

<b>172.320(a)</b>	<b>Severe Level II</b>	Failing to mark a package containing Class 1 material with the appropriate EX-number. (Check for applicable exceptions before citing).
<b>172.326</b>	<b>Severe Level II</b>	Failing to properly mark a portable tank of hazardous materials with the proper shipping name and identification number.
<b>172.326(c)(2)</b>	<b>Severe Level II</b>	Failing to provide to a motor carrier the required identification numbers for a portable tank.
<b>172.328(a)(1)</b>	<b>Severe Level II</b>	Failing to provide to a motor carrier the required identification numbers for a cargo tank.
<b>172.328(a)(2)</b>	<b>Severe Level II</b>	Offering a cargo tank containing hazardous material that has not been marked with the required identification number.
<b>172.400(a)</b>	<b>Severe Level II</b>	Failing to properly label a package of hazardous materials.
<b>172.403</b>	<b>Severe Level II</b>	Failing to affix the correct label to a package of radioactive material.
<b>172.506(a)</b>	<b>Severe Level II</b>	Failing to provide the required placards to a motor carrier.
<b>172.600(c)(1)</b>	<b>Severe Level II</b>	Failing to provide emergency response information.
<b>172.604(a)</b>	<b>Severe Level II</b>	Failing to provide an emergency response telephone number including the international access code for shipments originating outside U.S.A.
<b>172.604(a)(1)</b>	<b>Severe Level II</b>	Failing to provide an emergency response telephone number that is monitored at all times that a hazardous material is in transit.
<b>172.604(a)(2)</b>	<b>Severe Level II</b>	Failing to provide the 24-hour emergency response telephone number of a person who is knowledgeable of the hazards and characteristics of the hazardous materials being shipped (of a person who does not have comprehensive emergency response and accident mitigation information).
<b>172.604(a)(3)(iii)</b>	<b>Severe Level II</b>	Failing to prominently display through clearly identifiable means the ER information.
<b>172.604(b)(1)</b>	<b>Severe Level II</b>	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.
<b>172.604(c)</b>	<b>Severe Level II</b>	Failing to require the person preparing the shipping paper for continued transportation to provide either the ER information provided by the original offeror or their own ER information should that person take on the responsibility of providing emergency response information.
<b>172.704(a)</b>	<b>Severe Level II</b>	Failing to train hazmat employees as required. (Use when at least 10 percent of hazmat employees are not trained as required).  <b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>172.704(a)(1)</b>	<b>Severe</b>	Failing to provide General Awareness Training.

	<b>Level II</b>	<b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>172.704(a)(2)</b>	<b>Severe Level II</b>	Failing to provide Function Specific Training  <b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>172.704(a)(3)</b>	<b>Severe Level II</b>	Failing to provide Safety Training.  <b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>172.704(a)(4)</b>	<b>Critical</b>	Failing to provide security awareness training.
<b>172.704(a)(5)</b>	<b>Critical</b>	Failing to provide in-depth security awareness training
<b>172.800 - 172.802</b>		See <a href="#">HM Communication, Emergency Response Information &amp; Training – Investigative Procedures</a> .

### ***Acute, Critical, ESM, Fundamental and Severe Regulations for Part 172 - Motor Carriers***

There is only one violation listed below that should be considered for enforcement action, when discovered for a hazardous materials carrier and/or shipper when it is not registered to transport or ship hazardous materials in commerce. The violation is a Severe Level II violation. Acute and Critical Violations impact a motor carrier's safety rating. The ESM, Fundamental, Severe Level I and Severe Level II violations do not.

The discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) would result in a Critical Violation, ESM Violation, and Severe Level II violation.

### **Acute, Critical, ESM, Fundamental and Severe Regulations for Part 172 and 177 - sorted by Part 172**

<b>Primary Citation</b>	<b>Secondary Citation</b>	<b>TYPE</b>	<b>Description</b>
<b>177.817(a)</b>	<b>172.200 - 172.205 (add appropriate cite)</b>	Critical	Transporting a HM without a properly prepared shipping papers
<b>177.823(a)</b>	<b>172.300 thru 172.338 (add appropriate cite)</b>	Critical	Moving a transport vehicle containing hazardous material that is not properly marked  <b>Note:</b> Applies only to markings required on the transport vehicle.
<b>172.301(a)(1)</b>		Severe Level II	Failing to properly mark a non-bulk package of hazardous material with the proper shipping name and identification number.
<b>172.313(a)</b>		Acute	Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words "Inhalation Hazard."
<b>172.320(a)</b>		Severe Level II	Failing to mark a package containing Class 1 material with the appropriate EX-

			number. (Check for applicable exceptions before citing).
<b>172.326</b>		Severe Level II	Failing to properly mark a portable tank of hazardous materials with the proper shipping name and identification number.
<b>172.400(a)</b>		Severe Level II	Failing to properly label a package of hazardous materials.
<b>172.403</b>		Severe Level II	Failing to affix the correct label to a package of radioactive material.
<b>172.704(a)</b>		ESM	Failing to train HM employees as required.
<b>177.823(a)</b>	<b>172.500 – 172.519</b>	Critical	Moving a transport vehicle containing hazardous material that is not properly placarded
<b>177.817(a)</b>	<b>172.600(c)(1)</b>	Critical	Failing to provide emergency response information on or with the shipping papers.
<b>177.817(a)</b>	<b>172.604(a)</b>	Critical	Failing to provide an emergency response telephone number, including the international access code for shipments originating outside U.S.A.
<b>177.817(a)</b>	<b>172.604(a)(1)</b>	Critical	Failing to provide an emergency response telephone number that is monitored at all times that a hazardous material is in transit.
<b>177.817(a)</b>	<b>172.604(a)(2)</b>	Critical	Failing to provide the 24-hour emergency response telephone number of a person who is knowledgeable of the hazards and characteristics of the hazardous materials being shipped (of a person who does not have comprehensive emergency response and accident mitigation information).
<b>177.817(a)</b>	<b>172.604(a)(3)(iii)</b>	Critical	Failing to prominently display through clearly identifiable means the ER information.
<b>177.817(a)</b>	<b>177.604(b)(1)</b>	Critical	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.
<b>177.817(a)</b>	<b>172.604(c)</b>	Critical	Failing to require the person preparing the shipping paper for continued transportation to provide either the ER information provided by the original offeror or their own ER information should that person take on the responsibility of providing emergency

			response information.
<b>177.800(c)</b>	<b>172.704(a)</b>	Severe Level II	Failing to instruct a category of employees in hazardous materials regulations.  <b>Note:</b> See <i>Illustration HM-3</i> .
<b>177.800(c)</b>	<b>172.704(a)(1)</b>	Critical	Failing to instruct a category of employees in the hazardous material regulations by failing to provide General Awareness Training.  <b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>177.800(c)</b>	<b>172.704(a)(2)</b>	Critical	Failing to instruct a category of employees in the hazardous material regulations by failing to provide Function Specific Training.  <b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>177.800(c)</b>	<b>172.704(a)(3)</b>	Critical	Failing to instruct a category of employees in the hazardous material regulations by failing to provide Safety Training.  <b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>177.800(c)</b>	<b>172.704(a)(4)</b>	Critical	Failing to instruct a category of employees in the hazardous material regulations by failing to provide security awareness training.
<b>177.800(c)</b>	<b>172.704(a)(5)</b>	Critical	Failing to instruct a category of employees in the hazardous material regulations by failing to provide in-depth security awareness training.
<b>177.800(c)</b>	<b>172.704(c)</b>	Critical	Failing to provide Initial or Recurrent Training or failing to provide training after an amendment to the security plan.  <b>Note:</b> See <a href="#">Illustration HM-3</a> .
<b>172.800 - 172.802</b>			See <a href="#">HM Communication, Emergency Response Information &amp; Training – Investigative Procedures</a> .

**Note: If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated.**

### *1.3.14. 3.2.3 Part 172-Process Breakdowns/Remedies-SMC*

When you discovered the violations relating to Part 107, assist the hazardous materials 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 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 SMC to Help Diagnose a Breakdown in Safety during an Investigation section. For CAPRI procedures, see Part B - Recommendation/Requirements on how to select and customize the SMC Breakdowns and Remedies.

Always conduct a facility walk around. Look for markings, labels and placards to determine types and classes of HM present. Conduct a yard check and look for placarded vehicles. Ask where shipping papers are kept rather than just asking for specific shipping papers then takes a look at some of the files to see what hazardous materials are actually being shipped/transported.

### *1.3.14. 3.2.4 Part 172-Enforcement Procedures*

#### ***Evidence that is Required to Successfully Prosecute a Violation of Part 172***

To successfully prosecute a violation of Part 172, establish the following facts properly supported by evidence:

- That the hazardous material in question is in fact a hazardous material
- That the hazardous material was offered for transportation in commerce by the Carrier or Shipper being investigated
- That a violation of Part 172 occurred
- That knowledge and willfulness has been established (see [Investigations of HM Carriers and Shippers](#)).

#### ***Look for the Following When Compiling Your Case on Part 172***

- Ensure that the subject's actions actually constitute an offering for transportation in commerce. Sometimes, this can be difficult to establish. Generally speaking, a package is offered for transportation when the package is prepared, ready for shipment, and a shipping paper/bill of lading has been prepared indicating the consignee of the shipment.
- Ensure that the material in question is a hazardous material. 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, obtain a MSDS.
- When using a MSDS to confirm the presence of a hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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 that the documents reference one another. For instance:
  - If the shipping order number indicates a trailer number or drivers 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 it have the trailer number; and, is the driver's 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.

- When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.

### *Documents Needed for a Part 172 Enforcement Case*

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper, MSDS and/or other document, such as a bill of lading indicating the class of HM and, if possible, the quantity.
2. **Establish that the hazardous material was offered, or was actually transported in commerce.** Shipping papers, bills of lading, and other such documents, may be used to establish this fact. In addition, photographs of the shipment that indicate that it was offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 172 occurred.** Documenting a violation of Part 172 generally requires at least the HM shipping paper, and also photographs of the package in commerce showing the alleged violation and/or statements that establish the necessary facts of the case.

### *Preparing the Exhibit Abstract*

The exhibit abstract for each count should 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 172 Enforcement Case](#).

- Care should be taken in the preparation of the abstract
- Attention to detail is essential
- Ensure shipper and carrier violations are distinct, using the word “transporting” for carriers and “offering” for shippers
- Refer to [Illustration HM-11](#) for examples of exhibit abstracts for violations of Part 172.

### *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 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 172 function-specific training violation should read as follows:

On or about «DATE», «SHIPPER/CARRIER\_NAME» offered/transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION». «SHIPPER/CARRIER\_NAME» «DESCRIBE VIOLATION».

#### 1.3.14.3.3 Part 380 - Special Training Requirements

##### *1.3.14.3.3.1 Part 380 – Investigative Procedures*

In your review of compliance with 49 CFR Part 380, you should use the following guidelines to assist in your investigation of motor carriers, both of property (including placardable hazardous material) and/or passengers.

### *Procedures to Follow During the Investigation of Compliance with Part 380*

If you are assigned an Onsite Comprehensive Investigation, your investigation of 49 CFR Part 380 should consist of reviewing sampled DQ files for special training requirement certification.

If you are assigned an Onsite Focused Investigation or [100% States] Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you

are investigating. The table below identifies each BASIC by Part 380, and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes additional guidance on when each is required, or should be considered, based on investigative findings.

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

BASIC	Part 380	Description
Driver Fitness	●	Longer Combined Vehicle (LCV) and Entry Level Driver Training Requirements – <b>Required if</b> 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 – <b>Required if</b> the motor carrier has drivers subject to training requirements. 380.505 – Proof of Training – <b>Required if</b> motor carrier has drivers subject to entry-level driver training. 380.513 – Training Certificate – <b>Required if</b> motor carrier has drivers subject to entry-level driver training.
HM Compliance		
Unsafe Driving	●	LCV and Entry Level Driver Training Requirements – <b>Required if</b> 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 may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

Following this review, you should:

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

### ***Part 380 – Review Special Training Requirement Certification***

#### ***Special Training Requirements to Review***

The motor carrier is required to prepare and maintain DQ files in accordance with Section 391.51(b). In addition to the documents required by this section, motor carriers must ensure that copies of the required training certificates are maintained in the DQ file for each LCV driver and entry-level driver, as appropriate.

- **Longer Combination Vehicle (LCV) Driver Certification:** You should ensure the LCV Driver Training Certification (required by Section 380.401), or the LCV Driver-Training Certificate of Grandfathering (required by Section 380.111), is maintained by the motor carrier in the DQ file, all fields are completed, and the certification is signed and dated by the certifying training or motor carrier official, respectively.
- **Entry-Level Driver-Training Certification:** You should ensure the Entry-Level Driver-Training Certificate or diploma (required by Section 380.513) is maintained by the motor carrier in the DQ file, all fields are completed, and the certification is signed and dated by the appropriate official.

**Note:** The Entry-Level Driver-Training Certificate may also be maintained in the driver's personnel file. If there are LCV drivers in your sample, you must ensure the driver-instructor provides evidence of certifications required by Section 380.301 or 380.303.

### ***Part 380 – Special Training Requirement Problems***

#### ***Actions to Take if an LCV or Entry-Level Driver Does Not Have the Required Certification Maintained in its DQ File***

You must first ensure an LCV or entry-level driver certification is required. LCV Driver-Training Certification is required for all operators of LCVs in interstate commerce. Entry-Level Driver-Training Certification is required for all entry-level drivers who drive in interstate commerce and are subject to the CDL requirements of Part 383.

If the motor carrier has failed to maintain the LCV Driver-Training or Entry-Level Driving-Training Certification, it must be cited.

#### ***1.3.14.3.3.2 Part 380 – CAPRI Procedures***

Once you have completed your investigation of compliance with Part 380, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

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

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

You should cite Section 380.509(a) if a motor carrier fails to ensure each entry-level driver who operates a CMV requiring a CDL in interstate commerce has received training.

#### ***1.3.14.3.3.3 Part 380 – Process Breakdowns and Remedies - Applying the SMC Cycle***

Once you have discovered the violations relating to Part 380, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns are occurring in the motor carrier's processes, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to [General Guidelines for Using the Safety Management Cycle \(SMC\) to Help Diagnose a Breakdown in Safety during an Investigation](#). For CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the Safety Management Process (SMP) Breakdowns and Remedies.

#### ***1.3.14.3.3.4 Part 380 – Enforcement Procedures***

Once you have entered the violations discovered into Part B of CAPRI software and have decided to initiate an enforcement action for the Part 380 violations, you should use the following guidelines when submitting an enforcement report for Part 380 violations.

#### **Documentation**

#### **Enforcement Action against Carriers**

#### **Enforcement Action against Drivers**

### ***Part 380 - Documentation***

#### ***Documents that Should be Gathered to Initiate an Enforcement Action***

- You should gather documentation to initiate an enforcement action, which establishes the following:
- The vehicle used falls within FMCSR jurisdiction for Part 380.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.

- A violation of Part 380 occurred.

### ***Precautions that Should be Taken When Preparing a Statement for Carriers Who Do Not Have the Appropriate Records***

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included as part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose LCV driver-training certificates are not in the carrier's files to determine whether they have been trained and, if so, when, where and by whom. You should obtain the driver's signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.
- In selecting Part 380 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 380 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records. Therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in [\*Illustration E-1: Photographic Declaration\*](#).

### ***Some Examples of Documents that May be Used to Prove Violations of Part 380***

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver or other person responsible for compliance with Part 380.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill 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 CAPRI DQ Worksheet and have motor carrier verify lack of documents.

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

### ***Part 380 – Enforcement Action Against Carriers***

#### ***Some Important Issues to Remember When Documenting Violations of Part 380***

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

Best practice requires that you obtain statement(s) from motor carrier officials, affirming that the required documents were not in the DQ file, or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See [Illustration E-2: Written Statement with Perjury Clause](#).

Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for “failing to maintain” the driver’s state driving record abstract should not be described in the case report as “failing to make an inquiry” from the state licensing agency.

### ***Part 380 - Enforcement Action Against Drivers***

#### ***Enforcement Action that Should be Considered Against a Driver***

You should consider enforcement action against a driver for the following violation:

- 380.401(b) – Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to your employer to be filed in your Driver Qualification file.

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

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Procedures](#).

#### 1.3.14.3.5 Part 387 - Insurance Requirements

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 387: Procedures](#).

#### 1.3.14.3.6 Part 390 - General Requirements

##### *1.3.14.3.6.1 Part 390 – Investigative Procedure*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390: Procedures](#).

##### *1.3.14.3.6.2 Part 390 – CAPRI Procedure*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390: Procedures](#).

##### *1.3.14.3.6.3 Part 390 – Process Breakdowns/Remedies-SMC*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 - Procedures](#)

##### *1.3.14.3.6.4 Part 390 – Enforcement Procedures*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 - 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, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391: Procedures](#).

#### *1.3.14.3.7.2 Part 391-CAPRI Procedures*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391: Procedures](#).

#### *1.3.14.3.7.3 Part 391-Process Breakdowns/Remedies-SMC*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391 - Procedures](#).

#### *1.3.14.3.7.4 Part 391-Enforcement Procedures*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391 - Procedures](#).

### 1.3.14.3.8 Part 392 - Driving of Motor Vehicles

#### *1.3.14.3.8.1 Part 392-Investigative Procedures*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: Procedures](#).

#### *1.3.14.3.8.2 Part 392-CAPRI Procedures*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: Procedures](#).

#### *1.3.14.3.8.3 Part 392-Process Breakdowns/Remedies-SMC*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392 - Procedures](#)

#### *1.3.14.3.8.4 Part 392-Enforcement Procedures*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392 - Procedures](#).

#### *1.3.14.3.9 Part 177-HM Carriage by Public Highway*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 177. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 177:Procedures](#).

### *1.3.14.4 Hazardous Material(HM) Compliance BASIC*

#### *1.3.14.4.1 Introduction to Hazardous Material (HM) Compliance*

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

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

If you are assigned an Onsite Focused Investigation or **100% States** **Offsite Investigation**, the Parts by BASIC table for the HM 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 HM Compliance BASIC.

● full review of part

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

**\*\*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.

<b>Safety</b>		
383 - CDL	⊗ Part of CAIR	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
392 - Driving of Motor Vehicles	⊗ .2	392.2 - Applicable Operating Rules – <b>Required if</b> state or local routing laws are applicable to the motor carrier under investigation. Use “1 of 1” violation citation logic.
<b>Hazardous Materials</b>		
107 - HM Program Procedures (Registration)	⊗ .101 - .405  .501 - .504  .601 - .620	107.101 - 107.405, <b>required if</b> carrier/shipper is a party to a special permit. 107.501 - 107.504, <b>required if</b> carrier meets any Cargo Tank registration requirements. 107.601 - 107.620, <b>required if</b> 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) - <b>Required</b> to verify applicability of regulations. 171.2 - General requirements - <b>Required</b> 171.15 - Immediate notice of certain hazardous material incidents - <b>Required if</b> 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 - <b>Required if</b> carrier has incidents meeting detailed reporting criteria.
172 - HM Table/Communication	⊗ .200 -	172.200 - 172.205, Shipping Paper Requirements - <b>Required</b> as applicable to each proper shipping name or class/division of hazardous material transported or shipped.

	.205 .300 -.338 .400 -.450 .500 -.560 .600 -.606 .700 -.704 .800 -.822	<p>172.300 - 172.338, Marking Requirements - <b>Required</b> for each proper shipping name or class/division of non-bulk and bulk packages requiring marking in accordance with Subpart D or Part 172.</p> <p>172.400 - 172.450, Labeling Requirements - <b>Required</b> 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.</p> <p>172.500 - 172.560, Placarding Requirements - <b>Required</b> 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.</p> <p>172.600 - 172.606, Emergency Response Requirements - <b>Required</b> for each proper shipping name or class/division of hazardous material required to have emergency response information.</p> <p>172.700 - 172.704, Training Requirements - <b>Required</b> for hazardous material employees as defined by Subpart H of Part 172, check all requirements in Subpart H.</p> <p>172.800 - 172.822, Security Plan Requirements - <b>Required</b> for hazardous material transporters and shippers that are required to have a security plan in accordance with Subpart I or Part 172.</p>
173 - Shipper Requirements	●	<b>Required</b> 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	<p>177.800 - 177.823, General information and regulations - <b>As applicable</b> to the hazardous materials being transported.</p> <p>177.834 - 177.843, Loading and unloading - <b>As applicable</b> to the hazardous materials listed in Subpart B of Part 177.</p> <p>177.848, Segregation and Separation of Hazardous Materials - <b>Required if</b> 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.</p> <p>177.854, Vehicles and shipments in transit - <b>As applicable</b> and investigative evidence reveals.</p> <p>177.870, Regulations applying to hazardous material on motor vehicles carrying passengers for-hire - <b>Required if</b> 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.</p>
178 - Package Specifications		As applicable to the hazardous material packaging - <b>Required if</b> 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. <b>Required if</b> 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 - <b>As applicable</b> 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.
<b>Other</b>		
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> as part of CAIR process as applicable to the commodity transported or motor carrier operation type.

#### 1.3.14.4.2 Part 107-Registration of Persons Who Offer or Transport HM

##### 1.3.14.4.2.1 Part 107-Investigative Procedures

##### ***Determining if a HM Motor Carrier and/or Shipper Complies with the PHMSA Registration Requirements***

Whether you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation or an [100% States] Offsite Investigation of the HM Compliance BASIC, 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. An investigation must consist of an evaluation of the motor carrier and/or shipper registration with the PHMSA to transport and/or ship HM in commerce in accordance with 49 CFR Subpart G, specifically § 107.608, if applicable.

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 and have a HM Certificate of Registration that could expire in one, two or three years. Check the following information on the HM Certificate:

- Registration Year(s)
- Certification Statement
- Registrant and the address
- Registration Number
- Issue and Expiration Date(s).

**Note:** There are exceptions for HM Registration(s) and the exceptions are listed in 49 CFR § 107.606.

##### ***Determining if Cargo Tank Manufacturers, Assemblers, Repairers, Inspectors, and Design Certifying Engineers Complies with the FMCSA Registration Requirements***

##### **Determining if a Hazardous Materials (HM) Motor Carrier and /or Shipper Complies with the PHMSA Registration Requirements**

To determine if Cargo Tank Manufacturers, Assemblers, Repairers, Inspectors, and Design Certifying Engineers, are properly registered with FMCSA, in accordance with 49 CFR Part 107, Subpart F an investigation must consist of an evaluation of:

The entities' information listed within their registration statement, as described in 49 CFR § 107.503. There is additional information, if applicable, that **MUST** accompany the registration statement.

**Note:** The additional information, if applicable, is described in 49 CFR § 107.503(b) and 49 CFR § 107.503(c).

The Cargo Tank Manufacturers, Assemblers, Repairers, Inspectors, and Design Certifying Engineers registration(s) can be validated by using FMCSA Portal or FMCSA public website:

[http://memis.volpe.dot.gov/mcs150t/pkg\\_ct\\_public.prc\\_ct\\_public\\_search](http://memis.volpe.dot.gov/mcs150t/pkg_ct_public.prc_ct_public_search). Specific instructions on completing this review are found in [Part 180 - Cargo Tank Motor Carrier Reviews and Cargo Tank Facility Reviews \(CTFRs\)](#)

- 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 107	Description
HM Compliance	⊗ .101 - .405 .501 - .504 .601 - .620	107.101 - 107.405, <b>required if</b> carrier/shipper is a party to a special permit 107.501 - 107.504, <b>required if</b> carrier meets any Cargo Tank HM Registration requirements 107.601 - 107.620, <b>required if</b> person meets any of the HM Registration criteria found in 107.601
Unsafe Driving		

**Note:** The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

#### ***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.

#### ***Cargo Tank Manufacturers, Assemblers, Repairers, Inspectors, and Design Certifying Engineers that is not registered with FMCSA***

If the entity is not NOT currently registered with the FMCSA, inform the person responsible for compliance and/or a company official that they must MUST register immediately in accordance with 49 CFR Part 107, Subpart F.

#### ***Acute, Critical, ESM, Fundamental and Severe Regulations of Part 107***

There is only one violation listed below 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. The violation is a Severe Level II violation. Acute and Critical Violations impact a motor carrier's safety rating. The ESM, Fundamental, Severe Level I and Severe Level II violations do not.

The discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) would result in a Critical Violation, ESM Violation, and Severe Level II violation.

Acute, Critical, ESM, Fundamental, and Severe Regulations for Part 107

Citation	Type	Description
107.502(b)	Severe Level II	Failing to properly register before engaging in the manufacture, assembly, certification, inspection or repair of a specification cargo tank or cargo tank

		motor vehicle.
<b>107.608</b>	<b>Severe Level II</b>	Offering a hazardous material for transportation without having registered with the Department of Transportation, under Subpart G of Part 107.

**Note:** If enforcement action is not taken, it must be documented in [Part C](#) of the investigation to explain why enforcement was not initiated.

#### *1.3.14.4.2.2 Part 107-Process Breakdowns/Remedies-Applying the Safety Management Cycle (SMC)*

When you discover the violations relating to Part 107, assist the hazardous materials 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 HM 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 SMC to Help Diagnose a Breakdown in Safety during an Investigation* section. For CAPRI procedures, see *Part B - Recommendation/Requirements* on how to select and customize the SMP Breakdowns and Remedies.

#### *1.3.14.4.2.3 Part 107-Enforcement Procedures*

##### ***Evidence that is Required to Prosecute a Violation of Part 107***

To prosecute a violation of Part 107, Subpart G, you must show that the:

- Hazardous material(s) in question was in fact a hazardous material (s) subject to the requirements of Subpart G in an amount required to be registered.
- Hazardous material(s) was transported in commerce, e.g.: intrastate, interstate, or foreign commerce.
- Person(s) performing the activity was not registered in accordance with Subpart G of Part 107.
- Knowledge and willfulness were established.
- Hazardous material(s) will be used or was actually used to transport hazardous materials in commerce, e.g.: intrastate, interstate, or foreign commerce in the package

To prosecute a violation of Part 107, Subpart F, you must show that the:

- Person(s) performing manufacturing, assembling, repairing, inspecting, and engineering is required to perform that function.
- Entity is performing on packaging that are identified within the hazardous materials regulations
- Person(s) performing the activity was not registered in accordance with Subpart F of Part 107
- Cargo Tank Tests, Inspections, Repairs were completed on specification cargo tanks without being registered as required by Part 107

##### ***Look for the Following When Compiling Your Case on Part 107***

- Ensure that the company is not registered.
- Ensure the entity of the case is, in fact, performing the functions that require registration.
- Ensure the hazardous material(s) in question is a hazardous material in a quantity requiring registration.
- Use a MSDS to confirm the presence of a hazardous material(s). **Note: Extreme care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS is often a generic document providing 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 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.
- When identifying the documents on the exhibit abstract, it is critical to identify the areas of the document(s) that support the enforcement case and the hazardous material(s) violation. Cargo Tank Facilities: Copies of tests, inspections, repairs on specification cargo tanks.

### ***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 above in [Documents needed for an HM Registration Enforcement Case](#).
- Care should be taken in the preparation of this abstract. Attention to critical detail is essential. Refer to [Appendix F](#) for an example of an exhibit abstract for a violation of Part 107.

### ***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 107 violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER NAME» transported/shipped a placardable amount of «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION» without first registering with the Department, as required under Subpart G of Part 107.

#### 1.3.14.4.3 Part 109-Incorporation of General Policy

### ***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 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.

1.3.14.4.4 Part 130-Oil Spill Prevention and Response Plans

***Hazardous Materials Motor Carrier's Written Oil Spill Prevention and Response Plan***

If the hazardous materials motor carrier transports petroleum oil as defined in 49 CFR §130.5.

***General Requirements and Regulatory Scope for Oil Transportation by Hazardous Materials Motor Carrier***

**Note:** There are applicability exceptions for oil transportation and they are found in 49 CFR § 130.2 and 49 CFR § 130.3.

For packages having a capacity of 3,500 gallons or more, request to examine the HM motor carrier's written oil spill prevention and response plan.

***Requirements for Hazardous Materials Motor Carrier's Communication***

The communication requirement for a person that transports an oil subject to 49 CFR Part 130 MUST meet the requirements in 49 § 130.11.

***Requirements for Hazardous Materials Motor Carrier's Packaging***

The packaging required for a person that transports an oil subject to 49 CFR Part 130 MUST meet the requirements in 49 § 130.21.

***Requirements for Hazardous Materials Motor Carrier's Oil Spill Prevention and Response Plan***

The response plan MUST meet the requirements in 49 § 130.31.

### 1.3.14.4.5 Part 171-HM Incident Reporting

#### 1.3.14.4.5.1 Part 171-Investigative Procedures

Whether you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation or an **[100% States] Offsite Investigation** of the HM Compliance BASIC, or a Shipper Review, an investigation of Part 171 consists of:

#### *Determining if Violations of HM Incident Reporting Requirements Exists*

- 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 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 49 CFR §171.15 and 49 CFR §171.16.
- If an incident meets the requirements 49 CFR §171.15(b) the HM motor carrier must provide a telephone notification to the National Response Center (NRC) at 800-424-8802 (toll free) or 202-267-2675 (toll call) or online at [http:// www.nrc.uscg.mil](http://www.nrc.uscg.mil)
  - **Note:** While an incident may meet the criteria for telephone reporting, if that information was not available during the time of the incident (e.g., a person was hospitalized 2 days later after continuing to have respiratory problems), there is no violation.
- **Note:** Verify HM incidents by visiting the NRC and PHMSA websites to verify that an HM incident was reported, by viewing HMIS incident reporting information at <https://hazmatonline.phmsa.dot.gov/IncidentReportsSearch> and the alternative: <http://hazmat.dot.gov/enforce/spills/spills.htm>
- Determine whether incident reports are being filed and maintained for two years, as required by 49 CFR § 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 49 CFR § 171.16(c).
- Enforcement action should be considered for failure to report an HM incident.

● full review of part

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

BASIC	Part 171	Description
HM Compliance	⊗ .1, .2, .15, .16	171.1 – Applicability of Hazardous Materials Regulations (HMR) – <b>Required</b> to verify applicability of regulations. 171.15 – Immediate notice of certain hazardous material incidents – <b>Required if</b> 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 – <b>Required if</b> carrier has incidents meetings detailed

		reporting criteria 171.2 - General requirements - <b>Required</b>
Unsafe Driving		

**Note:** The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

#### 1.3.14.4.5.2 Part 171-CAPRI Procedures

#### **Acute, Critical, ESM, Fundamental and Severe Regulations for Part 171**

There is only one violation listed below 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 HM in commerce. The violation is a Severe Level II violation. Acute and Critical Violations impact a motor carrier's safety rating. The ESM, Fundamental, Severe Level I and Severe Level II violations do not.

The discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) would result in a Critical Violation, ESM Violation, and Severe Level II violation.

#### **Acute, Critical, ESM, Fundamental, and Severe Regulations for Part 171**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>171.15</b>	<b>Critical</b>	Failing to give immediate telephone notice of an incident involving hazardous materials. <b>Number Checked: The number of hazardous materials incidents checked which required immediate telephone notice.</b>
<b>171.16</b>	<b>Critical</b>	Failing to make a written report of an incident involving hazardous materials. <b>Number Checked: The number of hazardous materials incidents checked which required a written report.</b>

**Note:** If enforcement action is not taken, it must be documented in [Part C](#) of the investigation to explain why enforcement was not initiated.

#### 1.3.14.4.5.3 Part 171-Process Breakdowns/Remedies-SMC

Once you have discovered the violations relating to Part 171, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the [General Guidelines for Using the Safety Management Cycle \(SMC\) to Help Diagnose a Breakdown in Safety during an Investigation](#) section. For CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the SMP Breakdowns and Remedies.

#### 1.3.14.4.5.4 Part 171-Enforcement Procedures

#### **Evidence Required to Prosecute a Violation of Incident Reporting Requirements**

To prosecute a violation of HM incident reporting requirements, establish the following facts properly supported by evidence:

- HM were being transported in commerce (including loading and unloading operations covered by the HM regulations).
- There was an unintentional release of HM in a quantity requiring reporting.
- That the entity in possession of the HM at the time of the incident did not report the incident.

### ***Look for the Following When Compiling Your Case on HM Incident Reporting***

1. Prove that an incident requiring reporting occurred.
2. Prove that the incident was not reported
3. Ensure that the material involved in the incident is a hazardous material. 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, obtain a MSDS.
4. When using a MSDS to confirm the presence of a hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question.
  - A MSDS 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.
5. Ensure the material was considered “in transportation” when the incident occurred.
6. Validate who had possession of the hazardous material when the incident occurred.
7. 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.
8. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
  1. Exceptions for an HM Incident Reporting
  2. **Note: There are exceptions for HM Registration(s) and the exceptions are listed in 49 CFR § 171.16(d).**
  3. Review 49 CFR § 171.16 thoroughly to assure that an exception of HM incident reporting regulations DOES NOT apply.

### ***Documents Needed for HM Incident Reporting Enforcement Case***

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper and MSDS.
2. **Establish that the hazardous material was offered for transportation or was actually transported in 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 offered for, or that it was in commerce, may also be useful.
3. **Establish that an incident occurred, which is subject to the reporting requirements.** Many different documents can be used to prove that an incident occurred, including police reports, NRC notifications, company incident/accident reports, insurance reports and over, short and damaged (OS&D) reports.
4. **Establish that an incident report was not filed.** Proving that a report was not filed can be difficult. If possible, obtain a statement from the responsible company official. A screenshot of NRC/PHMSA databases or an oral interview with NRC/PHMSA is also sufficient. Or prepare a statement noting that you checked the NRC/PHMSA databases and the check resulted in being unable to locate an incident report.

### ***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 above in [Documents needed for an HM Incident Reporting Enforcement Case](#).
- Care should be taken in the preparation of the abstract. Attention to detail is essential.
- Refer to [Illustration HM-9](#) for an example of an exhibit abstract for a violation of Part 171.

### ***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 171 violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER NAME» transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION». During this trip, a HM incident occurred, and «CARRIER/SHIPPER NAME» failed to prepare a written report of an incident involving HM as required.

#### ***1.3.14.4.6 Part 172-HM Communication, Emergency Response Information & Training***

##### ***1.3.14.4.6.1 Part 172-Investigative Procedures***

As part of the HM Compliance investigation, your investigation should include an examination of the applicable subparts of Part 172. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 172: Procedures](#).

##### ***1.3.14.4.6.2 Part 172-CAPRI Procedures***

As part of the HM Compliance investigation, your investigation should include an examination of the applicable subparts of Part 172. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 172: Procedures](#).

##### ***1.3.14.4.6.3 Part 172-Process Breakdowns/Remedies-SMC***

As part of the HM Compliance investigation, your investigation should include an examination of the applicable subparts of Part 172. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 172: Procedures](#).

##### ***1.3.14.4.6.4 Part 172-Enforcement Procedures***

As part of the HM Compliance investigation, your investigation should include an examination of the applicable subparts of Part 172. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 172: Procedures](#).

#### ***1.3.14.4.7 Part 172 Subpart I-Security Assessments of HM Companies***

##### ***1.3.14.4.7.1 Part 172 Subpart I-Investigative Procedures***

### ***Investigative Procedures***

Whether you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation or an **[100% States] Offsite Investigation** of the HM Compliance BASIC, or you are completing a HM Supplemental or Security Contact Review (SCR), your investigation of Part 172 Subpart I should consist of:

- Verify the motor carrier/shipper is subject to Part 172 Subpart I.
  - Note: The amounts of HM transported/offered use terms only applicable to Security Plans e.g. "large bulk quantity."
- Review compliance with the Security Plan requirements, if applicable.

Assistance in completing your investigation is included in [Appendix F](#) with several documents:

- *Security Plan Applicability, Requirements & Checklist;*
- *Illustration HM 3 - Properly Cite HM Training Violations;*
- *Illustration HM 5 - Security Talking Points;* and
- *Illustration HM 7 - Security Contact Reviews Questions & Comments.*

Please refer to the [Part 172 - HM Communication, Emergency Response Information & Training - Investigative Procedures](#) for guidance on the applicable parts you would investigate as of an Onsite Comprehensive Investigation or Onsite Focused Investigation.

#### ***Following this Review, You Should***

- Cite violations, and if warranted
- Document counts for enforcement.

#### ***How FMCSA Addresses HM Security***

FMCSA addresses security issues as a component of the HM Safety program.

The CR/investigation process has been modified to include security measures, an integral part of all HM CRs.

- FMCSA will identify the highest risk carriers of HM for Security Contact Reviews (SCRs).

The motor carrier is offered a specific set of recommendations for improving security.

The SCR includes an actual review of facilities, security policies, security plans, and driver files, for companies that transport the most high-risk HM (e.g., high explosives, bulk quantities of poison inhalation HM, and highly radioactive materials).

FMCSA documents the results of the SCR, and provides a copy of the report to the carrier along with a specific set of recommendations for improving security.

#### ***Definition of a Security Contact Review (SCR)***

- A SCR is a stand-alone review of a transportation entity that will evaluate the company's security posture.
- The SCR can be performed independently or in conjunction with any other type of FMCSA investigation or review (e.g., Onsite Comprehensive Investigation or Onsite Focused Investigation, CTFR, SA or Shipper Review).
- SCRs are non-ratable reviews when conducted as a standalone review; but, may result in enforcement actions or affect the safety rating of the conjoined ratable review.
- Violations discovered during SCRs, conducted in conjunction with another type of review, will affect the rating.

#### ***When an SCR Must be Conducted***

- SCRs are to be performed on motor carriers and/or shippers that are required to have a transportation security plan, per Subpart I of 49 CFR Part 172 (49 CFR 172.800(b)) of the HMR.

- If, in the course of a SA or investigation, it is determined that the carrier is required to have a security plan, in accordance with Subpart I of 49 CFR Part 172 (172.800(b)), an SCR must be performed, in conjunction with the investigation, review or audit.
- A SCR should not be conducted on a company that has received a SCR within the previous 12 months, unless there is reason to believe that they are not complying with security requirements.
- SCRs are required to be conducted on a carrier applying for an HM Safety permit.

### ***SSV (Security Sensitivity Visit) Process***

Security awareness should be a part of every HM investigation or compliance review except those that have had a visit within the last 12 months. Deviation from this policy requires an explanation in [Part C](#). 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.

- Performed on carriers and shippers involved in transporting HM that do not require a Security Plan
- During the investigation or CR, the SI discusses security issues.
- No additional sampling specific to security is required, unless suspicious activity is discovered
- Look for security lapses and suspicious activity during normal sampling of safety records and inspection of facilities
- Ensure employer has verified citizenship and maintains a record of this activity, i.e. I-9 form
- Provide a copy of the Security Talking Points
- Suspicious activity should be reported to the DA using the [Suspicious Activity Report \(SAR\)](#).
- Part C narrative should include a statement indicating that the [Security Talking Points](#) were reviewed

### ***When a SSV Must be Conducted***

- SSVs are to be conducted with shippers and motor carriers involved in the transportation of HM in quantities that do not require a security plan.
- In addition, SSVs must be conducted when the Department or FMCSA has determined a threat has occurred regarding the motor carrier or shipper industry.

### ***Operations that May Also be Subjected 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.

### ***1.3.14.4.7.2 Part 172 Subpart I-CAPRI Procedures***

#### ***Citing Security Plan Violations***

- When conducting a SCR in conjunction with a HM investigation, or as a stand-alone SCR, 49 CFR 172.800-804 violations must be included in Part B of the HM investigation or SCR report.

#### ***Violations that Must be Considered for Enforcement***

##### ***Acute, Critical, ESM, Fundamental and Severe Regulations for Part 172***

The violations listed below should be considered for enforcement action, when discovered. Acute and Critical Violations impact a motor carrier's safety rating while ESM, Fundamental and 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, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated.

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>172.802(a)(1)</b>	Severe Level II	Security plan fails to provide measures to address Personnel Security
<b>172.802(a)(2)</b>	Severe Level II	Security plan fails to provide measures to address Unauthorized Access
<b>172.802(a)(3)</b>	Severe Level II	Security plan fails to provide measures to address Enroute Security
<b>172.800(b)</b>	Acute	Transporting HM without a security plan that conforms to the subpart requirements
<b>172.800(b)</b>	Acute	Transporting HM without a security plan
<b>172.800(b)</b>	Critical	Failure to adhere to a required security plan
<b>172.800(b)</b>	Critical	Offering HM without a security plan
<b>172.802(b)</b>	Critical	Failure to make copies of security plan available to HM employees
<b>172.802(d)</b>	Severe Level II	Failure to retain a copy of the security plan
<b>172.802(c)</b>	Severe Level II	Failure to revise and update the security plan at least annually
<b>172.802(c)</b>	Severe Level II	Failure to conform all copies of the security plan to the latest revision
<b>172.802(b)(1)</b>	Severe Level II	Failure to include the names or titles of those responsible for development and implementation of the security plan.
<b>172.802(b)(3)</b>	Severe Level II	Failing to include a plan for training hazmat employees to the security plan.

***Actions that Should Be Taken if Acute, Critical or Severe HM or Safety Violations are Discovered During a Stand-Alone SCR***

- If during the course of conducting a stand-alone SCR, the Investigator discovers acute, critical, severe HM or Safety violations, other than those relating to security plans or training, further investigation could be warranted. Collect evidence and contact your supervisor for guidance.
- Enforcement should be considered for all acute, critical, and severe violations.

***How Security Plan Violations Affect Carriers Required to Hold a HMSP Permit***

- Motor carriers that transport materials covered under FMCSA's HMSP rule (49 CFR Part 385, Subpart E) are required to have a satisfactory security program, as well as other requirements.
- When applying for the HMSP, the motor carrier must certify that it has a satisfactory Security Plan, as required in §385.407(b).

- If it is determined that a HMSP carrier does not have a satisfactory Security Plan, the carrier's HMSP is subject to suspension or revocation, which will restrict the company's authority to transport permitted materials.
- Cite the carrier for 390.35, Falsification of the MCS-150B if the carrier falsely certified that they had a satisfactory Security Plan.
- When §172.800(b) violations are cited against a HMSP motor carrier in CAPRI, and uploaded to MCMIS as part of either a HM investigation with SCR or a stand-alone SCR, 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.

***Cite these Violations if a HMSP Carrier Does Not Have a Security Plan***

Because question #33 of the MCS-150B requires the carrier to certify that they have a satisfactory security program, the SI shall cite two violations:

- §172.800(b) – Transporting HM without a Security Plan.
- § 390.35 – Making false statements on an MCS-150B.
  - Both of these violations are considered "Acute" and will affect the motor carrier's rating if cited during an investigation.
  - Both of these violations will initiate suspension/revocation of the motor carrier's HMSP.
  - The §390.35 violation will initiate a 30-day suspension of the carrier's HMSP.
  - Violation of §390.35 must be appealed directly to FMCSA's CSO. Enforcement of these violations is expected unless documented mitigating issues exist.

***Procedures to Follow When Conducting a SCR on a Mexican Carrier of HMSP Material***

- Mexican motor carriers that apply for a HMSP are issued a Temporary HMSP (THMSP) or HMSP as appropriate.
- Until FMCSA establishes an agreement to conduct investigations in Mexico, the SCR will be a paperwork review.

***Do the Following When a Company's Security Plan Fails to Comply with 49 CFR Part 172 Subpart I***

- Obtain a copy of the Security Plan when it is necessary to demonstrate that the motor carrier failed to comply with regulation set forth in 49 CFR Part 172 Subpart I. See [Short Guide to Handling Sensitive Security Information \(SSI\) for External Parties](#) for protective measures that must be taken.
- If the Security Plan is not marked as "Security Sensitive Information" or "SSI", the SI must ensure that the SSI Cover page is used as the cover page and back page of the document.
- In addition, every page of the Security Plan must be marked as "Security Sensitive Information" or "SSI" and maintained in a secure location within the Division.

***Site-Specific Security Plan Requirements for Companies with Multiple Locations***

- §172.802(a) states that the security plan must include an assessment of possible transportation security risks and appropriate security measures, including at a minimum - personnel, unauthorized access and enroute security including site-specific or location-specific risks.
- Adequate security measures to assess the security risks at all individual locations must be included in the company's security plan.
- Security plans must include a written site-specific assessment and specific measures to assess the security risks at each individual location.
- A separate Security Plan for each location is NOT required; however, each location must include site-specific assessments and measures to address issues found in the assessment.

***A Generic Security Plan May Meet the Requirements of Part 172, Subpart I***

- The Security Plan requirement is a performance standard. As stated above, the plan must include a site-specific assessment and specific security measures to address the issues found in the assessment.
- If the generic Security Plan meets this standard, then it complies with the regulations.

***Complete the SCR Checklist if the Company Required to Have a Security Plan Has None in Place***

- If no security plan exists, but is required, prepare the [SCR checklist](#), and check the "no plan discovered" box, which checks all the answers on the form NA.
- Provide comments regarding each individual question on the form as guidance to the motor carrier or shipper.

***1.3.14.4.7.3 Part 172 Subpart I-Process Breakdowns/Remedies-SMC***

Once you have discovered the violations relating to Part 172 Subpart I, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance.

The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance.

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

***1.3.14.4.7.4 Part 172 Subpart I-Enforcement Procedures******Evidence Required to Successfully Prosecute a Violation of Part 172 Subpart I***

To successfully prosecute a violation of Part 172 Subpart I, establish the following facts:

- That the carrier transported or shipper offered a hazardous material requiring a Security Plan in the amount required.
- That the hazardous material was transported in commerce.
- That the Security Plan was not prepared in accordance with the requirements of Part 172 Subpart I.
- That knowledge and willfulness was established (see [General Guidelines for the Investigation of HM Carriers and Shippers](#))

### *Look for the Following When Compiling a Case on Security Plans*

1. Ensure that the carrier transported a hazardous material 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 MSDS and some means to show the amount transported.
2. Where a MSDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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; e.g., 55 pounds for explosives, 3500 water gallons for Zone D, etc.
3. Ensure all elements are proven; e.g., 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, 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.
5. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation. This is especially important with extremely long Security Plans.
6. The lack of a Security Plan can only be proven by a statement. Ensure the statement is clear, covers the time period in question, and that no other document exists that could be used as a Security Plan.

### *Documents Needed for a Security Plan Enforcement Case*

1. **Establish that company transports or offers a hazardous material requiring a Security Plan in the amount required.** This may be accomplished by obtaining a copy of the shipping paper or delivery receipts and MSDS. Amounts of the HM, or proof of meeting the definition of a Hazard Zone, are crucial in some instances.
2. **Establish that the hazardous material was actually transported in 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.
3. **Establish that a violation of Part 172 Subpart I occurred.** Documenting a violation of Part 172 Subpart I generally requires statements that establish the facts of the case, as outlined above, and a copy of the Security Plan, if it exists, with identification of which parts of the plan are non-compliant. Ensure security markings of the plan are in place. 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 a Security Plan 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 172.

### *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 172 Subpart I violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER» used driver «DRIVER'S NAME» to drive a CMV transporting «AMOUNT OF» «PROPER SHIPPING DESCRIPTION», a hazardous material requiring a Security Plan, from «ORIGIN» to «DESTINATION». During this transportation the company did not comply with the requirements of 49 CFR 172 Subpart I. «DESCRIBE VIOLATION».

#### 1.3.14.4.8 Part 173 & 178-HM Packaging and Loading

##### 1.3.14.4.8.1 Part 173 and Part 178-Investigative Procedures

Whether you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation or an **[100% States] Offsite Investigation** of the HM Compliance BASIC, or Shipper Review, your investigation of Parts 173 & 178 should consist of:

- Preparation of HM packaging
  - Exceptions to packaging requirements
  - Packaging selection and loading requirements of the HMR
  - Checking compliance with Part 173 and 178 Regulations.
- 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
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
HM Compliance	●	<b>Required</b> for each proper shipping name or class/division of hazardous materials transported or shipped in accordance with Parts 173 & 178.
Unsafe Driving		

### *Packaging and Loading Requirements*

- Many of the packaging and loading requirements apply equally to shippers or 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.

### *Citation for General Noncompliance with the Packaging Requirements of the HMR*

- In Section 171.2, there is a general requirement prohibiting offering, marking, representing, certifying, or selling a package or container as meeting the HMR when it does not. This cite should be rarely used – choose the more specific violation regarding the marking, certifying, etc., instead.
- The packaging requirements in Part 173 specifically addresses the release of HM from a packaging. The package must not leak and must meet all the applicable provisions for the hazardous material it contains .
- When checking for compliance of the packages, determine the type of packaging being used. The type of packaging must be authorized under the HMR .

### ***Be Aware of the Following When Determining Packaging Violations***

- When determining packaging violations, make certain to check the special provisions (Column 7 of the HM Table) the exceptions in Column 8a of the HM table , and either Column 8b (non bulk package authorizations) or Column 8c (bulk package authorizations), as appropriate.
- Prior to taking enforcement action, ensure that no general exceptions apply to the shipment.
- There are packagings that are shipped under DOT Special Permits (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:<http://phmsa.dot.gov/hazmat/regs/sp-a/special-permits/search>
- If you are unsure whether the package is authorized or not, contact your HM Specialists or HM Program Manager.

### ***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.

#### ***1.3.14.4.8.2 Part 173 and Part 178-CAPRI Procedures***

### ***Acute, Critical, ESM, Fundamental and Severe Regulations for Part 173 & 178***

The violations listed below should be considered for enforcement action, when discovered. Acute and Critical Violations impact a motor carrier's safety rating while ESM, Fundamental and 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, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in [Part C](#) of the investigation to explain why enforcement was not initiated.

#### **Acute, Critical, ESM, Fundamental and Severe Regulations for Part 173 & 178**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>173.21(a)</b>	Severe Level I	Offering a forbidden material for transportation.
<b>173.21(e)</b>	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.

<b>173.22(a)(2)</b>	Severe Level I	Offering a hazardous material in an unauthorized package.
<b>173.24(b)(1)</b>	Acute	Transporting hazardous materials in a portable tank that has an identifiable release of hazardous materials to the environment.
<b>173.24(b)(1)</b>	Acute	Transporting hazardous materials in a cargo tank that has an identifiable release of hazardous materials to the environment.
<b>173.24(b)(1)</b>	Acute	Transporting hazardous materials in a non-bulk packaging that has an identifiable release of hazardous materials to the environment.
<b>173.24(b)(2)</b>	Severe Level I	Offering for transportation a hazardous material in a package that resulted in the effectiveness of the package being substantially reduced.
<b>173.24b(d)(2)</b>	ESM	Loading a cargo tank with a hazardous material that exceeds the maximum weight of lading marked on the specification plate.
<b>173.24(d)(2)</b>	Severe Level II	Failing to properly mark an overpack with the proper shipping name and ID number for materials contained within.
<b>173.25(a)(2)</b>	Severe Level II	Failing to properly mark an overpack with the proper labels for materials contained within.
<b>173.25(a)(2)</b>	Severe Level II	Failing to properly orient packages subject to the marking requirements of 172.312 in an overpack.
<b>173.30/177.848(d)</b>	Severe Level I	Loading hazardous materials not in accordance with the segregation table.
<b>173.30/177.834(g)</b>	Severe Level I	Failing to brace containers of hazardous materials to prevent relative motion between containers.
<b>173.30/177.835(a)</b>	Severe Level II	Loading into or on, or unloading a Class 1 (explosive) material from a motor vehicle with the engine running.
<b>173.33(a)</b>	Severe Level II	Offering or accepting for transportation a hazardous material in an unauthorized cargo tank motor vehicle.
<b>173.33(a)(2)</b>	ESM	Transporting or loading two or more materials in a cargo tank motor vehicle that resulted in an unsafe condition (fire, explosion, etc.)
<b>173.33(b)(1)</b>	ESM	Transporting in a cargo tank motor vehicle a hazardous material that had a dangerous reaction when in contact with the tank.
<b>173.33(c)(5)</b>	Severe Level I	Loading a division 6.1 material in a cargo tank having a maximum allowable working pressure of less than 25 psig.

<b>173.33(e)</b>	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).
<b>173.33(e)</b>	Severe Level I	Transporting (Division 6.1 material, oxidizer liquid, liquid organic peroxide, or corrosive liquid) in cargo tank piping while using a sacrificial device to satisfy accident damage protection requirements.
<b>173.40(d)</b>	Severe Level I	Offering a cylinder charged/filled with a poisonous material without providing additional protection as required.
<b>173.301(d)</b>	Severe Level II	Offering manifolded (interconnected) cylinders except as authorized.
<b>173.301(e)</b>	Severe Level II	Offering a charged/filled cylinder that has a container pressure at 70 degrees F (21.1 C) that exceeds its marked or designated service pressure.
<b>173.301(f)</b>	Severe Level II	Offering a charged/filled cylinder that has a container pressure at 130 degrees F (54.4C) that exceeds 5/4 times its marked or designated service pressure.
<b>173.301(g)</b>	Severe Level I	Offering a charged/filled cylinder with flammable, corrosive, or noxious gases without a prescribed valve protection device.
<b>173.301(i)</b>	Severe Level I	Offering a charged/filled cylinder that was manufactured outside the United States, not in accordance with prescribed DOT specifications.
<b>173.315(j)</b>	Severe Level II	Transporting a storage container charged with LPG to more than 5 percent of their water capacity. (Same as transporting HM in an unauthorized package, which is an acute violation)
<b>174.413</b>	Severe Level I	Using a Type B package not designed and constructed in accordance with all applicable requirements contained in 10 CFR 71.
<b>173.421</b>	Severe Level II	Offering a radioactive material for transportation not in proper condition for shipment. (Use for limited quantities of radioactive material that does not meet one or more of the conditions in § 173.421).
<b>173.421</b>	Severe Level II	Offering a radioactive material described, marked and packaged as a limited quantity that exceeds .5 mSv/hour (mrem/hour) on the surface of a package.
<b>173.421(a)</b>	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)
<b>173.422</b>	Severe	Offering a radioactive material for transportation not in

	Level II	proper condition for shipment. (Applies to radioactive instruments and articles that do not meet one or more of the conditions in § 173.422).
<b>173.431(a)</b>	Severe Level I	Offering for transportation in a type A package a quantity greater than that authorized.
<b>173.431(a)</b>	Acute	Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized.
<b>173.431(b)</b>	Severe Level I	Offering for transportation in a type B package a quantity greater than that authorized.
<b>173.431(b)</b>	Acute	Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized.
<b>173.441</b>	Severe Level I	Offering a package of radioactive material that exceeds allowable external radiation levels.
<b>173.441(a)</b>	Acute	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits.
<b>173.442(b)</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.
<b>173.442(b)(1)</b>	Severe Level II	Offering a package of radioactive material exceeding 122 degrees Fahrenheit on the external surface of the package. (Non-exclusive use)
<b>173.442(b)(2)</b>	Severe Level II	Offering a package of radioactive material exceeding 185 degrees Fahrenheit on the external surface of the package. (Exclusive use)
<b>173.443(a)</b>	Severe Level II	Offering a package of radioactive material with removable contamination in excess of 22 dpm/square cm.
<b>173.443(a)</b>	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.
<b>173.443(b)</b>	Severe Level II	Offering a package of radioactive material with removable contamination in excess of 220 dpm/square cm.
<b>173.447</b>	Severe Level I	Storing in one-area packages of radioactive material that exceed a total Transport Index of 50.
<b>173.457(b)(3)</b>	Severe Level I	Offering a fissile material, controlled shipment in a conveyance containing other packages of any Class 7

		(radioactive) material required to bear one of the labels prescribed in 49 CFR 172.403.
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**Note:** The HM regulations 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. If you discover a violation that is not on this list, but believe it warrants enforcement, seek additional guidance from your supervisor or a HM Specialist.

#### *1.3.14.4.8.3 Part 173 and Part 178-Process Breakdowns/Remedies-SMC*

Once you have discovered the violations relating to Parts 173 & 178, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance.

The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance.

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

During your facility walk around have your current HMR handy. Check package compliance by reviewing the HM Table and ensure the package is an authorized package for the material. Identify the proper shipping name from the shipping paper then follow the table to columns 7 & 8 to determine authorized packages.

#### *1.3.14.4.8.4 Part 173 and Part 178-Enforcement Procedures*

##### ***Evidence that is Required to Successfully Prosecute Violation of Part 173 or Part 178***

To successfully prosecute a violation of Part 173 or Part 178, we must establish the following facts, properly supported by evidence:

- That the material in question is, in fact, a hazardous material;
- That the hazardous material was offered for transportation in commerce;
- That the shipment was not offered for transportation or transported, in accordance with the requirements of Part 173 or Part 178; and
- That knowledge and willfulness are established - see [Investigations of HM Carriers and Shippers](#).

##### ***Look for the Following When Compiling a Case on Packaging and Loading***

1. Ensure that the material in question is a hazardous material. A shipping paper alone is normally sufficient for this purpose. Obtain a MSDS from the shipper to validate that the material shown on the shipping paper meets the definition of a hazardous material, since Section 173.22 places the regulatory burden on the shipper to properly classify and identify the hazardous material they offer for transportation. If the shipping paper includes at least the UN/NA identification number and a proper shipping name from the HM Table, then the shipper has identified it as a hazardous material. FMCSA personnel are not trained, qualified, or equipped to determine whether a particular product is in fact a hazardous material. .
2. Should the shipping paper fail to have at least the identification number and proper shipping name, you need to obtain a Safety Data Sheet (SDS) from the shipper to validate that the material shown on the shipping paper meets the definition of a hazardous material. Investigators should avoid using generic SDS obtained from the Internet or sources other than the shipper or manufacturer of the product.

3. Prior to documenting a violation of the packaging requirement in Part 173, be sure to check all applicable exceptions in the HMR, in addition to the Special Provisions found in the HM Table, and check for any Special Permits
4. 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.
5. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
6. Ensure knowledge and willfulness are clearly established.

#### *Documents Needed for Parts 173 & 178 Enforcement Case*

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper or the SDS.
2. **Establish that the hazardous material was offered for transportation or was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading, drivers' records of duty status, and other such documents may be used to establish this fact. In addition, photographs of the shipment that indicate that it was offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 173 or Part 178 occurred.** Documenting a violation of Parts 173 or 178 normally require photographs of the package in commerce and/or statements that establish the facts of the case. These photographs should clearly show any specification or other markings found on the package, or the lack thereof - if that is the situation - as well as the violation e.g. the leak, the residue on the outside of the package, the damage to the package, etc.

#### *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 Packaging and Loading 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 173.

#### *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 173 violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER» used driver «DRIVER'S NAME» to drive a CMV transporting «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION». During this transportation the hazardous material «DESCRIBE THE VIOLATION».

##### 1.3.14.4.9 Part 177-HM Carriage by Public Highway

###### 1.3.14.4.9.1 Part 177-Investigative Procedures

If you are assigned an Onsite Comprehensive Investigation, your investigation of Part 177 consists of:

- Confirming a motor carrier's compliance with operational requirements
- Determining if loading functions are conducted properly
- Checking for proper separation and segregation of HM loads
- Determining if additional driver training required by 49 CFR 177.816 is completed
- Determining the accessibility and completeness of shipping papers.

If you are assigned an Onsite Focused Investigation or an **100% States** Offsite Investigation, an investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating.

The table below identifies each BASIC by Part 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.

Part 177 does not apply to HM Shippers.

- 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 – <b>Required if HM Carrier</b>
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
HM Compliance	●	177.800 - 177.823, general information and regulations – <b>As applicable</b> to the hazardous materials being transported. 177.834 – 177.843, loading and unloading – <b>As applicable</b> 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 – <b>As applicable</b> and investigative evidence reveals. 177.870, Regulations applying to hazardous material on motor vehicles carrying passengers for-hire – <b>Required if</b> 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.
Unsafe Driving	⊗ .810, .816, .823	177.810 – Vehicular Tunnels – <b>Required if carrier transports quantities of HM that are prohibited from being transported through tunnels</b>

		177.823 – Movement of Motor Vehicles in Emergency Situations – <b>Required if HM Carrier</b> 177.816 Training Requirements – <b>Required if HM Carrier</b>
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*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

### ***Confirm Motor Carrier Compliance with 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 § 172.600.
- Check the shipping papers for the emergency response telephone number.

See [Part 172 - Shipping Papers - Subpart C](#) and [HM Shipping Paper Checklist](#).

### ***When Motor Carriers Perform Loading Functions***

- If the carrier is performing the loading, determine whether HM is properly loaded, blocked, and braced on vehicles. HM is not allowed to shift at all.
- In addition, 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 § 177.841(e).



### ***Check for Proper Segregation of HM Loads***

- Examine shipping papers to determine whether proper segregation of HM is followed in accordance with § 177.848.
- Remember that the subsidiary hazard may be more restrictive than the primary hazard.

### ***Additional Driver Training Requirements***

- 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
- Can be satisfied with current CDL with the appropriate endorsements
  - Frequency of training requirements may not meet CDL update requirements. Training is required every 3 years; CDLs usually renewed at 5 year intervals.

#### *1.3.14.4.9.2 Part 177-CAPRI Procedures*

### ***Properly Citing of Part 177 Violations***

Show motor carrier violations of Part 177 as the primary violation, with a secondary violation of the Part 172 violation (which describes the detail of the violation). There are no acute or critical violations of the communications requirements in Part 172; therefore, to ensure the motor carrier's rating is affected by the violation, it must be cited as a Part 177 primary violation.

***Properly Citing Violations of HM Training Requirements***

See [Illustration HM-3](#) (also linked from [Appendix F](#)).

***Acute, Critical and Severe Regulations for Part 177***

Violations of Part 177 that are designated as critical or acute listed in Appendix B to Part 385 are listed in the table below. In addition to the critical and acute violations, Severe Level 1 and Severe Level 2 violations have been identified. All acute, critical, and severe violations should be considered for enforcement action when discovered.

***Violations of Part 177 that Should be Considered For Enforcement Action******Acute, Critical, ESM, Fundamental and Severe Regulations for Part 177***

The violations listed below should be considered for enforcement action, when discovered. Acute and Critical Violations impact a motor carrier's safety rating while ESM, Fundamental and 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, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated.

**Acute, Critical, ESM, Fundamental and Severe Regulations for Part 177**

<b>Primary Citation</b>	<b>Secondary Citation</b>	<b>Type</b>	<b>Description</b>
<b>177.800(c)</b>	See <a href="#">table in Part 172</a> for appropriate cites.	Critical	Failing to instruct a category of employees in hazardous materials regulations.
<b>177.801</b>		Acute	Transporting a forbidden material.
<b>177.817(a)</b>	See <a href="#">table in Part 172</a> for appropriate cites	Critical	Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper.
<b>177.817(e)</b>		Critical	Failing to maintain proper accessibility of shipping papers.
<b>177.817(f)</b>		Severe Level II	Transporter fails to maintain a copy of the HM shipping paper as prescribed for 375 days (365 days after Jan. 9, 2006) after the date accepted by the motor carrier.
<b>177.823(a)</b>		Critical	Moving a transport vehicle containing hazardous material that is not properly marked or placarded.
<b>177.834(i)</b>		Severe Level I	Failing to attend a cargo tank during loading (or unloading).
<b>177.834(j)</b>		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).
<b>177.841(e)</b>		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.
<b>177.834(a)</b>		Severe Level II	Failing to brace containers of hazardous materials to prevent relative motion between containers.
<b>177.835(a)</b>		Acute	Loading into or on, or unloading a Class 1 (explosive) material from a motor vehicle with the engine running.
<b>177.835(c)</b>		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.
<b>177.835(j)</b>		Acute	Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted.
<b>177.848(d)</b>		ESM	Loading hazardous materials not in accordance with the segregation table.
<b>177.848(f)</b>		Severe Level I	Transporting, loading or storing Class 1 materials not in accordance with the compatibility table.

#### *1.3.14.4.9.3 Part 177-Process Breakdowns/Remedies-SMC*

Once you have discovered the violations relating to Part 177, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes.

To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance.

The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance.

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

#### *1.3.14.4.9.4 Part 177-Enforcement Procedures*

##### ***Evidence that is Required to Successfully Prosecute a Violation of Part 177***

To successfully prosecute a violation of Part 177, we must establish the following facts properly supported by evidence:

- That the material in question is in fact a hazardous material;
- That the hazardous material was transported by highway in commerce; and,
- That a violation of Part 177 occurred or when citing general requirements that relate to other sections, such as § 177.800(b), that a violation of Parts 107, 171, 172, 173, 177, 178 or 180 occurred by a motor carrier. When citing general requirements, you should ensure the enforcement procedures of the specific part (e.g., Part 172) are satisfied.
- That knowledge and willfulness are established.

##### ***Look for the Following When Compiling a Case on Part 177***

1. Ensure that the material in question is a hazardous material. A shipping paper alone is rarely sufficient for this purpose.

2. Obtain a MSDS to confirm the presence of a hazardous material. However, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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.
3. 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.
4. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
5. That knowledge and willfulness are established.

#### ***Documents that are Needed for a Part 177 Enforcement Case***

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper and/or MSDS.
2. **Establish that the hazardous material was actually transported in commerce by highway.** 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 offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 177 occurred.** Documenting a violation of Part 177 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements establishing the facts of the case outlined above. All elements of the secondary sections cited must also be proven and documented, per the relevant sections of this manual.

#### ***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 that are needed for a Part 177 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 177.

#### ***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 177 violation should read as follows:

On or about «DATE», «CARRIER» transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION», «DESCRIBE THE VIOLATION».

### 1.3.14.4.10 Part 180-Cargo Tank Motor Carrier Reviews and Cargo Tank Facility Reviews (CTFRS)

#### 1.3.14.4.10.1 Part 180-Investigative Procedures - Cargo Tank Facility Reviews

##### ***Definition of a Cargo Tank Facility Compliance Review***

A cargo tank facility review (CTFR) is an in depth review 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.

- The purpose of the review to evaluate the facility's compliance with the HMR.
- **A CTFR must be conducted ONLY by CTFR trained personnel.**

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.

##### ***Selection and Qualifications for CTFRs***

Cargo tank facilities should be chosen for review based on:

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.

Only personnel that have successfully completed NTC's CTFR Course may conduct CTFRs. CTFRs on facilities that have an NBIC R Stamp may only be conducted by or in conjunction with a HM Specialist (HMS) or HM Program Manager (HMPM).

CTFRs on cargo tank manufacturers(ASME U Stamp) are selected by the Service Center's HMPM in conjunction with the HM Division.

- 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.

##### ***Preparation Prior to the CTFR***

- Review FMCSA's MCMIS profile for the CT facility: Identify the Person Responsible for Compliance, the number of 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 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 following:

1. How long has the facility been conducting cargo tank tests; what is their company history?
  - a. Are they a LLC, corporation, etc.?
2. What are the qualifications and experience of the Person Responsible for Compliance?
  - a. Can the person explain the various tests and inspections?
  - b. When did they start testing/inspecting cargo tanks?
  - c. For what company?
3. What types of tests/inspections are conducted on what types of cargo tanks (including Special Permit), and how many of each are completed annually?
  - a. Verify that the facility is registered for all the cargo tanks and test types they are performing.
  - b. A facility can be registered for more tests/inspections than what they actually perform.
4. How many RIs do they have, and what are their qualifications and experience (make notes for follow up interviews with the individual RIs)?
  - a. Identify all RIs by name, including those that have left in the last year.
  - b. Section 107.503(a)(4) specifically requires the Person Responsible for Compliance with the applicable regulations to certify that all RIs and DCEs meet the minimum qualification requirements.
5. Obtain copies of their Cargo Tank Registration letters, and U/R Stamps if appropriate. (Section 107.504(e))
6. Review the MCMIS company profile and verify the information is accurate and current.
7. Do they conduct any mobile testing? Make note to look at mobile testing equipment during the shop assessment.
8. Are they also a motor carrier or HM shipper?
9. Do they perform any repairs (Section 180.413)?
  - a. If not, where do they send CTs that need repair to?
10. Do they have a DCE on staff or on contract?
  - a. How do they know the person meets the qualifications?
11. Do they perform any assembly or manufacturing functions?
12. Do they have any written procedures for tests/inspections? Obtain copies.
13. What kind of training program do they have?

- a. (Some investigators prefer to hold this question until the RI interviews and the shop assessment have been completed.)
14. Do they have access to the current HMR?
  - a. Are they familiar with Parts 107, 172.700, 178, and 180?
  - b. Can the RI find a specific section in the HMR?
  - c. Have they ever read Section 180.407?
15. Do they perform tests/inspections on Special Permit cargo tanks? If so, which ones?
  - a. Do they have copies of the Special Permits?
  - b. Have they contacted the manufacturer for instructions on how to perform tests/inspections on these cargo tanks?
  - c. Have they provided any training to their Registered Inspectors for these cargo tanks?
16. Do they outsource any portion of any of the tests/inspections (it is common to outsource the wet florescent magnetic particle exam for the pressure test)?
  - a. Does that facility have a CT# as required?
  - b. Do the employees of that facility meet the RI qualifications?
  - c. Are they issuing their own test/inspection reports?

### ***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](#).

Some of the questions for RIs are:

1. Does the person possess the required years of educational and work experience to be a RI?
  - a. Does the person have a high school diploma or GED (not required if the person was an RI prior to 9/1/91)?
  - b. Ask for copies of diplomas/GEDs (not specifically required by the HMR, but larger facilities often will have them).
2. Where did they obtain their experience?
  - a. What kind of cargo tanks did they work on?
  - b. What kind of tests did they do?
  - c. How long have they been inspecting/testing cargo tanks alone (without direct supervision)?
3. Have they ever had any HM training related to cargo tank testing?
  - a. When/where?

4. Can the person explain the inspection and testing procedures?
  - a. What tests/inspections do they perform?
5. Are the procedures provided by the RI consistent with the Part 180 inspection and/or testing requirements?
  - a. Do the answers that the RI provides indicate that he or she has sufficient knowledge and experience to properly inspect/test a DOT specification cargo tank?
6. Does the person know the location in the regulations for cargo tank re-qualification and maintenance requirements of specification cargo tanks (49 CFR Part 180)?
7. Does the person know the location in the regulations for the design and construction requirements of specification cargo tanks and whether the facility is re-qualifying or maintaining cargo tanks (49 CFR Part 178)?
8. Can the person explain the proper use of the inspecting, testing, and safety equipment in the shop area which should be used to perform the required test and inspection?
  - a. Does the RI rely on memory or do they use a checklist every time?

### ***CT Facility Shop Assessment***

During the CTFR, the Investigator should request to tour the shop area with the Person Responsible for Compliance. 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 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 OSHA's Confined Space Entry rules and other OSHA 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?

### ***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**

<b>Number of Cargo Tanks Tested/Inspected Annually</b>	<b>Number of Cargo Tanks to Review</b>
1-5	3
6-25	5
26-50	8
50-200	10
200+	15

If the minimum number of cargo tanks cannot be inspected, the reason should be explained in [Part C](#).

If you find a high level of non-compliance, increase your sample size and explain in [Part C](#).

These "walk-around inspections" are not true inspections unless a complete vehicle inspection is conducted in accordance with agency policy.

Your “inspection” should focus on items that are specifically required to be inspected during a Part 180 test/inspection and should include:

1. Specification plate and American Society of Mechanical Engineers (ASME) name plate, as applicable.
2. Test/inspection markings and all other required markings.
3. Improper test/inspection indicators, such as: dents, digs, or gouges that are not documented; signs of leakage; poor welds, weld cracks; missing bolts, nuts, or fusible links; inoperative remote closure devices; inadequate venting capacity; PRDs with torn gaskets or inoperative; upper couplers that have not been removed when required.

### ***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.

Repair records are discussed in [R and U Stamp Facilities](#).

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 the facility conducts.

**Minimum Sample for Cargo Tank Test Reports**

<b>Number of Tests/Inspections Performed Annually</b>	<b>Number of Cargo Tank Test Reports</b>
1-10	All
11-100	20
101-500	30
501 and up	40

Things to look for include:

- Test/inspection reports for Special Permit CTs or specification CTs not included on the facility’s registration statement. Review as many of these test reports as possible.
- Reports for tests/inspections not included on the facility’s registration statement.
- Notes on reports that indicate repairs that may require an R stamp. Ask for invoices, as these often detail welding work.
- Reports on cargo tanks that were involved in crashes or HM incidents.
- Reports from third-party facilities, such as facilities that perform the Wet Florescent Magnetic Particle Exam.
- Reports on cargo tanks that were cited for violations during roadside inspections.
- Reports on cargo tanks that you were able to conduct an assessment on, particularly if you found potential violations.

If the test/inspection report indicates the pressure relief device (PRD) was replaced instead of tested and reinstalled, ask for the invoice or purchase order showing purchase by the facility and the invoice or purchase order showing the charge to the cargo tank owner.

If the facility is utilizing a state EPA form for the EPA Method 27 Test, ensure all the information required by Section 180.417 is present on the state form. If not, the facility must complete a supplemental form that complies with Section 180.417.

Compare the facility test/inspection report to the requirements in Section 180.417(b) and (c) as applicable.

- Does the report contain all the required information?
- Are the reports signed by the RI? Test and inspection reports must be signed and dated by the person performing the inspection or test and this person must be a RI. Owner's signatures are not required on the RI'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.

- See the evidence section for more details.

### ***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 [CTFR Checklist](#) for a list of the violations that require cargo tanks to be retested/re-inspected.

### ***Completing the CTFR Report***

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.

#### *1.3.14.4.10.2 Part 180-CAPRI Procedures*

### ***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.

<b>Size</b>	<b>Number of Cargo Tanks Tested Annually</b>
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.

### ***Recording Violations during a CTR***

#### ***Acute, Critical, ESM, Fundamental and Severe Regulations for Part 180***

The violations listed below should be considered for enforcement action, when discovered. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) would result in a Critical Violation, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in [Part C](#) of the investigation to explain why enforcement was not initiated.

Example Abstracts can be found in [Appendix F](#).

#### **Acute, Critical, ESM, Fundamental and Severe Citations for Part 180**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>107.502(b)</b>	Severe Level II	Manufacturing, assembling, certifying, inspecting, or repairing) a cargo tank or cargo tank motor vehicle manufactured to a DOT specification, without registering.
<b>107.504(c)</b>	Severe Level I	Failing to renew registration every six years, or within 30 days of renewal of an ASME or National Board Certification.
<b>180.3(a)</b>	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.
<b>180.405(g)</b>	Severe Level I	Failing to equip a cargo tank with manhole assemblies conforming to § 178.345-5. <b>Note: Ensure the assembly does not meet an exception.</b>
<b>180.405(h)</b>	Severe Level II	Failing to replace a reclosing pressure relief valve with a valve meeting the requirements of § 178.345-10. <b>Note: Only applicable when valve is being replaced. There is no retrofit requirement.</b>
<b>180.407(a)(2)</b>	Severe Level I	Subjecting a cargo tank to a pressure greater than its design pressure or maximum allowable working pressure (MAWP). <b>Note: Except during a pressure test, loading, or unloading.</b>
<b>180.407(a)(3)</b>	Severe Level I	Performing or witnessing a test or inspection on a cargo tank without meeting the minimum qualifications prescribed in § 180.409.
<b>180.407(d)</b>	Severe Level I	Failing to perform an external visual inspection as prescribed.
<b>180.407(e)</b>	Severe Level I	Failing to perform an internal visual inspection as prescribed.

<b>180.407(f)</b>	Severe Level I	Failing to perform a lining inspection as prescribed.
<b>180.407(g)</b>	Severe Level I	Failing to perform a pressure retest as prescribed.
<b>180.407(g)(3)</b>	Severe Level I	Failing to perform a wet fluorescent magnetic particle test on an MC-330/331 cargo tank.
<b>180.407(h)</b>	Severe Level I	Failing to perform a leakage test as prescribed.
<b>180.407(i)</b>	Severe Level I	Failing to perform a thickness test as prescribed.
<b>180.413(a)(1)(i)</b>	Severe Level I	Performing a repair 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.
<b>180.413(a)(1)</b>	Severe Level I	Performing a repair 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. <b>Note: ASME tanks only.</b>
<b>180.413(a)(1)</b>	Severe Level I	Failing to perform a repair of an ASME Code U stamped cargo tank in accordance with the National Board Inspection Code. <b>Note: ASME tanks only.</b>
<b>180.413(b)</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).
<b>180.413(c)</b>	Severe Level I	Failing to leak test repairs done to piping or valves.
<b>180.413(a)(1)(i)</b>	Severe Level I	Performing a modification of a non-ASME Code stamped cargo tank while failing to hold a valid ASME Certificate of Authorization for use of the "U" stamp or National Board Cert. of Authorization for use of the "R" stamp. <b>Note: Non-ASME tanks only.</b>
<b>180.413(a)(1)</b>	Severe Level I	Performing 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. <b>Note: ASME tanks only.</b>
<b>180.413(d)(2)</b>	Severe Level I	Failing to performing a (stretching, modification, or re-barrelling) of a cargo tank to the applicable specification.
<b>180.413(d)(1)</b>	Severe Level I	Failing to have a (stretching, modification, or rebarrelling) of a cargo tank certified by a Design Certifying Engineer (DCE).
<b>180.413(d)(2)</b>	Severe Level I	Failing to perform a (stretching, modification, or rebarrelling) of an ASME Code U stamped cargo tank in accordance with the National Board Inspection Code. <b>Note: ASME tanks only.</b>
<b>180.413(d)(3)(iv)</b>	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).

<b>180.415</b>	Critical	Failing to mark a cargo tank that passed an inspection or test required by § 180.407.  <b>Number checked is the number of cargo tanks checked for test markings.</b>
<b>180.416(f)</b>	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.
<b>180.416(f)(2)</b>	Severe Level I	Failing to permanently mark a new or repaired delivery hose assembly with the month and year of the pressure test.
<b>180.417(b)</b>	Severe Level II	Failing to include all required information on test or inspection report.

*Always conduct a facility walk around and look for specification cargo tanks, especially those that have been recently tested and inspected. When you find one with a recent test/inspection conduct a visual inspection of the cargo tank. Look for rust, corrosion, dents and obvious flaws to the spec. tank and/or structural supports. If you find obvious flaws ask for the test and inspection reports and identify the RI who conducted the test/inspection. Ask to speak with that RI then follow the questions noted above to determine their level of knowledge; ask the RI's to demonstrate their use of testing equipment. Is it still in a box? Does the equipment exist? Do they know where it is kept?*

#### *1.3.14.4.10.3 Part 180-Enforcement Procedures*

#### ***Evidence Required for Enforcement Cases***

Regardless of the type of violation, you must show that 1) the cargo tank is subject to Part 180; and, 2) the RI failed to perform the test/inspection properly.

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.

Normally, it is best to not to 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.

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 (below) that, when discovered, constitute probable cause that an unsafe condition exists and consideration should be given to requiring those cargo tanks to 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 requirements in 49 CFR § 180.407.
- 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.

#### **Violations that Require Cargo Tank Retest/Reinspection**

<b>Violation</b>	<b>Description</b>
<b>180.405(b)</b>	Marking or certifying a cargo tank to a specification no longer authorized. Applies to the marking and/or certification of MC 306, MC 307 and MC 312 cargo tanks after August 31, 1995.
<b>180.407(b)(2)</b>	Failing to test and inspect a cargo tank that has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.

<b>180.407(b)(3)</b>	Failing to conduct a pressure test in accordance with § 180.407(g) on a cargo tank which has been out of hazardous materials transportation service for a period of one year or more.
<b>180.407(b)(4)</b>	Failing to test and inspect a cargo tank which has been modified from its original design specification.
<b>180.407(d)</b>	Failing to perform an external visual inspection as prescribed in that the cargo tank was given an external visual inspection on [enter date within 2 months of current date if applicable] and:  (2)(iv) The remote closure device failed to function as required. [date required] (2)(v) There were no fusible links or elements installed on the cargo tank as required. (2)(ix) The upper coupler was not removed to inspect the area above the upper coupler as required for a cargo tank transporting lading corrosive to the tank. (3) The reclosing pressure relief devices (PRD) on the cargo tank carrying lading corrosive to the valve was not removed and bench tested as required. (5) Corroded or abraded areas of the cargo tank were discovered where thickness testing is required and the facility performing the external visual inspection failed to thickness test as required. [date required]
<b>180.407(e)</b>	Failing to perform an internal visual inspection in accordance with 180.407(e)
<b>180.407(f)</b>	Failing to perform a lining inspection as prescribed in that the cargo tank was given a lining inspection on [enter date] and:  (1)(ii) For the rubber lining that was tested, the facility could not produce a calibration coupon of the same material and thickness of the tank that was given a lining test. (1)(iii) The facility failed to recalibrate the spark tester as required.
<b>180.407(g)</b>	Failing to perform a pressure retest as prescribed in that the cargo tank was given a pressure test on [enter date] and:  (1)(ii) The self-closing pressure relief devices were not removed from the cargo tank for inspection and testing as required. (1)(iii) The upper coupler was not removed to inspect the area above the upper coupler as required. (1)(iv) The prescribed test pressure of [enter required test pressure] was not used as required by the table in 180.407(g)(1)(iv) (1)(vii) All closures which comprise the lading retention area of the cargo tank wall were not in place during the test. (3) The facility failed to perform a wet fluorescent magnetic particle exam on an MC 330/331 cargo tank. (3) The person who performed the wet fluorescent magnetic particle exam does not meet the ASME qualifications to conduct the exam.
<b>180.407(h)</b>	Failing to perform a leakage test as prescribed in that the cargo tank was given a leakage test on [enter date] and :  (1) The prescribed test pressure of [enter required test pressure] was not used. (2) Failed to perform the EPA method 27 test as required in accordance Appendix A to 40 CFR Part 60 or the cargo tank was not eligible for the EPA method 27 tests.
<b>180.407(i)</b>	Failing to perform a thickness test as prescribed in that the cargo tank was given a

	thickness test on [enter date] and: (3) The person performing the test was not trained in the proper use of the thickness testing device used in accordance with the manufacturer's instructions.
<b>180.409</b>	Performing a test or inspection required by Part 180 by a person who does not meet the qualifications required by Section 180.409.
<b>180.413(a)(1)(i)</b>	Performing a repair 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 the use of the "R" stamp.
<b>180.413(a)(1)</b>	Performing a (stretching, modification, or re-barreling) 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.
<b>180.413(a)(1)</b>	Performing a repair 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.
<b>180.413(b)</b>	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).
<b>180.413(a)(1)(i)</b>	Performing a (stretching, modification, or re-barreling) 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 the use of the "R" stamp.
<b>180.413(c)(1)</b>	Failing to leak test repairs done to piping or valves.
<b>180.413(d)(3)(iv)</b>	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).

### ***Cargo Tank Retest/Reinspection Letter***

Here is a sample letter that should be used to notify companies that their cargo tanks will be required to be retested:

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
Mr. John Tanker, President  
Tank Testing Incorporated  
50 Oil Street  
Anytown, U.S.A

Dear Mr. Tanker:

RE: Best Test and Inspections, Inc. CT Facility #0000

As a result of a compliance review conducted at [insert name of facility] on [insert date], by the [insert state code] Division of FMCSA, serious violations of the Federal Hazardous Material Regulations (FHMR) have been discovered that demonstrate that these cargo tanks are in violation of the Federal Hazardous Materials Regulations and are in an unsafe operating condition. The FMCSA has determined that the tests and inspections performed by [insert name of facility] were not conducted in accordance with the requirements of 49 CFR Part 180.

Our records indicate that (insert facility name) performed (identify which tests/inspections) on the following DOT specification cargo tank motor vehicles that your company owns or operates:

Test Date	Description of Tank	DOT Spec.	Unit No.	Serial No.
06/30/04	1987 Beall-Transliner	MC 306S	TP-1	6052
07/10/04	Columbia Cargo Tank	MC 306AL	328HB	TT6090

The purpose of this letter is to notify you, (insert name of cargo tank owner) that, per 49 CFR Section 180.407(b)(5), these cargo tanks must be re-inspected and retested in accordance with 49 CFR Section 180.407 before being filled with a hazardous material. It is a violation of the FHMR to use these cargo tank motor vehicles before they have been re-inspected and retested in accordance with 49 CFR § 180.407 by a facility which is properly registered with FMCSA.

Per 49 CFR Section 171.2(g), a person who knowingly violates the FHMR may be assessed a civil penalty of not more than \$75,000 and not less than \$250 for each violation. When the violation is a continuing one and involves the transporting of hazardous materials, or the causing of them, to be transported or shipped, each day of the violation constitutes a separate offense. Any person who knowingly violates 49 CFR § 171.2(l) of this subchapter, or willfully violates a provision of the Federal hazardous material transportation law, or an order or regulation issued there under, shall be fined under Title 18, United States Code (U.S.C), or imprisoned for not more than 5 years, or both.

Further, you must provide documentation that these cargo tanks have been re-inspected and re-tested to (insert name and title of person).

Please send documentation to (insert person's name) at:

(insert mailing address)

(insert fax #)

(insert email address)

(insert phone number)

If you have any questions, please contact me at [insert phone number of person signing letter] or [insert name of person who can also answer questions].

Sincerely,

[Insert Division Administrator's Name]

**Division Administrator**

1.3.14.4.11 Part 180-Cargo Tank Motor Carrier Reviews

*1.3.14.4.11.1 Part 180-Investigative Procedure – Cargo Tank Motor Carriers Reviews*

***Investigation of Motor Carriers Operating Cargo Tanks***

Motor carriers that operate cargo tanks are responsible for ensuring that their tanks are tested and inspected as required by Part 180. Contact your HMS or HMPM if you have any questions. Include the following while reviewing motor carrier compliance with Part 180:

- 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 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.
- Observe cargo tanks and/or conduct inspections to verify compliance with the HMR.
- Review records of repairs, modifications, stretching, re-barreling, etc., if applicable. If you need assistance, contact your HMS or HMPM.
- Review the cargo tank test and inspection records for compliance with the requirements of Section 180.417(b).

- Verify the cargo tank facility that conducted the tests/inspections is registered with FMCSA as a cargo tank facility for the tests/inspections conducted.
  - If a third-party facility conducted the tests and inspections and violations are discovered in the test and inspection 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 CTRF.
- Review the Manufacturer's Certificates of Compliance (COC) and U1A forms (if applicable).
- For MC330/MC331 cargo tanks, review the following documents:
  - Manufacturer's certificate of compliance
  - ASME U-1A form
  - 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 shut –down procedures that must be in each cargo tank (see Section 177.840(l)).
- Review documentation to verify that cargo tank drivers received training pursuant to 177.816.

**Acute, Critical, ESM, Fundamental and Severe Violations of Part 180 are shown at the end of this section. 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, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated.**

***Investigative Procedures - Cargo Tank Testing and Inspections***

Whether you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation or an [100% States] Offsite Investigation of the HM Compliance BASIC, your investigation of Part 180 should consist of:

- Confirming a motor carrier's compliance
- Confirming that the motor carrier has all of the required documents
- Confirming that all cargo tanks being used by the motor carrier are tested and inspected by a registered cargo tank facility.

● 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 180	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
HM Compliance	●	Qualification and Maintenance of packaging – cylinders, IBCs and Cargo Tanks. Required if motor carrier provides any of these packages
Unsafe Driving		

*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

### **Motor Carrier Operations**

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.

Motor carriers conducting any function covered by Part 180 are required to register with the Department in accordance with 49 CFR, Part 107, Subpart F and obtain a CT number.

### ***Acute, Critical, ESM, Fundamental and Severe Regulations for Part 180***

The violations listed below should be considered for enforcement action, when discovered. Acute and Critical Violations impact a motor carrier's safety rating while ESM, Fundamental and 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, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in [Part C](#) of the investigation to explain why enforcement was not initiated.

Example Abstracts can be found in [Appendix F](#).

### **Acute, Critical, ESM, Fundamental and Severe Citations for Part 180**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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. <b>Note: Ensure the assembly does not meet an exception.</b>
180.405(h)	Severe Level II	Failing to replace a reclosing pressure relief valve with a valve meeting the requirements of § 178.345-10. <b>Note: Only applicable when valve is being replaced. There is no retrofit requirement.</b>
180.407(a)	Critical	Using a specification cargo tank that has not been inspected or retested in accordance with § 180.407. <b>Number checked is the number of instances checked for compliance with § 180.407(a).</b>
180.407(b)(1)	Severe Level I	Failing to test and inspect a cargo tank that shows evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation.
180.407(b)(2)	ESM	Failing to test and inspect a cargo tank that has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.
180.407(b)(3)	ESM	Failing to conduct a pressure test in accordance with § 180.407(g) on a cargo tank

		which has been put out of hazardous materials transportation service for a period of one year or more.
180.407(b)(5)	ESM	Failing to conduct a test or inspection on a cargo tank when required by the Department of Transportation.
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. <b>Note: This is an Owner/Carrier Requirement.</b>
180.413(f)	Severe Level I	Failing to retain records of repair, modification, stretching, or rebarrelling made to each tank, as required.
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. (Owner) 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. (Motor carrier) 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 additional report for MC330/331 cargo tanks as required.

#### 1.3.14.4.11.2 Part 180 – CAPRI Procedures

As part of the HM Compliance investigation, your investigation should include an examination of the applicable subparts of Part 180. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 180: Procedures](#).

### *1.3.14.4.11.3 Part 180 – Enforcement Procedures*

As part of the HM Compliance investigation, your investigation should include an examination of the applicable subparts of Part 180. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 180: Procedures](#).

### *1.3.14.4.12 Part 385 Subpart E-Hazardous Materials Safety Permit (HMSP) Program*

#### *1.3.14.4.12.1 Part 385 Subpart E-General Information*

#### ***Those Who Must Hold a Safety Permit - §385.403***

The HMSP rule is located in 49 CFR Part 385 Subpart E, which specifies that an HMSP is required of any motor carrier transporting any of the following HM:

1. A highway route-controlled quantity of a Class 7 (radioactive) material;
2. More than 25 kg (55 pounds gross weight 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 49 CFR 172 of this title;
3. More than one liter (1.08 quarts) per package of a material poisonous by inhalation, that meets the criteria for hazard zone A;
4. A material poisonous by inhalation, that meets the criteria for hazard zone B, in a bulk packaging [capacity greater than 460 L (119 gallons)];
5. A material poisonous by inhalation, that meets the criteria for hazard zone C, or hazard zone D, in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons); or,
6. A shipment of methane (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).

#### ***The HMSP Requirements Do Not Apply Only to the Primary Hazard Class***

The HMSP is required for all materials that meet any of the definitions above, not only those that have a primary hazard class of 2.3 or 6.1; for example, anhydrous ammonia is a non-flammable gas (Division 2.2), but does meet the definition of a hazard zone D (Division 2.3) and is a permit-required material, if transported in quantities greater than 3500 water gallons.

#### ***Conditions that a Carrier Has to Satisfy To Be Issued an HMSP***

The formal list can be found in § 385.407. The list below is a basic outline.

- The carrier must have a Satisfactory safety rating.
- The carrier must certify (Form MCS 150B) that it has a satisfactory security program, including a security plan as specified in Part 172, a communications plan, and the required security training.
- The carrier must not:
  - Have a crash rate greater than 0.136 crashes per million miles or
  - Have a driver OOS rate greater than 9.68 or
  - Have a vehicle OOS rate greater than 33.3 or
  - Have an HM OOS rate greater than 6.82.
- The carrier must be registered with PHMSA.
- Additionally, the HMSP notification letter issued by MCMIS requires the motor carrier to fax a copy of its MCS-90 or MCS-82 to HQ. HQ must receive proof of financial responsibility before processing any HMSP applications.

#### ***Additional Information Required To Be Carried On Board a Vehicle that is Transporting a Material that Requires an HMSP***

The requirements can be found in § 385.415(a).

- A copy of the safety permit or another document showing the permit number that clearly indicates the number is the FMCSA HMSP number.
- Carriers that transport Division 1.1, 1.2, or 1.3 materials or highway route-controlled quantities of radioactive materials (Class 7) are required to carry a written route plan that meets the requirements of § 397.67 or § 397.101.
- 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.

#### ***Definition of a Temporary HMSP***

- A Temporary HMSP is a document issued to a motor carrier that has applied for the HMSP and has met all the requirements except that it does not have a safety rating. Thus, they can transport HM that requires the HMSP, while they wait for an Onsite Comprehensive Investigation and the safety rating, so they can finish the process.
- Before the Temporary HMSP is issued the motor carrier is required to be operating in full compliance with the FMCSR and the HMR, including the minimum financial responsibility requirements of Part 387 and all other requirements listed in the conditions paragraph above.

#### ***Special Procedures for Conducting an Investigation of a Carrier that is Required To Have an HMSP***

- Investigators are required to verify the validity of a permit, if required, and check compliance with the operational requirements required for HM permitted loads (e.g., the communication plan).
- 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.
- Follow all other investigation procedures.

#### ***Time When a Security Contact Review (SCR) Should be Conducted on a Permitted Carrier***

A security contact review (SCR) will generally be conducted each time an investigation is conducted on a carrier that is required to have an HMSP.

- The SCR is optional, if the carrier has received an SCR within the past 12 months.

#### ***Procedures that Should be Followed During an Investigation, If it is Found that Motor Carrier Does Not Have the Required HMSP***

- Indicate on Part A of the investigation that a permit is required and cite a violation of 385.403.
- Enforcement action should be taken for this violation. The carrier is not authorized to transport permitted HM until an HMSP [or a Temporary Hazardous Materials Safety Permit (TMHSP)] is obtained.
- The shipper holds a regulatory responsibility to verify the validity of the Carrier's HMSP prior to shipping the HM with a motor carrier. Documentation shall be gathered regarding the shipper of the HM requiring a HMSP and provided to the DA/SD for future prosecution of the shipper.

#### ***An Onsite Comprehensive Investigation is required if the carrier is an Enhanced Oversight Carrier***

- **On a monthly basis each DA 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.**
- **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 carrier has the HM Compliance Basic equal to or greater than the HM threshold for the past 2 consecutive months;**

**AND/OR**

- **The 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**

**(3) The 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.**

***If a Carrier Makes it Impossible to Conduct an Onsite Comprehensive Investigation Needed for an HMSP***

- If a carrier fails to keep an appointment, and several attempts have been made to conduct the Onsite Comprehensive Investigation, the situation should be considered a refusal to conduct an investigation.
- All HMSP investigations needed for safety ratings **MUST** be a full onsite comprehensive investigation.
- If the carrier is a New Entrant (NE), then the guidelines within the NE program should be followed to remove the carrier from consideration.
- If the carrier is not a NE, then use established procedures to obtain access for the purposes of conducting an Onsite Comprehensive Investigation (e.g., subpoena, law enforcement, etc.)
- If a carrier has a THMSP and is non-responsive, the Division must contact the HM Division at HQ to have the THMSP automatic renewal process stopped. This will lead to expiration of the motor carrier's THMSP. For more information, please refer to Enforcing our Denial of Access Authority.

***When Citing an Acute Violation of a Motor Carrier's Security Plan, Use this Citation***

- For an acute violation of a motor carrier's security plan, inspectors should cite 49 CFR 172.800(b). Citing this code will trigger MCMIS to begin HMSP suspension proceedings.
- If a security plan violation is not serious enough to warrant triggering proceedings to suspend or revoke an HMSP, please cite the appropriate paragraph(s) under § 172.802.
- Cite Route Plan violations, as noted in 49 CFR 385.415(a)(2), as violations of 49 CFR 397.67(d), so that the carrier's safety rating is affected appropriately.

***Procedures for Suspension or Revocation of a Permit***

When any of the following actions have been discovered or occur as a first offense, the motor carrier will be subject to suspension of its HMSP or Temporary HMSP until the action is corrected or revocation of the permit for 365 days. The following list exhibits the violations listed in 49 CFR 385.421(a) and the resulting consequences of those actions:

- Failure to renew its application (MCS-150B): Automatically checked by MCMIS.
  - The carrier's HMSP will expire and no longer be valid.
  - An Expiration Notice will be sent to the carrier.
- Providing false or misleading information on its application: Inspector must cite §390.35 (pertaining to MCS-150B). Example: Certifying that the Security Plan was in place, when it was not.

- A 15-day letter will be sent to the motor carrier.
- If the carrier does not provide the Division Office proof of rectification of the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
- Motor carrier is issued a final safety rating less than Satisfactory: Automatically checked by MCMIS.
  - A Suspension or Revocation letter will be issued to the carrier.
- Failure to maintain a satisfactory security plan: Inspector must cite §172.800(b).
  - A 15-day letter will be sent to the motor carrier.
  - If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
- Failure to comply with an OOS order: Inspector must cite §396.9, §385.13(c)(1), or §385.325(c).
  - A 15-day letter will be sent to the motor carrier.
  - If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
- Failure to comply with an order issued under HMR, FMCSR, or compatible State regulation governing the transportation of HM.
  - A 15-day letter will be sent to the motor carrier.
  - If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
- Failure to maintain the minimum financial responsibility required by 49 CFR 387.9: Automatically checked by MCMIS.
  - A 15-day letter will be sent to the motor carrier.
  - If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
- Failure to maintain current HM registration with PHMSA: Automatically checked by MCMIS.
  - A 15-day letter will be sent to the motor carrier.
  - If the carrier does not rectify the problem within 15 days, an official Intent to Suspend or Revoke letter will be issued to the carrier.
- The motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan: Automatically checked by MCMIS.
  - A Suspension or Revocation letter will be issued to the carrier.

**Note:** The 15-day letter will give the carrier 15 days to rectify the issue before it is brought before the Chief Safety Officer (CSO) in an adjudications proceeding. Correction of items 1 and 9 will be verified through automated means. The correction of items 2, 4, and 6 will be verified by Division Office.

If any actions listed in 49 CFR 385.421(a) are discovered on an HM motor carrier that had its safety permit previously suspended, it will have its HM safety permit, including THMSP, revoked for a period of 365 days from the time of the discovered action.

***FMCSA will immediately suspend or revoke the HM motor carriers HMSP for the following reasons:***

- When it is discovered that an imminent hazard exists.
- A final rating of less than Satisfactory is issued to the HM motor carrier.
- The motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan.

### *1.3.14.4.12.2 Part 385 Subpart E-Communication Program*

#### ***Communication Procedures that Must Be in Place for a Carrier Transporting a Material that Requires an HMSP***

The vehicle operator must make contact with the carrier at the beginning and end of each duty tour and at the pickup and delivery of each load materials that require an HMSP. Contact can be made by telephone, radio, or via electronic tracking or monitoring systems.

#### ***A GPS Tracking System Can Replace Direct Communication Between the Motor Carrier's Operator and Dispatcher***

This is allowed as long as the tracking system creates a record of communication with the required information.

#### ***Documentation of the Communication System Required to be Maintained by the Motor Carrier***

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.

The record of communications must be maintained by the carrier or driver for 6 months after the acceptance of the shipment. The communication records do not have to be maintained separately from other records currently maintained by the motor carrier, as long as the information listed above is contained within the documents

#### ***If One Transport Vehicle is Delivering Permitted Material to More than One Location During One Duty Period, Communication is Required***

Communication is required at the pickup and delivery of each permitted load.

#### ***How the Owner/Operator Can Comply with the Communication Plan Requirements***

- The communications requirements may not apply to an owner/operator functioning under their own authority, if they have no supporting company infrastructure.
- If the only phone number for the company is the driver's cell phone, then the requirements of 385.415(a) (3) and/or 385.415(c)(1) do not apply.

#### ***Team Drivers are Not Required to Contact the Motor Carrier Each Time They Switch from Sleeper Berth to Driving and Back***

- Team drivers are not required to contact the motor carrier each time they switch drivers.
- The minimum number of contacts per day from team drivers to the motor carrier is two (2) per day, with a maximum of fourteen (14) hours, between each contact and at each pickup and delivery of a permitted load.

#### ***When the Vehicle is Required to be Inspected Prior to Transportation***

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.

#### ***Web Site and Telephone Number to Use for Further Information***

General HMSP information can be found at:

- <http://www.fmcsa.dot.gov/safety-security/hazmat/hm-permitting.htm>, or,
- by calling 202-366-6121.

#### 1.3.14.4.12.3 Part 385 Subpart E-Investigative Procedures

Whether you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation or an [100% States] Offsite Investigation of the HM Compliance BASIC, your investigation of Part 385 Subpart E should consist of:

- Verifying the motor carrier is subject to Part 385 Subpart E
- Verifying that the motor carrier holds a valid HMSP.
- Reviewing compliance with Permitting rule including:
  - The motor carrier must have a security plan that is in accordance with Part 172 Subpart I;
  - Minimum financial responsibility in accordance with Part 387;
  - Motor carrier is registered to transport HM with PHMSA (§107.601);
  - The motor carrier has not falsified their MCS-150B (permit application);
  - Communications plan in compliance with 385 Subpart E; 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, e.g., .21, .23, etc.)

BASIC	Part 385	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
HM Compliance	⊗ .401-.423	385.401 – 385.423, Hazardous Materials Safety Permits – <b>As applicable</b> to carriers transporting designated quantities of hazardous materials per 385.403
Unsafe Driving		

**Note:** The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

#### **Following this Review, You Should:**

- Cite violations, and if warranted,
- Document counts for enforcement.

#### 1.3.14.4.12.4 Part 385 Subpart E-CAPRI Procedures

#### **Counting the Operating Without an HMSP Violation**

If a company is transporting permissible loads of hazardous materials without an HMSP, every shipment is a violation; therefore, numerous counts could be cited.

### ***Enforcing the Level VI Inspections Required of HRCQ Loads***

If during an investigation or roadside inspection, it is determined that a Level VI inspection did not occur prior to a shipment of a HRCQ load, the carrier should be cited in violation of §385.415(b)(1).

### ***Acute, Critical, ESM, Fundamental and Severe Regulations for Part 385***

The violations listed below should be considered for enforcement action, when discovered. Acute and Critical Violations impact a motor carrier's safety rating while ESM, Fundamental and 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, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated

### **Acute, Critical, ESM, Fundamental and Severe Regulations for Part 385**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>385.403</b>	Severe Level I	Transporting hazardous materials requiring a hazardous materials safety permit in commerce when the carrier does not hold an HMSP.
<b>385.415(c)(1)</b>	Severe Level II	Transporting a hazardous material requiring a safety permit and failing to follow the communication plan as required.
<b>385.415(c)(1)</b>	Severe Level II	Transporting a permitted material without maintaining a record of communication for six months as required.
<b>390.35</b>	Acute	Making false entries on an MCS-150B.

**Note:** *The HM regulations 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. 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.*

#### *1.3.14.4.12.5 Part 385 Subpart E-Process Breakdowns/Remedies-SMC*

Once you have discovered the violations relating to Part 385, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance.

The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance.

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

#### *1.3.14.4.12.6 Part 385 Subpart E-Enforcement Procedures*

### ***Evidence Required to Successfully Prosecute a Violation of Part 385***

To successfully prosecute a violation of Part 385, establish the following facts:

- That the material in question is in fact a Hazardous Material and in a quantity requiring a HMSP.
- That the hazardous material was transported in commerce.
- That the shipment was not transported in accordance with the requirements of Part 385.
- That knowledge and willfulness were established.

### ***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 MSDS.
2. Where a MSDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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; e.g., 55 pounds for explosives, 3500 water gallons for Zone D, etc.
3. Ensure all elements are proven; e.g., 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 MSDS.
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 U.S. 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».

#### **1.3.14.4.13 Part 383 - Commercial Driver's License (CDL) Standards**

As part of the HM Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Investigative Procedures](#).

#### **1.3.14.4.14 Part 392 - Driving of Motor Vehicles**

As part of the HM Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: Investigative Procedures](#).

#### **1.3.14.4.15 Part 397-HM Driving and Parking**

##### ***1.3.14.4.15.1 Part 397-Investigative Procedures***

If you are assigned an Onsite Comprehensive Investigation, your investigation of Part 397 should consist of:

- Checking for compliance with routing regulations, if applicable (397.67 for marked or placarded non-RAM; 397.101 for placarded RAM).
- Checking for compliance with smoking, (397.13, certain divisions/classes), tire checks (397.17, all marked or placarded HM), and operations near fire (397.11, all marked or placarded HM).
- For Division 1.1, 1.2, or 1.3 Explosives only:
  - Checking for compliance with attendance (397.5) and parking (397.7(a)).
  - Checking for instructions and documents required to be carried (397.19).

Part 397 does not apply to HM Shippers.

SIs who are assigned reviews of a motor carrier that transports explosives should contact their HMS or HMPM for guidance and assistance. Generally, these carriers should be assigned to HMSs.

If you are assigned an Onsite Focused Investigation or an **[100% States] Offsite Investigation**, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating.

- The table below identifies each BASIC by Part 397 and includes guidance on whether the investigation should include a review of the full part or subpart.
- The table also includes additional guidance on when each is required or should be considered based on investigative findings.

● full review of part

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

BASIC	Part 397	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
HM Compliance	●	Driving and Parking rules – As applicable to the hazardous material investigation.
Unsafe Driving	⊗ .2, .3, .5, .19, .67	<p>A review of the 397.2, and .3 are <b>required if the carrier transports HM that requires markings or placards:</b></p> <p style="padding-left: 40px;">397.2 – Compliance with the Federal Motor Carrier Safety Regulations</p> <p style="padding-left: 40px;">397.3 – State and Local laws, ordinances and regulations</p> <p>A review of 397.5 and 397.19 are required if the motor carrier transports 1.1 1.2, or 1.3 Explosives</p> <p style="padding-left: 40px;">397.5 – Attendance and surveillance of motor vehicles</p> <p style="padding-left: 40px;">397.19 – Instructions and Documents</p> <p>397.67 – Motor carrier responsibility for routing – <b>Required if motor carrier operates marked or placarded non-RAM HM</b></p>

*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

**Conditions Under Which You Should Enforce Part 397 Regulations**

**Check the Following for Compliance with Routing Regulations**

For the routing requirements, go to FMCSA’s website and download the most current routing restrictions. Compare the route restrictions for the routes the motor carrier utilizes for the HM they transport on those routes. Determine if any violations have occurred.

- Note instances where a vehicle was operated on a restricted route, or in a heavily populated area, in violation of §397.67(b) or §397.101.

### Check the Following for Compliance with other Part 397 Regulations

Violations for the regulations related to fires, fueling, tire checks, parking (397.7(b)), and smoking are difficult, if not impossible, to enforce during an investigation without being present to witness the violation. Investigators should review the CSA data to identify specific drivers that have inspections with these violations and discuss company policies and training procedures with company officials.

### Check the Following for Compliance with Part 397 HRCQ RAM Regulations

Section 397.101(e)(1) – HRCQ RAM drivers must comply with 172.704 every **two** years

Section 397.101(e)(2) – HRCQ RAM drivers must have a training certificate on their person when operating a CMV with HRCQ RAM

Verify compliance with all of Section 397.101 as applicable.

### Check the Following for Compliance with Part 397 Explosive Regulations

Sections 397.5, Attendance; 397.7(a), Parking; and, 397.19, Instructions and Documents, are applicable only to transportation of Division 1.1, 1.2 and 1.3 explosives.

- Section 397.5: Ask the company officials how they comply with this section, what safe havens they use, and how they verify it is a valid safe haven.
- Section 397.7: This section is difficult to enforce unless witnessed. Ask the company officials how they comply with this requirement.
- Section 397.19:
  - Ask how they comply with the written route plan requirement. There is no requirement to retain written route plans, but many companies have established routes and will have copies of what is provided to the driver.
  - Part 397 receipts are only required to be retained for 1 year from date of driver signature.

For additional guidance on investigations of explosives motor carriers, contact your HMS or HMPM.

#### 1.3.14.4.15.2 Part 397-CAPRI Procedures

### Acute, Critical, ESM, Fundamental 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 ESM, Fundamental and 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, ESM Violation, and Severe Level II violation. If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated.

Acute, Critical, ESM, Fundamental and Severe Violations for Part 397

Citation	Type	Description
<b>397.5(a)</b>	<b>Acute</b>	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.  <b>Number checked is the number of instances checked for compliance with § 397.5(a).</b>
<b>397.7(a)(1)</b>	<b>Critical</b>	Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway.  <b>Number checked is the number of instances checked for compliance with § 397.7(a) (1).</b>
<b>397.7(b)</b>	<b>Critical</b>	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.

		<b>Number checked is the number of instances checked for compliance with § 397.7(b).</b>
<b>397.13(a)</b>	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.  <b>Number checked is the number of instances checked for compliance with § 397.13(a).</b>
<b>397.19(a)</b>	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.  <b>Number checked is the number of instances checked for compliance with § 397.19(a).</b>
<b>397.67(d)</b>	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.  <b>Number checked is the number of instances checked for compliance with § 397.67(d).</b>
<b>397.101(d)</b>	Critical	Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in Part 173.403, of radioactive materials that are not accompanied by a written route plan.

#### *1.3.14.4.15.3 Part 397-Process Breakdowns/Remedies-SMC*

Once you have discovered the violations relating to Part 397, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance.

The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance.

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

#### *1.3.14.4.15.4 Part 397-Enforcement Procedures*

##### ***Evidence Required to Successfully Prosecute a Violation of Part 397***

To successfully prosecute a violation of Part 397, establish the following facts:

- That the material in question is a hazardous material, requiring the motor vehicle to be marked or placarded, in accordance with title 49 CFR § 177.823
- That the hazardous material was transported in commerce
- That a violation of Part 397 occurred
- That knowledge or willfulness was established.

##### ***Look for the Following When Compiling Case on Part 397***

Ensure that the material in question is a hazardous material in a quantity requiring marking or placarding.

- In some cases a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available and in cases where no shipping paper was ever prepared, it may be necessary to obtain a MSDS.
- You must also be able to prove the quantity. A MSDS 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 MSDS.
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».

### 1.3.14.5 Hours of Service (HOS) BASIC

#### 1.3.14.5.1 Introduction to Hours of Service (HOS)

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

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

If you are assigned an Onsite Focused Investigation or **100% States** 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.)

<b>Safety</b>		
40 - Drug & Alcohol Testing		
380 - Special Training	⊗ .503(b), .505, .513	380.503(b) – Entry Level Driver Training Requirements - <b>Required if</b> motor carrier has drivers subject to training requirements.  380.505 - Proof of Training - <b>Required if</b> motor carrier has drivers subject to entry-level driver training.  380.513 - Training Certificate - <b>Required if</b> motor carrier has drivers subject to entry-level driver training.
382 - Drug & Alcohol Testing		
383 - CDL	⊗ Part of CAIR	<b>Required</b> 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 – <b>Required</b>  390.15 - Accident Register - <b>Required if</b> Crash BASIC Investigation is performed.  390.23/25 - Relief - <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration or emergency condition.
391 - Driver Qualifications	⊗ .21, .41, .43	391.21 - Application for Employment - <b>Consideration</b> in those cases where multiple employers may be contributing to the HOS Compliance BASIC  391.41 - Physical Qualifications of Drivers - <b>Consideration</b> in those cases where physical qualifications may be impacting the HOS

		<p>Compliance BASIC</p> <p>391.43 - Medical Exam – <b>Consideration</b> in those cases where physical qualifications may be impacting the HOS Compliance BASIC</p> <p>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.</p> <p><b>Example:</b> 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.</p>
392 - Driving of Motor Vehicles	⊗ .3, .6, .9a(a)	<p>392.3 – Ill and Fatigued Driver - <b>Consideration</b> when ill and fatigue driving is evident on the profile. Investigator should examine if violations may be related to a medical issue.</p> <p>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 – <b>Required</b></p> <p>392.9a (a) Authority - <b>Required</b> as part of the CAIR process.</p>
393 - Vehicle Parts and Accessories		
395 - Hours of Service	●	<b>Required:</b> HOS Compliance BASIC
396 - Vehicle Maintenance		
<b>Hazardous Materials</b>		
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		
<b>Other</b>		
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> 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 - <b>Required if</b> motor carrier transports migrant workers.
399 - Employee Health and Safety		

#### 1.3.14.5.2 Part 380 - Special Training Requirements

##### 1.3.14.5.2.1 Part 380 - Investigative Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: Investigate Procedures](#).

##### 1.3.14.5.2.2 Part 380 - CAPRI Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: CAPRI Procedures](#).

##### 1.3.14.5.2.3 Part 380 - Process Breakdowns and Remedies - Applying the SMC

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: Process Breakdowns and Remedies – Applying the SMC](#).

#### *1.3.14.5.2.4 Part 380 - Enforcement Procedures*

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: Enforcement Procedures](#).

#### *1.3.14.5.3 Part 383 - Commercial Driver's License (CDL) Standards*

##### *1.3.14.5.3.1 Part 383 - Investigative Procedures*

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Investigative Procedures](#).

##### *1.3.14.5.3.2 Part 383 - CAPRI Procedures*

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: CAPRI Procedures](#).

##### *1.3.14.5.3.3 Part 383 - Process Breakdowns and Remedies – Applying the SMC*

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Process Breakdowns and Remedies-Applying the SMC](#).

##### *1.3.14.5.3.4 Part 383 - Enforcement Procedures*

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Enforcement Procedures](#).

#### *1.3.14.5.4 Part 387 - Insurance Requirements*

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 387: Investigative Procedures](#).

#### *1.3.14.5.5 Part 390 - General Requirements*

##### *1.3.14.5.5.1 Part 390 - Investigative Procedures*

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 - Procedures](#)

##### *1.3.14.5.5.2 Part 390 - CAPRI Procedures*

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 – CAPRI Procedures](#)

##### *1.3.14.5.5.3 Part 390 - Process Breakdowns and Remedies – Applying the SMC*

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 - Process Breakdowns and Remedies - Applying the SMC](#)

#### *1.3.14.5.5.4 Part 390 - Enforcement Procedures*

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 - Enforcement Procedures](#)

#### *1.3.14.5.6 Part 391 - Qualification of Drivers*

##### *1.3.14.5.6.1 Part 391 - Investigative Procedures*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391: Investigative Procedures](#).

##### *1.3.14.5.6.2 Part 391 - CAPRI Procedures*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391: CAPRI Procedures](#).

##### *1.3.14.5.6.3 Part 391 - Process Breakdowns and Remedies – Applying the SMC*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391 - Process Breakdowns/Remedies-SMC](#).

##### *1.3.14.5.6.4 Part 391 - Enforcement Procedures*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391 - Enforcement Procedures](#).

#### *1.3.14.5.7 Part 392 - Driving of Motor Vehicles*

##### *1.3.14.5.7.1 Part 392 – Investigative Procedure*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: Investigative Procedures](#).

##### *1.3.14.5.7.2 Part 392 – CAPRI Procedure*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: CAPRI Procedures](#).

##### *1.3.14.5.7.3 Part 392 – Process Breakdowns/Remedies-SMC*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: Process Breakdowns/Remedies-SMC](#).

##### *1.3.14.5.7.4 Part 392 - Enforcement Procedures*

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: Enforcement Procedures](#).

### 1.3.14.5.8 Part 395-Hours of Service (HOS) of Drivers

#### 1.3.14.5.8.1 Part 395-Investigative Procedures

In your review of compliance with Part 395, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

#### ***Procedures to Follow During Investigation of Part 395***

If you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation that includes the HOS Compliance BASIC, your investigation of Part 395 should begin with:

- Determining the type of motor carrier operation.
  - Requesting a driver list.
  - Determining the minimum number of drivers time records/RODS to be sampled.
  - Selecting drivers time records/RODS to be reviewed.
  - Reviewing drivers time records/RODS.
- full review of part
  - ⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 395	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance	●	<b>Required: HOS Compliance BASIC</b>
HM Compliance		
Unsafe Driving		

**Note:** The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

Following this review, you should:

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

#### ***Part 395 - Red Flag Violations***

A key aspect of the investigation process is the driver's role in carrier safety. Data that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor. As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior, but also on carrier enforcement and education regarding their responsibilities for driver compliance. The drivers with Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity, and the drivers receiving these violations, are examined and addressed in conjunction with motor carrier investigations.

As part of the CAIR process, a review of the motor carrier's SMS record (for the presence of drivers with Red Flag Violations) is part of every motor-carrier-based investigation. Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have

occurred in the previous 12 months, and should request documents to confirm these drivers with Red Flag Violations have been corrected. A complete list of the Red Flag Violations can be found in [Appendix G](#). Part 395 Red Flag Violations include:

BASIC	FMCSR Part	Violation Description
HOS Compliance	395.13(d)	Driving after being declared OOS (in violation of Part 395 OOS Order)

*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Once the drivers with Red Flag Violations are identified, you must validate if the violation has been corrected through requesting relevant documentation and interviewing the motor carrier and/or driver. For each Red Flag Violation, the investigative responsibility is broken down into three areas:

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

### ***Part 395 - General***

Section 32101(d) of MAP-21 creates a statutory exemption from the HOS regulations for CMV drivers engaged in the transportation of agricultural commodities and farm supplies. During the planting and harvesting periods established by each State, HOS regulations will not apply to:

- Drivers transporting agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;
- Drivers transporting farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm, or other location, where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or,
- Drivers transporting farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

### ***Certain Motor Carrier Operations Allowed Exemptions within Part 395***

The exemptions are defined in Section 395.1. The HOS exemptions, outlined in SAFETEA-LU, follow and an exemption related to railroad signal carriers/drivers is 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.

### ***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.

### ***Part 395 - Passenger Carriers***

#### ***Procedures to Follow if Investigating a Motor Carrier of Passengers***

Private Motor Carriers of Passengers (nonbusiness) are not subject to the record-keeping requirements within Part 395. All other motor carriers of passenger [e.g., For-Hire and Private Motor Carrier of Passengers (Business)] are subject to the same record-keeping requirements as motor carriers of property.

#### ***Specific Issues to be Aware of when investigating a Motor Carrier of Passengers***

- **Extra Board, Shape and Spare Drivers** - An *extra board*, *shape*, or *spare* driver is a driver who does not have assigned work, but remains at the terminal in order to handle an operational contingency such as driver absence or vehicle breakdown. In most cases, they should record their hours as on duty, not driving until they are dispatched on the road.
- **Relief drivers** - On long distance trips requiring straight-through driving, motorcoach operators may send a relief driver ahead to take over driving responsibilities for the next part of the trip. The means by which this driver gets to the layover location can vary. Below are two scenarios and the correct recording of HOS for each:

Passenger vehicle trips can typically span several days and miles. These trips can also involve several drivers. When reviewing RODS for motor carriers of passengers, the Investigator may see the notation "DHOC." This notation stands for "deadhead on cushion." This is a common industry practice whereby a driver at the direction of the passenger motor carrier rides aboard the vehicle as a passenger in order to get to a designated location. If the driver is afforded 8 hours off duty upon arrival, all time spent "cushioning" or traveling is considered off duty.

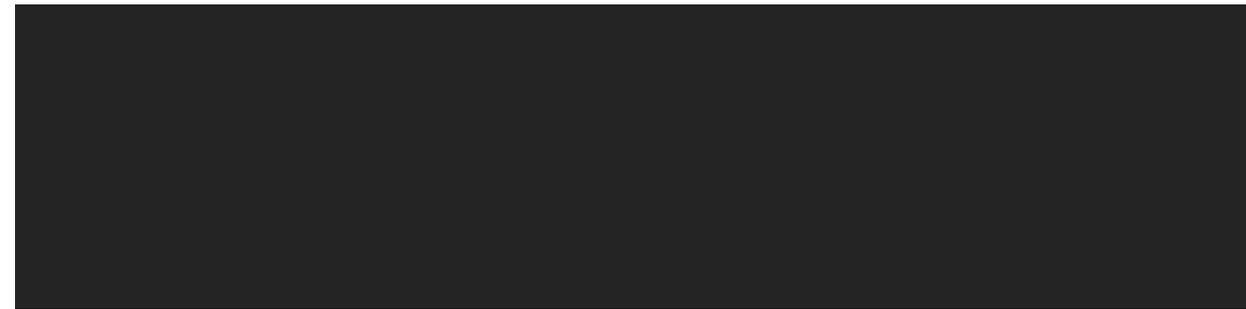
- **Scenario #1:** Driver is driven, or uses public transportation (e.g., commercial aircraft or train) to get to or return from the layover location. In this instance, if the driver has at least 8 consecutive hours off-duty after reaching the layover destination or terminal before assuming any on-duty status, the time spent traveling at the direction of the motor carrier may be logged as off-duty. If there is less than 8 consecutive hours off-duty, the time traveling at the direction of the motor carrier must be recorded as on-duty, not driving.

- **Scenario #2:** Driver drives himself/herself in an automobile (non-CMV) to the layover location or back to the terminal. Time spent driving a non-CMV at the direction of the motor carrier must be logged as on-duty, not driving, even if the driver is afforded 8 consecutive hours off-duty.
- **Team drivers** - In order to log sleeper berth status, the motorcoach must be equipped with a sleeper berth meeting the criteria in Section 393.76. There are no exceptions for motorcoach sleeper berths. Investigators should be aware that there are motorcoach in operation that meet the sleeper berth requirements. If the motorcoach is not properly equipped with a sleeper berth that meets the criteria, and there is a team assigned to it, all time spent riding in the motorcoach (in the reclining position or not) must be recorded by the driver as on-duty, not driving and may not be recorded as sleeper berth duty status. The only exception would be a driver who is riding on the motorcoach to the destination and is afforded 8 consecutive hours off-duty after reaching the destination. In such case, the time spent riding on the motorcoach may be recorded as off-duty.
- **Part Time drivers** - Passenger carriers make frequent use of part-time and intermittent/casual drivers. Many drivers operate passenger vehicles in only a part-time capacity. Most of these drivers are involved in other full-time employment. When conducting a CR, the Investigator should ensure that these drivers submit either the prior seven days of RODS or a prior seven-day duty statement before dispatch. Verify the drivers are reporting these hours accurately. In each instance, all compensated time working for a motor carrier or non- motor carrier entity must be reflected as on-duty time.

Part time drivers should be included in the sampling. Review a part-time driver's application and qualification documents to detect indications of other employers. Interview drivers to determine other employers. Run drivers in Driver Information Resource as roadside inspections with other employers may have occurred revealing additional employers. Many motorcoach operations use retired drivers part-time and these drivers may not have other full time employment but may drive for several motorcoach companies to supplement their retirement. Other part-time drivers that are not of a retirement age need other means of employment to support their families. Therefore it is especially important to interview drivers who need additional income to verify all hours are being reported. Request part-time drivers provide time sheets/payroll/records of duty status from their other employers and factor in hours worked elsewhere when calculating hours of service.
- For mixed fleet operations, ensure drivers that are commingled between different operations under the same corporate control are accurately reflecting their time. Charter motorcoach carriers may also do local work in addition to the charter operations. These local movements may be airport shuttles for the local university sports team, school field trips, or local attraction site seeing tours. These trips may pay by the hour and be recorded on a time card and must be included as part of a driver's HOS.
- Time spent collecting tickets, loading and unloading luggage must be reflected in the driver's RODS as "On-duty, not driving." As an additional example, part-time drivers that also drive a school bus under school bus operations as defined in 390.5 must indicate that time as "driving," not "on-duty, not driving."
- Depending on the length of the trip, a charter/tour driver may receive a very substantial tip from the group at the completion of the trip. Often, groups will pressure drivers to deviate from the stated itinerary, and drivers know all too well a refusal could affect their tip. Keep this in mind when comparing trip itineraries to RODS. Ask the carrier to articulate the company policy the driver must follow in these instances. Recommend that the carrier include a statement on the charter order/itinerary that the driver is not permitted to deviate from the itinerary without prior company approval. This helps the driver deflect the pressure from the group or tour leader
- Calculate distances when analyzing trips.
- **LIMITED EXCEPTION FOR FIXED ROUTE CARRIERS**

- ***Dispatch and Driver Interviews***

Interviews may be conducted with anyone relevant to the investigation. Interviews may be conducted with safety personnel, operations, current drivers, terminated drivers or others relevant to the information needed to complete the investigation. Open the discussion on HOS by questioning the nature of the operation. Ask about long distance trips and how the carrier builds the itinerary to ensure compliance with HOS regulations. Have the carrier demonstrate any software/fleet management systems utilized. Many vendors offer passenger carriers systems to manage the bidding, booking, dispatching and billing of trips. Ask if the carrier has positioned relay drivers for any long distance trips and how those drivers account for that time on their RODS. Overnight trips should be highly scrutinized for additional drivers and/or staged drivers along routes. Ask the carrier official how the company assures that drivers are available to replace drivers that are out of hours, verifies methods of transportation (e.g., personal conveyance, commercial vehicle, or airplane), and makes sure that the drivers meet the HOS requirement before they can drive.



**“See CSA list of probing questions”**

***Supporting Documents that are Unique to the Passenger Industry***

Charter orders and itineraries are the passenger carriers’ shipping papers. Although many are different in appearance, they usually contain the same information, such as the carrier’s name, driver’s name, date, vehicle number, group being transported, origin and destination points, routes taken, and cost.

- Itineraries are similar to charter orders, but they list a detailed time report of the passenger carriers trip. Itineraries will show arrival and destination times and dates. They are usually used during an extended charter trip.
- Most passenger carriers maintain charter orders and itineraries as a normal part of their business. Both of these documents as well as other supporting documentation should be used to determine the accuracy of the drivers RODS.
- In many instances, drivers will enter start and finish time on their trip envelopes, which can be used to verify their RODS. Major destination locations may maintain information regarding arrival and departure times for group tours. In-depth investigations may involve contacting the group that booked the charter for further verification. . When you contact a customer for an interview, state that you are doing so only as a matter of standard procedure.
- Additional common supporting documents unique to passenger carriers include, but are not limited to:
  - Parking and tour permits issued by destinations.
  - On-road lavatory service documents.
  - Driver hotel receipts.
  - Entertainer operations use Day Sheets which include the address of the venue, coach parking instructions, hotel information, load-in time, sound check time, show

time and departure time for the next venue. Your investigation should include these documents.

- Investigate posted schedules/tours on websites (departure, arrival, etc.).

### ***Part 395 - Interstate Operations versus Intrastate Operations***

#### ***Policy Concerning Drivers who Operate Both in Intrastate and Interstate Commerce***

Drivers who operate in interstate commerce must be in compliance with 49 CFR Part 395 before, during and after interstate trips. The records-of-duty-status requirements in Part 395 apply to all drivers seven days prior to an interstate trip and all of Part 395 applies for the 7- or 8-day period following an interstate trip.

The important points to remember are:

- Any driver who begins a trip in interstate commerce must continue to meet the requirements of 395.3(a) and (b) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under.
- The driver must continue to comply with the requirements of Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70-hour period (i.e., 7-8 day schedule) at the end of the interstate trip. However, even if the driver operated in intrastate commerce before and/or after the 7-8 day period, you must document the days that the carrier used a driver to operate in intrastate commerce.
- A driver who begins a trip in interstate commerce, in a CMV, must have in his/her possession a copy of RODS for the previous 7 consecutive days, as required by 395.8(k)(2), unless they meet 395.1(e), even if the driver operated only in intrastate commerce during that 7-day period.
- **Note: During the 7-day period prior to the interstate trip the driver may follow the state regulations applicable to intrastate commerce with regard to the states CMV driving and on-duty requirements.**
- FMCSA Investigators should cite drivers for violations of the 10/11- or 14/15-hour rules or the 60- or 70-hour rules that are committed while on the interstate trip or during the 7 or 8 days after completing the interstate trip (depending on which rule the motor carrier operates under). The driver remains subject to Part 395 for 7 or 8 days after a trip in interstate commerce even if he/she drives only in intrastate commerce for that period.
- FMCSA Investigators should be aware that, for cargo carriers, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours (34-hour restart).
- **Passenger carriers may not use the 34-hour restart.**

 Mexico domiciled motor carriers and drivers are required to comply with the FMCSRs only while operating in the U.S. FMCSA has no authority over a motor carrier when operating in Mexico. Mexico domiciled motor carriers may use the 100 air-mile exemption found in 49 CFR 395.1(e). However, once a carrier operates in the U.S., the carrier is subject to all of the applicable FMCSRs/HMRs and is, for example, required to produce the previous 7 days of RODS. [Policy Memorandum “Hours-of-Service Enforcement for Mexico-Domiciled Carriers,” dated April 3, 2002.]

#### ***Recording Violations of a Carrier who Operates in Both Interstate and Intrastate Commerce***

Interstate and intrastate violations will be cited separately under current policy. For the following example, assume you checked 150 RODS of which 100 were in interstate commerce and 50 in intrastate commerce, and that the violation rate was 50 percent. Your result is 50 days in violation/100 days checked for interstate commerce and 25 days in violation/50 days for intrastate commerce. These will then be entered into CAPRI, the first with its respective Federal violation, and the second with the appropriate State citation.

### ***Part 395 - Seasonal Operations***

#### ***Selecting Records when the Carrier's Operation is Seasonal***

When performing an investigation on a motor carrier with seasonal operations, select RODS and/or time records from the previous six months when the carriers operation was most active.

**Part 395 - Requesting Driver Lists**

**The Request for a Driver List Should Include the Following**

If a driver list was not requested before the investigation, or during the opening interview, you should request a list of drivers employed in the last 12 months, and the date they were hired and/or terminated. The list will need to be verified. You should verify the accuracy and completeness of the list by comparing the driver list to the list of drivers prepared during the pre-investigation process, reviewing the company profile, payroll record, dispatch records, bills of lading, and or other transportation or shipping documents.

**Timeframe for Review of Drivers Time Records/RODS**

Your review of compliance with Part 395 covers the previous six months, or the time period since the previous investigation, if the previous investigation was performed less than six months ago.

**When Review of Drivers Time Records/RODS Goes Beyond the Previous Six Months**

If you are called upon to conduct an investigation as a result of an accident, or as a result of a non-frivolous complaint, then the review of drivers' time records/RODS goes beyond the previous six months.



**Although we normally review only the prior six months of RODS from the date of your review, remember that the carrier is required to maintain these documents for six-months from date of receipt.**

**Sampling Requirements for the Minimum Number of Drivers Time Records/RODS to be Reviewed**

The number of records of RODS and/or time records (if the motor carrier uses 100 air-mile radius drivers) to be reviewed is the number of drivers who are subject to the FMCSR. You should follow the sampling requirements for the minimum number of interstate and intrastate commerce in its state of domicile drivers time records/RODS to be reviewed as set forth below:

**Sampling Requirements**

CFR Parts - Part 395 - Hours-of-Service							
Onsite			[100% States] Offsite		CBI		
# of Drivers Subject to FMCSR	# of Drivers Selected	Minimum # RODS to Review	# of Drivers Selected	Minimum # RODS to Review	# of Drivers Involved in Recordable Crashes	# of Drivers Selected	Minimum # of RODS to Review
1-5	All	# drivers x 30	1	1 x 30=30	1-5	All	# drivers x 15
6-15	5	5 x 30 = 150	2	2 x 30=60	6-15	5	5 x 15 = 75
16-50	7	7 x 30 = 210	≥3	3 x 30=90	16-50	7	7 x 15 = 105

51-150	11	11 x 30 = 330			51-150	11	11 x 15 = 165
151-500	17	17 x 30 = 510			151-500	17	17 x 15 = 255
501-Over	27	27 x 30 = 810			501-Over	27	27 x 15 = 405
				<p><b>Sample Selection:</b> Select from drivers involved in crashes.</p> <p><b>Additional Guidance:</b></p> <p>For <b>each</b> driver involved in a recordable crash for previous 365 days, conduct HOS review for day of crash and previous 14 days from date of crash (15 days total).</p> <ul style="list-style-type: none"> <li>• If crash date &gt;6 months, RODS may be reviewed if available. If no RODS, select RODS for a driver involved in crashes within previous 6 months.</li> <li>• If carrier has no RODS available for drivers involved in crashes within previous 6 months, first select drivers with the highest scoring HOS Compliance BASIC (to meet the required sample size) at the carrier’s place of business who were placed OOS during roadside inspections and then those found in violation during roadside inspections.</li> </ul>			

***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. 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 50<sup>th</sup> percentile. The driver sample

should include currently employed drivers. There are circumstances where you need to select drivers recently terminated by the motor carrier; this practice is acceptable, if properly articulated in Part C. If this does not produce enough drivers to reach the required sample size for the BASIC, then as additional criteria, the SI should select drivers who have been involved in crashes, and then a selection of drivers with high violation rates.

You have some flexibility and discretion in this selection process and should use your best judgment; for example, if two drivers have HOS Compliance BASIC percentiles that are very close to each other, but one has been involved in one or more crashes, then you could decide to include the driver who has been involved in crashes, regardless of which driver has the higher BASIC percentile rank. Other methods may include drivers with poor CDLIS driving records, recently hired drivers or highest-paid drivers. These deviations should be explained in Part C.

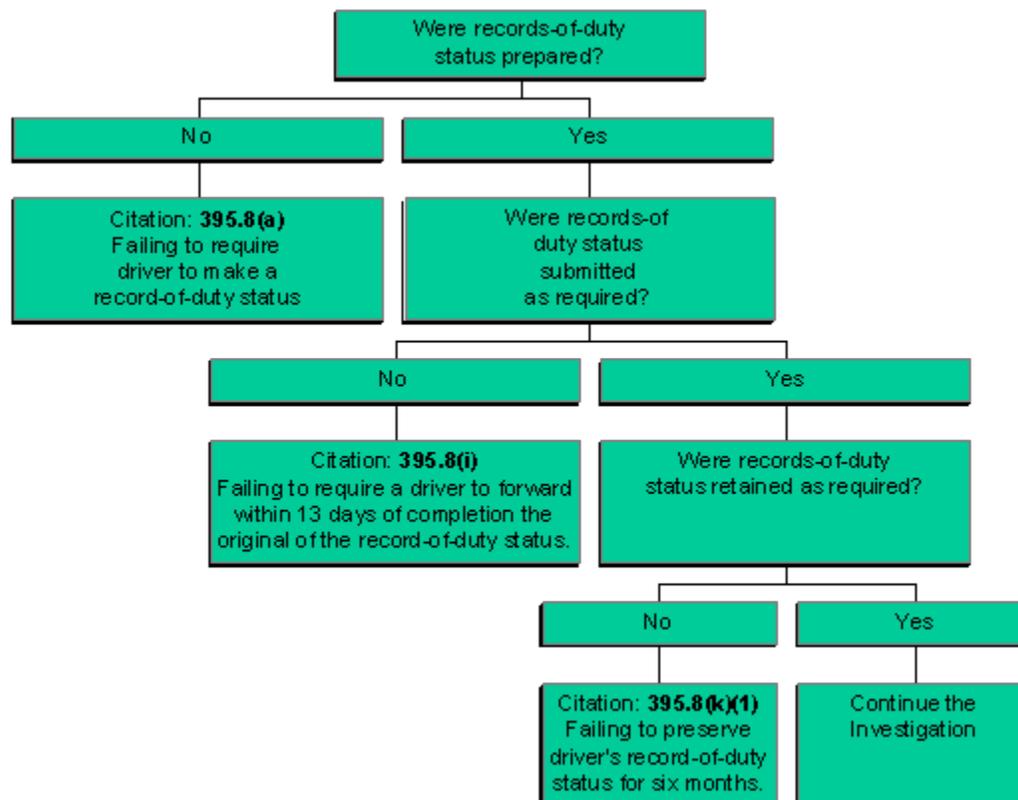
**Note:** Drivers with Red Flag Violations may not have poor DSMS percentile ranks. Therefore, a driver with Red Flag Violations may not necessarily be selected for sampling related to the BASIC under investigation. Regardless of whether the driver is selected for sampling during a motor carrier investigation, drivers with Red Flag Violations should be examined and the Red Flag Violations should be addressed. Drivers are held accountable for safe practices across their employment.

#### *Action to Take if Unable to Meet the Minimum Sample Size for Part 395*

**There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain, in Part C of the investigation, why you did not meet your sample. You must also explain, in Part C, if you exceed the required sampling beyond the number set forth in the chart above.**

#### *Part 395 - Missing RODS*

When the carrier does not provide RODS, 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 requested or reviewed.

***When You Are Unable to Determine the Driver for a Particular Shipment***

Occasionally, you may be unable, by any means, to determine the driver who moved a particular shipment. When the motor carrier failed to maintain records of duty status (395.8(k)(1)), and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment.

***When a Carrier Fails to Have Complete Time Records for 100 Air-Mile Radius Drivers***

Every single condition of the 100 air-mile radius exemption in Section 395.1(e) must be fulfilled in order for a driver to be exempt from preparing a RODS. A failure to fulfill any condition of the exemption results in the application of the requirement to prepare a RODS.

***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 key elements to consider relating to the new on-duty time provision are as follows:

1. The “up to 2 hours” riding in a passenger seat of a property-carrying CMV in conjunction with 8 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 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 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.
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.

#### ***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 up to two hours riding in the passenger seat with sleeper berth time to obtain the 10 or more consecutive hours off duty..

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 key elements to consider relating to the new on-duty time provision are as follows:

1. The "up to 2 hours" riding in a passenger seat of a property-carrying CMV in conjunction with 8 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 will be included in the calculation of the 14-hour period. For 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 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.
3. The 2-hour time period riding in a passenger seat may be split into any combination of time before and after the 8-hour sleeper berth break. For example, if a driver rides in the passenger seat for 1 hour before and 1 hour after the 8-hour sleeper berth break, or 30 minutes before and 1 1/2 hours after, the entire 2-hour period is considered off-duty time.
4. A driver is permitted to accumulate the required 8 or 10 hours off duty while resting in a parked vehicle.

#### ***Driving During the Change from Standard Time to Daylight Savings Time or Vice Versus***

During the change from Standard Time to Daylight Savings Time or vice versus, the driver records his/her time "as is" and enters an explanation in the Remarks section of RODS. It doesn't matter exactly how the driver logs his/her time (as Standard Time or Daylight Savings Time) as long as it is clear how many hours are actually involved on each line of the RODS grid. He/she **DOES NOT** get to drive or work an hour more (or less).

### ***Recording Violations that Span Consecutive Days***

The number checked refers to the total number of RODS checked for the sample.

The number of violations discovered generally refers to the total number of RODS showing a violation. For example, a driver who drives continuously from 6:00 p.m. on Day 1 to 6:00 a.m. on Day 2 would be cited for one 11-hour violation occurring on Day 2. [Note: In rare circumstances, two 11-hour violations may occur on a single RODS where the first violation occurs early in the RODS period and the driver then promptly takes at least 10 hours off duty and then drives another 11 hours during the same RODS. In the event such a record is discovered, contact your DA.]

Violations of *separate* HOS regulations within a single 24-hour RODS period should each be counted. For example, a driver might be cited for an 11-hour, a 14-hour, and a 60-hour violation all within the same 24-hour RODS period if the driver drove 15 hours toward the end of a 7-day period. Driving into the next 24-hour RODS period when the driver is already over hours for multiple purposes will trigger additional violations during the subsequent RODS period for each separate regulation.

Typically, no more than one violation of any *individual* HOS regulation (e.g., 11-hour rule) should be cited within one 24-hour RODS period.

The following examples illustrate the operation of this guidance with respect to enforcing the 11-hour rule. Assume all drivers begin driving with zero hours, i.e., immediately after 10 consecutive hours off duty, and in all examples the motor carrier maintains RODS from Midnight to Midnight:

- **Example 1:** A driver who drives continuously from 6:00 p.m. on Day 1 to 6:00 a.m. on Day 2 would be cited for 1 violation occurring on Day 2.
- **Example 2:** A driver who drives continuously from Noon on Day 1 until 1:00 a.m. on Day 2 would be cited for 2 violations. The first violation occurs at 11:01 p.m. on Day 1. The second occurs at 12:01 a.m. on Day 2 when the driver enters a new RODS period.
- **Example 3:** Three drivers driving equal amounts of time may accrue a different number of violations. If Driver A begins driving at 9:00 a.m. and continues to drive for 13 hours, Driver A would be cited with 1 violation. If Driver B begins driving at Noon and continues to drive for 13 hours, until 1:00 a.m. on Day 2, then Driver B would be cited for 2 violations, one on each RODS. If Driver C begins driving at 4:00 p.m. and continues driving for 13 hours, Driver C would only be cited with 1 violation, on Day 2.

### ***Counting Off-Duty Days as a Day Checked***

You should include those RODS that show the driver was off-duty for the entire 24-hour period. Multiple days designated as off-duty, on a single ROD, are also counted as multiple RODS checked for excessive driving.

### ***34-Hour Restart***

A driver of a property carrying vehicle may restart the 60/70 hour period with an off-duty period of 34 or more consecutive hours off duty. The driver can use the 34-hour restart at any time. He/she does not have to be compliant with the 60/70-hour rule to use the restart provision. This is because the 34-hour restart wipes clean all past time regardless of whether such time constituted a violation or not. While the time is wiped clean, the violation is not undone. The driver and the motor carrier would still be subject to appropriate enforcement.

### ***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.

### ***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 PC Miler, 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 PC Miler. Refer to *Using PC\*Miler to Support a False RODS*. 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.

### ***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 PC\*MILER to Support a False RODS***

PC\*MILER cannot be used as stand-alone evidence. It would not stand up as evidence in court because of the hearsay rules. Consequently, the CSO and the Administrative Law Judge (ALJ) would not accept it as evidence.

However, it can be used in conjunction with other evidence to bolster your case. It could, also, be used in the obvious situation where the violation on its face is so clear that FMCSA would ask the trier of fact to take judicial notice of the fact that the RODS is false. For example, a driver logged a trip from New York to Florida as 400 miles and six hours. In this situation, FMCSA would use a map or PC\*MILER printouts to show the trier of fact that the miles and time logged are so incorrect that the decision-maker must take judicial notice of the fact that the RODS is false.

### ***Time Records Counted as RODS Checked for Falsification***

Time records that are checked for inaccuracy are not counted as RODS. An inaccurate time record is considered to be a failure to prepare a RODS not a false RODS.

### ***Counting the Number of RODS Checked for Falsification***

The number of RODS checked for falsification is the number of RODS checked against supporting documentation. Any day for which a document or documents exist, that verifies the accuracy or inaccuracy of a RODS, should be counted as a day checked for falsification. This includes those days verified as being off duty. You may have to check additional records to reach your sample size. If you are unable to reach your sample size, you will need to document your reason in Part C of CAPRI.

**Example:** If you check 3 months, or 90 days of RODS, but only have supporting documents to compare for accuracy against sixty-eight days, you would have to check an additional twenty-two RODS that you could verify for accuracy with supporting documents to reach your sample size. If you discover seven false RODS, the proper cite would be seven found and ninety records checked.



**It is important to remember, that in this case, the number discovered and number checked refer to days. If while checking a single RODS, multiple instances of falsification are found, the number discovered/number checked would still be 1 of 1. Additionally, if multiple documents show the same instance of falsification, for a given RODS, the number discovered/number checked is still 1 of 1.**

### ***What to Document After Determining a RODS is False***

Each false RODS cited on an investigation report should be recorded in your handwritten or laptop notes. The name of the driver, date, and the supporting document(s) used to detect falsification should be noted for each citation of false RODS.

### ***Differences in False RODS Violations***

- A **critical** false RODS is false by one hour or more, or fifty miles or more.
- A **non-critical** false RODS is false by less than one hour or fifty miles.

### ***False RODS Used to Calculate a Violation of a Critical Violation***

Only critical false RODS violations are counted by CAPRI in calculating the motor carrier's safety rating. However, you should still enter both critical false and non-critical false RODS violations in CAPRI.

### ***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 - Retention of Supporting Documents and Use of Electronic Mobile Communication/Tracking (EMC/T) Technology***

#### ***Supporting Documents Requirements for Motor Carriers With and Without Qualifying EMC/T Technology***

On April 4, 1997, as part of a set of guidance and policy statements, FHWA published a list of more than thirty examples of supporting documents that motor carriers needed to retain pursuant to 49 CFR 395.8(k)(1) (62 FR 16370, 16425) (Guidance Question 10). Based on its enforcement experience since 1997, FMCSA recognizes that certain documents in that list are not regularly used by enforcement staff to verify the accuracy of RODS and that requiring motor carriers to retain these documents is no longer necessary.

With the widespread use of EMC/T systems, FMCSA realizes with the retention of tracking system information, fewer paper supporting documents are required for a thorough investigation. This policy allows the carrier to retain less supporting documentation with the use of qualifying EMC/T technology.

**NOTE:** Whether the EMC/T records are acceptable to the Agency under the policy or not, the Investigator has the authority to demand those records and he or she may accept them in either printed or electronic form from the motor carrier. These records will be used to assess motor carrier and CMV driver compliance with the HOS regulations and for other evaluations into the safety performance or regulatory compliance of the motor carrier. EMC/T records may also be used by the Agency as evidence in any proceeding to enforce Federal motor carrier statutes and regulations.

For each vehicle a motor carrier uses and for which the motor carrier can produce EMC/T records which meet the system requirements acceptable under the policy, the motor carrier may take advantage of the less burdensome list of supporting documentation found in the policy.

Motor carriers that seek to take advantage of the less burdensome supporting documents retention requirements available under the policy are precluded in HOS enforcement proceedings from challenging the accuracy of their own EMC/T records.

All motor carriers that use EMC/T technology in the ordinary course of business, whether or not such technology is qualifying technology under the policy, must continue to retain data generated by that system in the ordinary course of business. The motor carrier is not required, for purposes of responding to investigations by FMCSA or State enforcement personnel, to convert the data from the format in which it is ordinarily retained. However, if the motor carrier receives in the ordinary course of business electronic or printed reports or other communications in which the data is converted to a more readable or usable format, the motor carrier must retain such reports or communications and provide them to Investigators upon demand.

If a motor carrier denies the Agency access to its supporting documents, including, without limitation, EMC/T records, the motor carrier's action shall be considered a denial of access under 49 U.S.C. 521(b)(2)(E). As with all supporting documents, a failure to maintain EMC/T records may be cited under 49 CFR 395.8(k)(1).

Based on technical information publicly available from EMC/T system providers, FMCSA presumes that the time, date, and location data captured by these systems are accurate. A RODS falsification violation may be documented in an enforcement action based solely on an inconsistency between the EMC/T record and the corresponding RODS. The Agency recognizes that certain atmospheric, terrain, and other conditions may occasionally impact the availability and quality of time and location signals. As part of the decision on whether to document a false RODS violation in an enforcement action, an Investigator should review the overall position history (time, date, descriptive location, and latitude/longitude) of the vehicle to

ensure that the sequence of the times and locations appears to be reasonable over the course of several hours.

\*\*\* See *Retention of Supporting Documents and Use of Electronic Mobile Communication/Tracking (EMC/T) Technology* for complete policy including lists of supporting documentation and qualifying system specifications.

[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.).

Be sure to verify the time zone in which the driver prepares the RODS as well as the time zone of the system report

[REDACTED]

[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.

## **Automatic On-Board Recording Device (AOBRD)**

### **AOBRD**

#### **What is an AOBRD?**

As defined in 49 CFR 395.2, an automatic on-board recording device (AOBRD) is an electric, electronic, electromechanical, or mechanical device capable of recording a driver's duty status information accurately and automatically as required by 49 CFR 395.15. The device must be integrally synchronized with specific operations of the CMV in which it is installed. At a minimum, the device must record all of the following:

- Engine use;
- Speed;
- Miles driven; and,
- Date and time of day

The AOBRD device itself can be in the form of, but not limited to, a laptop, cell phone, and a tablet, so long as the device meets the definition of 49 CFR 395.2

#### **AOBRD Procedures to Follow During Investigation of Part 395**

If you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation that includes the HOS Compliance BASIC and the motor carrier operates with an AOBRD, your investigation of Part 395 should begin with a demonstration of the carriers system. Review the system's capabilities including driver system rights, drivers' editing capabilities, as well as the carrier's system for monitoring driver's hours and ensuring accuracy of the electronic RODS. Pay particular attention to the system settings and parameters. Vendors offer carriers many options to customize systems to their operations and many of these options give the drivers an opportunity to manipulate their hours of service or disqualify the device from being a compliant AOBRD. Below is a hyperlink to questions that will aid an Investigator in becoming familiar with the motor carriers AOBRD system

[What are some questions I can ask the motor carrier regarding their AOBRD system?](#)

#### **Request System Documentation**

The following is a list of documents and other information that should be reviewed when becoming familiar with the motor carrier's system:

- Equipment Contract & Invoices- The contracts will illustrate the type and number of devices purchased by the motor carrier. Invoices will support the information displayed on the contract such as the monthly service fees.
- Manufacturer's Certification of Compliance as required by 395.15(i)1.
- Driver On-Board Information Card as required by 395.15(g)(1) - The information card should provide steps for obtaining the drivers hours during a roadside inspection.

- **Software Manual-** this manual may provide information about the set-up parameters for the system addressing data storage, when driving time starts being recorded (miles driven and/or time in drive gears), availability of communication options (e.g., texting, email, voice), vehicle position check intervals (number of pings per hour or set time interval), reporting capabilities, and other system features. It will also provide installation recommendations. Device installation is important as it will give the Investigator an indication how easy the system may be tampered with by drivers.
- **Vendor's website-**may provide additional information regarding the systems capabilities.

**Requesting System Reports** Although not all systems provide the following reports, the reporting capabilities of the carrier's system should be reviewed during the system demonstration.

***Login Lists.*** Request the system's login list(s) for all drivers used in the past six months (active, inactive, and training) and carrier officials authorized to manage HOS compliance. Verify the list(s) against the driver list, payroll records, and random drug testing lists. Comparing this list may reveal the practice of **Ghost drivers** (see example 1 for a description). These lists may also reveal another tampering practice called **Switching Driver Logins** (see example 2 for a description).

Example 1: A company has 10 drivers but has 12 driver logins. The over-hours drivers use the two other logins so they can keep driving.

Example 2: Driver A wants to continue working however he/she is out of hours. Driver B is on extended leave for vacation or medical reasons. Driver A uses Driver B's driver login to use Driver B's available hours to continue to drive.

***Vehicle list*** (containing the assigned device with identifying information). Until a carrier assigns the device to a vehicle in the support system, the device may be identified with a serial number or IP address. An Investigator may have to require the carrier to identify which device is in what vehicle in this situation. Information associated with unidentified driver, sensor failures, etc., are reported by vehicle/device. Compare the vehicle list with the vehicle maintenance list to verify what vehicles have a compliant device installed.

***Unidentified driver.*** Request reports showing when a vehicle is being operated without a driver logged-in. The name for this report varies by vendor, the following is a list of names the motor carrier may use: Unassigned Miles, Miles without Hours, Unauthorized Driving and Unknown Driver. This practice occurs when a driver doesn't properly log onto the system and operates the vehicle. Since the system is integrally connected to the vehicle's Electronic Control Module (ECM), the vehicle operation information will still be recorded in the system. The computer does not know who the driver is unless the driver is properly logged-in. Therefore, a separate report is generally accessible from the management system. The problem is the reports are sometimes hard to find, especially if the carrier officials have not been using all of the available reporting features.

Note: This tampering is mostly the driver manipulating the system to avoid HOS violations and the carrier fails to monitor the system to ensure unidentified driving time is assigned to the correct driver's RODS. However, a carrier may have the option to assign the unidentified driver miles as a result of maintenance related move, yard move, or other category. Reports may be run to verify that a carrier does not hide driving time from the driver's RODS or unidentified driving reports.

***Reports for Off-Duty Driving time.*** \*Not all systems have this report. This report may give an indication of drivers who abuse the personal conveyance option.

***Edits Reports.*** Most systems are designed to allow carrier officials and/or drivers to edit the RODS for the purpose of adding unassigned driving time or missed duty status changes. However, this feature has been abused by companies who edit the RODS in order to cover HOS violations, thus allowing its drivers to continue driving in violation. The carrier may also assign the unassigned driving time to a fictitious driver. Review the edits report to verify edits are being made for justified reasons, or to identify the falsification concealing HOS violations. This tampering is most often a sign of management manipulating the system.

If a driver has edit rights, the most common falsification occurs when the driver edits on duty not driving time to off duty or sleeper berth time. By doing this, the driver can obtain more driving hours before hitting the 60/70 hour limitation.

### ***Sensor Failure Reports:***

There are several possible sensor failures that can occur. The GPS may not work due to a vehicle's location (e.g., parked besides a tall building or inside a building/tunnel). This would cause the display/report to not show the proper location. The system could report a discrepancy in ECM odometer readings which are used to calculate daily mileage. It is also possible that other engine problems may cause a malfunction code. Multiple sensor failures are indicative of system problems. These could be the result of tampering by the driver or lack of oversight by the carrier to repair the AOB RD. 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 AOB RD and/or the connectors on the vehicle diagnostic port (ECM). In this case, the carrier should be repairing the devices in a timely manner.

**Reviewing AOB RD Records of Duty Status.** 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 AOB RD system is calculating and capturing the HOS violations correctly. A compliant AOB RD system is not required to print graph grid logs, but most systems do provide a graph RODS.

### **Detecting False AOB RD 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 AOB RD 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.

### **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.

### ***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-CAPRI Procedures***

Once you have completed your investigation of compliance with Part 395, you should use the following guidelines to assist in the completion of Part B - Violations Tab of the CAPRI software.

### ***Part 395 - Pyramiding***

#### ***Definition of Pyramiding and Why it Should be Avoided***

Motor carriers must require their driver to make RODS when the driver operates a CMV in interstate commerce. The driver must submit, or forward the original RODS to the employing motor carrier within 13 days, following completion of the RODS. It could be argued that a carrier who cannot produce a requested RODS would be subject to three violations: no RODS prepared, RODS were not submitted or forwarded within 13 days of completion, or the RODS were not maintained. Only one of these violations can be cited per RODS; otherwise, what is termed pyramiding of counts would occur.

### ***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?***

No. When you discover that a RODS contains a HOS violation and false entries on the same day, you would cite 395.8(e) - False records of duty status. If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e) - False records of duty status.

### ***Part 395 - Critical Regulations and Enforcement***

#### ***The Following is Required for All Violations Cited Under the Same Section, if it is Determined that an Enforcement Case will be Generated for a Certain Violation***

For violations that will be considered for civil penalty purposes as part of an enforcement action, **you should be able to provide information about each of these violations that are counted in a "number found" field** of the investigation report. You can record most of the information required on the number of violations found on the CAPRI worksheets. You should be able to identify the date, driver's name, and

specific document(s) (e.g., fuel receipt, trip envelope, scale ticket, etc.) used to detect each of these violations.

***Recording Violations of Part 395 Critical Regulations (Except Alaska)***

You should record the violations as follows:

Violations of Part 395 Critical Regulations

Citation	Type	Description
395.1(o)	Critical	Requiring or permitting a short-haul property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours.  <b>Number checked: Total number of RODS checked, <u>including off-duty days</u>.</b>
395.3(a)(1)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.  <b>Number checked: Total number of RODS checked, <u>including off-duty days</u>.</b>
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.  <b>Number checked: Total number of RODS checked, <u>including off-duty days</u>.</b>
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 or sleeper-berth period of at least 30 minutes.
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.  <b>Number checked: Number of <u>seven-day periods</u> checked, not the total number of RODS checked.</b>
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.  <b>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</b>
 395.5(a)(1)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours.  <b>Number checked: Total number of RODS checked, <u>including</u></b>

		<b><u>off-duty days.</u></b>
 <b>395.5(a)(2)</b>	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.  <b>Number checked: Total number of RODS checked, <u>including off-duty days.</u></b>
 <b>395.5(b)(1)</b>	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.  <b>Number checked: Number of <u>seven-day periods</u> checked, not the total number of RODS checked.</b>
 <b>395.5(b)(2)</b>	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.  <b>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</b>
<b>395.8(a)</b>	Critical	Failing to require a driver to make a RODS.  <b>Number checked: Total number of RODS each driver was required to prepare.</b>
<b>395.8(e)</b>	Critical	False reports of RODS. (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).  <b>Note:</b> Enforcement action is recommended <u>only</u> when a 10 percent or greater frequency of falsification to conceal excess hours has been discovered.  <b>Number checked: Number of days which supporting documents were used to verify the accuracy of drivers RODS.</b>
<b>395.8(i)</b>	Critical	Failing to require a driver to forward, within 13 days of completion, the original of the RODS.  <b>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.</b>
<b>395.8(k)(1)</b>	Critical	Failing to preserve driver's rods for 6 months.  <b>Number checked: Number checked is the number of days checked in which a record of duty status should have been on file.</b>
<b>395.8(k)(1)</b>	Critical	Failing to preserve driver's RODS supporting documents for 6

		months.  <b>Number checked: Total number of supporting documents that the carrier was required to maintain.</b>
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*Part 395 - Critical Regulations Alaska***Alaska Driving Violations Only**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>395.1(h)(1)(i)</b>	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (driving in Alaska).  <b>Number checked: Number of RODS checked, <u>includes off-duty days</u>.</b>
<b>395.1(h)(1)(ii)</b>	Critical	Requiring or permitting a driver to drive after having been on-duty 20 hours (driving in Alaska).  <b>Number checked: Number of RODS checked, <u>includes off-duty days</u>.</b>
<b>395.1(h)(1)(iii)</b>	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on-duty 20 hours (driving in Alaska).  <b>Number checked: Number of RODS checked, <u>includes off-duty days</u>.</b>
<b>395.1(h)(1)(iii)</b>	Critical	Requiring or permitting a driver to drive after having been on-duty more than 70 hours in 7 consecutive days (driving in Alaska).  <b>Number checked: Number of <u>seven-day periods</u> checked, not the number of RODS.</b>
<b>395.1(h)(1)(iv)</b>	Critical	Requiring or permitting a driver to drive after having been on-duty more than 80 hours in 8 consecutive days (driving in Alaska).  <b>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</b>
<b>395.1(h)(1)(iv)</b>	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).  <b>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</b>
<b>395.1(h)(2)(i)</b>	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (driving in Alaska).

		<b>Number checked: Number of RODS checked, <u>includes off-duty days.</u></b>
<b>395.1(h)(2)(ii)</b>	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on-duty 20 hours (driving in Alaska).  <b>Number checked: Number of RODS checked, <u>includes off-duty days.</u></b>
<b>395.1(h)(2)(iii)</b>	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).  <b>Number checked: Number of <u>seven-day periods</u> checked, not the number of RODS.</b>
<b>395.1(h)(2)(iv)</b>	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).  <b>Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.</b>

### ***Recording Violations of Part 395 ESM/Fundamental Regulations***

ESM/Fundamental violations are not Acute or Critical Violations, but are subject to the same policy and procedures related to required enforcement action, and will not impact the motor carrier's formal safety rating. If enforcement action is not taken, it must be documented, in [Part C](#) of the investigation, to explain why enforcement was not initiated.

- Violations of Fundamental regulations are those where noncompliance is so severe that they require immediate corrective action by a carrier, regardless of its overall safety posture.
- Violations of ESM regulations are associated with elements of safety management controls necessary to operate. Discovery of violations in at least 10% of the records checked would result in a Serious Violation.

You should record the number checked as follows:

#### **Part 395 – ESM and Fundamental Violations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>395.13(c)(1)</b>	<b>Fund</b>	Knowingly requiring or permitting a driver declared OOS to operate a CMV before that driver may lawfully do so under the rules of Part 395.

#### ***1.3.14.5.8.3 Part 395-Process Breakdowns/Remedies-SMC***

Once you have discovered the violations relating to Part 395, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process, to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the [General Guidelines for Using the](#)

[Safety Management Cycle \(SMC\) to Help Diagnose a Breakdown in Safety during an Investigation](#). For CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the SMP Breakdowns and Remedies.

#### *1.3.14.5.8.4 Part 395-Enforcement Procedures*

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 395 violations, you should use the following guidelines when submitting an enforcement report for Part 395 violations.

#### ***Part 395 - Guidelines for Enforcement of Red Flag Violations***

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

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

#### ***Driver vs. Carrier Enforcement***

The Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

#### ***Part 395 - Red Flag Violations***

- The Red Flag Violation 395.13(d) is cited when the driver has been found operating while placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either the driver or the carrier, or both driver and carrier.
- Once the violation is verified, if there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC.

#### ***Part 395 - Basic Enforcement Concepts for Part 395***

##### ***Some Basic Enforcement Concepts to Keep in Mind when Preparing an Enforcement Case that Includes Part 395 Violations***

- It is inappropriate to submit a count where a driver exceeded one of the HOS rules and falsified the RODS for the same day.
- Driver interviews or other documents are necessary to prove the violation exists when falsification and exceeding the HOS limits occur on the same day,

- One of the most serious violations is one in which the carrier dispatched the driver with accumulated hours already at, or very close to, the maximum hours permitted.
- Statements from dispatchers and/or drivers should be obtained. This is important when you are trying to demonstrate that the motor carrier dispatched the driver when it knew that the driver was very close to, or already in excess of, the total hours of service permitted.
- Any day on which a violation occurs may be documented for enforcement purposes. However, avoid documenting violations on consecutive calendar days when the hours driving in violation begin on one day and continue into the next. In cases where violations continue over a period of consecutive days, and you are planning enforcement, it is preferable that only the most flagrant violations are documented.

### ***Types and Sources of Evidence to Prove Falsification***

Types and sources of evidence, to prove log falsifications, are too numerous to list; however, some examples are:

- Shipping documents that contain time and date entries for loading and/or unloading time.
- Run sheets, trip reports, trip envelopes which contain instructions for pickups, documents pertaining to drop-offs, key stops, return load pickups, gravity or pump unloading, bulk or container unloading, cleaning of trailers, etc.
- Trip expense reports or vouchers, coupled with petty cash receipts for such expenses as toll receipts, repair purchases, loading or unloading help (lumpers), oversize or overweight special permits, port of entry inspection slips, etc.
- Vehicle breakdown reports.
- Terminal or checkpoint "in and out" records.
- Dispatch sheets, daily or weekly truck reports, terminal reports.
- Run availability sheets and "sign-in sheets."
- Time cards, tachographs or service recorder discs.
- Accident records and reports including workmen's compensation and cargo liability reports.
- Federal or state roadside inspection reports.
- Payroll and related records that show duty times and/or pay for work performed other than driving. Checking payroll books and records may determine very little. An interview with the payroll clerk is typically more helpful in deciphering the codes used to describe the work performed, or location of the driver's work site.
- Telephone invoices that show the time, date, location of the caller and caller identification number. Motor carriers who use 1-800 numbers to keep in communication with their drivers, or who distribute telephone credit cards, should have these records.
- Insurance company observation reports.
- Contract road patrol reports.
- Daily fuel statements, paid by "credit card" or electronic funds transfer by a third-party vendor. Unlike the fuel receipts received by the driver, these daily fuel statements may also identify the driver, time of purchase, number of gallons purchased, unit price, truck number, location of fuel station, and odometer reading.

### ***Some Important Points to Remember Regarding Incomplete RODS***

The simplest of all Part 395 violations concerns the failure to show all required entries on the driver's RODS. Violations that are part of a continuing and flagrant disregard of the regulations (as opposed to inadvertent omissions) should be documented for enforcement when they demonstrate an apparent intent cover up other more serious violations. The following types of recurring omissions should raise additional questions:

- Frequently omitted daily mileage often occurs as part of the driver's concealment of a trip, a portion of a trip, or the mileage driven to deliver a "hot" load.

- Failing to show the name of the place the driver reported for duty is often a part of the driver's plan to conceal a portion of his/her time on-duty and/or driving.
- Failing to show the driver's location at each change of duty status is often a part of a plan to conceal work performed. For example, some drivers will show many stops in route, fail to indicate the place where they actually stopped, and then show "off duty" at this last unidentified stop. In many cases, this last-unidentified stop is where some type of work was performed, such as loading or unloading cargo.
- Failing to show the name of the place where the driver went off duty for the rest of the day is often a part of a plan to conceal actual driving time, distance traveled, or work performed other than driving.
- Failing to show the driver's locations at each change of duty status prevents you from comparing the RODS for accuracy against time- stamped supporting documents.

### ***Part 395 - Documentation***

#### ***Documents that Should be Gathered to Initiate an Enforcement Action***

You should gather the documentation to initiate an enforcement action, which establishes the following:

- The driver was subject to Part 395.
- The driver was an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce at the time of the violation on a specific date.
- A specific violation of Part 395 occurred.

#### ***Some Examples of Documents that May be Used to Prove Violations of Part 395***

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 395. You should take statements from the drivers, particularly when the documented violation involves falsified RODS or the failure to require drivers to prepare RODS. See [Illustration E-2](#).
- Driver's time records/RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle was subject to Part 395.
- Copies of documents that support the violation.
- Photographs that support the violation.

This list is not meant to limit you to specific documents; there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove your violation (e.g., shipper/customer). You may also use documents, or State Ports of Entry records, that the carrier could have used to verify the accuracy of the drivers' logs, regardless of whether they were actually contained in the carrier's files.

#### ***Documents Available to Check Driver HOS***

If the motor carrier keeps few or no records, documentary evidence may still be obtained from other sources. These same carriers likely perform transportation for shippers who generally keep good records. A few examples are:

- The broker of an auction house usually requires the driver to sign a "tally sheet". In many instances, this record will show the time and date of pickup, truck owner, tag number, etc.
- Lumber mills, sawmills, and planing mills usually require the driver to sign a "load ticket" or other document. These usually tie the driver to the vehicle and the carrier.
- Produce brokers often retain a "Truckers Agreement" which contains identifying information about the trip.

- Breweries keep extensive records of shipments tendered to distributors (private carriers) as well as common or contract carriers. These records include "in tickets" or "key slips," as well as documents relating to outbound shipments. Many states require breweries and distilleries to make monthly or quarterly reports on alcoholic beverages shipped into the State.
- Livestock dealers, stockyards, brokers, etc., usually keep "Tally Sheets" or the "Uniform Livestock Bill of Lading." These include transportation information and times of delivery and pickup.
- Shippers of commodities requiring temperature control usually keep time records showing pickup of their products.
- State Port of Entry records often identify the equipment by license plate number, show the driver's name, date and time he/she checked in at the port of entry and the commodity transported, its origin and destination, etc. State Patrol, Public Utilities Commission or other State inspection reports often contain similar information.
- Agricultural inspection or quarantine inspection reports usually show the driver's name, date, time, commodity, origin, destination, and vehicle license number.
- Permits for overweight, over length or over height loads contain information about the driver, motor carrier, vehicle, cargo, trip date, time of application, and origin and destination for the shipment.

### ***Part 395 - Selecting Violations***

#### ***Criteria that Should be Used to Select Violations for an Enforcement Action***

The general rule is to view both the severity and extent of the violation when deciding whether enforcement action is justified; for example, several 15-minute violations of the HOS rules may not warrant enforcement action, where a very few examples of violations that are over 1 hour may warrant enforcement.

Additionally, issues that arise frequently, regarding specific HOS sections, are as follows:

#### **10/11 and 14/15-hour rules**

- It is generally better to select counts that involve two hours or more of excess driving. These violations emphasize the severity of the motor carrier's/driver's violation. However, there are exceptions. Counts should be submitted when a driver, or several drivers, consistently drives 10.5/11.5 hours or more after 8/10 consecutive hours off duty. This pattern of behavior shows a disregard for the regulations.
- If it can be demonstrated that a driver falsified his/her RODS to cover up a 10/11 or 14/15-hour violation, then evidence that proves the HOS violation should be submitted for enforcement action, even though the log is false; for instance, the driver actually drove 13.45 hours, rather than the recorded 11 hours, after 10 consecutive hours off duty.
- If an egregious violation 10/11 hour rule (49 CFR 395.3(a)(1) and 395.5(a)(1)) is discovered that shows a clear disregard for safety and compliance by the motor carrier and/or driver

#### **60/70-hour rules**

- Remember that drivers only violate the 60/70-hour rule when they drive in interstate commerce beyond this period, or they drove in interstate commerce within the last 7 or 8 days. You should show that the driver was driving in interstate commerce during all, or a portion of, the time in excess of 60, or 70, total duty hours, or show that they drove in interstate commerce within the last 7 or 8 days.
- For 60 or 70-hour violations, always document the driver's activities for the full 7 or 8 consecutive day period. The exhibits should consist of copies of the driver's RODS for the entire period.
- To determine whether to use the 60 hours in 7 days, or 70 hours in 8 days calculation period, adhere to the following:
  - If the carrier does not operate vehicles on every day of the week, report violations under the "60 in 7" rule.

- If the carrier operates any vehicle every day of the week and has elected to record under the “70 in 8” rule, then determine the HOS violations on that basis.
- If the carrier operates any vehicles every day of the week and has elected to record under the “60 in 7” rule, then determine the HOS violations on that basis. However, in cases where the motor carrier has the option to select either the 60 hours in 7 days or 70 hours in 8 days, select periods in which the driver has a violation in both rules.
- In any case where there is a question about which rule should be used, it is good practice to obtain a statement from the motor carrier that clearly states the duty period used by the motor carrier.
- Any day on which a violation occurs may be documented for enforcement purposes. However, avoid documenting violations on consecutive calendar days when the hours driving in violation begin on one day and continue into the next. In cases where violations continue over a period of consecutive days and the SI is planning enforcement, it is preferable that only the most flagrant violations be documented.

### **Failing to require drivers to prepare RODS**

- In cases where the carrier does not require drivers to prepare daily RODS, documentary evidence is simple and usually easy to obtain. A typical exhibit would consist of a shipping document or dispatch record or payroll record, etc., to show that the driver drove for the carrier on a certain date, and a statement, verbal or written, that the driver was not required to prepare RODS and that the driver, in fact, did not prepare a RODS.
- Do not document instances of failing to require drivers to prepare RODS for days off-duty, days that the driver performed intrastate work only, etc. You should cite the violation on the CR, but should not document such violations on their enforcement report, unless those instances are included on the 7-8 day period of an interstate trip.
- Do not document simply isolated instances. Select violations for documentation/counts that clearly show a pattern of disregard for the requirement that RODS be prepared.
- Occasionally, you may be unable to determine the driver who moved a particular shipment. When the carrier does not require any of its drivers to prepare RODS, and the driver of a specific movement cannot be identified through the use of carrier, shipper or State records, you can still prepare a count by listing the names of all drivers employed by the carrier on the date of the shipment.

### **Falsification of RODS**

- Falsification of drivers' RODS may be chargeable to the carrier and/or the driver under Section 395.8 of the safety regulations. When the carrier is charged, it is important that the evidence used to demonstrate falsification of a RODS be obtained from the carrier's own records or files. By doing so, we can better demonstrate that the carrier knew or should have known that the driver was falsifying RODS.
- Interview drivers to determine why they falsified their RODS and whether they have any possible defenses. Statements should be taken from the drivers. When the intention is to construct a count which alleges the RODS was falsified to conceal excess hours (e.g., the falsification is for less than 1 hour, but was falsified to hide what would otherwise have been a 10/11 hour violation), you should first demonstrate that the driver exceeded the HOS rules. Obviously, this can be established through a statement from the driver in which he/she admits to exceeding the HOS limitations and to falsifying the RODS to hide the fact. The better alternative (and much more difficult) is for you to reconstruct the trip segment in which the HOS violation occurred by using, at a minimum, two reliable and time/date stamped trip documents for the reference points. You should submit this documentation for enforcement and should submit the false RODS, and the RODS for the day

before and after, as part of the evidence. [**Note:** In some instances it may be acceptable to use one time-specific document, such as electronic data (e.g., Qualcomm), Electronic Data Guidance.]

- Falsification of RODS typically follows one or more of the following patterns:
  - Showing "off-duty" for a whole calendar day when, in fact, the driver works and drives on that day. Evidence to prove this type of falsification is straightforward. The evidence need only consist of the driver's RODS showing him as "off duty," together with documents taken from the carrier's own records clearly showing that the driver was driving in interstate commerce, and that the carrier knew or should have known of this falsification. One good source to detect this pattern of falsification is to check dispatch records for trips by those drivers whose accumulated hours the day before reached 60 (or 70) total duty hours. Often, the driver's reason for falsifying his RODS by showing "off-duty" is clear--he had no hours remaining for the immediate trip. Drivers who commit this type of falsification sometimes admit their violations and will provide written statements admitting that they made the false entry to conceal their total time on-duty.
  - Showing "off-duty" for an 8/10-hour period following 10/11 hours of driving time, when, in fact, the driver did not go "off duty" but continued to drive. This violation is frequently used to conceal a driving violation that occurred during a turnaround trip. This type of falsification is widespread and is one that should be prosecuted more frequently.
  -  **Experience shows that the following fact patterns should alert you: a driver's RODS which consistently show 10 or 11-hour driving periods, followed by exactly 8 or 10 hours "off-duty"; RODS which consistently add up to 58 (60 hour rule) or 68 (70 hour rule) total duty hours on the driver's 6th or 7th day of the period; RODS which show accumulated duty hours just short of 60 or 70 total duty hours and with little or no time shown as "on-duty, not driving" loading/unloading time on their RODS.**
  - Concealing a portion of a day's work: This practice appears more often among drivers of tank truck carriers, automobile transporters, lumber haulers, building materials haulers, new furniture haulers, steel haulers, HHG carriers, drivers of temperature-controlled commodities, and drivers who perform the pickup and/or delivery in addition to the over-the-road trip. This pattern of falsification can be detected using the following:
    - Dispatch and/or payroll records which may show additional interstate trips or local trips than those accounted for on the driver RODS; and,
    - Dispatch records, shipping documents and/or payroll records which may show additional payments to drivers for unloading, stop-offs or "off route" deliveries.

### *Part 395 - Enforcement Action Against a Driver*

#### *Considering an Enforcement Action Against a Driver*

Enforcement action should be considered against drivers on the following violations when they have 10 percent or more violations recorded on the number of RODS reports checked for at least 30-day period.

- 395.3(a) (1) - Driving more than 11 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(a) (2) - Driving for any period after having been on-duty 14 hours following 10 consecutive hours off duty (property-carrying vehicles).

- 395.3(b) (1) - Driving after having been on-duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.3(b) (2) - Driving after having been on-duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.5(a) (1) - Driving more than 10 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(a) (2) - Driving for any period after having been on-duty 15 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(b) (1) - Driving after having been on-duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.5(b) (2) - Driving after having been on-duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.8(a) (1) - Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.
- 395.8(e) - 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–Financial Responsibility**

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 387: Investigative Procedures](#).

### **1.3.14.7 Unsafe Driving BASIC**

#### **1.3.14.7.1 Introduction to Unsafe Driving**

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

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

If you are assigned an Onsite Focused Investigation or **[100% States] 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**

<b>Safety</b>		
40 - Drug & Alcohol Testing		
380 - Special Training	●	Longer Combined Vehicle (LCV) and Entry Level Driver Training Requirements – <b>Required if</b> motor carrier has drivers subject to training requirements.
382 - Drug & Alcohol Testing		
383 - CDL	⊗ Part of CAIR	<b>Required</b> 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 – <b>Required</b> 390.15 - Accident Register – <b>Required if</b> Crash BASIC Investigation is performed. 390.23/25 - Relief - <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration.
391 - Driver Qualifications	⊗	A review of driver qualification regulations should be a <b>consideration</b> 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. <b>Example:</b> 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 <b>required</b> 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 - <b>Required</b> as part of the CAIR process
393 - Vehicle Parts and Accessories		
395 - Hours of Service		
396 - Vehicle Maintenance		
<b>Hazardous Materials</b>		
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 - <b>Required if</b> carrier transports quantities of HM that are prohibited from being transported through tunnels 177.823 - Movement of motor vehicles in emergency situations – <b>Required if HM carrier</b> 177.816 - Training requirements – <b>Required if HM carrier</b>
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 <b>required if</b> 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 - <b>Required if</b> route controlled HM operation
<b>Other</b>		
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> 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 – <b>Required if</b> motor carrier transports migrant workers. 398.4 - Driving of Motor Vehicles - <b>Required if</b> motor carrier transports migrant workers.
399 - Employee Health and		

Safety		
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### 1.3.14.7.2 Part 380 - Special Training Requirements

#### *1.3.14.7.2.1 Part 380 - Investigative Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: Investigative Procedures](#).

#### *1.3.14.7.2.2 Part 380 - CAPRI Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: CAPRI Procedures](#).

#### *1.3.14.7.2.3 Part 380 - Process Breakdowns and Remedies - Applying the SMC*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: Process Breakdowns and Remedies](#).

#### *1.3.14.7.2.4 Part 380 - Enforcement Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 380: Enforcement Procedures](#).

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

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Procedures](#).

### 1.3.14.7.4 Part 387 - Insurance Requirements

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 387 Procedures](#)

### 1.3.14.7.5 Part 390 - General Requirements

#### *1.3.14.7.5.1 Part 390 – Investigative Procedure*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390: Investigative Procedures](#).

#### *1.3.14.7.5.2 Part 390 – CAPRI Procedure*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390: CAPRI Procedures](#).

#### *1.3.14.7.5.3 Part 390 – Process Breakdowns/Remedies-SMC*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 - Process Breakdowns/Remedies-SMC](#).

#### *1.3.14.7.5.4 Part 390 – Enforcement Procedures*

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 - Enforcement Procedures](#).

#### *1.3.14.7.6 Part 391 - Qualification of Drivers*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391 - Procedures](#)

#### *1.3.14.7.7 Part 392-Driving of Motor Vehicles*

##### *1.3.14.7.7.1 Part 392-Investigative Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. 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-CAPRI Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392: CAPRI Procedures](#).

##### *1.3.14.7.7.3 Part 392-Process Breakdowns/Remedies-SMC*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392 - Process Breakdowns/Remedies-SMC](#).

##### *1.3.14.7.7.4 Part 392-Enforcement Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392 - Enforcement Procedures](#).

#### *1.3.14.7.8 Part 397-HM Driving and Parking*

##### *1.3.14.7.8.1 Part 397-Investigative Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 397. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 397: Investigative Procedures](#).

##### *1.3.14.7.8.2 Part 397-CAPRI Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 397. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 397: CAPRI Procedures](#).

##### *1.3.14.7.8.3 Part 397-Process Breakdowns/Remedies-SMC*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 397. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 397 - Process Breakdowns/Remedies-SMC](#).

##### *1.3.14.7.8.4 Part 397-Enforcement Procedures*

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 397. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 397 - Enforcement Procedures](#).

### 1.3.14.8 Vehicle Maintenance BASIC

#### 1.3.14.8.1 Introduction to Vehicle Maintenance

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

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

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

● 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	●	<b>Required:</b> Controlled Substances and Alcohol BASIC
383 – CDL	⊗ Part of CAIR	<b>Required</b> 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 - <b>Required</b> 390.15 - accident register - <b>Required if</b> 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. - <b>Consideration</b> when present on profile 390.23/25 - relief - <b>Required if</b> 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 - <b>Consideration</b> when the profile shows evidence of 392.2 Cargo-Related violations. Use “1 of 1” violation citation logic. 392.9 - inspection of cargo - <b>Consideration</b> when the profile shows evidence of 392.2 Cargo-Related violations. Use “1 of 1” violation citation logic. 392.62 - Safe operation or buses - <b>Consideration</b> when evidence of violation exists on the profile.

		392.9a(a) Authority - <b>Required</b> as part of the CAIR process
393 – Vehicle Parts and Accessories		<b>Required:</b> 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 <b>Consideration</b> when the profile shows evidence of cargo-related issues. Use “1 of 1” violation citation logic.
395 – HOS		
396 – Vehicle Maintenance		<b>Required:</b> Vehicle Maintenance BASIC  396.3(a) Inspection, repair, and maintenance - <b>Consideration</b> when profile shows evidence that may be related to the maintenance of load securement devices. Use “1 of 1” violation citation logic.
<b>Hazardous Materials</b>		
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		
<b>Other</b>		
325 – Noise Emission		
387 – Financial Responsibility	⊗ As applicable	<b>Required</b> 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 - <b>Required if</b> motor carrier transports migrant workers.
399 – Employee		

Health and Safety		
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#### 1.3.14.8.2 Part 383 - Commercial Driver's License (CDL) Standards

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383 Procedures](#).

#### 1.3.14.8.3 Part 387 - Insurance Requirements

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 387 Procedures](#).

#### 1.3.14.8.4 Part 390 - General Requirements

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 Procedures](#).

#### 1.3.14.8.5 Part 391 - Driver Qualifications

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391 Procedures](#).

#### 1.3.14.8.6 Part 392 - Driving of Motor Vehicles

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392 Procedures](#).

#### 1.3.14.8.7 Part 393 and Part 396 – Parts & Accessories, and Inspection, Repair & Maintenance

##### *1.3.14.8.7.1 Part 393 & 396 – Investigative Procedure*

In your review of compliance with Parts 393 and 396, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers. However, the procedures for motor carriers of passengers (business and nonbusiness) vary slightly in Part 396.

##### ***Parts 393 & 396 - Vehicle Inspections***

##### ***Procedures to Follow during an Investigation of Part 396***

If you are assigned an Onsite Comprehensive Investigation, your investigation of Part 396 should consist of:

- Determining if Level V inspections should be conducted during your investigation
- Selecting vehicles for inspection
- Inspecting vehicles
- Calculating the OOS rate
- Determining the number of maintenance files to review
- Determining the number of DVIR to review.

If you are assigned an Onsite Focused Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 396 and includes guidance on whether the investigation should include a review of the full

part or subpart. The table also includes additional guidance on when each is required or should be considered based on investigative findings.

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

BASIC	Part 396	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance	●	<p><b>Required:</b> 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.</p> <p>393.100-.136 <b>Consideration</b> when the profile shows evidence of cargo-related issues. Use “1 of 1” violation citation logic.</p> <p><b>Required:</b> Vehicle Maintenance BASIC</p> <p>396.3(a) Inspection, repair, and maintenance – <b>Consideration</b> when profile shows evidence that may be related to the maintenance of load securement devices. Use “1 of 1” violation citation logic.</p>
HOS Compliance		
HM Compliance		
Unsafe Driving		

*Note: The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Following this review, you should, if necessary:

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

### **Part 396 – Red Flag Violations**

A key aspect of the investigation process is the driver’s role in carrier safety. Data has shown that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier’s responsibility for hiring, training, and supervising safe drivers is also a factor. As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior, but also on carrier enforcement and education regarding their responsibilities for driver compliance. The driver Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity, and the drivers receiving these violations are examined and addressed in conjunction with motor carrier investigations.

As part of the CAIR process, a review of the motor carrier’s SMS record for the presence of drivers with Red Flag Violations is part of every motor carrier-based investigation. Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier’s BASIC status) that have occurred in the previous 12 months and should request documents to confirm these driver’s Red Flag Violations have been corrected. A complete list of the Red Flag Violations can be found in [Appendix G](#). Part 396 Red Flag Violations include:

BASIC	FMCSR Part	Violation Description
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Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle before making repairs
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Once the Red Flag Driver(s) and violations are identified, you must validate if the violation has been corrected through requesting relevant documentation and interviewing the motor carrier and/or driver. For each Red Flag Violation, the investigative responsibility is broken down into three areas:

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

### ***Determining if Vehicle Inspections Need to be Conducted during the Investigation***

If the motor carrier does not have the minimum sample for vehicle inspections on its company profile, you are required to conduct Level V inspections during your investigation when commercial motor vehicles are available. The calculation of the carrier's OOS rate is only needed during an Onsite Comprehensive Investigation or an Onsite Focused Investigation that include the Vehicle Maintenance BASIC (Vehicle Maintenance). For additional information when inspections are required see:

***Vehicle Inspection Required for Vehicle Maintenance BASIC Assessment Requirements for (Motorcoach Operators, Passenger Carriers and Property Carriers)***

### ***Parts 393 & 396 - Calculating the OOS Rate***

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

- Onsite Comprehensive Investigation
- Onsite Focused Investigation on the Vehicle Maintenance BASIC.

The motor carrier's OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected. If the motor carrier had an investigation within the previous 12 months, you will only use inspection data that occurred after the investigation. Only safety-related maintenance/vehicle OOS violations of Parts 393 and 396 are to be considered when determining the OOS rate.

The calculation of the OOS rate should be based on vehicles that were transporting passengers or property in commerce (interstate and intrastate). Review the motor carrier's most recent Level 1, 2, or 5 inspections. The number of vehicles from the vehicle inspection table should determine the number of inspections used to calculate the OOS rate; an example would be where the motor carrier has 6-25 vehicles, the number of vehicles used to determine the OOS rate would be 5. Review the company profile and check the 5 most recent Level 1, 2, or 5 inspections for the past 12 months or since the last investigation. There must be at least 3 vehicle inspections to calculate the OOS rate. However, you should use as many Level 1, 2, or 5 inspections as possible, up to the number of vehicle inspections indicated by the sampling table. If there were less than 3 inspections, conduct additional Level 5 inspections to reach the minimum sampling requirements. If you cannot meet this minimum requirement, you will be unable to calculate the OOS rate and you should explain why in Part C of the investigation report.

### **Circumstances Where Level 2 Inspection Cannot Be Used to Calculate the OOS Rate**

The motor carrier OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected for the previous 12 months. Use the ***Minimum Sample for Vehicle Inspections for Calculating OOS Rate*** chart to determine the sample size for determining the OOS rate for carriers under this policy. Chart and any inspections conducted during the investigation. Only vehicle OOS violations of

Parts 393 and 396 are to be considered when determining the vehicle OOS rate. If needed to meet the minimum sample size during the investigation, use the most recent Level I and/or Level 5 inspections obtained from the motor carrier's profile covering the previous 12 months.

Level 2 inspections shall not be included for motor carriers subject to the following criteria:

1. The carrier operates motorcoaches;
2. The carrier is a non-motorcoach operating passenger carrier with a Vehicle Maintenance BASIC percentile, at the time of the investigation, above the intervention threshold of 65; or,
3. The carrier is a property carrier with indicators from the Enhanced Investigative Techniques (EIT) process.

There are some cases where the OOS rate cannot be calculated because the minimum number of inspections cannot be reached using inspections conducted during the investigation and Level I and/or Level 5 inspections from the profile. For example, only two inspections can be conducted during an investigation for a passenger carrier when the passenger carrier only has two vehicles. If this carrier does not have eligible inspections on the motor carrier's profile, an OOS rate cannot be calculated because there are fewer than three inspections. The SI must conduct the passenger carrier vehicle inspections even though an OOS rate cannot be calculated in this scenario.

### **Enforcement**

If the calculated OOS rate from the investigation report exceeds 34 percent (i.e. Factor 4 of the safety fitness rating methodology is impacted), a NOC for violation of 49 CFR 396.3(a) "Failing to ensure that all vehicles under a motor carrier's control are systematically inspected, repaired, and maintained", should be initiated. If a NOC is not initiated, the reason must be explained in Part C of the investigation report.

**CFR Parts - Part 393 & 396 - Vehicle Inspections (for calculating OOS rates)**

**Considerations:** Select vehicles involved in accidents; then, select vehicles that have been placed out-of-service (OOS) (profile) or cited for equipment violations during roadside inspections within the previous 365 days. Verify if the OOS violations and other equipment violations were repaired.

Onsite		CBI
# of Vehicles* subject to the FMCSR**	Vehicle Inspections to Conduct	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 serious 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).
1-5	3	
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	

\*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.

***Actions to Take When the Minimum Number of Vehicle Inspections Cannot be Conducted***

There will be instances where you will not be able to inspect the minimum number of required vehicle inspections. If this happens, you must explain in [Part C](#) of the investigation report, why you did not meet your minimum sample. You must also explain, in [Part C](#), if you exceed the required sampling beyond the number set forth in the chart above.

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

You should select vehicles that were operated in interstate commerce and intrastate commerce in its state of domicile within the previous 7 days, are ready for dispatch, just returning to the company, and others available for inspection.

1. Select vehicles involved in accidents.

2. Select vehicles that have been placed OOS (profile) or cited for equipment violations during roadside inspections within the previous 12 months. You will need to verify if the OOS violations and other equipment violations were repaired

***Steps to Take if Roadside Inspections are Discovered During the Investigation (on the Company's Profile) that Do Not Belong to the Motor Carrier***

You must not include these inspections in the OOS rate calculation. Provide the Company Profiles state points-of-contact list to the carrier and have them contact the state in question directly.

Advise the motor carrier of the error(s) and explain that they must contact DataQs to resolve the issue. The DataQs website is found at: <http://dataqs.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>).

***Procedures for Conducting Vehicle Inspections***

Your vehicle inspections should be conducted using the North American Standard Inspection. However, before you conduct your vehicle inspections, request the assistance of a driver, mechanic, or other individual capable of operating the controls of the vehicle. When you conduct the vehicle inspections, inspect at least one of each type of vehicle operated (straight truck, truck tractor, etc.), and perform Level 5 inspections. If Level 5 inspections are not appropriate, you will need to provide an explanation in Part C of the investigation report. Please see the Inspection Manual for inspection procedures.

***Policy for Ensuring that Brake Inspectors are Qualified***

In order to potentially reduce crashes involving brake violations and the use of unqualified brake inspectors, it is important that we tie brake violations to unqualified brake inspectors.

If there are brake violations in your sample of inspections on the profile, the qualifications of the brake inspector involved should be investigated. Furthermore, if there is a significant crash and there are indications that brake violations caused the crash, the qualifications of the brake inspector should also be investigated. If the investigations result in evidence that a carrier's brake violations are as a result of unqualified inspectors, appropriate enforcement action should be taken.

***OOS Violations during the Vehicle Inspections***

If you discover OOS violations during the vehicle inspections, you must inform the appropriate motor carrier official. You will need to advise the individual that the vehicle(s) cannot be legally operated until the necessary repairs are made. You must place the OOS Order (Form MCSA-64) on the OOS vehicle.

***After Conducting the Vehicle Inspections***

You will need to generate an ASPEN report for each inspection conducted during an investigation. The inspection report should be uploaded through SAFETYNET into MCMIS. If you find violations during the inspections and note them on the ASPEN report, you cannot include those violations on Part B of the investigation.

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

There will be instances where you will not be able to review the minimum number of required documents and/or vehicles. If this happens, you must explain, in Part C of the investigation, why you did not meet your sample. You must also explain, in Part C, if you exceed the required sampling beyond the number set forth in the chart above.

***Parts 393 & 396 – Vehicle Inspection Required for Vehicle Maintenance BASIC Assessment (Motorcoach Operators, Passenger Carriers and Property Carriers)***

**Investigations**

**[100% States]** Offsite investigations are no longer permitted for any motor carrier with a Vehicle Maintenance BASIC percentile at or above the intervention threshold. An onsite focused or onsite comprehensive investigation must be conducted in accordance with current policy.

**Vehicle Inspections Required for Vehicle Maintenance BASIC Assessment**

Vehicle inspections will be conducted during investigations under the circumstances outlined below. These inspections are required to be Level 1 or Level 5 inspections as defined by the Commercial Vehicle Safety Alliance, North American Standard Inspection program. Inspections must be conducted by Federal or State personnel who are properly certified in accordance with 49 CFR Part 385 and the existing certification policy. Required inspections must be conducted prior to the close out of the review.

Inspections are required during investigations when one of the following criteria is met:

1. The carrier operates motor coaches;
2. The carrier is a non-motor coach operating passenger carrier with a Vehicle Maintenance BASIC percentile, at the time of the investigation, above the intervention threshold of 65; or,
3. The carrier is a property carrier with indicators from the EIT process that vehicle inspections should be conducted. For example, if during the course of the investigation, the Investigator identifies systemic vehicle maintenance failures that cannot be fully identified through other means, or if continuing to monitor the carrier is not adequate to ensure the safe operation of the carrier's vehicles, inspections should be coordinated with the Investigator's supervisor and the DA or his/her designee.

When one of the above criteria is met, the table below should be used for the number of inspections required as the minimum sample for vehicle inspections."

#### Minimum sample for Vehicle Inspections

Number of Vehicles Subject to FMCSR	Vehicles Inspections to Conduct
1-3	ALL
4-5	3
6-25	5
>25	8

\* Each power unit is considered a vehicle for determining the number to be sampled.

\* Interstate operations and intrastate operations in its state of domicile only.

There will be instances where a sufficient number of vehicles to meet minimum sample requirements are not readily available for inspection at the motor carrier's principle place of business (PPOB), or in close proximity to the location in which the investigation is being conducted. If this is the case during a motor coach or passenger carrier investigation, the Investigator, in consultation with the DA and/or designee, should coordinate with other FMCSA Division Offices, State Motor Carrier Safety Assistance Program lead agencies, and Provincial partners to arrange for inspections in alternate locations before the closeout of the investigation.

In all instances, for passenger carriers and other motor carriers, when completing sufficient inspections to meet the sampling requirements is not feasible, you must fully explain the reasons must in Part C of the investigation report.

#### Selecting Vehicles for Inspection

Vehicles identified for inspection should be selected in the following order, to the extent practicable:

1. Operated in interstate commerce and/or intrastate commerce in the motor carrier's state of PPOB within the previous 7 days;
2. Are ready for dispatch or are just returning to the company;
3. Were involved in a crash within the previous 24 months;
4. Were placed OOS as indicated on the carrier's profile; and,

5. Were cited for equipment violations during roadside inspections within the previous 12 months. If these vehicles are sampled, repairs must be verified.

### ***Actions to Take When the Minimum Number of Vehicle Inspections Cannot be Inspected***

There will be instances where you will not be able to conduct the minimum number of required vehicle inspections. If this happens, you must explain, in Part C of the investigation, why you did not meet your minimum sample. You must also explain, in Part C, if you exceed the required sampling beyond the number set forth in the chart above.

### ***Follow up [Q&A for Investigating the Vehicle Maintenance BASIC policy](#)***

#### ***Parts 393 & 396 - Vehicle Maintenance***

***Systematic Inspection / Repair and Maintenance Program.*** The purpose of reviewing Parts 393 and 396 is to establish the effectiveness of the vehicle maintenance practices of the motor carrier or its agent and to determine the general condition of the motor carrier's vehicles. In order to establish this element of compliance, the Investigator must go beyond the carrier's maintenance documentation and evaluate the effectiveness of the carrier's maintenance program.

Have the carrier define its maintenance and inspection program and verify the carrier is in fact following a prescribed plan that is reasonable and consistent with the manufacturer's recommendations. Does the carrier have a documented schedule containing specific information to determine what is being accomplished? Does the carrier document a record of inspection, repair, and maintenance when conducting the preventive maintenance inspection process? Keep in mind, different operation types, and operations using different types of equipment, may require the Investigator to address different components and additional aspects of the maintenance program. Examples include;

- Operations utilizing owner-operators. Many carriers struggle with vehicle maintenance issues when dealing with owner-operators. Although the vehicle maintenance records may reside with the owner-operator, records should be requested during an investigation. The carrier is responsible for ensuring the vehicles under their control meet all of the requirements of Parts 393 and 396 and are maintained in safe operating condition.
- Cargo securement, towed units and coupling devices. Drivers try to adjust axle loads to shift weight. They do so by applying rear brakes and applying forward and reverse pressure on coupling devices to pull a towed unit forward to adjust weight. This applies unusually harsh wear on coupling devices. Permitted loads can subject a vehicle to heavy wear and tear.

***Shop and Driver interviews.*** Begin the maintenance program investigation by interviewing key personnel. Determine the location where inspection, repair, and maintenance take place determine who completes the following; general service, brake work, periodic inspections and large repairs. If some of these maintenance functions are performed off-site, then outside vendors performing maintenance for the motor carrier may also be included in the interviews. Include mechanics and inspectors doing routine preventative maintenance, Periodic Inspections, brake inspections, etc. Also include maintenance personnel such as safety managers, maintenance directors and shop foremen. Questions for maintenance personnel should include:





**See CSA Probing questions for the Vehicle Maintenance Basic**

***Maintenance facility or shop tour.***

The purpose of visiting the carrier's maintenance facility is to determine if the shop personnel assigned to specific repair duties have the training and equipment to properly maintain and inspect the vehicles to ensure safe operation. If the carrier is using an outside source, you may have to conduct a visit to the facility. If the carrier is using a mobile maintenance service, take a closer look at the services offered, equipment utilized, and the capabilities, experience of the mechanics or service provider. Determine the relationship between the mobile service provider and the carrier. Determine if the maintenance facility or mobile service is properly equipped:

- Does the facility have ramps or pits? (Required for motorcoach operations)
- Does the facility have proper tools and equipment to maintain the vehicles?
- Does the facility maintain manufacturer's service manuals or have online access to manuals for representative vehicles?
- Observe the overall condition of the facility.
- Observe the condition of tires in the used tire corral; look for badly worn tires or signs of catastrophic failure.

If applicable, visit off-site facilities or arrange for another Investigator to complete a visit. Contact the mobile maintenance service to arrange for an interview and inspection of how the mobile unit is equipped.

***Passenger Carrier.***

In addition to the prescribed maintenance requirements and or processes discussed throughout the maintenance BASIC, passenger carrier inspection and repair facilities/mechanics require additional equipment and experience for bus and motorcoach operations. The facility performing maintenance on a motorcoach should have a specific manual for the year, make, and model of the coach.. Additional questions related to a passenger carrier maintenance plan are;

- How did you get involved with motorcoaches?
- Do you have any specialized training in motorcoach or commercial vehicle maintenance?
- Does your program account for the type of service you provide (e.g., regular route vs. charter operation)?
- Request a demonstration of the 90-day emergency exit/window inspection process.
- Request an explanation of the tire maintenance program.
- Request a description of their tire pressure monitoring program.
- Request the mechanic demonstrate a PSI reading in the shop.
- Does the carrier use tire pressure monitoring systems (TPMS)?
- Are there buses equipped with onboard TPMS?

- If systems are in place, are they capable of alerting dispatch (smart tire technology)?

***Steps to Determine if the Carrier has a Periodic Inspection Program***

Each CMV that operates in interstate commerce must have a periodic inspection that has been conducted every 12 months and retained in the maintenance file. Record retention for a periodic inspection is 14 months; if within that time frame, review the previous document to look for gaps in inspection dates. To verify the inspection, ensure the facilities used by the carrier to conduct the inspections are adequate. This includes in-house facilities and outside vendors, including mobile mechanic services. Verify periodic inspections and brake inspections are being conducted by qualified inspectors. Conduct thorough interviews with inspectors to determine training and qualifications; request and verify inspector experience. In conducting motorcoach periodic inspections, in order to access and inspect the undercarriage, the inspector should have adequate pits, ramps or lifts. **See Maintenance facility or shop tour.** If it is determined that the facility is not adequate or that the inspector is not qualified, these issues could result in the invalidation of the periodic inspections.

***Determine Inspector Qualifications-*** Interview individual(s) performing the inspection(s). The interview must include topics such as vehicle equipment requirements and violations in FMCSR Parts 393, 396, and Appendix G. Questions should include:

- How did you become an inspector?
- What previous experience do you have inspecting motorcoaches?
- What reference materials do you use when conducting an inspection?
- Are you familiar with Appendix G?
- Ask questions specific to Appendix G.
- Review maintenance records.
- What specialized training or certification do you have relating to inspecting motorcoaches?
- Have you provided your employer with documentation demonstrating your training as an inspector?

The following would serve as proof of a periodic inspection:

- A copy of the inspection and results conducted under [Appendix G](#) to Part 396.
- Evidence of an inspection conducted within the last 12 months through a state inspection program that has been deemed to satisfy the federal requirements.
- Evidence of a CVSA inspection conducted within the last 12 months that indicates that the vehicle passed a Level 1 inspection with no violations of the critical vehicle inspection items.

***Requesting a Current Vehicle List See Stage 2 - Pre Investigation*** Once the carrier has provided a current equipment list, verify that the list is accurate. The following are some methods which may be used to identify additional equipment:

- Check insurance paperwork
- Locate the supplemental vehicle summary contained in the insurance binder
- Verify current equipment list with the insurer
- Look for leased equipment
- Check accounts payable department
- Review lease agreements.

Reviewing the entire insurance policy can sometimes uncover vehicles that the carrier failed to report. The insurance policy should have an addendum that lists all the equipment on that policy. However, in some instances the carrier may not have reported all its equipment to its insurer.

***Carrier's Vehicle History to Cover in Order to Review Compliance with Part 396 during an Investigation***

You need to cover the 12-month period prior to the investigation or the period since the last investigation.

***Determining which Maintenance Files to Review***

You will need to select maintenance files for those vehicles that:

- Have been involved in an interstate recordable accident; Check insurance documentation and locate the supplemental vehicle summary contained in the insurance binder; Verify the current equipment list with the insurer;
- Have been placed OOS;
- Have been found to be in violation during roadside inspections; and,
- Any remaining files should be selected randomly.

***Number of Maintenance Files to Select***

You should follow the sampling requirements for the minimum number of maintenance files to review as set forth in the table below:

**Maintenance Files to Review**

CFR Parts - Part 393 & 396 - Maintenance Files			
Onsite		CBI	
# of Vehicles Subject to FMCSR	# of Maintenance Files to Review	# of Vehicles involved in Recordable Crashes	Sample Size: # of Maintenance Files to Review
1-5	All	1-5	All
6-25	5	6-25	5
26-50	8	26-50	8
51-90	13	51-90	13
91-150	20	91-150	20
151-280	32	151-280	32
281-400	50	281-400	50
401-500	68	401-500	68
501-1,200	80	501-1,200	80
1,201-3,200	125	1,201 and Above	125
3,201-10,000	200	<b>Sample Selection:</b> Select from vehicles involved in crashes.  <i>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.</i>	
10,001-35,000	315		
35,001-150,000	500		

***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;

- Are the vehicles properly identified: company number, year, make, serial number and tire size?
- Does the carrier maintain adequate documentation to demonstrate repairs?
- Were OOS defects identified during roadside inspections in the last 12 mos. repaired prior to use?
- Were non-OOS defects identified during roadside inspections repaired prior to re-dispatch?
- Were OOS defects identified on DVIRs repaired prior to use?
- Were non-OOS defects identified on DVIRs repaired prior to use?
- Does the carrier maintain adequate documentation of inspection?
- Does the inspection documentation reflect the carrier's maintenance plan as discussed with shop and safety officials?
- Is the carrier conducting tests on push-out windows, emergency doors, and marking lights?
- Does the carrier maintain adequate records for vehicle defects identified during traffic enforcement?

### ***Parts 393 & 396 - DVIR***

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 is not applicable to the operators of passenger-carrying CMVs***

***See FR Vol.79, No. 243 / Thursday, December 18, 2014 / 75449***



***DVIRs for Passenger Carrying CMVs.*** - The driver of a passenger-carrying CMV must prepare and submit a DVIR even 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" and the driver's DVIR will reflect "no defects" for that same vehicle and date. 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. Please note that passenger carrier operations must have a DVIR each time the passenger vehicle is operated. Property carrying CMVs only are required to fill out a DVIR when defects are noted or were made known to the driver.

### ***Minimum Number of DVIR to be Reviewed for a Property Carrier (Carriers subject 49 CFR 396.11)***

The minimum number of DVIR's to be checked should cover each day the vehicle was operated and a defect was noted. You should select the number of DVIRs containing a defect to be reviewed by following steps outlined below and from the following table (and for additional background information and guidance click here for the policy document):

1. Determine the number of vehicles to select (see table below)
2. Inspect the motor carrier profile/roadside inspections/maintenance files from the date of investigation through the previous 90 days. Note: One month of DVIRs should be reviewed for each vehicle selected, regardless of the number of RODS that have been reviewed for compliance with Part 395 within the previous six months.
3. For each vehicle selected note all days where:
  - a. Level 1,2, or 5 inspections noted vehicle defects and/or
  - b. Vehicles involved in crashes.
4. Request DVIRs from carrier for all days where vehicle defects should have been noted and/or day(s) where vehicles were involved in crashes.
5. Ensure the carrier has DVIRs for each vehicle for the specifically requested days:
  - a. # checked is number of DVIRs that should have been maintained that had vehicle defects
  - b. # discovered is number of DVIRs not prepared and maintained that should have noted the defects.

<b>CFR Parts - Part 393 &amp; 396 – DVIRs</b>					
<b>Criteria/Time frames:</b> 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.					
<b>Onsite</b>			<b>CBI</b>		
<b># of Vehicles Subject to FMCSR</b>	<b># of Vehicles to Select</b>	<b>DVIRs to Request</b>	<b># of Vehicles Involved in Crashes</b>	<b># of Vehicles to Select</b>	<b>DVIRs to Request</b>
2-5	All	Carrier is required to provide all DVIRs with defects noted on the <b>X</b> vehicles selected during a 30-day period occurring in the previous 3 months  <b>X = # of Vehicle to Select</b>	2-5	All	Carrier is required to provide all DVIRs with defects noted on the <b>X</b> vehicles selected during a 30-day period occurring in the previous 3 months  <b>X = # of Vehicle to Select</b>
6-15	5		6-15	5	
16-50	7		16-50	7	
51-150	11		51-150	11	
150-500	17		150-500	17	
501-Over	27		501-Over	27	

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 property-carrying motor carrier has 25 vehicles subject to the Federal Motor Carrier Safety Regulations.

- Per the eFOTM table the sample size would be 7 vehicles.
- The carrier is required to produce all DVIRs with defects on the 7 vehicles during a 30-day period occurring in the past 3 months.
- After reviewing maintenance records, roadside inspections, or other information for those vehicle(s) for all of the interstate trips in that 30-day period, the Investigator should compare the number of days that there was a defect against the number of days a DVIR was prepared and retained. If there should have been 2 DVIRs and there are none provided, the violation would be cited as 2 of 2 checked for a violation of 49 CFR 396.11(a).
- If there were 2 DVIRs prepared, and it was discovered after reviewing maintenance records and conducting interviews that there was a third day that a DVIR was required, then the violation would be 1 violation of 3 checked for a violation of 49 CFR 396.11(a).

Recognizing that some carriers may still prepare and retain DVIRs for each trip as a matter of company policy, while these may not be required, they may be a source of important information for investigators.

### **Additional Guidance for Property Carriers**

#### ***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).

#### ***Time to Consider Enforcement Action Against a Driver for Failing to Complete a DVIR***

Enforcement action should be considered on each driver who fails to prepare in writing a DVIR at the completion of each day's work, on each vehicle in commerce where a defect or deficiency should have been reported and was not, provided 10 percent or more violations occur for at least a 30-day period checked.

#### ***Requiring DVIRs for a Motor Carrier that Operates Two Registered Commercial Motor Vehicles, Yet Only Has One Driver***

The exception in 396.11(d) only applies to motor carriers that operate one registered CMV, regardless of the number of drivers employed.

#### ***Steps to Take When You Are Unable to Determine the Vehicle for a Particular Shipment***

Occasionally, you may be unable, by any means, to determine the vehicle that moved a particular shipment. When the motor carrier failed to maintain daily vehicle inspection reports (396.11(c)(2)), and you cannot identify the vehicle on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by identifying all vehicles used by the carrier on the date of the shipment.

#### ***Minimum Number of DVIR to be Reviewed for a Passenger Carrier***

The minimum number of DVIRs to be checked should cover each day the vehicle was operated. Days off cannot be counted as days of operation and should not be included in your count. You should select the number of DVIRs to be reviewed from the following table:

#### **Minimum Number of DVIR**

<b>CFR Parts - Part 393 &amp; 396 - DVIRs</b>
<b>Criteria/Time frames:</b> 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.					
Onsite			CBI		
# of Vehicles Subject to the FMCSR	# Vehicle to Select	# of DVIRs to Review	# of Vehicles Involved in Crashes	# of Vehicles to Select	# of DVIRs to Review
2-5	All	# of Vehicles x 30	2-5	All	15 x # Vehicles
6-15	5	5 x 30 =150	6-15	5	15 x 15 = 75
16-50	7	7 x 30 =210	16-50	7	7 x 15 = 105
51-150	11	11 x 30 =330	51-150	11	11 x 15 = 165
150-500	17	17 x 30 =510	150-500	17	17 x 15 = 255
500-Over	27	27 x 30 =810	501-Over	27	27 x 15 = 405

### **Additional Guidance for Passenger Carriers**

#### ***Steps to Take if the Minimum Number of DVIR Files Cannot be Reviewed***

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain, in Part C of the investigation, why you did not meet your minimum sample. You must also explain, in Part C, if you exceed the required sampling beyond the number set forth in the chart above.

#### ***You Cannot Count a DVIR Checked for Every Day a ROD is Checked***

The number of RODS checked for the DVIR is the number of RODS checked against those days where the vehicle was operated in interstate commerce. RODS that show 24 consecutive hours off duty and are verified to be accurate, are not counted as a RODS checked for DVIR. The proper cite for ten DVIRs that were not conducted, out of sixty-eight checked RODS, would be ten found and sixty-eight checked.

#### ***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***

Every motor carrier must require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work, on each vehicle operated in accordance with 396.11(a).

#### ***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, provided 10 percent or more violations occur for at least a 30-day period checked.

#### ***Requiring DVIRs for a Motor Carrier that Operates Two Registered Commercial Motor Vehicles, Yet Only Has One Driver***

The exception in 396.11(d) only applies to motor carriers that operate one registered CMV, regardless of the number of drivers employed.

#### ***Steps to Take When You Are Unable to Determine the Vehicle for a Particular Shipment***

Occasionally, you may be unable, by any means, to determine the vehicle that moved a particular shipment. When the motor carrier failed to maintain daily vehicle inspection reports (396.11(c)(2)) and you cannot identify the vehicle on a specific movement through the use of motor carrier, shipper or State records, you

can still document the violation for enforcement by identifying all vehicles used by the carrier on the date of the shipment.

#### 1.3.14.8.7.2 Part 393 & 396 – CAPRI Procedure

Once you have completed your investigation of compliance with Part 396, you should use the following guidelines to assist in the completion of Part B - Violations Tab of CAPRI.

#### **Recording Violations of Part 396 Critical/Acute Regulations**

##### **Part 396 Acute and Critical Violations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
<b>396.3(b)</b>	<b>Critical</b>	Failing to keep minimum records of inspection and vehicle maintenance.  <b>Number Checked: Number of vehicle maintenance files reviewed.</b>
<b>396.9(c)(2)</b>	<b>Acute</b>	Requiring or permitting the operation of a motor vehicle declared “out-of-service” before repairs are made.  <b>Note:</b> Prior to citing for a violation of 396.9(c)(2), you should confirm that no local, state or federal agency has taken action against the carrier for this violation.  <b>Number checked: Number of days the vehicle operated after being declared OOS, without making repairs.</b>
<b>396.11(a)</b>	<b>Critical</b>	Failing to require driver to prepare driver vehicle inspection report.  <b>Number checked: Number of vehicle inspection reports that were required to be made.</b> <b>Number discovered: Number of vehicle inspection reports that were not made.</b> <b>**This is not the same as vehicle inspection reports that were not maintained.</b>
<b>396.11(c)</b>	<b>Acute</b>	Failing to correct defects or deficiencies that affect the safe operation of the vehicle listed by the driver in a driver vehicle inspection report before the vehicle is operated again.  <b>Note:</b> Prior to citing for a violation of 396.11(c), you must confirm that the report was submitted to the carrier and that the carrier failed to correct the defect.  <b>Number checked: Number of days the vehicle operated after defect was noted on daily vehicle inspection report.</b> <b>Number discovered: One per vehicle day that the vehicle was operated without making repairs.</b>
<b>396.17(a)</b>	<b>Critical</b>	Using a commercial motor vehicle not periodically inspected.  <b>Number checked: Number of vehicle maintenance files reviewed.</b> <b>Number discovered: Number of vehicles that were not periodically</b>

		<b>inspected.</b>
<b>396.17(g)</b>	<b>Acute</b>	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.  <b>Number checked: Number of vehicles that had parts and accessories that did not meet minimum periodic inspection standards not the total number of vehicles.</b>

***Guidelines for Recording Cargo-Related Violations within the Vehicle Maintenance BASIC in CAPRI***

The cargo-related violations within the Vehicle Maintenance BASIC generally do not lend themselves to the discovery of new violations during an investigation since these are violations usually observed roadside. In some cases, you may discover new violations; but in most cases, you will examine available data and review the roadside violations that led to the deficiency. In those cases in which the carrier meets or exceeds the SMS threshold and you do not identify new violations based on the sample, violations should be cited, as outlined in the table below, and recorded as “1” discovered and “1” checked, so as not to adversely affect the outcome of the motor carrier’s safety fitness rating. The table below provides an example of regulations that might be 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.

<p><b>Vehicle Maintenance BASIC</b></p> <p>For each violation, determine whether it indicates:</p> <ul style="list-style-type: none"> <li>• Improper application of cargo securement rules;</li> <li>• Defective or improperly maintained cargo securement devices;</li> <li>• Or both of the above.</li> </ul> <p>Once this is established, follow the guidance below to determine the appropriate citation:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• If the issue is defective or improperly maintained cargo securement devices, then cite 396.3(a)(1) Inspection, Repair and Maintenance.</li> <li>• 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.</li> <li>• Note: CAPRI 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.</li> </ul>
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**\*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 CAPRI Part B Violation 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:** CAPRI provides a BASIC-specific 392.2 violation option for each BASIC. You must select the appropriate 392.2 option in alignment with the BASIC; for example, you must select the “392.2 Operating a vehicle in violation of local/State laws - Unsafe Driving” when recording violations associated with the Unsafe Driving BASIC. If there are 392.2 violations related to multiple BASICs, you must record only one instance of 392.2 for the BASIC in which the most

significant process breakdown was identified. You should then address the other 392.2 “1 of 1” eligible violations when documenting the process breakdown and associated recommendations. An example of selecting the most significant process breakdown is provided below.

- **Example:** A motor carrier is above the threshold in Unsafe Driving and Vehicle Maintenance BASICs. When reviewing the profile, you find that Unsafe Driving has far more violations, including speeding, lane changes and reckless driving. Additionally, six out of seven drivers at the company have Unsafe Driving violations. Upon further investigation, you determine that the carrier is not performing background or DMV checks of the drivers being hired. The vehicle maintenance - cargo securement violations are shipper-related and include four violations, due to sealed loads that the driver could not open and check. In this case, the most significant process breakdowns would be those related to Unsafe Driving. You should record 392.2 operating a vehicle in violation of local/State laws- Unsafe Driving – “1 of 1” – in Part B of CAPRI. However, both process breakdowns could be addressed in the recommendations.

#### *1.3.14.8.7.3 Part 393 & 396 – Process Breakdowns/Remedies-SMC*

Once you have discovered the violations relating to Part 393 and 396, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier’s processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to [General Guidelines for Using the Safety Management Cycle \(SMC\) to Help Diagnose a Breakdown in Safety during an Investigation](#). For CAPRI procedures, see [Part B - Recommendation/Requirements](#) on how to select and customize the SMP Breakdowns and Remedies.

#### *1.3.14.8.7.4 Part 393 & 396 – Enforcement Procedures*

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 396 violations, you should use the following guidelines when submitting an enforcement report for Part 396 violations.

#### ***Part 393 & 396 - Guidelines for Enforcement of Red Flag Violations***

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

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

#### ***Driver vs. Carrier Enforcement***

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

#### ***Part 396 - Red Flag Violations***

- The Red Flag Violation 396.9(c)(2) is cited when the driver has been found operating while the vehicle was placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either or both the driver and the carrier. Once the Red Flag Violation is verified, if there was no original enforcement on the violation at the roadside, you will normally issue an NOC.

### ***Parts 393 & 396 - Documentation***

#### ***Documenting an Enforcement Case for Part 396***

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

#### ***Specific Documents that Should be Used to Document these Violations***

Specific documentation may be needed to support some of the above referenced 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 (driver has 10 percent or greater violations for at least 30 days checked).

(\*) denotes Red Flag Violation

### 1.3.15 SI Selects Preliminary Follow-on Intervention

Completing an Investigation requires the preliminary selection of a Follow-on Intervention or deliberately choosing to have “no Follow-On.” Making this decision is more than just evaluating the identified violations. The SI must use past intervention and enforcement experiences, experience with the carrier under Investigation, what the results of the Investigation and evidence require, and the SI’s best judgment. The end goal is to improve the carrier’s and staff’s safety behavior. The SI should consider all factors to select the intervention that has the highest probability of changing the carrier’s culture and behavior. In addition to “no follow-on,” there are three possible Follow-on Interventions: NOC, NOV, and **100% States CSP**. The general procedure for determining the appropriate Intervention or Interventions is presented in the accompanying workflow and summarized below.

The Process Workflow diagram for Section 1.3.15 SI Selects Preliminary Follow-on Intervention, shown in [Appendix P: Intervention Workflows](#), presents a visual overview of this process.

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; and,
  - **100% States Determine if the discovered violation(s) can be addressed in a CSP.**

#### 1.3.15.1 Notice of Claim (NOC)

An NOC is the official charging document used by the FMCSA to initiate a civil action for violation of Federal Laws and Regulations under the jurisdiction of this agency (the FMCSR, the FHMR, and violations of the United States Code). The NOC states the amount of penalty, provides a summary of the violations and a statement of charges, presents a notice to abate the violations, and includes information pertaining to hearings, negotiation, and failure on the part of the subject to reply to the notice.

An NOC is intended to correct carrier regulatory non-compliance, to deter future violations, and/or to issue civil penalties for non-compliance. Safety improvements are expected by non-compliant carriers as they respond to an NOC’s financial penalties and certification of adverse action, and other attributes of the formal civil penalty proceedings.

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

- Sufficiently persistent violations are discovered during any type of Investigation and warrant formal civil penalty action.
- The carrier has neither corrected the violations nor met the other terms of a prior NOV.
- 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.
- There is sufficient evidence that the carrier was operating while under an Operations OOS Order. Proper evidence to prove the violation of an Operations OOS Order should be followed in accordance with the 01.05.2015 Enforcing Out-of-Service Orders and Operating Authority Violations policy.
- Violations of one or more of the Acute or Fundamental regulations are present, unless the SI can provide an adequate explanation in the Final Investigation Report for not taking enforcement action.
- A greater than or equal to 10% violation rate on one or more of the Critical or ESM regulations are present, unless the SI can provide an adequate explanation in the Investigation Report for not taking enforcement action.

***What else do I need to know?***

- The SI should refer to the current e-FOTM for process steps on NOC development and issuance.
- [100% States] A CSP should NOT be issued in conjunction with a carrier NOC.
- However, a driver NOC may be issued in conjunction with a carrier CSP.

***1.3.15.2 Notice of Violation (NOV)***

The NOV serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the satisfaction of the Agency, formal enforcement action may be taken in accordance with paragraph (c) of Part 386.11. An NOV is not a prerequisite to the issuance of an NOC.

An NOV details the required corrections for achieving compliance. The NOV should specify an alleged violation found in an inspection, a negative event, a non-frivolous complaint, or an Investigation, and establishes that continued non-compliance with NOV-identified violations may result in an NOC if the SI determines that this is warranted.

In cases where an NOV (Direct NOV) is issued to a carrier without an Investigation, (See [Section 1.1.4 of Stage 1](#)), then existing data (from roadside or previous investigations) should be used to assist in establishing FMCSA's burden of proof to generate the NOV. The specified corrective action should require proof that the carrier is currently in compliance. For example, if the carrier has a history of medical card violations it should be required to provide proof that drivers currently have medical cards. The NOV should state that driving/operating while in violation is not permissible.

An NOV should include the specific terms for carrier compliance. Failure to meet the terms of abatement in the NOV warrants escalation of these violations to an NOC.

**When is it used?** An NOV may be appropriate if:

- The criteria for an NOC are not met yet the violation is sufficiently severe to warrant action beyond a [100% States] CSP.
- 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 Serious Violations from previous investigations.
- The Insurance/Other indicator is the only reason the carrier received an investigation and there is no evidence of correction.

**When is it not used?** An NOV is NOT usually appropriate if:

- An NOC is warranted.
- The carrier has a history of not sustaining the correction of violations.
- The carrier has previously been cited for the same violations in the previous six years.
- The carrier was the subject of prior enforcement action for the same violation in the previous six years.
- The violation(s) involve falsifications.
- The carrier has a proposed or final Unsatisfactory Safety Rating.
- The carrier is rated less than satisfactory in Factor 6 (accident).

**What else do I need to know?**

- The SI should refer to the current e-FOTM for process steps on NOV development and issuance.
- [100% States] A CSP may be issued in conjunction with an NOV and the carrier may submit a CSP in response to an NOV.
- In certain situations, NOV's may be issued without a formal Investigation, provided sufficient evidence can be obtained.

***1.3.15.3 Cooperative Safety Plan (CSP)***

[100% States] The CSP is an opportunity for the carrier to respond to Investigation findings by voluntarily preparing a structured action plan to improve its safety performance and return to compliance. CSP should

be offered to select carriers based on SI and Manager discretion; consideration should be given to the carrier's willingness to participate and cooperate in the CSP process. The CSP is a voluntary carrier choice and is a combined effort between the carrier and the Investigator to establish a structured plan for safety improvements built upon understanding the breakdowns in the carrier's Safety Management Processes and recommended remedies.

**When is it used?** A CSP may be selected if:

- Likely Process Breakdowns underlying the safety problem and related remedies are identified.
- The Investigation has not found a reason to propose a Safety Fitness Rating of Unsatisfactory.

**What else do I need to know?**

- A CSP should NOT be selected if a carrier NOC is issued.
- However, a carrier CSP may be issued in conjunction with a driver NOC.

## 1.4 Stage 4-Investigation Feedback and Closeout

### 1.4.1 Introduction

During this Stage, the SI provides the carrier with feedback resulting from the Investigation. At the closeout, the SI conveys the results of the Investigation, reviews the carrier's Process Breakdowns, and discusses potential remedies with the carrier in order to effect a change to improve safety. The closeout is an opportunity to review specific violations in the context of the SMC in addition to reviewing the whole concept of the SMC and how it can help a carrier to understand interdependencies and how this understanding can help improve overall safety. It is important that the closeout be a two-way street and that you engage the carrier in discussing what he/she thinks the issues and potential solutions are in order to ensure carrier buy-in and commitment to lasting change.

### 1.4.2 Overview of the Closeout

The following is a guide to items that should be covered during the closeout with the carrier:

- Ensure that the carrier received all closeout documents. The closeout package should include:
  - The appropriate SMC(s) corresponding to the carrier's BASICS under investigation that are roadside related (or associated with a complaint) or violations subject to the SMC process
  - [100% States] Crash reports, and the pertinent crash countermeasures
  - A CSP template if this has been determined to be the appropriate follow-on.
- Review the findings and recommendations in the closeout with the carrier:
  - Acknowledge what the carrier is doing well and what SMPs they have in place. This should be part of the feedback process and helps to ensure that the carrier is primed to receive the recommendations for improvement.
  - Discuss the concept of the SMC and describe the violations discovered and corresponding process breakdowns found.
  - Walk the carrier through the SMC and use this as an opportunity to educate the carrier. This holistic view to safety will help to ensure that the carrier understands their process breakdowns in the context of the larger safety picture.
  - Detail the carrier's specific process breakdowns and the reason why the SMP is failing.
  - Discuss potential remedies. You should confirm that the carrier understands the potential remedies to the process breakdowns identified.
  - SIPs customized to the carrier: Discuss with the carrier how to go about implementing these practices and the carrier should be engaged in thinking through the implementation effort in order to help the carrier view compliance as possible. The Mandatory Recommendations should be discussed with the carrier.

Upon completion of the closeout with the carrier, the SI finalizes the Investigation Report to include a narrative summary of findings and recommendations. Following authorization by the Manager, this report is uploaded to MCMIS.

The Stage 4: Investigation Feedback and Closeout workflow presents a visual representation of the process.

### 1.4.3 Notification and Delivery of Investigation Report

Once the draft Investigation Report is prepared and ready for review with the carrier, the SI should contact the carrier official (the highest ranking motor carrier/shipper official in the session) and notify him or her that the report is ready. The delivery method should be pre-determined based on the initial contacts and the start of the investigation: whether the Investigation was Onsite or Offsite, and also based on prior agreement with the carrier. The Carrier Investigation Report can be provided by fax, email, or mail for Offsite Investigations. The SI should record the method used to deliver the report. The motor carrier/shipper official or designated representative's signature is not required.

When a closeout session takes place with only the designated representative of the motor carrier/shipper, provide a copy of the Investigative Report to the designated representative and mail another copy to the highest ranking motor carrier/shipper official.

The SI should retain notes on any differences in names, titles, carrier/shipper name, date, and telephone number, if different from the information in MCMIS, as well as the names and mailing addresses, where appropriate, of the individuals to whom the Investigative Report was provided. This information is included in [Part C](#), which is not provided to the motor carrier/shipper.

When performing an Offsite Investigation, some carriers may request the closeout be done onsite, especially when the carrier has had little or no previous contact with FMCSA or our State partner agencies. This is an acceptable practice but should only be done after consultation with a Manager. Even if the Investigation has been conducted offsite and the closeout is done onsite, the intervention is still considered offsite. The SI should record the reason for the onsite closeout.

If the motor carrier/shipper official, or designated representative, refuses to accept a copy of the Investigation Report, the SI must send a printed copy to the highest ranking motor carrier/shipper official using a mailing method that allows tracking and delivery confirmation. Note in [Part C](#) the refusal to accept

the copy, when the SI mailed the copy, to whom the copy was mailed, and a tracking number for ensuring delivery and receipt.

If the carrier questions the Safety Fitness Rating, either issued from an Onsite Investigation or unchanged because it was an Offsite Investigation, then the SI should inform the carrier that they may initiate a change in their Safety Fitness Rating by requesting an administrative review (385.15) or by requesting a change based on corrective action (385.17).

#### 1.4.4 SI Discusses Potential Follow-on Interventions with Carrier

During the closeout, the SI should discuss with the carrier the potential Follow-on Interventions and, if appropriate, discuss the opportunity to enter into a CSP. If the carrier agrees to prepare a CSP, the SI should make arrangements to send the [CSP Template](#) to the carrier and discuss the steps for completion.

If the intervention selected is the [NOC](#) or [NOV](#), the SI should ensure all records and evidence are appropriate and accurate. The SI should discuss these Interventions with the highest-ranking carrier official (sole proprietor, partner, or corporate officer) and explain the selection and consequences to the official.

### Completion of Part A of the Investigation after Interviewing the Motor Carrier

#### [Recording the Reason for Initiation of the Investigation](#)

#### [Additional Steps Needed for Recording Onsite Focused Investigations](#)

#### [At the Completion of an Investigation, Do the Following, if Enforcement Action is Not Taken on Acute Violations](#)

### Completion of Part B at the Conclusion of the Investigation - Recommendations/Requirements

#### [Part B - Recommendations/Requirements](#)

#### 1.4.5 Completion of Part C After Closing Out the Investigation

Part C of the investigation report - the part of the investigation report that is not provided to the motor carrier/shipper - should provide as much information as possible about motor carrier issues not noted during the review that are important to the investigation. [CAPRI Part C Remarks Template 1.4.6](#), on how to complete [Part C](#) of the investigation report. [In addition the SI, Auditor, or State MCSAP Investigator must record his/her name and title.](#)

In [Part C](#) of the report, you should select all parts of the regulations that were reviewed during the investigation: This includes parts and/or sections that were only partially reviewed in accordance with the Parts by BASIC tables. You should note (in the [Part C](#) Remarks) which parts were partially reviewed and which specific subparts were reviewed.

##### 1.4.5.1 Recording the Reason for Initiation of the Investigation

FMCSA needs accurate data about the initiation of investigations to make informed policy decisions. SIs should designate the correct reason for initiation of the investigation in [Part C](#). If there are multiple reasons for initiation of an investigation, record them in [Part C](#). See [CAPRI Part C Remarks Template 1.4.6](#).

- **Priority List** - If the investigation was initiated because of the motor carrier's BASICs score on the HM/Passenger list.
- **Complaint** - If the investigation was initiated because of a complaint identified on the division office complaint register.
- **Enforcement Follow-up** - If the investigation was conducted as a follow-up to an enforcement action.
- **Other** - If the investigation was conducted in response to an accident, a special project, or for other reasons.

##### 1.4.5.2 Additional Steps Needed for Recording Onsite Focused Investigations

Record an Onsite Focused Investigation using the steps outlined below:

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

- Select “CSA” as the Non-Ratable Review subtype.
- When completing the Onsite Focused Investigation, you must select “Focused CR” in [Part C](#) as the “Reason for Review.” This must be done, even if the triggering event for the investigation was a complaint, etc. This will ensure that the review can be successfully uploaded into MCMIS, and that the investigation findings (e.g., Serious Violations) are properly processed and incorporated into both the SMS and prioritization.

Prior to closing out the review, you should click on the “Display Rating” button in the print window of Part B, review the Proposed Rating, and **convert the review type to a “Compliance Review,” if the following conditions are met:**

- Passenger Carriers Operating without Authority - If the Proposed Rating is “Unsatisfactory”, the SI should convert the review type to “Compliance Review.” **Note: this only applies to Passenger Carriers who have never had operating authority.**
- All Other Carriers - If the Proposed Safety Rating is "Unsatisfactory" or "Conditional", the SI should convert the review type to “Compliance Review.”

If these conditions are not met, you must complete the review as a Non-Ratable review.

The tables below summarize how to record Onsite Focused Investigations in CAPRI.

#### **Recording an Onsite Focused Investigation in CAPRI for Passenger Carriers Operating Prior to Receiving Operating Authority**

<b>Investigation Type</b>	<b>Proposed Safety Rating</b>	<b>Review Type</b>
Onsite Focused	Unsatisfactory	Convert to Ratable Review - Set review type to "Compliance Review."
	Conditional, Satisfactory	Complete as Non-Ratable Review

#### **Recording an Onsite Focused Investigation in CAPRI for All Other Carriers**

<b>Investigation Type</b>	<b>Proposed Safety Rating</b>	<b>Review Type</b>
Onsite Focused	Unsatisfactory, Conditional	Convert to Ratable Review - Set review type to "Compliance Review."
	Satisfactory	Complete as Non-Ratable Review

#### ***1.4.5.3 At the Completion of an Investigation, Do the Following, if Enforcement Action is Not Taken on Acute Violations***

The reason should be explained in Part C of the investigation. See [CAPRI Part C Remarks Template](#). Enforcement action not taken on acute violations must be explained in part C.

#### **1.4.6 CAPRI Part C Remarks Template 1.4.6**

The Part C Remarks Template has been integrated into CAPRI. Those items labeled “**REQUIRED**” in the CAPRI template must be completed. Those noted as “**SUGGESTED**” are suggested items for Part C.

#### **PART C Template:**

**PURPOSE:** The purpose of this template is two-fold - it documents the investigation and aids in penalty assessment if applicable. This template is intended to increase the uniformity of the investigative process. Each section should be completed as applicable. The content and context of each section should be completed with details from the investigation.

**HOW TO USE:** Provide details of the investigation that are not obvious or evident from reading Parts A and B of the report. All remarks should be based in fact or actual statements made by carrier staff. All information contained in this report must be accurate and legally defensible.

Items noted as [REQUIRED] are required to be in Part C. Those noted as [SUGGESTED] are suggested items for Part C.

**REMARKS:**

**INVESTIGATIVE REPORT RECEIVED BY:**

[REQUIRED] Name:

[REQUIRED] Title:

[REQUIRED] Carrier/Shipper Name :

[REQUIRED] Date:

[REQUIRED] Telephone Number (if different from Part A):

**IF CARRIER REFUSES** to accept investigative report **OR** closeout was with less than highest ranking official provide mailing details below:

[REQUIRED] Name to whom it was sent:

[REQUIRED] Mailing method (e.g., FedEx UPS, etc.):

[REQUIRED] Date Sent:

[REQUIRED] Tracking /Confirmation Number:

[REQUIRED] Telephone Number (if different from Part A):

[REQUIRED] List of drivers (indicate part/full time) or where this information is stored. (Note: Use discretion, lengthy driver lists or vehicle lists would be unmanageable to include in Part C)

[REQUIRED] List of vehicles in use or where this information is stored.

[REQUIRED] Significant findings regarding accuracy of registration data (MCS-150 data).

[REQUIRED] Note recurring violations, both serious and non-serious, discovered during prior investigations.

[REQUIRED] Note techniques used in discovering violations for use in subsequent investigations.

[REQUIRED] Note aspects of the carrier's maintenance program.

[REQUIRED] Note any coordination/discussion with Division office or Service Center (IH, reincarnation, etc).

**REASON FOR INVESTIGATION:**

[REQUIRED] Note if there is more than one reason for initiating this review (e.g., High-Risk List, Complaint, etc.), identify all reasons

**SCOPE OF INVESTIGATION:**

[REQUIRED] If an Onsite Focused Investigation 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] Explain interstate versus intrastate operations.

[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 motor carrier refuses to provide, explain how the amount was determined

List of 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] (Required if motor carrier were involved in emergency relief) Note whether motor carrier

was involved in emergency relief efforts or operating under an exemption or waiver.

[REQUIRED] Provide names and U.S.DOT numbers of affiliated motor carriers when applicable.

[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, that is how do they make money, what is acceptable profit, how do they make up for losses, etc.

[SUGGESTED] Describe the company location and the principal place of business, 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 safety operation and identify the personnel responsible for safety management.

#### **PRE-INVESTIGATION:**

[REQUIRED] Provide a listing of the specific supporting documents that were requested and when. Include whether or not the motor carrier was given 48 hours to produce records not located at the principal place of business.

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

[SUGGESTED] Document issues that posed barriers to the pre-investigation process, such as locating or reaching the motor carrier, availability and accuracy of information, etc. If extremely difficult to locate motor carrier, explain how the 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.

#### **CDLIS (DRIVER LICENSE) CHECK:**

[REQUIRED] If applicable explain why a CDLIS licensing check was not conducted or that other methods were used to verify licenses.

#### **AUTHORITY: (If applicable)**

[REQUIRED] Does the motor carrier have the appropriate type of authority? Yes or No and explain and note any lapses.

[REQUIRED] If applicable, provide the following:

PHMSA Registration Number:

PHMSA Registration Expiration Date:

FMCSA HMSP Number:

FMCSA HMSP Expiration Date

#### **INSURANCE:**

[REQUIRED] Does the motor carrier have the appropriate level of insurance? Yes or No and explain, noting any lapses and whether the appropriate proof of insurance was on file at the PPOB.

[SUGGESTED] The amount noted on the 90 or 90B

#### **DRIVERS WITH RED FLAG VIOLATIONS:**

[REQUIRED] How many Drivers with Red Flag Violations were identified as needing an investigation?

[REQUIRED] What was the outcome of the Drivers with Red Flag Violations Investigations?

Carrier NOV/NOC: Yes or No

Driver NOV/NOC: Yes or No

No further action required

#### **CONTROLLED SUBSTANCES AND ALCOHOL SUPPLEMENTAL REVIEW:**

[REQUIRED] Was a CONTROLLED SUBSTANCES AND ALCOHOL SUPPLEMENTAL REVIEW performed? Yes or No [REQUIRED] If Yes - did this result in a full investigation of the CONTROLLED SUBSTANCES AND ALCOHOL BASIC? Yes or No [Suggested] Number of CDL required drivers hired in the past 365 days.

**HAZARDOUS MATERIALS SUPPLEMENTAL REVIEW:**

Was an HM Supplemental Review performed? Yes or No

**INVESTIGATION:**

[REQUIRED] Describe what specific supporting documents were produced, when and by whom. Include the name and title of the person providing documents.

[REQUIRED] List documents that were not provided as requested and actions taken to obtain them.

[REQUIRED] Describe where the supporting documents are located and how are they are 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 FOTM

[REQUIRED] When the CRASH calculation is required, number of crashes missing from profile, description of all recordable crashes, and method of discovery of missing crashes.

[REQUIRED] Explain how mileage was determined. Note if mileage was extrapolated because company has been in business less than 12 months.

[REQUIRED] As applicable for HOURS OF SERVICE related investigations if supporting documentation was available and/or presented that did not contain valid or vital information that could be used to check the accuracy of the RODS. Explain how and why.

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, explain why vehicles were not inspected IF three or more inspections were not on profile

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, explain sampling used for Part A vehicle OOS rates.

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, explain findings and disposition of any vehicle inspections performed during investigation.

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, note aspects of the carrier's maintenance program and facilities.

[SUGGESTED] During an investigation of the CONTROLLED SUBSTANCES AND ALCOHOL BASIC document any problems discovered with the consortium.

[SUGGESTED] Note statements made by officials relative to correcting the violations discovered during the investigation.

[SUGGESTED] Note any other information that explains and/or complements the cited violations in Part B and would increase the accuracy of the evaluation process and would aid the follow-up Investigator.

**FOLLOW-ON 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.

[SUGGESTED] Provide information about the selection of the Follow-on action

[SUGGESTED] Document areas of weakness that may be future problem areas for the motor carrier.

**DOCUMENTS PROVIDED TO CARRIER:** [REQUIRED] List materials provided to the motor carrier and any materials the motor carrier had on hand.

**1.4.7 SI Completes Final Investigation Report and Uploads for Manager Review**

The Final Investigation Report consists of completing all of Parts A, B, and C required elements and suggestions, along with recommendations for follow-on intervention, if any. Additionally, the investigative process requires that the SI complete a narrative summary of findings and recommendations in CAPRI. The narrative should present details of the Investigation that are not obvious or evident from the other parts of the Investigation Report and should expand on the full description of the carrier's Process Breakdowns and Remedies. These details are not included in the report given to the carrier. The SI should thoroughly review the completed Final Investigation Report for accuracy and completeness.

At this point, the SI should make sure that all investigative notes and contact history with the carrier are up-to-date. Once all documentation has been finalized, the SI should upload the Final Investigation Report for review and authorization by the Manager.

### 1.4.8 Manager Reviews Final Investigation Report

The Manager reviews the Final Investigation Report to ensure that it meets Agency quality standards, including:

- Was the intervention performed as assigned?
  - If not, was the reason for the switch documented?
  - Did the SI get the Manager's approval?
  - Was the switch justified?
- Were the BASICs investigated based on data at the time of initiation vs. assignment?
- Did the SI make appropriate decisions about Follow-on Interventions (NOC, NOV, **100% States CSP**) for both carriers and drivers?
  - Were the related interventions appropriately recorded?
- Is the intervention status noted as closed-completed?
- Did the SI investigate all drivers with Red Flag Violations and document the Investigation results?
- Did the SI upload appropriate documents?
- Do the Process Breakdowns selected seem appropriate given the explanation in the investigative report?
- Does the description of the Process Breakdown justify why the process is broken?
- Are the Recommended Remedies customized to the carrier?
- Is the Investigation Report concise, free of opinion and limited to fact?
- Was the Investigation Report spellchecked?
- If violations were discovered in BASICs that were not Roadside Identified and enforcement was taken, were Process Breakdowns documented?
- Do violations in BASICs that were not Roadside Identified seem reasonable given the path of the Investigation?

If the answer to any of these questions is “no,” then the Manager should discuss with the SI and have them correct the issue as appropriate.

### 1.4.9 Manager Authorizes Final Investigation Report

Once the Manager determines that the report is complete and that it meets the guidelines spelled out in Section 1.4.8, then the Final Investigation Report is authorized in the FMCSA Portal.

#### 1.4.9.1 Requirements for Uploading Investigations

It is important that all reviews be uploaded in an expeditious manner. If the proposed rating is UNSATISFACTORY, the review should be electronically uploaded to MCMIS within seven calendar days after the closeout session. All other reviews should be uploaded to MCMIS within 10 calendar days after the closeout session. **If the investigation is not uploaded within 30 days, it will not be rated.**

#### 1.4.9.2 Process for Automatic Rendering of Investigations to EDMS (See [Illustration SACN-2](#) and [Illustration SACN-3](#))

In the October 2006 release of CAPRI 6.5.0.36, FMCSA began the process of automatically rendering PDF versions of investigations to EDMS. SIs are no longer required to scan the entire investigation report, unless problems occur with the network, communications, etc. The PDF version of the investigation report will be uploaded to EDMS when the investigation is approved in MCMIS. This is an automatic process.

#### HOWEVER:

- Investigations conducted on Mexico domiciled long-haul carriers require coordination with the North American Borders Division when those investigations result in either an UNSATISFACTORY or CONDITIONAL rating. The North American Borders Division must ensure the appropriate confirming rating letter is received by the carrier after the investigation report is uploaded to MCMIS. Contact the North American Borders Division prior to uploading the report; the uploading triggers the production of

an automated letter that needs to be purged at headquarters and substituted with a revised letter for long-haul operations.

#### 1.4.10 Part B - Recommendations/Requirements

- [Notifications Provided to the Motor Carrier at the Conclusion of the Investigation](#)
- [Part B - Recommendations](#)
- [Mandatory Recommendations](#)
- [For All Investigations](#)
  - [Understand Why Compliance Saves Time and Money](#)
  - [Document and Follow Through on Action Plans](#)
  - [Section 222 – Maximum Penalty Assessments \(Three Strikes\)](#)
  - [Part 391.23 – Pre-Employment Screening Requirements](#)
  - [Security Notification \(America Needs You\)](#)
- [For All Investigations Where the Carrier Has Been Involved in Two or More Recordable Crashes](#)
  - [Crash Data Preventability Review](#)
- [For All Investigations That Could Result in a NOC](#)
- [For All Investigations Resulting in Serious Violations](#)
- [For All Investigations Resulting in a Proposed Conditional or Unsatisfactory Rating](#)
  - [Less than Satisfactory Safety Rating](#)
- [For All Investigations Resulting in a Proposed Unsatisfactory Rating](#)
  - [Recommendations for Motor Carriers Who Are to Receive a Proposed Unsatisfactory Safety Rating](#)

##### 1.4.10.1 Notifications Provided to the Motor Carrier at the Conclusion of the Investigation

You must ensure that the motor carrier is aware of the proposed safety rating. If the proposed safety rating is conditional or unsatisfactory, you must discuss the potential rating with the highest ranking motor carrier official (sole proprietor, partner, or corporate officer), if possible. If the closeout was not conducted with the highest ranking motor carrier official, or the corporate officer refused to accept the investigation report, you are required to ensure that a copy of the investigation report and closeout documentation are mailed to the highest ranking motor carrier official.

##### **Onsite Focused Investigations Corrective Action Upgrade Implications**

Onsite Focused Investigations raise unique policy and procedural issues associated with corrective action upgrade requests filed with the Federal Motor Carrier Safety Administration (FMCSA) per 49 CFR 385.17, because they do not include review of all six rating factors, as required by 49 CFR Part 385, to earn a Satisfactory safety rating.

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

- If an Onsite Focused Investigation results in a proposed Conditional or Unsatisfactory safety rating of a motor carrier with an existing safety rating from a prior investigation, then you shall advise the motor carrier that any subsequent corrective action upgrade request, filed per 385.17,

must address all violations from both the current Onsite Focused Investigation and the previous investigation, as well as the vehicle OOS rate and/or crash rate from each investigation, if either affected the safety rating.

- A carrier may not receive a Satisfactory safety rating if FMCSA has not, at some point in time, examined all rating factors specified in 49 CFR 385.5 and 385.7.

An investigation should not be initiated, nor should the scope of an ongoing investigation be expanded, for the purpose of providing a motor carrier the requested opportunity to earn a Satisfactory safety rating. Unrated motor carriers that request FMCSA investigative resources, for the purpose of obtaining a Satisfactory safety rating, should be advised that the Agency's resources cannot be influenced by external demands and that FMCSA concentrates investigative and enforcement resources on motor carriers with known safety performance and compliance problems to best ensure safety to the motoring public. Motor carriers with existing adverse safety ratings from prior investigations that request FMCSA investigative resources to perform an Onsite Comprehensive Investigation or to expand the scope of an Onsite Focused Investigation for safety rating upgrade purposes should be advised to follow the corrective action upgrade process in 49 CFR section 385.17. A 385.17 request cannot ultimately result in a Satisfactory safety rating, if FMCSA has not previously performed an investigation that includes the review of all required CFR Parts.

Given the unique policy and procedural issues, Division offices should contact and work closely with Service Centers in handling 385.17 requests from carriers resulting from Onsite Focused Investigations.

#### 1.4.10.2 Part B - Recommendations

Once the process breakdowns are identified, you should select and customize the appropriate Process Breakdowns and Remedies that best fit the carrier in CAPRI. CAPRI provides a template for the investigation report, and you should customize the report to be relevant to the motor carrier. Process breakdowns are defined as Safety Management Processes (SMPs) that have not been implemented by the carrier. Remedies are steps that the carrier should take to reduce the likelihood of future violations. Remedies may be identified or derived from the Safety Improvement Processes (SIPs) associated with each process breakdown. The remedies listed in CAPRI should be reviewed and customized to be relevant to the carrier. Both Process Breakdowns and Remedies should specify and incorporate defects in SMPs and corrections which may have been identified during the investigation. For guidance on how to identify Process Breakdowns and Remedies, see the [General Guidelines for Using the Safety Management Cycle \(SMC\) to Help Diagnose a Process Breakdown during an Investigation](#). Some general guidance on customizing appropriate Process Breakdowns and Remedies can be found below:

##### Customizing Process Breakdowns

During the course of your investigation, ask the carrier if this is an individual problem (e.g., one driver) or if it is a systematic, management problem (e.g., multiple drivers with the same issue).

You may select more than one process breakdown; but, it is important to focus on the process breakdown that will have the most impact towards correcting or eliminating the violation connected to the process breakdown.

- If it is discovered that the carrier has none of the SMPs in place and has made no attempt to put them in place, Policies and Procedures should be selected since that is the starting point on SMC. However, establishing the Policies and Procedures is only the first step; the carrier also needs to start using the SMC in such a way that will encourage the quickest and most efficient change in compliance that will reduce or eliminate discovered violations.

The language in the report should be directed to the carrier.

The customized description of SMP Breakdowns should be written in the present tense. The facts should be reported and accusatory or inflammatory statements avoided. The report should place emphasis on how to address things from this point forward. The description should clearly document why the process is broken, specifically answering the following questions:

- Describe the carrier's current process related to the breakdown.
- Where is the process breaking down?
- Why is this process breaking down?
- Explain the result of the process breakdown and link it back to the discovered violation.
  - The description of the SMP Breakdown should be concise.
  - When customizing process breakdowns, you should ask yourself the following questions outlined below. The answers to these questions will help you customize remedies appropriate to the carrier.
    - 1) “Why doesn’t the company have these SIPs in place?” Answering this question will help you develop appropriate SIPs and a description should be included in CAPRI. Potential answers include:
      - “I don’t know how.”
      - “I don’t have anyone to do that.”
      - “I don’t have the time.”
      - “That will cost me too much money.”
      - “I’m not required to do that.”
      - “I don’t care.”
    - 2) “What improvements could be made that might encourage safety compliance?” You should engage the carrier in a discussion encouraging the carrier to brainstorm and help develop remedies to address the process breakdowns.

### ***Customizing Remedies (SIPs)***

Customize the SIPs accordingly. SIPs are geared towards systematic problems. Customize and target the SIPs that are pre-populated in the CAPRI template. In general, be specific if there are certain topics, tools, or staff you would like the carrier to focus on.

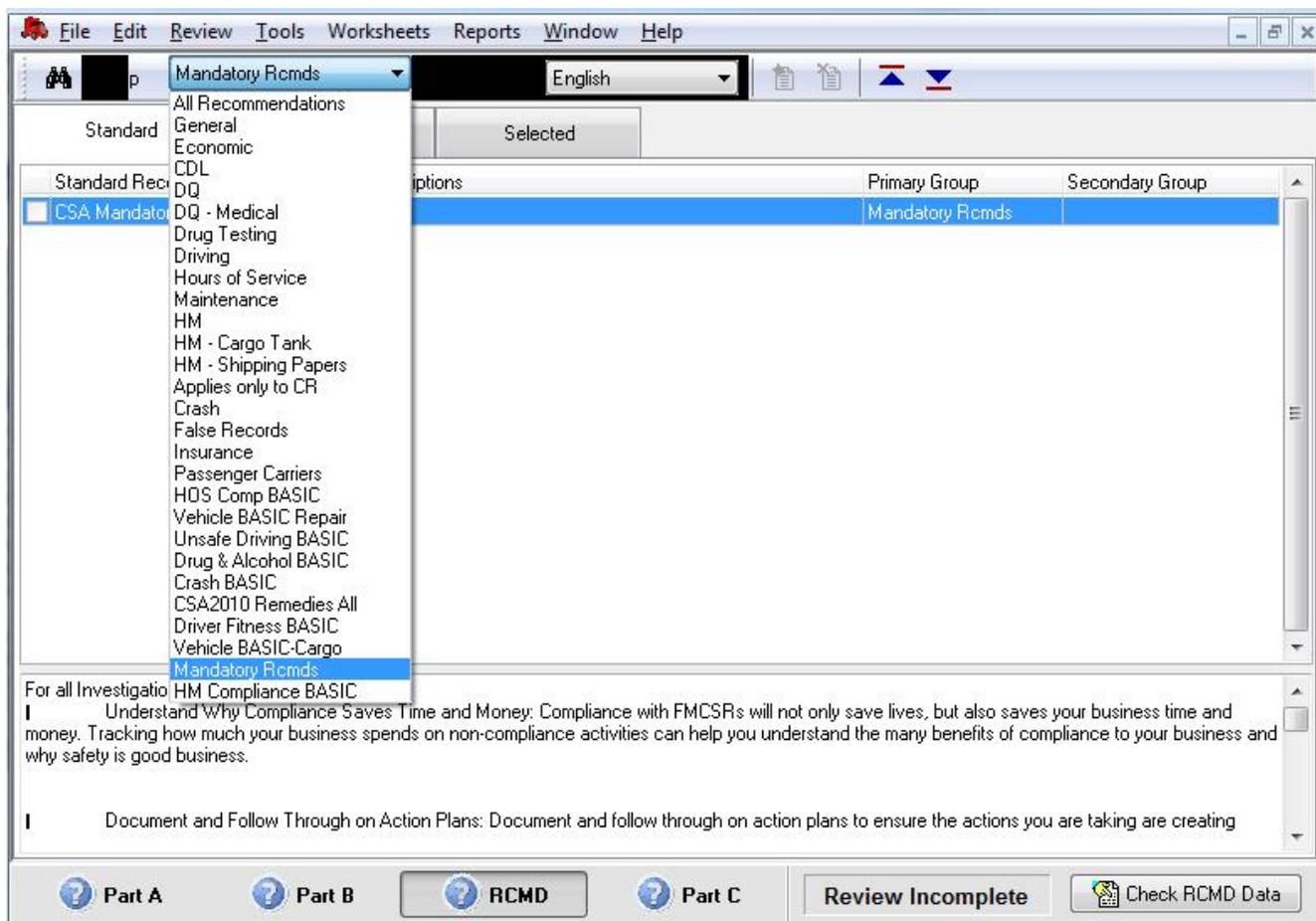
The Recommended Remedies should be to the point, bulleted, and structured in a way that the carrier will find easy to follow.

Remedies should use the imperative form of the verb and be action-oriented.

The remedies appearing in CAPRI should be reviewed and, if needed, changed to reflect the order of importance in which the carrier should address them.

### **1.4.10.3 Mandatory Recommendations**

The specific recommendations/requirements must be tailored to the motor carrier and the violations discovered during the investigation. The standard recommendations in the CAPRI software can be used as a starting point with more detailed and specific recommendations added by you. There are mandatory recommendations found in CAPRI that must be included depending on the type, scope, and/or outcome of the investigation. These recommendations are found in the “Mandatory Rcnds” drop-down menu under the recommendations tab in CAPRI as illustrated in the figure below. You should delete the recommendations that are not applicable to the investigation that you are working on.



#### 1.4.10.4 For All Investigations

Field staff should continue to insert the following language into Part B - Recommendations of all investigation reports.

##### 1.4.10.4.1 Understand Why Compliance Saves Time and Money

*Compliance with FMCSR will not only save lives, but will also save your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.*

##### 1.4.10.4.2 Document and Follow Through on Action Plans

*Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.*

##### 1.4.10.4.3 Section 222 – Maximum Penalty Assessments (Three Strikes)

**NOTICE:** A pattern of and/or repeated violations of the same or related acute or critical regulations will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.

#### 1.4.10.4.4 Part 391.23 – Pre-Employment Screening Requirements

**NOTICE:** 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous three years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase five years of crash data and three years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via web request. Motor carriers should visit the following website for more information: <http://www.psp.fmcsa.dot.gov/Pages/default.aspx>.

#### 1.4.10.4.5 Security Notification (America Needs You)

All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities. Discuss with your employees and drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier officials. Motor carriers should visit the following website for more information:

<http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf>

### 1.4.10.5 For All Investigations Where the Carrier Has Been Involved in Two or More Recordable Crashes

#### 1.4.10.5.1 Crash Data Preventability Review

The DA/SD will continue to consider preventability when a motor carrier contests a proposed safety fitness rating. The motor carrier may claim that the recordable accident rate is not a fair means of evaluating its accident factor (Factor 6) on the investigation report due to non-preventability on the part of the motor carrier or its driver. If so, the motor carrier must submit the compelling evidence within seven calendar days if the proposed rating is Unsatisfactory and 10 calendar days if the proposed rating is Conditional to:

*Division Administrator/State Director*

*Federal Motor Carrier Safety Administration*

*Mailing Address*

*City, State Zip Code*

*Compelling evidence must be limited to official police accident reports and official insurance accident investigation reports.*

### 1.4.10.6 For All Investigations That Could Result in a NOC

**PLEASE NOTE:** The violations discovered during this investigation may affect the civil penalty proposed in any subsequent NOC. In addition, your history of prior violations of the FMCSR, Federal Hazardous Material Regulations, or the FMCCR may also affect the civil penalty proposed in any subsequent NOC. Receipt of this report acknowledges your understanding that the violations discovered by the FMCSA during this review may be used to calculate any civil penalty proposed as a result of this review.

Attached to this report is a Table of Violations, which identifies all the documented violations which were discovered during the course of this review.

### 1.4.10.7 For All Investigations Resulting in Serious Violations

Serious Violations were recorded on this investigation report. These violations will impact your safety record. Furthermore, these violations may result in a follow-up investigation at a later date, unless adequate evidence of corrective action is forwarded to our office:

*Division Administrator/State Director*

*Federal Motor Carrier Safety Administration*

*Mailing Address*

*City, State Zip Code*

### **1.4.10.8 For All Investigations Resulting in a Proposed Conditional or Unsatisfactory Rating**

#### **1.4.10.8.1 Less than Satisfactory Safety Rating**

The specific recommendations/requirements must be tailored to the motor carrier being reviewed. The standard recommendations used in the CAPRI software can be used as a starting point with more detailed and specific recommendations added by you. The following recommendations/requirements must be included in Part B of the compliance review:

#### **385.15**

*If you believe the proposed rating is in error and there are factual and procedural issues in dispute, Part 385.15 (copy provided) outlines procedures for petitioning the Federal Motor Carrier Safety Administration for an administrative review of these findings. Your petition must be addressed to:*

*Chief Safety Officer*

*Federal Motor Carrier Safety Administration*

*1200 New Jersey Avenue SE*

*Washington, DC 20590*

#### **385.17**

*In addition, a request for a change to a safety rating based on corrective actions may be made at any time. Part 385.17 (copy provided) outlines the procedures for such a request. The request must be made in writing, must describe the corrective action taken and must include other documentation that may be relied upon as a basis for the requested change. Address your written request to:*

*Field Administrator*

*Federal Motor Carrier Safety Administration*

*Mailing Address*

*City, State Zip Code*

Ensure that a CC copy of the letter is mailed to:

Division Administrator/State Director

FMCSA, "Specific" Division

Mailing Address

City, State Zip Code

### **1.4.10.9 For All Investigations Resulting in a Proposed Unsatisfactory Rating**

#### **1.4.10.9.1 Recommendations for Motor Carriers Who Are to Receive a Proposed Unsatisfactory Safety Rating**

#### **For Proposed Unsatisfactory Rating for Passenger & Placardable HM Carriers**

*This review will result in a Proposed Safety Rating. The findings indicate you are currently operating at an unsatisfactory level of safety compliance. A written notice of proposed unsatisfactory rating will be sent to you by FMCSA via U.S. Mail. If you fail to obtain an improved rating within 45 days of the date that notice is sent, the unsatisfactory rating will become final and you must cease all interstate and intrastate transportation operations.*

*Information on your compliance status, roadside inspections, regulatory changes, accident counter measures and the hazardous material incident prevention manual are available on the Internet at the FMCSA's website at <http://www.fmcsa.dot.gov> and <http://www.safer.fmcsa.dot.gov>.*

**For Proposed Unsatisfactory Rating for All Other Motor Carriers**

*This review will result in a Proposed Safety Rating. The findings indicate you are currently operating at an unsatisfactory level of safety compliance. A written notice of proposed unsatisfactory rating will be sent to you by FMCSA via U.S. Mail. If you fail to obtain an improved rating within 60 days of the date that notice is sent, the unsatisfactory rating will become final and you must cease interstate operations.*

***Information on your compliance status, roadside inspections, regulatory changes, accident counter measures and the hazardous material incident prevention manual are available on the Internet at the Federal Motor Carrier Safety Administration's website at <http://www.fmcsa.dot.gov> and <http://www.safer.fmcsa.dot.gov>.***

**1.5 Stage 5 – Post Investigation Intervention (Enforcement Manual)**

# Enforcement manual

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**

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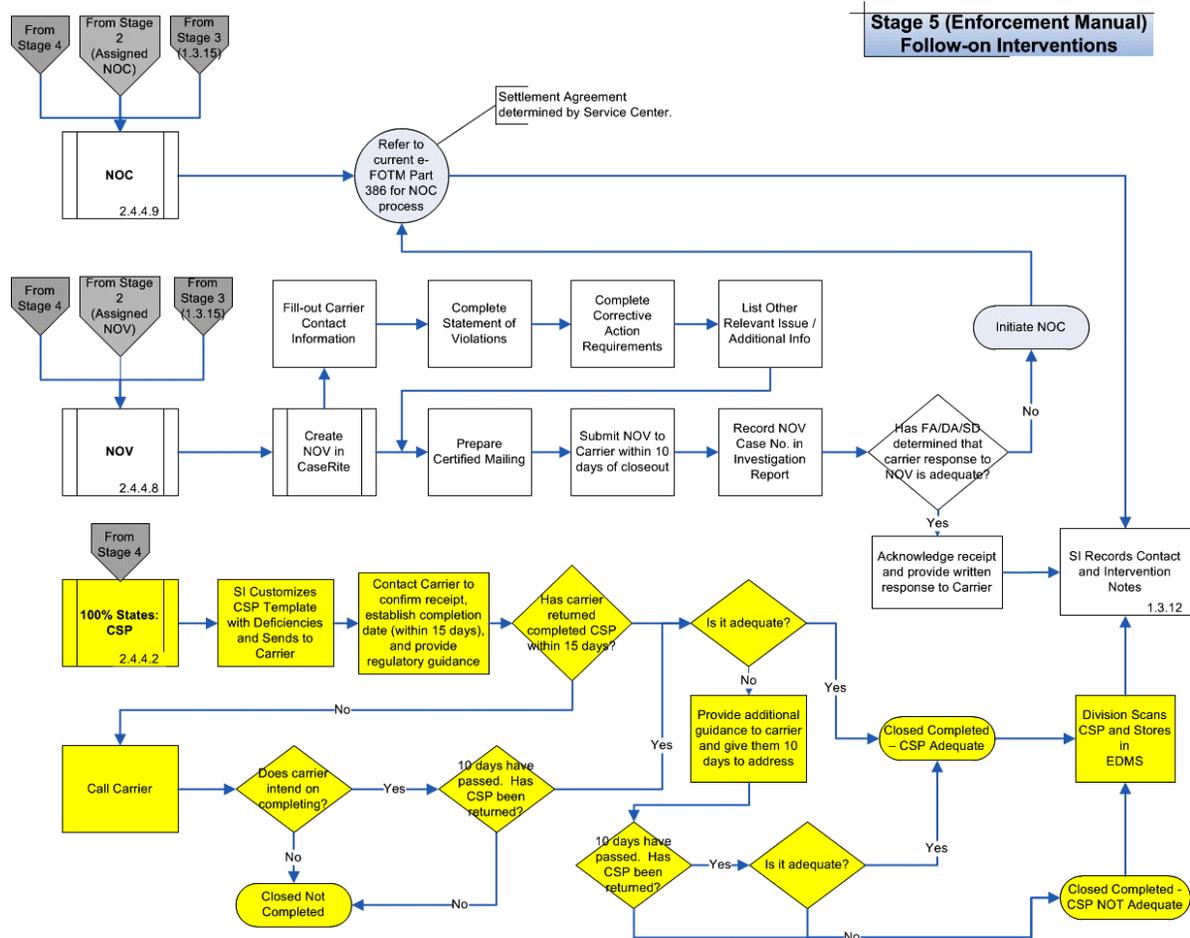
## 2 Enforcement Manual

### 2.1 Introduction

Once you have completed your investigation or inspection, and have entered the discovered violations into the Compliance Analysis & Performance Review Information (CAPRI)/ASPEN/HMPIP software, you should make the determination whether an enforcement action is warranted for the subject's noncompliance. The decision to initiate a civil forfeiture proceeding is one of the most serious elements used by our Agency to encourage compliance by the subject. The decision should be well founded and justified by evidence obtained during the investigation. In this process, nothing can substitute for the sound judgment of your experience in analyzing the facts and determining the appropriate action to implement. Adherence to this general guidance will ensure high quality decision making and uniformity in the Agency's enforcement program.

Mandatory enforcement violations have been removed from our procedures. However, this in no way eliminates enforcement from the equation. It does allow greater discretion to focus enforcement where performance data reflects that violations could contribute to a crash. Therefore, you should focus your enforcement in all Parts where Serious Violations (Acute, Critical, Severe Level I and II, Fundamental and Essential Safety Management (ESM)) 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.

The Stage 5: Follow-on Interventions workflow presents a visual representation of the process.



## 2.2 Enforcement Process

### 2.2.1 Initiating an Enforcement Action

#### 2.2.1.1 Individuals who Can Initiate an Enforcement Action

Safety Investigators can initiate an enforcement action based on investigations, compliance reviews (CRs), roadside inspections, and HM package inspections. Certified Safety Auditors or Certified Roadside Inspectors may only initiate an enforcement action as a result of a roadside inspection.

#### 2.2.1.2 When to Initiate an Enforcement Action

During CRs, roadside inspections, HMPIP and investigations, if violations of the Federal Motor Carrier Safety Regulations (FMCSR), FMCCR, and/or Hazardous Materials Regulations (HMR) are discovered, some initial determinations are necessary before deciding whether enforcement action should be initiated. You should consider what enforcement action will best encourage and maintain compliance and reduce accidents. An enforcement action is meant to correct noncompliance, deter future violations, and/or penalize violators.

Enforcement action (civil forfeiture) is more effective in improving the regulatory compliance of motor carriers that are in substantial noncompliance than those that are in marginal compliance. Enforcement is also more effective on motor carriers with higher than average crash rates.

#### 2.2.1.3 When Enforcement Action Is Not Necessary

Enforcement action may not be necessary in certain instances. For example, an enforcement case may not be warranted if a motor carrier has minimal violations, has improved its compliance, and has decreased its accident rate.

#### 2.2.1.4 Who Can Be Subject to Enforcement Action

Enforcement actions can be initiated against motor carriers, HM shippers, cargo tank facilities drivers, and/or company officials who are responsible for ensuring compliance with the regulations.

#### 2.2.1.5 Initiation of an Enforcement Action on a First Time Investigation

A first time investigation is not a factor in deciding whether or not to initiate an enforcement action.

#### 2.2.1.6 Basis for a Decision Not to Take Enforcement Action for Serious Violations

If you decide not to take enforcement action in these circumstances, you must provide an explanation in Part C of CAPRI, whether or not mitigating circumstances are present.

Serious Violations include:

- Violations of **Acute** regulations are those where noncompliance is so severe that they require immediate corrective action by a carrier regardless of its overall safety posture. Discovery of a single Acute Violation constitutes a Serious Violation.
- Violations of **Critical** regulations are those which relate directly to the carrier's management and/or operational controls and are indicative of breakdowns in a carrier's management controls. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) results in a Serious Violation.
- Violations of **Fundamental** 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 Fundamental Violation constitutes a Serious Violation.
- Violations of **ESM** regulations are associated with elements of safety management controls necessary to operate. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) results in a Serious Violation.

Note: ESM and Fundamental Violations, that are not Acute or Critical Violations, are subject to the same policy and procedures related to required enforcement action and will not impact the motor carrier's formal safety rating.

#### ***2.2.1.7 Important Points to Consider If I Don't Know If an Enforcement Case Is Warranted***

- Enforcement action may be pursued for violations of Critical or ESM regulations, even though the violation frequency is less than 10 percent. A penalty is appropriate when a motor carrier has a repeated, deliberate disregard for compliance with the FMCSR.
- Enforcement action may not be necessary, if the motor carrier's compliance level has improved since its previous investigation or CR, and the motor carrier will likely make further progress.
- In short, the decision to take enforcement action is based upon your evaluation of the facts when you uncover marginal levels of violations of Critical or ESM regulations. It is a matter for exercise of your discretion.
- If you are still unsure, ask your Division Administrator (DA) or designee.

#### ***2.2.1.8 Initiating an Enforcement Action Against a Driver***

You should consider enforcement action on each driver that fails to comply with the FMCSR, regardless of whether enforcement action was initiated against the motor carrier. For each section (e.g., 382, 383, etc.) of the eFOTM ([Compliance Manual](#)), there are recommended violations (such as Red Flag Violations) you should consider when you opt to take enforcement against a driver. Enforcement action should be taken against drivers who knowingly and consistently ignore the regulations. In general, an enforcement action should not be initiated for a violation that has already been addressed through a State enforcement action, such as a civil citation or a ticket. If you are unsure, ask your DA or designee to determine if enforcement should be initiated.

#### ***2.2.1.9 Factors to Consider When Contemplating Enforcement Action for Driver Violations***

- How long has the driver been driving a CMV?
- Does the motor carrier have a disciplinary plan in place which holds the driver accountable for his/her actions?
- If so, what actions does the motor carrier take to ensure the driver will comply with the FMCSR?
- Consider taking action against a driver who is responsible for a significant portion of a motor carrier's violations.
- What percentage of the motor carrier's violations do the driver's violations represent?
- Did the driver fail to inform the employing motor carrier of the Red Flag Violation?
- If corrected, was the correction timely? Did the driver operate between the time of the violation and when it was corrected?
- Has the Red Flag Violation been corrected, or is it continuing?

#### ***2.2.1.10 Failure to Stop for an Inspection***

If a driver of a CMV knowingly fails to stop for an inspection when directed to do so by an authorized employee, contact a MCSAP partner who has the authority to pursue the driver/vehicle in question and detain the driver for questioning and possible inspection. FMCSA authorized employees do not have the authority to pursue and detain drivers and vehicles.

FMCSA does not have the authority to cite or bring enforcement against Title 18, United States Code violations because they are criminal violations. However, suspected violations of 18 U.S.C. must be referred to the Office of the Inspector General (OIG) for possible criminal enforcement action.

If an authorized employee of FMCSA believes that a referral for criminal prosecution is warranted, he/she must first consult with his/her supervisor. The decision to refer a case to the OIG will be left to the discretion of the DA. The DA must ensure his/her actions are coordinated with the appropriate Service Center (SC) and MC-CCE Field Attorney. If the DA, after consultation with the SC and MC-CCE Field

Attorney, determines that criminal prosecution should be pursued against a driver, the matter must be referred to the OIG. The OIG is the Department of Transportation's law enforcement component and it is mandatory to coordinate any criminal prosecutions with it.

#### ***2.2.1.11 Enforcement of Exemptions***

An exemption does not require specific documentation to demonstrate that a driver was operating under the exemption. However, an Investigator, Auditor, or Inspector should attempt to demonstrate that the driver does or does not meet the conditions of the exemption. Examples of evidence to support the proper use of the exemption are available through motor carrier/shipper documents, motor carrier interviews, driver interviews, documents found in the vehicle, contacting State and local officials, contacting associations of those affected by the exemption, or interviewing persons affected by the exemption. When it is determined that the driver did not meet all the conditions of the exemption, the driver must comply with all applicable FMCSR and should be cited for violation(s).

Before undertaking enforcement action where an exemption applies, you should consult with your supervisor and/or legal and enforcement staff at one of the Service Centers. If after consultation, a determination is made that the exemption does not apply, and enforcement action will be pursued for violations discovered during an investigation or roadside inspection, the Investigator or Inspector should follow standard operating policies and enforcement procedures detailed in this document. Evidence establishing that the driver was not within the scope of the exemption must be included in the case documentation for any enforcement action taken.

#### ***2.2.1.12 Uniform Fine Assessment (UFA)***

The purpose of the UFA software is to assist FMCSA in calculating uniform proposed civil penalties for violations of the FMCSRs, Hazardous Materials Regulations (HMRs), Federal Household Goods Regulations (HHGs) minimum financial responsibility regulations, registration regulations, and all other statutes and regulations enforced by FMCSA. The software is designed to ensure that statutory, regulatory, and administrative policies are considered in determining each penalty assessment, to promote uniformity in assessments throughout FMCSA, and to create transparent and easily understood assessments. FMCSA has used UFA to calculate penalties since the mid-1990's. Under a long line of administrative decisions, starting with Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking, FHWA-1996-5323 (Final Order, Feb. 7 1996), FMCSA and its predecessor agency have held that UFA is presumed to properly consider the statutory penalty factors under 49 U.S.C. §521 (b)(2)(D) and 49 U.S.C. 5123(c).

Refer to the UFA Policy ([signed PDF](#); [Word version](#)), [User's Manual](#) and [Calculations Guide](#) regarding use of the software and questions about the selections to be made in the system.

#### ***2.2.1.13 Evidence Included as a Lettered Exhibit to the Case Report to Support the History Selection in UFA***

1. A copy of the Assistant Administrator's/Administrative Law Judge's final order,
2. A settlement agreement containing an express admission of liability,
3. Evidence of full payment and the NOC containing admissions language, or
4. The Final Agency order issued pursuant to 49 CFR 386.14(e), as applicable, must be included as a lettered exhibit.

#### ***2.2.1.14 Use of a Prior State Enforcement Case as History***

Use prior state enforcement case as history if the enforcement case was performed using Federal procedures, and processed through the Federal System, and the case was closed in accordance with the answer to *Determining History When Completing UFA or UPAWs*.

### ***2.2.1.15 Ensuring There Are Admissions Clauses in Previous Enforcement Actions***

Most information can be obtained by researching the Enforcement Management Information System (EMIS). The Safety Investigator (SI) will be responsible for researching motor carrier history prior to conducting the investigation or CR. The SI should contact his/her Division Program Specialist (DPS) or DA for assistance as needed.

SC personnel will be available to assist the Division Program Specialists and DAs.

### ***2.2.1.16 Selecting Counts for the Enforcement Case***

After considering the nine factors, decide which violations are most likely to increase the chance of an accident occurring. Use the following list as a guide to selecting counts:

1. Look at accident reports and, if preventable, determine if the cause is related to the violations noted on your review. These should be considered your primary counts.
2. Look at roadside out-of-service (OOS) violations and high Behavior Analysis and Safety Improvement Category (BASIC) percentiles in accordance with [Table: BASIC Thresholds \(Percentiles\)](#). Is the motor carrier exhibiting behavior that increases the likelihood that an accident will occur?
3. Look at those areas of noncompliance found during your investigation where the severity and extent of the violations will increase the likelihood of accidents, e.g., hours of service (HOS) violations, positive drug tests, disqualified and medically unqualified drivers, and vehicles not periodically inspected.
4. Next, staying within the recommended fine amounts, consider taking several counts (e.g., one count in each part) at less than the maximum amounts to cover more parts of the regulations.
5. Lastly, review your UFA fine amount to determine the number of counts needed.

### ***2.2.1.17 Taking Several Counts in Each Part Where Noncompliance of Critical or Acute Regulations Is Discovered***

Spreading the counts among several parts of the regulations shows the motor carrier these areas are important. The enforcement case should reflect the motor carrier's safety posture by penalizing the motor carrier for each of the Acute/Fundamental and Critical/ESM violations recorded in the investigation or CR report, if possible. This will also be important if repetitive violations are found in subsequent investigation or CRs, so that the provisions of Section 222 (Three Strikes) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) will then be applicable and deserved.

## **2.2.2 Understanding Your Evidence**

### **2.2.2.1 Understanding Your Evidence**

#### ***2.2.2.1.1 Definition of Evidence***

Evidence is what is offered to prove the existence or non-existence of a fact, ultimately to determine the truth of the matter at issue. The law of evidence concerns the rules of admissibility and weight accorded evidence in a judicial and administrative setting. There are two types of evidence:

**Direct Evidence** – Facts that prove the issue in question, without the need for reference to any other fact or evidence.

**Example** – A record of duty status (RODS) shows a driver driving for more than 11 hours without ten consecutive hours off duty. This is direct evidence of a violation of the 11-hour rule. However, this is not sufficient evidence to sustain a penalty. Although this is direct evidence of violating the eleven-hour rule, you must still show the carrier and driver are subject to the regulations; that the document is authentic; and that the carrier required or permitted the violation. Similarly, if one were to examine a confession in a criminal case, it may be direct evidence of the crime, but you would need to show it was not coerced and corroborate the facts of the confession. Direct evidence does not

mean further proof is unnecessary to sustain a judicial decision. It simply means that further inferences are unnecessary to establish the fact shown in the evidence.

**Circumstantial Evidence** – A fact or facts which, standing alone, do not prove or disprove the issue, but when considered with other established facts, gives rise to an inference which establishes the truth of a particular matter or that excludes all other hypotheses, except for the conclusion ultimately reached.

**Example** – A carrier’s VP provides a written statement that he personally reviews all driver RODS and compares them with payroll records, toll receipts, bills of lading, and weigh station receipts on a weekly basis. Investigation shows numerous false RODS. There is no evidence of disciplinary measures against drivers, a prior audit was signed by the VP, all documents were in the carrier files and available to the VP, and the VP is responsible for safety compliance. A case of circumstantial evidence has been established for requiring or permitting preparation of false RODS.



**It is important to keep in mind that circumstantial evidence is no less admissible and carries no less weight in a judicial or administrative setting. In fact, the overwhelming majority of criminal and civil cases are based on circumstantial evidence. However, you should think of circumstantial evidence as links in a chain, which are used to establish a particular fact or violation. If one of the links is missing, you may be unable to sustain the penalty. Since many of your cases will be built on circumstantial evidence, it is your job to insure that the links are securely fastened.**

#### *2.2.2.1.2 The Different Forms of Direct Evidence*

<b>Real Evidence</b>	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.
<b>Testimonial Evidence</b>	Oral evidence produced at trial or during an administrative hearing.
<b>Documentary Evidence</b>	Evidence in the form of writing.
<b>Demonstrative Evidence</b>	Evidence in the form of photographs, charts, videos or similar type of evidence demonstrating a particular set of facts.

#### *2.2.2.1.3 Definition of Admissibility of Evidence Mean*

A judge or Administrative Law Judge will decide at trial whether your evidence is admissible and, therefore, whether he/she will consider it in reaching a determination of the facts in dispute. The rules of evidence govern questions of admissibility. Generally, at administrative hearings, the rules of evidence may be relaxed. However, the rules of evidence also bear on the reliability of evidence (i.e., whether it is worthy of belief) and therefore, ALJs have the discretion to apply the Federal Rules of Evidence (FRE) to proceedings and often do.

#### *2.2.2.1.4 Rules that Must be Followed to Ensure the Evidence Submitted is Admissible*

In your role as an investigator, you must ensure the following rules for admissibility, as it relates to authentication, hearsay, and proof are met:

[Authentication](#)

[Hearsay and Proof](#)

### 2.2.2.2 Authentication

Generally documentary and demonstrative evidence must be authenticated; meaning that the document must be what it purports to be.

**Documentary Evidence** – For instance, if introducing a statement by a VP of Jones Trucking taken during an investigation, you should obtain contact information for the VP so that he/she can be called to testify at trial. Even a signed statement is not admissible as evidence unless the person who signed it is present to authenticate it. With a business record, such as the daily RODS, an authorized custodian of the records must be present at the trial to testify that the record is authentic.

**Demonstrative Evidence** – This evidence is generally authenticated by showing the evidence accurately depicts what it is attempting to illustrate. For instance, the proponent of a photograph must testify he is familiar with the scene shown in the photo, indicate when the photo was taken, and state the photo accurately depicts the scene at that time and place.

**Important Photo/Digital Image Notes** – FMCSA personnel must use great care when using digital camera visual images in enforcement cases and accident/hazardous material incident investigations to assure the integrity of the visual images. FMCSA personnel should ensure date and/or time settings on digital or traditional cameras are accurate and account for daylight savings time and/or time zone changes. FMCSA strictly prohibits personnel from altering or manipulating visual images taken with digital cameras. However, depending on the type of digital camera, it may be necessary to rename the digital file in order to prevent future overwriting of the file. In the event that renaming the file becomes necessary, that fact should be included in the signed affidavit.

Accidental alterations of the visual images may occur when the disc with the stored visual images is placed too close to a powerful magnetic source. The effects of accidental alteration to the visual images are likely to be catastrophic in nature. FMCSA recommends that investigators/inspectors read the digital and traditional camera's instruction manual carefully and follow all guidelines and warnings.

FMCSA personnel using digital images from digital cameras or standard photographs from traditional cameras as evidence must authenticate the visual images or photographs. The photographer must sign an affidavit or declaration stating that the visual images or photographs are an accurate representation of the scenes depicted in the visual images or photographs at the time the photographs were taken by FMCSA personnel (see [Illustration E-1](#)).

### 2.2.2.3 Hearsay and Proof

The fact a document or item is authenticated does not guarantee its admission at trial, since it often must overcome the objection of hearsay. Hearsay is defined as an out of court statement offered in court to prove the truth of the matter asserted. The statement could be verbal or written. There are numerous exceptions to the prohibitions against hearsay; some of the ones that are pertinent to your work as an investigator are the business records and admissions exceptions.

**Business Records** – Are admissible as an exception to the hearsay rule. Generally, to qualify as a business record it must be shown that the business ordinarily kept the record in the course of its business, the report was prepared in conjunction with the events or facts, and the report was prepared by a person with a business relationship with the company. Most of the records encountered during an investigation would qualify as business records; this would include records maintained in official files of the agency, such as previous audits, inspections, or reviews. Please note that the testimony relating to business records need not come from the maker of the records; it may come from someone familiar with the records and their maintenance. See FRE 803(6).

**Official Records** – Are also allowed as exceptions to the hearsay rule. These types of records are described as records, reports, statements, data compilations of public agencies, officers setting forth the activities of the office, or matters observed pursuant to duty imposed by law. Thus, most agency reports would qualify as official reports. See FRE 803(8).

**Admissions** – By a party are also an exception to the hearsay rule. This would be one of the most common exceptions that would be applicable to your work as an investigator. Admissions are generally statements a party makes that are against the party’s pecuniary or proprietary interest. An admission can be something less than a complete acknowledgment of guilt. It can be a statement or act which, when considered with other evidence, would infer guilt or civil liability. For example, with respect to false RODS case, you have taken a statement of the VP of Jones Trucking in which he states that he is in charge of safety compliance, he examined the records and supporting documents, he failed to detect the violations and was aware of his responsibility, and failed to inform drivers of their responsibilities. The statement can be admitted at trial as an admission and introduced by the investigator. It should be noted that corporations are bound by the acts of their employees and agents acting within the scope of their duties. This statement is admissible because the VP is the person responsible for safety and the overall management of the company and supports the violation of requiring or permitting drivers to make false entries on RODS. When considering whether an act or statement can be construed as an admission, it may be necessary to view the case in its entirety and place the statement in that context. See FRE 804(b)(3).

**Past Recollection Recorded** – Permits admission of a previous memo or other type of document that recalls a previous event the witness is unable to recall at the present time. See FRE 803(5).

**Example:** The SI has prepared a memo in connection with the carrier’s elaborate scheme to submit false RODS. It is now several years later at the hearing and the SI is unable to recall the precise details of the scheme. The memo may be introduced as evidence of that scheme. Note: It is possible the memo could be introduced as an official records exception to the hearsay rule.

### ***2.2.2.3.1 Definition of Burden of Proof***

In civil cases, including administrative hearings, a party must prove its case by “a preponderance of the evidence.” That is, a party must demonstrate to the trier of fact that it is more likely than not that its position is the correct or true one. Additionally, the regulations state that the administration has the burden of proof. **Therefore, the case begins with a presumption in the absence of sufficient reliable evidence that the carrier or driver did not commit the violations**

## **2.2.3 Conducting Interviews and Obtaining Witness Statements**

### ***2.2.3.1 Reasons for Performing Interviews and/or Obtaining Witness Statements***

Interviews and witness statements can be useful tools in gathering facts that cannot be otherwise documented. Moreover, they may be essential in explaining real evidence that is not otherwise obvious and in strengthening the links of the chain of circumstantial evidence. Often the witness interview is the final element in building and solidifying the case. For example, consider the following uses:

- To definitely show facts about which the witness has knowledge;
- To implicate the subject by his/her admissions or confessions;
- To refresh the memory of the witness;
- To deter a witness who may change his story at trial;
- To make admissions or confessions irreversible;
- To determine the anticipated defense of the subject; and
- To preserve and collect evidence and possibly lead to more evidence.

Generally, a statement or interview must be signed under penalty of perjury by the person making the statement (e.g., carrier officials, drivers, other witnesses) and by the agency investigator (see Illustration [E-2](#) and [E3](#)). If such a statement is not signed under penalty of perjury, and the carrier objects to its introduction at a hearing, the issue of validity of the document will be determined by an ALJ and the agency may have failed to meet its burden of proof. See: Dan F. Carey (dba DFC Transport), Final Order (May 28, 1997).

Although the SI may have identified a person from whom he believes a written statement is needed, an intelligent decision cannot be made without first conducting an interview to determine the facts the

witness has knowledge of, and the willingness of the witness to, give a statement. It is important for the SI to conduct the interview with the goal of obtaining as much relevant information as possible; and it is imperative to begin the interview with an open mind. Preconceived ideas as to guilt or innocence, or other facets of the case, may preclude you from seeking out information that is contrary to your already-established train of thought. An open mind will allow you to assimilate information more readily, and explore alternative theories. There is nothing wrong with having a theory of the case based on your review of the documentary evidence and preliminary information; just do not overlook other options during the interview. Be inquisitive, ask follow-up questions, probe for inconsistencies, be complete, seek answers as to: Who, What, When, Where, How, and Why. Many of the techniques discussed in the [\*General Guidelines for Using the Safety Management Cycle \(SMC\) to Help Diagnose a Process Breakdown During an Investigation\*](#) can be applied when performing these interviews.

### 2.2.4 Three Principal Techniques for Questioning a Witness

The three principal techniques are: free narrative, direct examination, and cross-examination. They are defined as follows:

**Free Narrative** – An orderly presentation of the story by a witness, with little or no prompting from the interviewer. It usually is started by asking the witness to tell you about a certain event or situation. Never generalize about the subject matter be specific.

**Example:** “Tell me about the accident on June 14, 1999, involving the truck you were driving and another car.” (During this phase of the interview take careful notes, but allow the story to be told with little interruption.)

**Direct Examination** – Systematic questioning designed to bring out the connected story of the event or incident. Its purpose is to elicit new information or fill in new details omitted during the narrative.

- Begin with questions not likely to cause hostility.
- Ask questions that will develop facts, in the order of their occurrence, or in some systematic manner.
- Ask only one question at a time and keep them short, requiring only one answer.
- Don't rush the witness.
- Help the witness remember, but don't suggest answers.
- Repeat or rephrase the question if it will help the witness.

It is often useful to start direct examination after the free narrative, to fill in the gaps and complete the story. These techniques often follow in sequence.

**Example:** “You stated earlier that you thought you heard a grinding noise as you were braking. Did you notice any defects prior to the trip?”

**Cross Examination** – This is exploratory questioning designed to test the reliability of the story and the witness, and probe for inconsistencies. It is also useful in seeking specific admissions and seeking support for your theory of the case. Cross Examination is often the last sequence in the interview, designed to close all the loops and strengthen all the links in the chain of circumstantial evidence.



**Helpful Tips** – It is always recommended that you conduct the interview in a non-threatening manner and establish a rapport with the witness. Introduce yourself, make the witness feel comfortable, and ask questions in a calm and methodical manner. Breaking down barriers between you and the witness often leads to a more open and informative interview.

**Practice active listening during the interview. After the response to a question occasionally paraphrase a response and ask: “Is that what you are stating?” Often during an interview the**

**interviewer is not listening during a response, but rather is thinking of the next question. This is a serious mistake and will often preclude you from asking important follow-up questions.**

**Whether you have the witness write out the statement and sign it, or you write it out and have the witness sign it, or submit a written form of the interview, is all a matter of preference. It is strongly recommended that you use a Division/SC approved form that contains information on perjury. Also, it is recommended that you fill out the form to ensure that all needed information is included. There is no right or wrong way, but, if possible, the witness should always sign the form. Remember the statement and answers given during an interview are admissions, if they support the violation, and the witness is an employee or agent (owner operator) of the carrier. Moreover, the investigator conducting the interview can testify at trial to those questions and answers. Further, the statement and interview responses can be used to impeach the witness, should he change his story at trial.**

#### ***2.2.4.1 Indicators that May Be Used to Determine if a Witness is Being Truthful***

Much has been written and studied about body language and cues relating to deceit or truthfulness. This area is not a science but an art, and caution should always be exercised when applying any of the principles in this area. Further, a detailed outline of this subject is beyond the scope of the manual. However, some points to keep in mind are:

- Deceptive subjects tend to be evasive in their answers, lack directness, and their answers may be somewhat unresponsive.
- They may be slower in their responses, as they are making up the story as they go along.
- Deceptive subjects tend to qualify their answers, e.g. "As far as I can recall."
- Deceptive subjects will often make less eye contact or they may appear glassy eyed and tired.
- They may shift in their chair more and retreat from the interviewer. Sometimes they appear rigid.
- They may be sweating profusely, which is a reaction of the body to the deception.
- There is some authority that right-handed people will gaze to the left when devising deception due to the location of neural functions.

Again, it is important to remember this is not an exact science and body language and verbal communication cues are difficult to interpret. Check the agency catalog and with local vendors for courses that will allow you to gain a more thorough understanding of this subject.

#### ***2.2.4.2 Precautions that Should be Taken When Preparing a Statement for Carriers that Fail to Have Appropriate Records***

The preparation of written statements requires time, accuracy and specific requests for production of records.

Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or agents will not sign a statement, it should be prepared, read to a responsible carrier official, and his/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included in and made a part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose medical examiner's certificates are not in the carrier's files to determine whether they have been examined, and, if so, when, where and by whom. You should obtain the driver's statements, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This letter should then be included as part of the evidence in the case.
- In selecting Part 391 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to preclude a defense argument that the violations were accidental or isolated. Additionally,

you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.

- Occasionally, you may be unable, by any means, to determine the driver who moved a particular shipment. When the motor carrier has none of the required Part 391 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' RODS or for failing to maintain daily vehicle inspection reports.
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records, and that it simply could not locate the records. Carriers have also been known to backdate records. Therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in [Illustration E-2](#).

### **2.2.5 Gathering Your Documents for then Enforcement Action**

As you will see, the eFOTM has been formatted in a manner that will allow you to be aware of the documents you should gather while you are conducting your investigation in each part of the FMCSR. You may refer to the [Violation Table](#) for specific elements, documents, and statement content on certain violations. The Table assumes the availability of statements. The Investigator should be prepared to develop all necessary facts if statements are not obtained.

#### ***Basic Information that Should be Documented for Most Cases***

You will be responsible for obtaining documents that identify the following:

- The vehicle is subject to a specific Part of the FMCSR;
- The driver was an employee of (or controlled by) the motor carrier;
- The vehicle was operated (used) by the motor carrier;
- The vehicle was operated in intrastate or interstate commerce on a certain date; and
- A specific violation occurred.

#### ***Documents that Will Help You Establish whether a Vehicle Is/Was Subject to Our Regulations***

Examples of documents, which may show vehicles are subject to a specific Part, could be in the form of the following:

- GVWR markings on the vehicle;
- Vehicle Registration or VIN number;
- State Fuel and Tax Reports (AKA IFTA reports);
- Weight Tickets;
- Photographs of vehicle interior for seating capacity;
- Hazardous Material Shipping Papers; and
- Statement from the motor carrier official verifying the weight of the vehicle.

#### ***Documents that You Should Look for To Prove that a Driver Is/Was an Employee***

Examples of documents, which may show a driver is/was an employee of (or controlled by) the motor carrier, could be in the form of the following:

- Employment application;
- Lease Agreement;
- Payroll Records; and
- A statement from the motor carrier official verifying that the driver is/was their employee (with their date of hire/fire).

### ***Documents that You Should Look for To Prove a Vehicle/Driver Operated in Commerce***

Examples of documents, which may show the motor carrier operating a vehicle in intrastate or interstate commerce on a certain date, can be in the form of the following:

- RODS;
- Time Cards;
- Trip Reports;
- Leasing Company's Vehicle Mileage Reports;
- Shipping Papers;
- Bills of Lading; and
- Statement from the motor carrier official verifying their vehicle was used in intrastate, interstate, or foreign commerce on a particular day.

There are too many motor carrier documents available to help prove a violation to list here. Therefore, use your resourcefulness and investigative skills to ensure you gather all the documentation you need, prior to leaving the motor carrier.

### ***Documentation in Support of Extent of Violation***

#### **Extent is Low**

If extent is low – less than 10 percent of Records Checked -- the investigator must document all violations that will be included in the NOC. For example, if the investigator discovered 7 false RODS of 100 records checked, extent is low. If UFA indicates the investigator should include 5 counts in the NOC as claimed violations, the investigator need not document the 2 remaining false RODS, for extent or any other purpose. The documentation should be included as a lettered exhibit in the enforcement case.

#### **Extent is High**

If extent is high--10 percent or more of Records Checked--the investigator must document 10 percent of the number of records checked. The investigator should also document one or two additional counts, as a cushion in case some counts are rejected on evidentiary grounds. If UFA indicates a number greater than 10 percent should be charged, then that number of violations should be documented.

**Example:** If the investigator discovered 20 false RODS of 100 records checked, extent is high. If UFA indicates the investigator should include 7 counts in the NOC as claimed violations, then 11 or 12 discovered false RODS must be documented. If UFA indicates 15 violations should be charged, then 15 violations should be documented. The documentation must be included as a lettered exhibit in the enforcement case.

Below are examples showing the number of violations to document, when extent is high.

<b>Violation Cited</b>	<b>Numbered of Records Checked</b>	<b>Number of Violations Discovered</b>	<b>Number of Violations in NOC, per UFA</b>	<b>Number to Document</b>
395.8(e)	100	20	7	11 or 12
395.8(e)	100	30	15	15
395.8(e)	200	40	18	21 or 22
395.8(e)	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 Part B Recommendations of the Investigation***

You must add the following recommendations:

**Please note:** The violations discovered during this investigation may affect the civil penalty proposed in any subsequent NOC. In addition, your history of prior violations of the FMCSR, HMR, or the FMCCR may also affect the civil penalty proposed in any subsequent NOC. Receipt of this report, acknowledges your understanding that the violations discovered by FMCSA during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified.

[For cases in which enforcement will be taken]

Attached to this report is the Table of Violations, which identifies all documented violations discovered during the course of this review.

### ***Appropriate Time for the SI To Complete the Table of Violations Which Identifies all Documented Violations Discovered***

The SI will need to complete the Table of Violations prior to the investigation closeout and attach the table to the investigation report.

### ***How the SI Informs the Motor Carrier of Specific Violations Found During the Investigation***

The SI will inform the motor carrier of any violations discovered during the conduct of the investigation and during the closeout of the investigation.

## **Preparation of an Enforcement Report**

### ***You Need to Remember the Following About Your Computer Software Before Writing the Enforcement Report***

You will generally use the FMCSA software UFA and CaseRite to prepare your enforcement report. For best results with data transfer from CAPRI to UFA and CaseRite, you must complete all parts of CAPRI (e.g., A, B and C) to ensure all data is transferred to the appropriate software application. You should ensure, prior to the initiation of the enforcement action, that you have the latest versions of FMCSA software on your laptop computer. You may check to ensure the latest versions available by logging into <https://portal.fmcsa.dot.gov>. Click on “Software/Documents” for the latest version of UFA, and CaseRite. **Update all software before starting the investigation or CR; once the review has been completed, do not update CAPRI, UFA, or CaseRite until you contact your system administrator and ensure no data will be lost. After checking with the system administrator, and backing up your files, update your software and restore the files to your computer.**



**It is recommended you access the UFA software, prior to leaving the motor carrier, to ensure required documents gathered correspond with the recommended penalty. This enforcement is necessary to ensure you effectively address the motor carrier’s lack of safety management controls.**

## **Violation Table**

[Violation Table](#)

## 2.2.6 Enforcement of SAFETEA-LU Section 4114

- During **INTERSTATE** violations, the FMCSA SIs 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, CAPRI 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 CAPRI 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 Part B of CAPRI, the enforcement decision is based on the extent of **INTERATE** and **INTERSTATE** violations combined. For Example:  
**INTERSTATE** violations = 5 discovered of 100 checked (5%)  
**INTERSTATE** violations = 10 discovered of 50 checked (20%)
- When enforcement is initiated based on the example in A4, only the extent factor of **INTERSTATE** violations is used when calculating the penalty assessment. In example A4, the extent is five discovered of 100 checked (5%).

## 2.3 Enforcement by BASIC

### 2.3.1 Controlled Substances/Alcohol BASIC

#### 2.3.1.1 Part 382 Control Substances/Alcohol Use Testing

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

#### *Part 382 – Enforcement Violations*

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

#### *Part 382 - Documentation*

#### *Evidence that is Required to Prosecute a Violation of Part 382*

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

#### *Important Issues to Remember when Documenting Violations of Part 382*

- Ensure that driver is subject to Part 383 (CDL Standards).

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

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

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

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

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

#### ***How to Cite Drug and Alcohol Violations***

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

#### ***Part 382 - Enforcement Action Against Drivers***

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

- 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 392 Driver Motor Vehicles***

##### ***Part 392 - Enforcement Action Against Drivers***

##### ***Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated.
- 392.4(a) - Driver uses, or is in possession of, drugs.\*
- 392.4(b) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty. \*
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.

(\*) denotes Red Flag Violation

##### ***Special Topic: Distracted Driving – Ban on Texting and Hand-held Mobile Telephone Use***

The regulations prohibiting texting and hand-held mobile telephone use should be cited against a driver and/or motor carrier, when warranted, during an inspection or investigation, including, but not limited to, crash investigations and onsite investigations. Situations where the violation may be cited include, but are not limited to, the following:

- CMV drivers and/or motor carriers may be cited at roadside, if enforcement personnel directly observe the CMV driver texting or using a hand-held mobile phone while driving a CMV, while operating in interstate commerce or transporting placardable quantities of HM in intrastate commerce. The violation will apply to drivers observed using hand-held mobile phones when

driving in any area that meets the 49 CFR Section 390.5 definition of a “highway.” This includes a rest stop, weigh station or other road, street, or way open to public travel.

- During a crash investigation, enforcement personnel may cite the violation, if the driver acknowledges texting or using a hand-held mobile phone when the crash occurred, or if there is credible and sufficient evidence that the driver was using a hand-held mobile telephone. Such evidence could include eyewitness testimony, or evidence that a text or call was placed at the time of the crash.
- During an investigation at a motor carrier’s PPOB or terminal, the violation may be cited, if sufficient and credible evidence of texting or hand-held mobile phone use while driving is discovered. (Such evidence may be found in crash reports, driver files, letters of reprimand, citations, etc.) The violation should be cited on Part B of the compliance review/investigation report, and a notice of claim may be issued against the driver and/or motor carrier, as appropriate.
- Motor carriers may be held accountable for driver violations of the texting or hand-held mobile telephone prohibition, if there is evidence that the employer allows, or requires, the driver to use a hand-held mobile phone while driving, or routinely places calls to its drivers’ hand-held devices while the drivers are driving a CMV.

When citing a driver or motor carrier for a violation either of these rules, use the appropriate violation citation.

- 392.80(a) - Operating a CMV while texting.
- 392.82(a)(1) - Operating a CMV while using a hand-held mobile telephone.
- 49 CFR Section 392.80(b) - Allowing or requiring a driver to operate a CMV while texting. (Carriers)
- 49 CFR Section 392.82(a)(2) - Allowing or requiring a driver to operate a CMV while using a hand-held mobile telephone. (Carriers)

### [\*Frequently Asked Questions Ban on Texting and Hand-held Mobile Phones\*](#)

#### **Primary and Secondary Violations**

If a State currently has no authority, or only secondary enforcement authority, in this area of distracted driving, the Division Office should strongly encourage the State to seek primary enforcement authority through its legislative or regulatory process.

#### ***2.3.1.3 Part 387 Insurance Requirements***

#### ***Documents that Should be Gathered to Initiate an Enforcement Action***

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

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



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

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

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

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 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

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

Review the L&I Database: or . 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 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.

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.

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

- Leasing Requirements for Mexico Domiciled Motor Carriers

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

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

[Policy: Post Pilot Program Inspection Requirements for Mexico Domiciled Carriers with Long-Haul Operating Authority (MC-ESB-2015-0001), October 6, 2014.]USDOT Number Identification (§ 390.21(a))

### **US DOT Number Identification:**

When FMCSA grants operating authority to a Mexico domiciled motor carrier to operate within the U.S. southern border municipalities and commercial zones, the motor carrier is directed to include the suffix “Z” at the end of its assigned 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.

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

### **CVSA Inspection Decal Requirements**

A Mexico domiciled motor carrier with authority to operate beyond the commercial zones is required to ensure that each power unit operated in the 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-CMV's are not required to display CVSA decals to operate in the US.

Citing a Violation of the CVSA Decal Requirement

If a carrier is discovered to be operating in the US 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 US 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.]

#### ***2.3.1.4 Part 390 General Requirements***

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

#### ***Part 390 - Documentation***

##### ***Documents that Should be Gathered to Initiate an Enforcement Action***

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

##### ***Some Examples of Documents that May be Used to Prove Violations of Part 390***

- Statement from motor carrier official, driver or other person responsible for compliance with Part 390. See Illustration E-2.
- Driver's RODS, and corresponding shipping paper/bill 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 you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

#### ***Part 390 - Enforcement Action Against Drivers***

##### ***Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for violating:

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

### ***2.3.1.5 Part 391 Driver Qualifications***

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 391 violations, you should use the following guidelines when submitting an enforcement report for Part 391 violations.

#### ***Part 391 - Guidelines for Enforcement of Red Flag Violations***

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

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

#### ***Driver vs. Carrier Enforcement***

The manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

#### ***Part 391 - Red Flag Violations***

- For Red Flag Violations which were originally cited for operating while disqualified [391.11(b)(7), and 391.15(a)-SIN9 , 391.15(a)-SOUT9- ], enforcement normally depends on whether the disqualification was for a safety-related reason.
- NOV is an option for 391.11(b)(5), as long as they are immediately correctible and readily verifiable.
- If there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC (or NOV in the case of the two violations listed above). If there already was a citation, then you should consult with the manager before initiating enforcement against the driver.

#### ***Part 391 - Documentation***

##### ***Documents that Should be Gathered to Initiate an Enforcement Action***

You should gather documentation to initiate an enforcement action, which establishes the following:

- The vehicle used falls within FMCSR jurisdiction for Part 391.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.
- A violation of Part 391 occurred.

***Some Important Issues to Remember when Documenting Violations of Part 391***

- When considering enforcement for a violation that charges the motor carrier with using a driver not physically examined, it is best to obtain a statement from the driver affirming that fact.
- Best practice requires that you obtain statement(s) from motor carrier officials affirming that the required documents were not in the DQ file or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See Illustration E-2.
- Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for “failing to maintain” the driver’s state driving record abstract should not be described in the case report as “failing to make an inquiry” from the state licensing agency.

***Precautions that Should be Taken when Preparing a Statement for Carriers Who Do Not Have the Appropriate Records***

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included as part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose medical certificates are not in the carrier’s files to determine whether they have been examined and, if so, when, where, and by whom. You should obtain the driver’s signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver’s oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.
- In selecting Part 391 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 391 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers’ records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier’s belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records, therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in Illustration E-1.

***Some Examples of Documents that May be Used to Prove Violations of Part 391***

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver or other person responsible for compliance with Part 391.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle was subject to Part 391.
- If copies of documents/certificates required by Part 391 were unavailable or do not exist, obtain a statement from the motor carrier attesting to missing documents or utilize CAPRI DQ Worksheet and have motor carrier verify lack of documents.
- Certified documents from State agencies.
- Photographs that support the violation.

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

***Part 391 - Enforcement Action Against Drivers******Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for violating:

- 391.11 - Unqualified driver\*
- 391.11(b)(5) - Driving without a currently valid motor vehicle operator's license or permit.\*
- 391.11 (b)(7) - Driver disqualified from operating CMV\*
- 391.15(a)-SIN 10- Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance\*
- 391.15(a)-SOUT10 - 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

***2.3.1.6 Part 383 Commercial Driver's License (CDL) Standards***

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

***Evidence Required to Prosecute a Violation of Part 383***

- Evidence that the driver was subject to Part 383, CDL requirements (e.g., GVWR >26,000 lbs.)
- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the vehicle was operated (used) by the employer.
- Evidence that the CMV was operated in intrastate or interstate commerce.
- Evidence on a certain date.

- Evidence that a specific violation of Part 383 occurred.
- Proof of HM transported in placardable quantities or in tank vehicles (for endorsement violations)
- Knowledge by the carrier if the enforcement case is against the company

### ***Part 383 - Guidelines for Enforcement of Red Flag Violations***

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

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

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

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

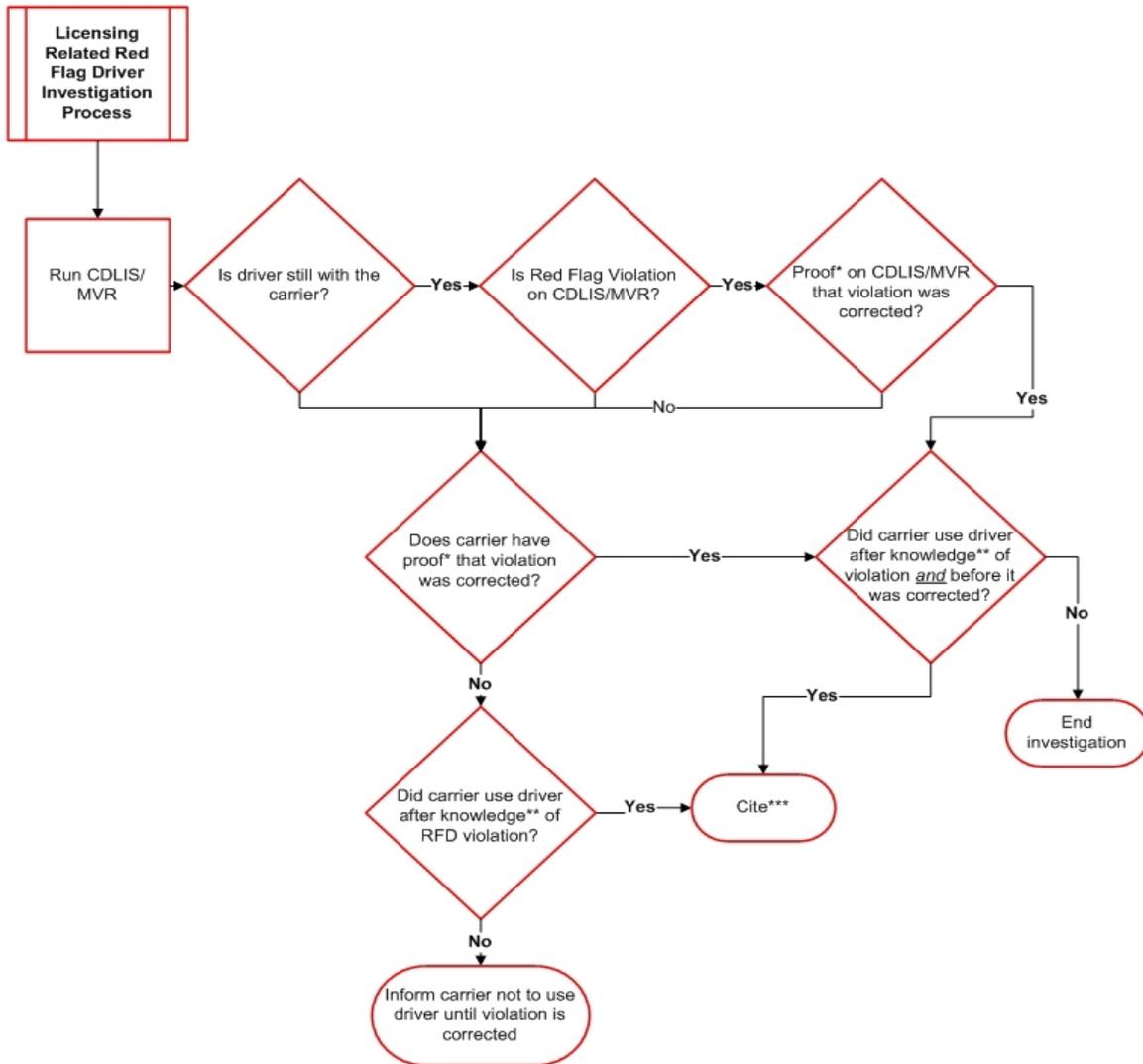
### ***Driver vs. Carrier Enforcement***

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

### ***Part 383 - Red Flag Violations***

- For Red Flag Violations which were originally cited for operating while disqualified [383.51(a)-SIN,5 383.51(a)-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, you will normally issue a NOC (or NOV in the case of the two violations listed above). If there already was a citation, then you should consult with the manager before initiating enforcement against the driver.

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



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

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

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

[Description of Licensing Related Red Flag Driver Investigation Process](#)

**Part 383 - Documentation**

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

- **Does FMCSA have jurisdiction?**
  - GVWR markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating MSDS should be used to establish FMCSA’s jurisdiction over the motor carrier’s operation.
- **Was the driver assigned (or controlled) by the employer?**
  - Employment application, lease agreement, payroll records, tax and worker’s compensation deductions, record of duty status with preprinted company name, and/or

statement from a motor carrier (e.g., Safety Director) may be used to prove that the driver was assigned or controlled by the employer.

- **Was the CMV operated in intrastate or interstate commerce?**
  - Obtain a RODS or time records and a corresponding shipping document to show that the CMV was used in commerce.
- **Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?**
  - Statement(s) of driver and/or responsible employer official are strongly recommended, especially when the violation involves the employer's/driver's failure to act or failure to maintain records.

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

- Statement from carrier official, driver, or person responsible for compliance with Part 383. See Illustration E-2.
- Driver's RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle meets the definition of a CMV in Part 383.
- State vehicle inspection report.
- Motor vehicle record from the State that issued the CPL/CDL showing suspension/cancellation/disqualification or being invalid. A CDLIS printout is acceptable.
-  **Note:** A CDLIS printout is acceptable for the MX/CN driver. Note that the CDLIS printout will only display a status for the driver as of the date of the status query, and not a history for the compliance review period.
- Photograph or copy of current CDL or other photographs that support the violation.

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

### *Part 383 - Enforcement Action Against Drivers*

The following violations warrant considering enforcement action against a driver:

- 383.21 - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.\*
- 383.23(a) (2)- Operating a commercial motor vehicle without a valid commercial driver's license.\*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.
- 383.51(a)-SIN ,6 - Driving a CMV while CLP or CDL is suspended for a safety-related or unknown reason. and in state of driver's license issuance.\*.
- 383.51(a)-SOUT,6 - Driving a CMV while CLP or CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.\*
- 383.91 (a) - Operating a CMV with improper CDL group.\*

(\* ) denotes Red Flag Violation

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

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

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

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

### 2.3.2 Crash Indicator BASIC

#### ***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.

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 follow on action called the "Cooperative Safety Plan". The Cooperative Safety Plan (CSP) is a voluntarily agreed upon document the motor carrier prepares outlining the actions they will take to reduce or eliminate those crashes that caused the Crash BASIC to meet or exceed the threshold and require the Crash BASIC Investigation to occur. The CSP is not an enforcement action and is viewed as a follow on action designed to assist the carrier in committing to the actions discussed with the investigator during the CBI.

### 2.3.3 Driver Fitness BASIC

#### ***2.3.3.1 Part 383 Commercial Driver's License (CDL) Standards***

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Procedures](#).

#### ***2.3.3.2 Part 391 – Drivers Qualifications***

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 391: Procedures](#).

#### ***2.3.3.3 Part 171 – HM Communication, Emergency Response Information Training***

#### ***Evidence that is Required to Successfully Prosecute a Violation of Part 172***

To successfully prosecute a violation of Part 172, establish the following facts properly supported by evidence:

- That the hazardous material in question is in fact a hazardous material.

- That the hazardous material was offered for transportation in commerce by the Carrier or Shipper being investigated.
- That a violation of Part 172 occurred.
- That knowledge and willfulness has been established (see Investigations of HM Carriers and Shippers)

### *Look for the Following When Compiling Your Case on Part 172*

- Ensure that the subject's actions actually constitute an offering for transportation in commerce. Sometimes, this can be difficult to establish. Generally speaking, a package is offered for transportation when the package is prepared, ready for shipment, and a shipping paper/bill of lading has been prepared indicating the consignee of the shipment.
- Ensure that the material in question is a hazardous material. 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, obtain a MSDS.
- When using a MSDS to confirm the presence of a hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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 that the documents reference one another. For instance:
  - If the shipping order number indicates a trailer number or drivers 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 it have the trailer number; and, is the driver's 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.
- When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.

### *Documents Needed for a Part 172 Enforcement Case*

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper, MSDS and/or other document, such as a bill of lading indicating the class of hazardous material and, if possible, the quantity.
2. **Establish that the hazardous material was offered, or was actually transported in commerce.** Shipping papers, bills of lading, and other such documents, may be used to establish this fact. In addition, photographs of the shipment that indicate that it was offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 172 occurred.** Documenting a violation of Part 172 generally requires at least the HM shipping paper, and also photographs of the package in commerce showing the alleged violation and/or statements that establish the necessary facts of the case.

### *Preparing the Exhibit Abstract*

The exhibit abstract for each count should 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 172 Enforcement Case.](#)

- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- Ensure shipper and carrier violations are distinct, using the word “transporting” for carriers and “offering” for shippers.
- Refer to [Illustration HM-11](#) for examples of exhibit abstracts for violations of Part 172.

### ***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 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 172 function-specific training violation should read as follows:

On or about «DATE», «SHIPPER/CARRIER\_NAME» offered/transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION». «SHIPPER/CARRIER\_NAME» «DESCRIBE VIOLATION».

#### ***2.3.3.4 Part 380 – Special Training Requirements***

Once you have entered the violations discovered into Part B of CAPRI software and have decided to initiate an enforcement action for the Part 380 violations, you should use the following guidelines when submitting an enforcement report for Part 380 violations.

### ***Part 380 - Documentation***

#### ***Documents that Should be Gathered to Initiate an Enforcement Action***

You should gather documentation to initiate an enforcement action, which establishes the following:

- The vehicle used falls within FMCSR jurisdiction for Part 380.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.
- A violation of Part 380 occurred.

#### ***Precautions that Should be Taken When Preparing a Statement for Carriers Who Do Not Have the Appropriate Records***

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included as part of the evidence in the case.

- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose LCV driver-training certificates are not in the carrier's files to determine whether they have been trained and, if so, when, where and by whom. You should obtain the driver's signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.
- In selecting Part 380 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 380 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records. Therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in Illustration E-1: Photographic Declaration.

### ***Some Examples of Documents that May be Used to Prove Violations of Part 380***

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver or other person responsible for compliance with Part 380.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill 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 CAPRI DQ Worksheet and have motor carrier verify lack of documents.

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

### ***Part 380 - Enforcement Action Against Carriers***

#### ***Some Important Issues to Remember When Documenting Violations of Part 380***

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

Best practice requires that you obtain statement(s) from motor carrier officials, affirming that the required documents were not in the DQ file, or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See [Illustration E-2: Written Statement with Perjury Clause](#).

Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for “failing to maintain” the driver’s state driving record abstract should not be described in the case report as “failing to make an inquiry” from the state licensing agency.

### ***Part 380 - Enforcement Action Against Drivers***

#### ***Enforcement Action that Should be Considered Against a Driver***

You should consider enforcement action against a driver for the following violation:

- 380.401(b) - Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to your employer to be filed in your Driver Qualification file.

#### ***2.3.3.5 Part 387 – Financial Responsibility***

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 387 : Procedures](#).

#### ***2.3.3.6 Part 390 – General Requirements***

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 390 : Procedures](#).

#### ***2.3.3.7 Part 392 – Driving of Motor Vehicles***

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 392 : Procedures](#).

#### ***2.3.3.8 Part 177 – HM Carriage by Public Highway***

##### ***Evidence that is Required to Successfully Prosecute a Violation of Part 177***

To successfully prosecute a violation of Part 177, we must establish the following facts properly supported by evidence:

- That the material in question is in fact a hazardous material,
- That the hazardous material was transported by highway in commerce, and
- That a violation of Part 177 occurred or when citing general requirements that relate to other sections, such as § 177.800(b), that a violation of Parts 107, 171, 172, 173, 177, 178 or 180 occurred by a motor carrier. When citing general requirements, you should ensure the enforcement procedures of the specific part (e.g., Part 172) are satisfied.
- That knowledge and willfulness is established.

##### ***Look for the Following When Compiling a Case on Part 177***

1. Ensure that the material in question is a hazardous material. A shipping paper alone is rarely sufficient for this purpose.

2. Obtain a MSDS to confirm the presence of a hazardous material. However, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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.
3. 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.
4. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
5. That knowledge and willfulness is established.

### *Documents that are Needed for a Part 177 Enforcement Case*

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper and/or MSDS.
2. **Establish that the hazardous material was actually transported in commerce by highway.** 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 offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 177 occurred.** Documenting a violation of Part 177 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements establishing the facts of the case outlined above. All elements of the secondary sections cited must also be proven and documented, per the relevant sections of this manual.

### *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 that are Needed for a Part 177 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 177.

On or about «DATE», «CARRIER» transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION», «DESCRIBE THE VIOLATION».

## **2.3.4 Hazardous Material (HM) Compliance**

### *2.3.4.1 Part 107-Registration of Persons Who Offer or Transport HM*

#### *2.3.4.1.1 Evidence that is Required to Successfully Prosecute a Violation of Part 107*

To successfully prosecute a violation of Part 107, Subpart G, you must show that:

- That the material in question is in fact a hazardous material subject to the requirements of Subpart G in an amount meeting the requirements.
- That the hazardous material was actually transported in intrastate, interstate, or foreign commerce.

- That the person performing the activity was not registered in accordance with Subpart G of Part 107.
- That knowledge and willfulness was established.

#### ***2.3.4.1.2 Look for the Following When Compiling Your Case on Part 107***

1. Ensure that the company is not registered.
2. Ensure the subject of the case is, in fact, performing the functions that require registration.
3. Ensure that the material in question is a hazardous material in a quantity requiring registration.
4. Use a MSDS to confirm the presence of a hazardous material. However, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS is often a generic document providing 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.
5. 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.
6. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.

#### ***2.3.4.1.3 Documents Needed for an HM Registration Enforcement Case***

1. **Establish that the material in question is in fact a hazardous material that meets the limits in Subpart G.** This may be accomplished by obtaining a copy of the shipping paper and MSDS, that indicate not only the class of hazardous material, but the quantity as well.
2. **Establish that the hazardous material was offered for transportation or was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading and other such documents may be used to establish this fact. In addition, photographs of the shipment that indicate that it was offered for, or that it was in commerce, may also be useful.
3. **Establish that the person was not registered.** This can be demonstrated by obtaining a statement from a responsible company official, by verifying registration information in MCMIS/PHMSA online, or by an oral interview with the HM Division/PHMSA to confirm the lack of a current registration. A screenshot of the PHMSA online check showing the lack of registration is a good way. Be sure to check various spellings of the carrier's name.
4. **Establish that a knowledge and willfulness of a violation of Part 107 occurred.** This generally requires at least the HM shipping paper, but may also require photographs of the package in commerce and/or statements that establish the necessary facts of the case, as outlined above.

#### ***2.3.4.1.4 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 above in [Documents Needed for an HM Registration Enforcement Case](#)
- Care should be taken in the preparation of this abstract. Attention to detail is essential. Refer to [Appendix F](#) for an example of an exhibit abstract for a violation of Part 107.

#### ***2.3.4.1.5 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 107 violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER NAME» transported/shipped a placardable amount of «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION» without first registering with the Department, as required under Subpart G of Part 107.

#### ***2.3.4.2 Part 171-HM Incident Reporting***

##### ***2.3.4.2.1 Evidence Required to Prosecute a Violation of Incident Reporting Requirements***

To prosecute a violation of hazardous materials incident reporting requirements, establish the following facts properly supported by evidence:

##### ***2.3.4.2.2 Evidence that is Required to Successfully Prosecute a Violation of Incident Reporting Requirements***

To successfully prosecute a violation of incident reporting requirements, establish the following facts properly supported by evidence:

- HM were being transported in commerce (including loading and unloading operations covered by the HM regulations).
- There was an unintentional release of HM in a quantity requiring reporting.
- That the entity in possession of the HM at the time of the incident did not report the incident.

##### ***2.3.4.2.3 Look for the Following When Compiling Your Case on HM Incident Reporting***

1. Prove that an incident requiring reporting occurred.
2. Prove that the incident was not reported
3. Ensure that the material involved in the incident is a hazardous material. 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, obtain a MSDS.
4. When using a MSDS to confirm the presence of a hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question.
  - A MSDS 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.

5. Ensure the material was considered “in transportation” when the incident occurred.
6. Validate who had possession of the hazardous material when the incident occurred.
7. 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.
8. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.

#### ***2.3.4.2.4 Documents Needed for HM Incident Reporting Enforcement Case***

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper and MSDS.
2. **Establish that the hazardous material was offered for transportation or was actually transported in 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 offered for, or that it was in commerce, may also be useful.
3. **Establish that an incident occurred, which is subject to the reporting requirements.** Many different documents can be used to prove that an incident occurred, including police reports, NRC notifications, company incident/accident reports, insurance reports and over, short and damaged (OS&D) reports.
4. **Establish that an incident report was not filed.** Proving that a report was not filed can be difficult. If possible, obtain a statement from the responsible company official. A screenshot of NRC/PHMSA databases or an oral interview with NRC/PHMSA is also sufficient. Or prepare a statement noting that you checked the NRC/PHMSA databases and the check resulted in being unable to locate an incident report.

#### ***2.3.4.2.5 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 above in [Documents Needed for an HM Incident Reporting Enforcement Case](#)
- Care should be taken in the preparation of the abstract. Attention to detail is essential.
- Refer to [Illustration HM-9](#) for an example of an exhibit abstract for a violation of Part 171.

#### ***2.3.4.2.6 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 171 violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER NAME» transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION». During this trip, a HM incident occurred, and «CARRIER/SHIPPER NAME» failed to prepare a written report of an incident involving HM as required.

### ***2.3.4.3 Part 172-HM Communication, Emergency Response Information & Training***

#### ***2.3.4.3.1 Evidence that is Required to Successfully Prosecute a Violation of Part 172***

To successfully prosecute a violation of Part 172, establish the following facts properly supported by evidence:

- That the hazardous material in question is in fact a hazardous material.
- That the hazardous material was offered for transportation in commerce by the Carrier or Shipper being investigated.
- That a violation of Part 172 occurred.
- That knowledge and willfulness has been established (see Investigations of HM Carriers and Shippers)

#### ***2.3.4.3.2 Look for the Following When Compiling Your Case on Part 172***

- Ensure that the subject's actions actually constitute an offering for transportation in commerce. Sometimes, this can be difficult to establish. Generally speaking, a package is offered for transportation when the package is prepared, ready for shipment, and a shipping paper/bill of lading has been prepared indicating the consignee of the shipment.
- Ensure that the material in question is a hazardous material. 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, obtain a MSDS.
- When using a MSDS to confirm the presence of a hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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 that the documents reference one another. For instance:
  - If the shipping order number indicates a trailer number or drivers 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 it have the trailer number; and, is the driver's 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.
- When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.

#### ***2.3.4.3.3 Documents Needed for a Part 172 Enforcement Case***

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper, MSDS and/or other document, such as a bill of lading indicating the class of hazardous material and, if possible, the quantity.
2. **Establish that the hazardous material was offered, or was actually transported in commerce.** Shipping papers, bills of lading, and other such documents, may be used to establish this fact. In addition, photographs of the shipment that indicate that it was offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 172 occurred.** Documenting a violation of Part 172 generally requires at least the HM shipping paper, and also photographs of the package in commerce showing the alleged violation and/or statements that establish the necessary facts of the case.

#### ***2.3.4.3.4 Preparing the Exhibit Abstract***

The exhibit abstract for each count should 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 172 Enforcement Case](#)

- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- Ensure shipper and carrier violations are distinct, using the word “transporting” for carriers and “offering” for shippers.
- Refer to Illustration HM-11 for examples of exhibit abstracts for violations of Part 172.

#### ***2.3.4.3.5 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 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 172 function-specific training violation should read as follows:

On or about «DATE», «SHIPPER/CARRIER\_NAME» offered/transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION». «SHIPPER/CARRIER\_NAME» «DESCRIBE VIOLATION».

#### ***2.3.4.4 Part 172 Subpart I-Security Assessments of HM Companies***

##### ***2.3.4.4.1 Evidence Required to Successfully Prosecute a Violation of Part 172 Subpart I***

To successfully prosecute a violation of Part 172 Subpart I, establish the following facts:

- That the carrier transported or shipper offered a hazardous material requiring a Security Plan in the amount required.
- That the hazardous material was transported in commerce.
- That the Security Plan was not prepared in accordance with the requirements of Part 172 Subpart I.
- That knowledge and willfulness was established (see General Guidelines for the Investigation of HM Carriers and Shippers)

#### ***2.3.4.4.2 Look for the Following When Compiling a Case on Security Plans***

1. Ensure that the carrier transported a hazardous material 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 MSDS and some means to show the amount transported.
2. Where a MSDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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. This is especially important with extremely long Security Plans.
6. The lack of a Security Plan can only be proven by a statement. Ensure the statement is clear, covers the time period in question, and that no other document exists that could be used as a Security Plan.

#### ***2.3.4.4.3 Documents Needed for a Security Plan Enforcement Case***

1. **Establish that company transports or offers a hazardous material requiring a Security Plan in the amount required.** This may be accomplished by obtaining a copy of the shipping paper or delivery receipts and MSDS. Amounts of the HM, or proof of meeting the definition of a Hazard Zone, is crucial in some instances.
2. **Establish that the hazardous material was actually transported in 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.
3. **Establish that a violation of Part 172 Subpart I occurred.** Documenting a violation of Part 172 Subpart I generally requires statements that establish the facts of the case, as outlined above, and a copy of the Security Plan, if it exists, with identification of which parts of the plan are non-compliant. Ensure security markings of the plan are in place. Photographs should clearly show any specification or other markings found on the package, and the amount of HM on the vehicle.

#### ***2.3.4.4.4 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 Security Plan 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 172.

#### ***2.3.4.4.5 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 172 Subpart I violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER» used driver «DRIVER'S NAME» to drive a CMV transporting «AMOUNT OF» «PROPER SHIPPING DESCRIPTION», a hazardous material requiring a Security Plan, from «ORIGIN» to «DESTINATION». During this transportation the company did not comply with the requirements of 49 CFR 172 Subpart I. «DESCRIBE VIOLATION».

#### ***2.3.4.5 Part 173 & 178-HM Packaging and Loading***

##### ***2.3.4.5.1 Evidence that is Required to Successfully Prosecute Violation of Part 173 or Part 178***

To successfully prosecute a violation of Part 173 or Part 178, we must establish the following facts, properly supported by evidence:

- That the material in question is, in fact, a hazardous material;
- That the hazardous material was offered for transportation in commerce;
- That the shipment was not offered for transportation or transported, in accordance with the requirements of Part 173 or Part 178; and
- That knowledge and willfulness is established - see Investigations of HM Carriers and Shippers.

##### ***2.3.4.5.2 Look for the Following When Compiling a Case on Packaging and Loading***

1. Ensure that the material in question is a hazardous material. A shipping paper alone is normally sufficient for this purpose. Obtain a MSDS from the shipper to validate that the material shown on the shipping paper meets the definition of a hazardous material, since Section 173.22 places the regulatory burden on the shipper to properly classify and identify the hazardous material they offer for transportation. If the shipping paper includes at least the UN/NA identification number and a proper shipping name from the HM Table, then the shipper has identified it as a hazardous material. FMCSA personnel are not trained, qualified, or equipped to determine whether a particular product is in fact a hazardous material.
2. Should the shipping paper fail to have at least the identification number and proper shipping name, you need to obtain a Safety Data Sheet (SDS) from the shipper to validate that the material shown on the shipping paper meets the definition of a hazardous material. Investigators should avoid using generic SDS obtained from the Internet or sources other than the shipper or manufacturer of the product.
3. Prior to documenting a violation of the packaging requirement in Part 173, be sure to check all applicable exceptions in the HMR, in addition to the Special Provisions found in the HM Table, and check for any Special Permits.
4. 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.
5. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
  6. Ensure knowledge and willfulness is clearly established.

#### ***2.3.4.5.3 Documents Needed for Parts 173 & 178 Enforcement Case***

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper or the MSDS.
2. **Establish that the hazardous material was offered for transportation or was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading, drivers' records of duty status, and other such documents may be used to establish this fact. In addition, photographs of the shipment that indicate that it was offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 173 or Part 178 occurred.** Documenting a violation of Parts 173 or 178 normally require photographs of the package in commerce and/or statements that establish the facts of the case. These photographs should clearly show any specification or other markings found on the package, or the lack thereof - if that is the situation – as well as the violation i.e. the leak, the residue on the outside of the package, the damage to the package, etc.

#### ***2.3.4.5.4 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 above. 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 173.

#### ***2.3.4.5.5 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 173 violation should read as follows:

On or about «DATE», «CARRIER/SHIPPER» used driver «DRIVER'S NAME» to drive a CMV transporting «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION». During this transportation the hazardous material «DESCRIBE THE VIOLATION».

#### ***2.3.4.6 Part 177-HM Carriage by Public Highway***

##### ***2.3.4.6.1 Evidence that is Required to Successfully Prosecute a Violation of Part 177***

To successfully prosecute a violation of Part 177, we must establish the following facts properly supported by evidence:

That the material in question is in fact a hazardous material,

That the hazardous material was transported by highway in commerce, and

That a violation of Part 177 occurred or when citing general requirements that relate to other sections, such as § 177.800(b), that a violation of Parts 107, 171, 172, 173, 177, 178 or 180 occurred by a motor carrier. When citing general requirements, you should ensure the enforcement procedures of the specific part (e.g., Part 172) are satisfied.

That knowledge and willfulness is established.

#### ***2.3.4.6.2 Look for the Following When Compiling a Case on Part 177***

1. Ensure that the material in question is a hazardous material. A shipping paper alone is rarely sufficient for this purpose.
2. Obtain a MSDS to confirm the presence of a hazardous material. However, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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.
3. 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.
4. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
5. That knowledge and willfulness is established.

#### ***2.3.4.6.3 Documents that are Needed for a Part 177 Enforcement Case***

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper and/or MSDS.
2. **Establish that the hazardous material was actually transported in commerce by highway.** 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 offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 177 occurred.** Documenting a violation of Part 177 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements establishing the facts of the case outlined above. All elements of the secondary sections cited must also be proven and documented, per the relevant sections of this manual.

#### ***2.3.4.6.4 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 that are Needed for a Part 177 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 177.

#### ***2.3.4.6.5 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 177 violation should read as follows:

On or about «DATE», «CARRIER» transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION», «DESCRIBE THE VIOLATION».

#### ***2.3.4.7 Part 180-Cargo Tank Motor Carrier Reviews and Cargo Tank Facility Reviews (CTFRS)***

##### ***Evidence Required for Enforcement Cases***

Regardless of the type of violation, you must show that 1) the cargo tank is subject to Part 180; and 2) the RI failed to perform the test/inspection properly.

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.

Normally, it is best to not to 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 HM Program Manager for guidance.

Examples of how to compile a CTFR case are available from your HM Specialist or HM Program Manager.

### ***2.3.4.8 Part 385 Subpart E-Hazardous Materials Safety Permit (HMSP) Program***

#### ***2.3.4.8.1 Evidence Required to Successfully Prosecute a Violation of Part 385***

To successfully prosecute a violation of Part 385, establish the following facts:

- That the material in question is in fact a Hazardous Material and in a quantity requiring a HM Safety Permit.
- That the hazardous material was transported in commerce.
- That the shipment was not transported in accordance with the requirements of Part 385.
- That knowledge and willfulness was established.

#### ***2.3.4.8.2 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 MSDS.
2. Where a MSDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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.

#### ***2.3.4.8.3 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.

#### ***2.3.4.8.4 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 MSDS.
2. **Establish that the HMSP-required hazardous material was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading and other such document may be used to establish this fact. In addition, photographs of the shipment that indicate that it was in commerce may also be useful. Amounts of the HM, or proof of meeting the definition of a Hazard Zone, is crucial in some instances.
3. **Establish that a violation of Part 385 occurred.** Documenting a violation of Part 385 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements that establish the facts of the case as outlined above. These photographs should clearly show any specification or other markings found on the package, and the amount of HM on the vehicle.

#### ***2.3.4.8.5 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 in section 2.3.3.8.4 .
- 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.

#### ***2.3.4.8.6 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».

#### ***2.3.4.9 Part 392-Driving of Motor Vehicles***

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 392 violations, use the following guidelines when submitting an enforcement report for Part 392 violations.

##### ***Part 392 - Guidelines for Enforcement of Red Flag Violations***

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

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

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

### ***Driver vs. Carrier Enforcement***

The manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

### ***Part 392 - Red Flag Violations***

- Normally, discovery of the two designated Red Flag Violations [392.4(a) and 392.5(a)] will result in an immediate driver disqualification. If you find evidence that the driver operated while disqualified, cite 383.51(a) for operating while disqualified and pursue enforcement against the driver.
- If there was no disqualification, check to see if there was a subsequent conviction for the violation. If the driver was convicted, then you or the manager should refer the matter to the Service Center (SC) to pursue driver disqualification, and should not initiate an NOC.
- If there was no disqualification, no conviction, and no original citation, then verify the violation in the course of the investigation, and initiate a driver and/or carrier NOC. If there was an original citation, then consult with the manager before initiating enforcement.

### ***Part 392 - Documentation***

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

You should 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.

- You should 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 your discovered violations are listed below:

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 392. See Illustration E-2.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to Part 392.
- Documentary evidence proving the violation (i.e., 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 you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

### ***Part 392 - Enforcement Action Against Drivers***

#### ***Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated.
- 392.4(a) - Driver uses, or is in possession of, drugs.\*
- 392.4(b) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty. \*
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.

(\* ) denotes Red Flag Violation

#### ***Special Topic: Distracted Driving – Ban on Texting and Hand-held Mobile Telephone Use***

The regulations prohibiting texting and hand-held mobile telephone use should be cited against a driver and/or motor carrier, when warranted, during an inspection or investigation, including, but not limited to, crash investigations and onsite investigations. Situations where the violation may be cited include, but are not limited to, the following:

- CMV drivers and/or motor carriers may be cited at roadside, if enforcement personnel directly observe the CMV driver texting or using a hand-held mobile phone while driving a CMV, while operating in interstate commerce or transporting placardable quantities of HM in intrastate commerce. The violation will apply to drivers observed using hand-held mobile phones when driving in any area that meets the 49 CFR Section 390.5 definition of a “highway.” This includes a rest stop, weigh station or other road, street, or way open to public travel.
- During a crash investigation, enforcement personnel may cite the violation, if the driver acknowledges texting or using a hand-held mobile phone when the crash occurred, or if there is credible and sufficient evidence that the driver was using a hand-held mobile telephone. Such evidence could include eyewitness testimony, or evidence that a text or call was placed at the time of the crash.
- During an investigation at a motor carrier’s PPOB or terminal, the violation may be cited, if sufficient and credible evidence of texting or hand-held mobile phone use while driving is discovered. (Such evidence may be found in crash reports, driver files, letters of reprimand, citations, etc.) The violation should be cited on Part B of the compliance review/investigation report, and a notice of claim may be issued against the driver and/or motor carrier, as appropriate.
- Motor carriers may be held accountable for driver violations of the texting or hand-held mobile telephone prohibition, if there is evidence that the employer allows, or requires, the driver to use a hand-held mobile phone while driving, or routinely places calls to its drivers’ hand-held devices while the drivers are driving a CMV.

When citing a driver or motor carrier for a violation either of these rules, use the appropriate violation citation.

- 392.80(a) - Operating a CMV while texting.
- 392.82(a)(1) - Operating a CMV while using a hand-held mobile telephone.
- 49 CFR Section 392.80(b) - Allowing or requiring a driver to operate a CMV while texting. (Carriers)
- 49 CFR Section 392.82(a)(2) - Allowing or requiring a driver to operate a CMV while using a hand-held mobile telephone. (Carriers)

### [Frequently Asked Questions Ban on Texting and Hand-held Mobile Phones](#)

#### Primary and Secondary Violations

If a State currently has no authority, or only secondary enforcement authority, in this area of distracted driving, the Division Office should strongly encourage the State to seek primary enforcement authority through its legislative or regulatory process.

#### ***2.3.4.10 Part 397-HM Driving and Parking***

#### ***Evidence Required to Successfully Prosecute a Violation of Part 397***

To successfully prosecute a violation of Part 397, establish the following facts:

- That the material in question is a hazardous material, requiring the motor vehicle to be marked or placarded, in accordance with title 49 CFR § 177.823
- That the hazardous material was transported in commerce
- That a violation of Part 397 occurred
- That knowledge or willfulness was established

### ***Look for the Following When Compiling Case on Part 397***

Ensure that the material in question is a hazardous material in a quantity requiring marking or placarding.

- In some cases a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available and in cases where no shipping paper was ever prepared, it may be necessary to obtain a MSDS.
- You must also be able to prove the quantity. A MSDS 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 MSDS.
- 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».

#### ***2.3.4.11 Part 130 – Oil Spill Prevention and Response Plans***

New Data

#### ***2.3.4.12 Part 180 – Cargo Tank Motor Carrier Reviews***

New Data

#### ***2.3.4.13 Part 383 – Commercial Driver’s License (CDL) Standards***

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the [Part 383: Procedures](#).

### **2.3.5 Hours of Service (Hos) BASIC**

#### ***2.3.5.1 Part 392 Driving of Motor Vehicles***

Please refer to [Enforcement Procedures](#).

#### ***2.3.5.2 Part 395 Hours of Service (HOS) of Drivers***

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 395 violations, you should use the following guidelines when submitting an enforcement report for Part 395 violations.

#### ***Part 395 - Guidelines for Enforcement of Red Flag Violations***

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

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

#### ***Driver vs. Carrier Enforcement***

The manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.

- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

### ***Part 395 - Red Flag Violations***

- The Red Flag Violation 395.13(d) is cited when the driver has been found operating while placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either the driver or the carrier, or both driver and carrier.
- Once the violation is verified, if there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC.

### **Part 395 - Basic Enforcement Concepts for Part 395**

#### ***Some Basic Enforcement Concepts to Keep in Mind when Preparing an Enforcement Case that Includes Part 395 Violations***

- It is inappropriate to submit a count where a driver exceeded one of the HOS rules and falsified the RODS for the same day.
- Driver interviews or other documents are necessary to prove the violation exists when falsification and exceeding the HOS limits occur on the same day,
- One of the most serious violations is one in which the carrier dispatched the driver with accumulated hours already at, or very close to, the maximum hours permitted.
- Statements from dispatchers and/or drivers should be obtained. This is important when you are trying to demonstrate that the motor carrier dispatched the driver when it knew that the driver was very close to, or already in excess of, the total hours of service permitted.
- Any day on which a violation occurs may be documented for enforcement purposes. However, avoid documenting violations on consecutive calendar days when the hours driving in violation begin on one day and continue into the next. In cases where violations continue over a period of consecutive days, and you are planning enforcement, it is preferable that only the most flagrant violations are documented.

#### ***Types and Sources of Evidence to Prove Falsification***

Types and sources of evidence, to prove log falsifications, are too numerous to list; however, some examples are:

- Shipping documents that contain time and date entries for loading and/or unloading time.
- Run sheets, trip reports, trip envelopes which contain instructions for pickups, documents pertaining to drop-offs, key stops, return load pickups, gravity or pump unloading, bulk or container unloading, cleaning of trailers, etc.
- Trip expense reports or vouchers, coupled with petty cash receipts for such expenses as toll receipts, repair purchases, loading or unloading help (lumpers), oversize or overweight special permits, port of entry inspection slips, etc.
- Vehicle breakdown reports.
- Terminal or checkpoint "in and out" records.
- Dispatch sheets, daily or weekly truck reports, terminal reports.
- Run availability sheets and "sign-in sheets."
- Time cards, tachographs or service recorder discs.
- Accident records and reports including workmen's compensation and cargo liability reports.
- Federal or state roadside inspection reports.
- Payroll and related records that show duty times and/or pay for work performed other than driving. Checking payroll books and records may determine very little. An interview with the

payroll clerk is typically more helpful in deciphering the codes used to describe the work performed, or location of the driver's work site.

- Telephone invoices that show the time, date, location of the caller and caller identification number. Motor carriers who use 1-800 numbers to keep in communication with their drivers, or who distribute telephone credit cards, should have these records.
- Insurance company observation reports.
- Contract road patrol reports.
- Daily fuel statements, paid by "credit card" or electronic funds transfer by a third party vendor. Unlike the fuel receipts received by the driver, these daily fuel statements may also identify the driver, time of purchase, number of gallons purchased, unit price, truck number, location of fuel station and odometer reading.

### ***2.3.5.3 Part 380-Special Training Requirements***

Please refer to [Enforcement Procedures](#).

### ***2.3.5.4 Part 383-Commercial Driver's License (CDL) Standards***

Please refer to [Enforcement Procedures](#).

### ***2.3.5.5 Part 387-Financial Responsibility***

Please refer to [Enforcement Procedures](#).

### ***2.3.5.6 Part 390-General Requirements***

Please refer to [Enforcement Procedures](#).

### ***2.3.5.7 Part 391-Qualification of Drivers***

Please refer to [Enforcement Procedures](#).

## **2.3.6 Insurance/Other**

### ***2.3.6.1 Part 387 – Financial Responsibility***

#### ***Documents that Should be Gathered to Initiate an Enforcement Action***

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

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



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

- Statement from motor carrier official, or person responsible for compliance with Part 387. See Illustration E-2.
- Driver's RODS and corresponding shipping paper/bill of lading/passenger manifest or HM shipping paper.

- Vehicle registration showing GVWR, Passenger Seating Capacity, Liquid Load Capacity, or Water Gallons, or documentary evidence proving the vehicle was subject to Part 387.
- FMCSA License & Insurance website printed document showing amount of liability and/or cargo insurance required.
- FMCSA License & Insurance website printed document showing status of operating authority.
- Oral statement from Investigator noting name/date/time of conversation with FMCSA License & Insurance team member verifying motor carrier's "real-time" status of authority and/or insurance.

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

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 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

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

Review the L&I Database: or . 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 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.

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.

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

- Leasing Requirements for Mexico Domiciled Motor Carriers

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

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

[Policy: Post Pilot Program Inspection Requirements for Mexico Domiciled Carriers with Long-Haul Operating Authority (MC-ESB-2015-0001), October 6, 2014.]USDOT Number Identification (§ 390.21(a))

### **US DOT Number Identification:**

When FMCSA grants operating authority to a Mexico domiciled motor carrier to operate within the U.S. southern border municipalities and commercial zones, the motor carrier is directed to include the suffix “Z” at the end of its assigned 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.

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

### **CVSA Inspection Decal Requirements**

A Mexico domiciled motor carrier with authority to operate beyond the commercial zones is required to ensure that each power unit operated in the 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-CMV's are not required to display CVSA decals to operate in the US.

Citing a Violation of the CVSA Decal Requirement

If a carrier is discovered to be operating in the US 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 US 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.]

## **2.3.7 Unsafe Driving**

### **2.3.7.1 Part 392 - Driving of Motor Vehicles**

Once you have entered the violations discovered into Part B of CAPRI 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.

#### **2.3.7.1.1 Part 392 - Guidelines for Enforcement of Red Flag Violations**

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

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

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

#### ***Driver vs. Carrier Enforcement***

The manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

#### ***Part 392 - Red Flag Violations***

- Normally, discovery of the two designated Red Flag Violations [392.4(a) and 392.5(a)] will result in an immediate driver disqualification. If you find evidence that the driver operated while disqualified, cite 383.51(a) for operating while disqualified and pursue enforcement against the driver.
- If there was no disqualification, check to see if there was a subsequent conviction for the violation. If the driver was convicted, then you or the manager should refer the matter to the Service Center (SC) to pursue driver disqualification, and should not initiate an NOC.

- If there was no disqualification, no conviction, and no original citation, then verify the violation in the course of the investigation, and initiate a driver and/or carrier NOC. If there was an original citation, then consult with the manager before initiating enforcement.

### ***2.3.7.1.2 Part 392 - Documentation***

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

You should 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.
- You should 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 your discovered violations are listed below:

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 392. See Illustration E-2.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to Part 392.
- Documentary evidence proving the violation (i.e., 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 you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

### ***2.3.7.1.3 Part 392 - Enforcement Action Against Drivers***

### ***Considering an Enforcement Action Against a Driver***

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated.
- 392.4(a) - Driver uses, or is in possession of, drugs.\*
- 392.4(b) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty. \*
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.

(\*) denotes Red Flag Violation

### ***Special Topic: Distracted Driving – Ban on Texting and Hand-held Mobile Telephone Use***

The regulations prohibiting texting and hand-held mobile telephone use should be cited against a driver and/or motor carrier, when warranted, during an inspection or investigation, including, but not limited to, crash investigations and onsite investigations. Situations where the violation may be cited include, but are not limited to, the following:

- CMV drivers and/or motor carriers may be cited at roadside, if enforcement personnel directly observe the CMV driver texting or using a hand-held mobile phone while driving a CMV, while operating in interstate commerce or transporting placardable quantities of HM in intrastate commerce. The violation will apply to drivers observed using hand-held mobile phones when driving in any area that meets the 49 CFR Section 390.5 definition of a “highway.” This includes a rest stop, weigh station or other road, street, or way open to public travel.
- During a crash investigation, enforcement personnel may cite the violation, if the driver acknowledges texting or using a hand-held mobile phone when the crash occurred, or if there is credible and sufficient evidence that the driver was using a hand-held mobile telephone. Such evidence could include eyewitness testimony, or evidence that a text or call was placed at the time of the crash.
- During an investigation at a motor carrier’s PPOB or terminal, the violation may be cited, if sufficient and credible evidence of texting or hand-held mobile phone use while driving is discovered. (Such evidence may be found in crash reports, driver files, letters of reprimand, citations, etc.) The violation should be cited on Part B of the compliance review/investigation report, and a notice of claim may be issued against the driver and/or motor carrier, as appropriate.
- Motor carriers may be held accountable for driver violations of the texting or hand-held mobile telephone prohibition, if there is evidence that the employer allows, or requires, the driver to use a hand-held mobile phone while driving, or routinely places calls to its drivers’ hand-held devices while the drivers are driving a CMV.

When citing a driver or motor carrier for a violation either of these rules, use the appropriate violation citation.

- 392.80(a) - Operating a CMV while texting.
- 392.82(a)(1) - Operating a CMV while using a hand-held mobile telephone.

- 49 CFR Section 392.80(b) - Allowing or requiring a driver to operate a CMV while texting. (Carriers)
- 49 CFR Section 392.82(a)(2) - Allowing or requiring a driver to operate a CMV while using a hand-held mobile telephone. (Carriers)

### [Frequently Asked Questions Ban on Texting and Hand-held Mobile Phones](#)

#### **Primary and Secondary Violations**

If a State currently has no authority, or only secondary enforcement authority, in this area of distracted driving, the Division Office should strongly encourage the State to seek primary enforcement authority through its legislative or regulatory process.

#### ***2.3.7.2 Part 397-HM Driving and Parking***

##### ***2.3.7.2.1 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

##### ***2.3.7.2.2 Look for the Following When Compiling Case on Part 397***

Ensure that the material in question is a hazardous material in a quantity requiring marking or placarding.

- In some cases a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available and in cases where no shipping paper was ever prepared, it may be necessary to obtain a MSDS.
- You must also be able to prove the quantity. A MSDS alone will not do that.
- Ensure that the documents reference one another. For instance:

##### ***2.3.7.2.3 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 MSDS.
- 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.

##### ***2.3.7.2.4 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.

#### ***2.3.7.2.5 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».

#### ***2.3.7.3 Part 380 – Special Training Requirements***

Please refer to [Enforcement Procedures](#).

#### ***2.3.7.2 Part 383 – Commercial Driver’s License (CDL) Standards***

Please refer to [Enforcement Procedures](#).

#### ***2.3.7.5 Part 387 – Financial Responsibility***

Please refer to [Enforcement Procedures](#).

#### ***2.3.7.6 Part 390 – General Requirements***

Please refer to [Enforcement Procedures](#).

#### ***2.3.7.7 Part 391 – Qualification of Drivers***

Please refer to [Enforcement Procedures](#).

#### ***2.3.7.8 Part 177 – Enforcement Procedures***

##### ***Evidence that is Required to Successfully Prosecute a Violation of Part 177***

To successfully prosecute a violation of Part 177, we must establish the following facts properly supported by evidence:

- That the material in question is in fact a hazardous material,
- That the hazardous material was transported by highway in commerce, and
- That a violation of Part 177 occurred or when citing general requirements that relate to other sections, such as § 177.800(b), that a violation of Parts 107, 171, 172, 173, 177, 178 or 180 occurred by a motor carrier. When citing general requirements, you should ensure the enforcement procedures of the specific part (e.g., Part 172) are satisfied.
- That knowledge and willfulness is established.

#### ***Look for the Following When Compiling a Case on Part 177***

1. Ensure that the material in question is a hazardous material. A shipping paper alone is rarely sufficient for this purpose.
2. Obtain a MSDS to confirm the presence of a hazardous material. However, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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.
3. 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.
4. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
5. That knowledge and willfulness is established.

#### *Documents that are Needed for a Part 177 Enforcement Case*

1. **Establish that the material in question is, in fact, a hazardous material.** This may be accomplished by obtaining a copy of the shipping paper and/or MSDS.
2. **Establish that the hazardous material was actually transported in commerce by highway.** 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 offered for, or that it was in commerce, may also be useful.
3. **Establish that a violation of Part 177 occurred.** Documenting a violation of Part 177 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements establishing the facts of the case outlined above. All elements of the secondary sections cited must also be proven and documented, per the relevant sections of this manual.

#### *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 that are Needed for a Part 177 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 177.

#### *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 177 violation should read as follows:

On or about «DATE», «CARRIER» transported «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION», «DESCRIBE THE VIOLATION».

## 2.3.8 Vehicle Maintenance

### 2.3.8.1 Part 393 and Part 396 – Parts & Accessories, and Inspection, Repair & Maintenance

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 396 violations, you should use the following guidelines when submitting an enforcement report for Part 396 violations.

#### *Part 393 & 396 - Guidelines for Enforcement of Red Flag Violations*

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

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

#### *Driver vs. Carrier Enforcement*

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

#### *Part 396 - Red Flag Violations*

- The Red Flag Violation 396.9(c)(2) is cited when the driver has been found operating while the vehicle was placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either or both the driver and the carrier. Once the Red Flag Violation is verified, if there was no original enforcement on the violation at the roadside, you will normally issue an NOC.

#### *Parts 393 & 396 – Documentation*

##### *Documenting an Enforcement Case for Part 396*

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

***Specific Documents that Should be Used to Document these Violations***

Specific documentation may be needed to support some of the above referenced critical and acute regulation violations.

- 396.9(c)(2) - Copy of the original out-of-service order.
- 396.11(c) - Copy of DVIR indicating the defects or deficiencies listed by the driver and a statement from carrier official that the defect was not corrected.
- 396.17(g) - Copy of the periodic inspection report with defects identified; statement of carrier official that defects were not repaired.

***Documents that Can be Used to Support the Violation***

Examples of documents to support your discovered violations are listed below.

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

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

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

***Parts 393 & 396 - Enforcement Action Against Drivers******Considering an Enforcement Action Against a Driver***

The following violations warrant considering enforcement action against a driver:

- 396.9 - No driver shall operate any motor vehicle declared and marked “out-of-service” until all repairs required by the “Out-of-Service Notice” have been satisfactorily completed.
- 396.9(c)(2) - Operating an "out-of-service" vehicle.\*
- 396.11(a) - Each driver shall report, and every driver shall prepare a report in writing at the completion of each day’s work, on each vehicle operated in commerce (driver has 10 percent or greater violations for at least 30 days checked).

(\* ) denotes Red Flag Violation

***2.3.8.2 Part 383 – Commercial Driver’s License (CDL) Standards***

Please refer to [Enforcement Procedures](#).

***2.3.8.3 Part 387 – Financial Responsibility***

Please refer to [Enforcement Procedures](#).

***2.3.8.4 Part 390 – General Requirements***

Please refer to [Enforcement Procedures](#).

***2.3.8.5 Part 391 – Driver Qualification***

Please refer to [Enforcement Procedures](#).

***2.3.8.6 Part 392 - Driving of Motor Vehicles***

Please refer to [Enforcement Procedures](#).

## 2.4 Follow-on Interventions and Enforcement Tools

### 2.4.1 Introduction to FMCSA's Intervention and Enforcement Toolbox

The Intervention and Enforcement Toolbox is a compilation of “Tools” that may be utilized to provide FMCSA employees, contractors, and State Motor Carrier Safety Assistance Program (MCSAP) partners with a central location for information on the various enforcement tools used to enforce the Federal Motor Carrier Safety Regulations (FMCSR), Hazardous Materials Regulations (HMR) and Federal Motor Carrier Commercial Regulations (FMCCR).

- [2.4.2 Pre-Discovery Enforcement Tools](#) - Includes tools that would be used to locate commercial motor vehicle (CMV) drivers or motor carriers to determine their compliance with the regulations.
- [2.4.3 Investigational Tools](#) – Includes tools that will be used to discover potential noncompliance of Federal regulations.
- [2.4.4 Post-Discovery Tools](#) - Includes tools that would be used to initiate enforcement actions against motor carriers and/or individuals for noncompliance.

### 2.4.2 Pre-Discovery Enforcement Tools

Pre-Discovery Tools include tools that are used to locate CMV drivers or motor carriers to determine their compliance with the FMCSR, HMR, and FMCCR.

**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.

**Motor Carrier Management Information System (MCMIS)** - MCMIS (<http://mcmis.fmcsa.dot.gov>) or (<https://portal.fmcsa.dot.gov>) is an information system that captures data from field offices through the Safety Network (SAFETYNET), CAPRI, 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.

**Commercial Driver's License Information System (CDLIS)** - The CDLIS (<http://cdlis.dot.gov>) access software is used to retrieve driver licensing status and conviction history reports. CDLIS is available via the internet on the FMCSA network or Virtual Personal Network (VPN), in addition to dial-up. It accepts driver query data from ASPEN or CAPRI, and can also be accessed through Query Central (QC).

**Licensing & Insurance (L&I)** - The L&I system is a client-server and web-based real-time application (<http://li-public.fmcsa.dot.gov>) or (<https://portal.fmcsa.dot.gov>) with both public and private access. It is used to enter and display licensing and insurance information regarding authorized for-hire motor carriers, freight forwarders, and property brokers. It is the authoritative source for FMCSA licensing and insurance data. L&I is part of the registration process.

**Query Central (QC)** - QC is a web-based application (<http://qc.fmcsa.dot.gov>) or (<https://portal.fmcsa.dot.gov>) that retrieves safety compliance and enforcement data on CMV drivers, vehicles, and motor carriers from multiple sources using a single input. The response data is analyzed and summarized before being presented in the user's browser. Response data can also be downloaded to pre-populate ASPEN. Data sources include MCMIS, Safety and Fitness Electronic Records (SAFER), L&I, Performance & Registration Information System Management (PRISM), CDLIS, Secretaria de Comunicaciones y Transportes (Mexican Government) (SCT), and Licencia Federal Information System (Mexican) (LIFIS). (Both SCT and LIFIS contain Mexican motor carrier and driver information). This software application is generally used at the roadside for checking Inspection Selection System (ISS) scores, previous inspection history on vehicles and drivers, and for validating a driver's license.

**Enforcement Management Information System (EMIS)** - EMIS is a web-based application (<https://portal.fmcsa.dot.gov>) used to monitor, track, and store information related to FMCSA enforcement actions. EMIS manages and tracks all data associated with notifying the motor carrier, monitoring the motor carrier's response, determining whether further compliance action is required, and generating reports for various Headquarters, Service Center (SC), and Division staff. It is the authoritative source for FMCSA enforcement data. Inputs include data from CaseRite and data entry.

**Electronic Document Management System (EDMS)** - EDMS (<http://edms.fmcsa.dot.gov>) or (<https://portal.fmcsa.dot.gov>) allows for the storage and retrieval of documents, including enforcement case and SA documents, in a paperless environment. EDMS is the central repository for FMCSA documents. Inputs include both scanned and electronically generated documents from EMIS and CAPRI.

**National Consumer Complaint Database (NCCDB)** - NCCDB (<http://nccdb.fmcsa.dot.gov/Homepage.asp>) is a database where complaints are lodged against motor carriers. The complaints will be entered into FMCSA's National Commercial Complaint Database and used for analytical and statistical purposes, until the Agency decides to take enforcement against a carrier. It has HHG, hazardous materials (HM), and safety-related complaints.

**Driver Information Resource (DIR)** - The DIR is a web-based tool that allows a user to search, by driver, for driver's crash and inspection history, regardless of a driver's employment history. FMCSA and State enforcement staff continue to use this tool to access driver-specific data. The Agency expects to make this information available to the motor carrier industry as part of the pre-employment verification process.

**Americans with Disabilities Act (ADA) Related Records and Reports** - FMCSA shares oversight responsibility with the U.S. Department of Justice (DOJ) for monitoring and ensuring ADA regulatory compliance by over-the-road bus companies. An "over-the-road bus (OTRB)" is a bus characterized by an elevated passenger deck over a baggage compartment. A motor coach is the most common example of an OTRB. Pursuant to the Over-the-Road Bus Transportation Accessibility Act of 2007, FMCSA is authorized to deny or revoke interstate operating authority of OTRB companies found to be willfully violating the ADA regulations. DOJ has exclusive civil penalty authority for violations of the ADA regulations for OTRB companies. In March 2009, FMCSA began conducting ADA Reviews to investigate the ADA regulatory compliance of OTRB companies. These ADA Review reports can be found in the OTRB company's/motor carrier's EDMS folder.

**Insurance Company Database** - Insurance companies generally retain information on whether a company has valid insurance, the number of vehicles covered, and the dates of the current and active policy. Some insurance companies allow inquiries for this type of information.

**Global Positioning System (GPS) Data** - When used properly, GPS data can aid a motor carrier in keeping track of its drivers' locations, in order to efficiently coordinate loads and traffic lanes. GPS is also an innovative way for enforcement officials to monitor drivers HOS. Highway safety could potentially be advanced through the use of GPS technology.

**Hazardous Materials (HM) Intelligence Portal** - (<http://hip.phmsa.dot.gov>) The HM Intelligence Portal is an USDOT data integration program managed by the Pipeline and Hazardous Materials Safety Administration (PHMSA). The system consists of an information data warehouse of consolidated HM information from multiple Department of Transportation (DOT) modal agencies, which is accessed through a web-based, decision-support portal. By providing a single, DOT-wide repository of compliance and risk management data, relating to the transportation of HM across all modes of transport, DOT agencies are able to improve oversight of the HM industry.

**Secretary of State's Office** - By searching the State's database for the articles of incorporation and a corporation's Doing Business As (DBA) name, may assist in locating corporations and their officers. The website will give basic information; some states are more liberal in the information they provide on their websites.

**County Records** - County records are similar to searching the Secretary of State's database, as the county records are one level deeper, and can also be used to search articles of incorporation and DBA information. Again, the website may provide limited information, so a visit to the county's records building may be required to obtain detailed information.

**Subpoenas** - Applications for the issuance of subpoenas must be submitted to the Assistant Administrator (AA), or in cases that result in hearings, to the ALJ. The application must show the general relevance and reasonable scope of the evidence sought. Any person served with a subpoena may, within seven days after service, file a motion to quash or modify. The motion must be filed with the official who approved the subpoena. The filing of a motion shall stay the effect of the subpoena until a decision is reached. The AA and Chief Safety Officer (CSO), AA for Field Operations, FAs, DA/SD 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.

**Safe, Accountable, Flexible, Efficient, Transportation, Equity Act - A Legacy for Users (SAFETEA-LU) Section 4103, Penalty for denial of access to records** - A person subject to chapter 51, or a motor carrier, broker, freight forwarder, or owner or operator of a CMV subject to Part B of Subtitle VI who fails to allow promptly, upon demand, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment, lands, buildings and other property, in accordance with sections 504(c), 5121(c), and 14122(b), shall be liable to the United States for a civil penalty not to exceed \$1,000 for each offense. Each day the Secretary is denied the right to inspect and copy any record, or inspect and examine equipment, lands, buildings and other property, shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$10,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request, or could not be timely produced, without unreasonable expense or effort. Nothing in this subparagraph amends or supersedes any remedy available to the Secretary under Section 502(d), Section 507(c), or any other provision of this title.

### **Online Information Search Tools**

- **Whitepages.com, ZabaSearch & Intelius** - These are free online tools that can be used for business searches, reverse phone number and address look-ups. They can be useful in comparing the information motor carriers have submitted on their applications to cross-checking addresses, phone numbers, and names.
- **DOT Job History** - This is an online tool, with a focus on transportation jobs that can be used to gain access to commercial drivers' background checks and employment histories.

**FMCSA Creating Opportunities, Methods, and Processes to Secure Safety (COMPASS)** - The COMPASS program is an FMCSA-wide initiative that is leveraging new technology to transform the way that FMCSA does business. The ultimate goal is to implement an IT solution that improves the Agency's ability to save lives and improves the safety of commercial motor vehicles; key objectives include: creating a single source for crucial safety data via single sign-on access, improving data quality to enable better, more informed decision making and providing actionable information, as well as data.

- By optimizing FMCSA's business processes and improving the Agency's IT functionality, COMPASS will help FMCSA and State enforcement personnel and industry make America's roads safer. COMPASS is now leveraging service-oriented architecture and leading technologies to develop a solution that can adapt easily to a changing environment. The FMCSA Portal provides single sign-on access to MCMIS, EMIS, L&I, DataQs, QC, Analysis and Information Online (A&I), SAFER, Hazardous Material Package Inspection Program (HMPIP), 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.

**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 Serious Violations related to registration and/or insurance requirements from a previous investigation. The Insurance/Other Indicator is not based on on-road safety performance data.
- **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 CAPRI, which is used for preparing CRs, as well as specialized cargo tank facility reviews (CTFRs) and HM shipper reviews. CAPRI includes worksheets for collecting (1) HOS data, (2) DQ data, and (3) drug and alcohol compliance data. It also creates the preliminary carrier safety fitness rating and various reports for motor carriers. It electronically transfers data to SAFETYNET and/or MCMIS.

1. As part of the CSA program, CRs may be either comprehensive or focused 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 or focused). The terms Onsite Comprehensive Investigation and Onsite Focused Investigation are used when the guidance is specific to the type of investigation. A brief description on how to conduct Onsite Comprehensive Investigations and Onsite Focused Investigations can be found below. Additional guidance is provided in the eFOTM.
2. Investigations will include the violation discovery process as documented in the eFOTM. Additionally, the process includes an examination of the elements of "CAIR" and an assessment of a motor carrier's Safety Management Processes (SMPs) using the Safety Management Cycle (SMC). A brief description of the CAIR elements and the SMC is provided below.
3. "CAIR"- As part of every investigation, you must check for the following elements of "CAIR":
  - "C" - **Commercial Driver's License Information System (CDLIS)** - Following eFOTM guidance for checking the minimum number of drivers using CDLIS. Validate endorsements as part of CDLIS checks.
  - "A" - **Authority** - Verifying that the motor carrier has the appropriate type of operating authority using the FMCSA's Licensing and Insurance (L&I) database. It is important for SIs to incorporate the following when performing an investigation of a carrier that transports HM, regardless of whether or not the carrier has been identified for an HM Compliance BASIC investigation:
    - Operating Authority Registration;
    - Pipeline and Hazardous Materials Safety Administration (PHMSA) HM Registration in accordance with §107.601;

- Proper registration of Manufacturing, Testing, or Repair Facility for carriers performing this function;
  - FMCSA HM Safety Permit; and
  - PHMSA HM Special Permit.
- **"I" - Insurance** - Verifying that the motor carrier has the appropriate level of insurance using the L&I (e.g., MCS-90).
  - **"R" - Red Flag Violations** – Investigating all drivers with Red Flag Violations as described in the eFOTM.

**Safety Management Cycle (SMC)** - The SMC is a model that provides a holistic systems view of the management processes and safety improvement practices a carrier should have, in place in order to ensure compliance with FMCSA regulations. The SMC is an important tool for you to use while questioning carrier officials and staff, to help diagnose the breakdown in the Safety Management Process (SMPs) that led to the discovered violations. All six SMPs need to be operating properly, in order to have a fully functioning safety management system. The SMC focuses on what SMPs are breaking down, why they are breaking down, and how they can be fixed.

#### **[100% States] 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. The Offsite Investigation is a desktop investigation that involves pre-investigation research and communication with the carrier via phone, fax, email, and postal mail. Offsite Investigations are an assessment of a carrier's SMP related to the BASIC(s) from a location other than the 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. The same core processes (offsite sample size, application of FMCSR, CAIR, SMC, etc.) are used. Offsite Investigations are generally performed when a carrier has three or fewer BASICs requiring an investigation. If a carrier is uncooperative or non-responsive during an Offsite Investigation [refer to 04.17.2015 Penalties for Denial of Access to Records \(MC-ECE-2015-002\)](#) for guidance regarding how it should be handled. An Offsite Investigation is not recommended if a Follow-on Intervention has failed to address the problem in the past. If this is the case, an Onsite (Comprehensive or Focused) Investigation is generally recommended.

- **Outcome of an Offsite Investigation** - An Offsite Investigation cannot result in a Safety Fitness Rating and will be recorded in CAPRI as a non-ratable review. Violations of Acute and Fundamental regulations found during an Offsite Investigation result in a Serious Violation and impact SMS BASIC prioritization status for a carrier. Violations of ESM and Critical regulations found during an Offsite Investigation do not result in a Serious Violation.

#### **Onsite Comprehensive Investigation**

- **How is it conducted?** - The Onsite Comprehensive Investigation is conducted according to the guidelines set forth in the eFOTM. A Safety Investigator (SI) reviews the motor carrier's operation to determine whether or not the motor carrier is in compliance with the regulations of this Agency (FMCSR, FMCCR, and HMR). Generally, an Onsite Comprehensive Investigation has two purposes: (1) to assign the motor carrier a current safety rating under 49 CFR Part 385, and (2) to determine the motor carrier's overall compliance with Federal regulations administered by this Agency. An Onsite Comprehensive Investigation may lead to the initiation of a civil forfeiture proceeding under 49 CFR Part 386.
- **Outcome of an Onsite Comprehensive Investigation** - A motor carrier's safety rating is determined by the number of Acute and Critical Violations discovered during the investigation, in conjunction with the motor carrier's accident history and out-of-service (OOS) rate. Acute Violations exist where noncompliance is so severe as to require immediate corrective action by a

motor carrier, regardless of the overall safety posture of the motor carrier. Critical Violations exist where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in the motor carrier's management controls. There must be a pattern of Critical Violations to affect a motor carrier's safety rating. The number of violations required to meet a pattern must be equal to at least 10% of the records examined. Notwithstanding the 10% requirement for violations, to affect a motor carrier's safety rating, this Agency could initiate an enforcement proceeding under 49 CFR Part 386 for any and all violations discovered during an Onsite Comprehensive Investigation. An Onsite Comprehensive Investigation can result in a Safety Fitness Rating of Satisfactory, Conditional, or Unsatisfactory. Serious Violations resulting from investigations impact the carrier's overall BASIC status for 12 months.

### **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 the FMCSA Portal. 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. Serious 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 ASPEN, an application that collects all the commercial driver/vehicle roadside inspection details. It utilizes several other applications that pull data from remote sources- ISS, Previous Inspection Query (PIQ), CDLIS, and QC. It also includes communication features to electronically transfer inspection details to SAFER and/or SAFETYNET.

**Safety Audit (SA)** - An examination of a motor carrier's operations to provide educational and technical assistance on safety and operational requirements of the applicable FMCSR, FMCCR and HMR and to gather critical safety data needed to make an assessment of the motor carrier's safety performance and basic safety management controls. An SA does not result in safety ratings.

**Performance Registration Information System Management (PRISM)** - The PRISM program includes two major processes: 1) Commercial Vehicle Registration Process; and 2) Motor Carrier Safety Improvement Process. These two processes work in parallel to identify motor carriers and hold them responsible for the safety of their operation. PRISM ties vehicle registration to the safety of the company responsible for the vehicle(s). The performance of unsafe motor carriers is improved through a comprehensive system of identification, education, awareness, safety monitoring, and treatment.

## 2.4.4 Post-Discovery Tools

### 2.4.4.1 Introduction to Post-Discovery Tools

Post-Discovery Tools will be utilized after the discovery of noncompliance and can be used to take enforcement actions against a motor carrier or driver.

The respondent may not be held accountable for failing to respond to charges which are insufficiently described and/or fail to establish jurisdiction and the who, how, where and what of a violation.

### 2.4.4.2 Cooperative Safety Plan

**[100% States]** If the carrier agrees to complete a Cooperative Safety Plan (CSP), the SI should follow the steps below to complete the CSP process. Note that the SI will complete the CSP letter and template using Senti. When this action is taken, a record is generated in the FMCSA Portal for the purposes of tracking the CSP.

- **SI Customizes and Sends CSP Template to Carrier** The SI should use the letter and CSP template from Senti to inform the carrier of safety deficiencies and offer the opportunity to develop a CSP. In the CSP template the SI should include the specific violation and the identified Process Breakdown from the Investigation Report. The remedy statements must be filled in by the carrier. The carrier must take the responsibility to complete these statements so they “own” the solutions
- **SI Contacts Carrier to Confirm Receipt, Establish Completion Date, and Provide Guidance** The SI should give the carrier 15 calendar days to complete the CSP. If the CSP is not submitted, then one reminder call may be given to the carrier. From the date of the reminder call, the carrier has 10 days to submit the CSP. If it is not submitted in this timeframe, then the CSP should be “closed not complete” in the FMCSA Portal. The SI should provide guidance as needed to assist the carrier in completing the template. However, it should be made clear to the carrier that it is their responsibility to establish their remedies and plans.
- **Carrier Submits Completed CSP to SI** The SI should determine an acceptable delivery method. The carrier may choose to fax the document, but the SI should consider the legibility and readability problems with faxed documents. A signature from the company official should be provided.

- **SI Reviews CSP** When the carrier returns the completed CSP, the SI reviews it and verifies that the carrier's remedies will address the issues. If it is not adequate, the carrier is given one opportunity to improve it; the SI should return the CSP to the carrier and provide further guidance to ensure they understand the concerns, sufficiently address the Process Breakdowns, and make appropriate corrections. The carrier should be offered 10 additional days to submit a revised CSP. If the CSP is not adequate, then the CSP should be "closed complete," and the CSP should be designated as inadequate in the system. The CSP is retained with the carrier file. If the CSP is adequate, then the SI should sign the CSP, the CSP should be "closed complete," and the CSP should be designated as adequate in the FMCSA Portal.
- **SI Scans CSP and Uploads to EDMS**—Once the CSP is finalized and signed, it should be electronically scanned and uploaded to EDMS.

#### 2.4.4.3 Denial of Access

Denial of Access refers to circumstances where a motor carrier, broker, freight forwarder, commercial motor vehicle (CMV) owner, CMV operator, or person subject to the Hazardous Materials Regulations (HMR), (regulated entity) 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 establish civil penalty provisions and 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 and/or HMR 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. Civil penalties and 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 "[04.17.2015 Penalties for Denial of Access](#)."

##### 2.4.4.3.1 Demand Letters

Demand letters are used as an official written demand for access to records of a regulated entity denying access to FMCSA. They are used after the regulated entity has denied access after proper display of credentials in the investigative process. 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. Demand letters must identify, with sufficient specificity, the records, equipment, lands, buildings, or other property to which access is demanded in terms that are understandable to the regulated entity on which it is served. The investigator in consultation with their Division Administrator and/or Program Specialist determines what date and time by which the regulated entity must allow access. The date specified may take into consideration date a 48-hour timeframe permitted to those carriers with multiple terminals as allowed by 49 CFR 390.29. Carriers without multiple offices or terminals must grant access promptly and may be issued a demand letter with a date that leaves a shorter timeframe for the regulated entity to comply. If the regulated entity fails to grant access by the date and time specified in the Demand letter coordination with the Service Center Enforcement team should follow to serve the entity's representative with an Out-of-Service Order. Demand letters may be served in person or by mail depending on the circumstances of the individual case. Sample Demand letters for personal and mail service are found in [attachments B-1 and B2](#) to the Denial of Access Policy.

##### 2.4. 4.3.2 Out-of-Service Penalty for Denial of Access

If a regulated entity fails to grant access by the date and time specified in the Demand letter served to them, the representative should then be served with an Out-of-Service Order that is generated by the Service Center Enforcement Team. The Out-of-Service Order should not be lifted until, but must be lifted once the regulated entity has complied with the requirements of the demand.

#### ***2.4.4.3.3 Civil Penalties for Denial of Access***

Regulated entities may be penalized up to \$1,000 for each day authorized FMCSA personnel are denied prompt access to inspect and copy any record and/or inspect and examine equipment, lands, buildings, and other property. The total of all civil penalties against any violator for all offenses, related to a single violation, shall not exceed \$10,000. If a regulated entity continues to deny access for 10 days after being served a written demand the investigator will cite the violation(s) with one count per day, up to 10 days, for each day records are not provided. The penalty should be calculated using the Unified Fine Assessment (UFA) software. Each day of penalty should be calculated no more than the maximum \$1,000 civil penalty with a total maximum penalty of \$10,000 on the 10th day. If a regulated entity grants access prior to reaching a total of 10 days of denial of access, the investigation should be completed. In such cases, Denial of Access violations should be included in a single NOC, along with any other violations discovered in the investigation for which enforcement will be pursued. If no other violations are discovered as a result of the investigation, an NOC should be prepared to enforce the Denial of Access violations.

#### ***2.4.4.3.4 Citing a Denial of Access Violation***

Investigators and auditors should cite a denial of access violation when taking enforcement as follows:

- For private carriers of non-hazardous materials, cite 49 USC § 504(c) - Failing to promptly allow, upon demand, FMCSA to inspect and copy any record and/or inspect and examine equipment.
- For hazardous materials shippers and carriers, cite 49 USC 5121(c) - Failing to promptly allow, upon demand, FMCSA to inspect and investigate records and property.
- For for-hire carriers, cite 49 USC 14122(b) ) - Failing to promptly allow, upon demand, FMCSA to inspect and copy any record and/or inspect and examine equipment, lands, buildings or other property.

#### ***2.4.4.3.5 Coordination with Use of Subpoenas***

FMCSA also has broad authority to subpoena records in an investigation; subpoenas are enforced through the Federal District court. In some circumstances, the Divisions may want to consider using Denial of Access authority in conjunction with a subpoena. While Section 4103 allows FMCSA to assess penalties for failure to allow access to review and copy records and Section 32502 of MAP-21 gives authority to place violators OOS, enforcement of a subpoena through the Federal District court provides an additional tool to ensure FMCSA is able to access records necessary to complete a review or investigation. If the Division believes a subpoena may be appropriate, before serving a Demand and/or initiating an action using Section 4103 authority, the Division should contact the SC Attorney and Enforcement Program Coordinator. [Subpoenas](#)

#### ***2.4.4.4 Case Rite***

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 CAPRI, ASPEN, and Uniform Fine Assessment (UFA). The Notice of Claim (NOC) is generated from CaseRite and exported to EMIS, a web-based application (<https://portal.fmcsa.dot.gov/>) used to monitor, track, and store information related to FMCSA enforcement actions. It manages and tracks all data associated with notifying the carrier, monitoring the carrier's response, determining whether further compliance action is required, and generating reports for Headquarters, SC, and Division staff. It is the authoritative source for FMCSA enforcement data. Inputs include data from CaseRite and data entry.

#### ***2.4.4.4.1 Before Initiating CaseRite***

Prior to initiating CaseRite, you should complete all parts of CAPRI, ASPEN, or HMPIP, and complete the UFA Penalty Assessment. If you make a change to the number checked, number discovered, or penalty amount after you have already transferred the CAPRI and UFA data into CaseRite, you should manually manipulate the number fields to reflect the new information. If you initiate an enforcement action from anything other than CAPRI, ASPEN, or HMPIP, you should complete the UPAW and enter the data manually into CaseRite.

#### ***2.4.4.4.2 Describing CaseRite***

CaseRite is a Windows-based software program designed to improve the automation, accuracy, and ease of your enforcement case writing process. CaseRite expedites your data entry and also provides error and content checking. The ultimate benefit from the FMCSA's use of CaseRite is the increase in uniformity and consistency of enforcement actions.

#### ***2.4.4.4.3 How CaseRite Works***

CaseRite assists in the entire enforcement case preparation by gathering data from CAPRI and UFA. It also produces the NOC, NOV, and all other related documents.

#### ***2.4.4.4.4 When To Use CaseRite***

You can initiate an enforcement action from an investigation, CR, or from a roadside inspection on the following entities:

- Motor Carriers of Property
- Motor Carriers of Passengers
- Motor Carriers of HM
- Shippers of HM
- Cargo Tank Facilities
- Drivers/Employees
- Brokers
- Freight Forwarders
- Household Goods (HHG) Carriers
- Drug and Alcohol Consortia

#### ***2.4.4.4.5 How To Use CaseRite***

Please refer to [Appendix D](#).

#### ***2.4.4.5 Service List***

##### ***Definition of Service List***

The Service List certifies that the Notice of Claim was provided to the respondent, their legal representative, the DA/SD, 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/State Director's name and address, and the Motor Carrier Docket Clerk, and his/her address in the SC.

The original is served on the respondent, and one copy is served on the rest of the parties. The name of the individual who has served (mailed) the NOC must be typed or printed at the end of the service list and that person **must sign** the service list.

### ***Steps that Should be Taken to Complete an Enforcement Action***

After you complete the documentation process of your enforcement action, you should submit the completed document with evidence to the DA/SD, 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/SD should ensure that investigators do so. Inspectors and Investigators should review the report for clarity and factual accuracy, prior to submitting the enforcement report to the reviewing official. You should submit an electronic export of the enforcement action either on a floppy diskette, or as an email attachment to the reviewing official.

#### **2.4.4.6 Statement of Change**

##### ***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.

#### **2.4.4.7 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.

#### **2.4.4.8 Notice of Violation (NOV) Section**

##### ***2.4.4.8.1 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, NOV's 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, NOV's 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.

#### ***2.4.4.8.2 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.

#### ***2.4.4.8.3 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.

#### ***2.4.4.8.4 Those Who Have the Authority to Initiate and Sign NOVs***

The Field Administrators and Division Administrators or State Director have authority to initiate and sign NOVs.

#### ***2.4.4.8.5 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/State Director (DA/SD) 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 Serious 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

Serious 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.

#### ***2.4.4.8.6 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.

#### ***2.4.4.8.7 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/State Director (DA/SD) 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 violations identified in the NOV and necessary to support a NOC and any proposed penalty, if and when an NOC is issued.

#### ***2.4.4.8.8 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.

#### ***2.4.4.8.9 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.

#### ***2.4.4.8.10 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.

#### ***2.4.4.8.11 Criteria for Issuing the NOV as a Result of a Direct NOV Assignment***

When a Direct NOV assignment is initiated, you should review motor carrier data for drivers with Red Flag Violations. If the motor carrier has any drivers with Red Flag Violations, these violations should be included in the NOV. The inclusion of Red Flag Violations does not require an investigation to be assigned. Additionally, there may be other immediately correctable violations outside of the Driver Fitness BASIC identified in the motor carrier data that may be considered for inclusion in the Direct NOV (e.g., failing to update the MCS-150).

#### ***2.4.4.8.12 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 recorded in the Compliance Analysis, Performance, Review, Information (CAPRI) system, the investigator should choose “NOV” for the planned action. The case number should be noted in Part C of the report.

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/SD 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/SD 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.

#### ***2.4.4.8.13 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.

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1 Section 222-eligible investigations include on-site rated and unrated compliance reviews, terminal reviews and shipper reviews.

#### **2.4.4.9 Notice of Claim (NOC) Section**

##### ***2.4.4.9.1 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.

##### ***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.

##### ***Those Who Have the Authority to Initiate and Sign NOCs***

The Field Administrators and Division Administrators or State Director has authority to initiate and sign NOCs. Safety Investigators may initiate an NOC and submit it to their Division Administrator or State Director for review and signature.

##### ***Time When the NOC Can Be Initiated***

Although NOCs can be initiated at the discrepancy of the SI, the following is a list of instances when a NOC must be initiated:

- The violation involves falsification of documents or records;
- The violation caused or contributed to a crash;
- The violation cannot be corrected within 30 days; ,
- The violations resulted in a proposed unsatisfactory safety rating;
- The violation is an acute violation listed in 49 CFR Part 385, Appendix to Part 385 and discovered during a Section 222-eligible investigation;

##### ***2.4.4.9.2 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

##### ***2.4.4.9.3 Generating the NOC***

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

#### ***2.4.4.9.4 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.

#### **2.4.4.10 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.

#### **2.4.4.11 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).

#### **2.4.4.12 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.

#### ***2.4.4.12.1 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](#)

#### ***2.4.4.12.2 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.

#### ***2.4.4.12.3 Provide the Following to SCET Before a IHOOS Order is Issued***

- I** 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.

#### ***2.4.4.12.4 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.

#### ***2.4.4.12.5 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 investigation.

#### **2.4.4.13 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](http://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.

### **Order to Show Cause (OSC)**

#### ***Time When Show Cause Order is Issued***

If the SCET has not received payment within 45 days after the date specified for payment by the final agency order, the date of a missed installment payment or the date the respondent fails to comply with any other term or condition of a settlement agreement, it shall issue a Show Cause Order.

EMIS will alert the SCET to issue the Show Cause Order.

**Before issuing any notices or orders related to non-payment, the SCET must ensure that payment has not been received by checking [pay.gov](http://pay.gov) online and any other available sources.**

#### ***Delivering Show Cause Order***

The Show Cause Order must be delivered by certified mail return receipt requested or commercial express service.

**If the respondent's principal place of business (PPOB) is in a foreign country, the notice will be delivered to the respondent and the respondent's designated process agent.**

#### ***Show Cause Order Must Contain the Following***

The Show Cause Order shall include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in a prohibition of operating in interstate commerce and, if applicable, suspension of the subject's FMCSA registration.

The Show Cause Order notifies the respondent that it must show cause why it should not be prohibited from operating in interstate commerce, and, if applicable, why it should not have its registration suspended, on the 91st day after the date specified for payment.

**The SCET is responsible for entering into EMIS the date the Show Cause Order is mailed to the respondent.**

***Respondent Must Submit the Following in Response to Show Cause Order***

The prohibition and suspension, if applicable, can only be avoided by submitting to the AA the:

- Evidence that the subject has paid the entire amount due; or
- Evidence that the subject has filed for bankruptcy.

Although the regulations refer only to the filing of Chapter 11 bankruptcy, the FMCSA will consider bankruptcies in which a person is a debtor under any chapter of the Bankruptcy Code. Subjects in bankruptcy must also supply:

- The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed;
- The bankruptcy case number;
- The court in which the bankruptcy proceeding was filed; and
- Any other information requested by the agency to determine a debtor's bankruptcy status.

**Serious sanctions apply to any agency that proceeds with certain aspects of enforcement of a case after a motor carrier has filed for bankruptcy. Therefore, it is important to consult with your SC attorney for guidance. Do not issue any documents once it becomes apparent that a carrier or individual has filed for bankruptcy, unless specifically advised to do so by counsel. If a respondent submits information in response to the Show Cause, the SCET shall immediately consult with its SC attorneys to determine whether the response is sufficient to avoid the prohibition and suspension.**

The SCET shall also notify the Division of any response it receives in response to a Show Cause Order.

**The SCET is responsible for entering into EMIS the information regarding the respondent's response.**

## **Order to Cease Operations (OCO)**

### ***Time When the OCO is Issued***

If respondent does not pay the civil penalty or submit evidence of bankruptcy filing after issuance of the Show Cause Order, the SCET shall issue and serve an OCO of Interstate Transportation and/or Registration Suspension (registration suspension only applicable to respondents with operating authority). The SCET is responsible for preparing the appropriate OCO given the nature of respondent's operations.



**Before issuing any notices or orders related to non-payment, the SCET must ensure that payment has not been received by checking [pay.gov](http://pay.gov) online and any other available sources.**

The OCO is issued only if:

- Respondent has failed to pay its civil penalty;
- Respondent has not submitted evidence that it has paid the entire amount due or that it is subject to bankruptcy proceedings as directed in the Show Cause Order; and
- No stay has been granted by the AA or any judge having jurisdiction over the proceedings.

### ***The OCO Must Contain the Following***

The identity:

- Name and address of respondent;
- Case number which gave rise to the issuance of the OCO; and
- DOT number and MC/MX number if applicable.

Notify respondent that:

- It will be prohibited from operating in interstate commerce and its registration will be suspended (if applicable) on the 91st day after the date specified for payment in the final order or the date of the missed payment or breach of agreement or order.

Contain:

- A certificate of service.

Prohibit Operation and Suspend Registration:

- No earlier than 91 days after the date specified for payment. While EMIS normally calculates when the OCO should be effective, it is the SCET's responsibility to verify that the OCO date is correct.

The OCO may contain such other information the FA deems appropriate.

### ***Delivering the OCO***

OCOs may be served by any United States Postal Service mail service with a return receipt requested. See [Illustration 3: Notice of Claim Service](#). Although this permits Express Mail or Certified Mail, Express Mail is preferred in order to ensure prompt service. Additionally, when United States Postal Service is used to serve an OCO, the Order should be mailed at least five (5) business days before the effective date of the Order.

If the OCO is hand delivered, it should be delivered to the respondent at least three (3) business days before the effective date in the OCO. This ensures that respondent will have sufficient time prior to the effective date of the OCO to get its commercial motor vehicles to a safe and secure location prior to the prohibition on operations in interstate commerce.

The person effecting delivery is responsible for completing the Certificate of Service. The SCET is responsible for delivering copies of the OCO to all parties on the Certificate of Service.

#### **2.4.4.14 Record Consolidation Order (RCO)**

A record consolidation order consolidates the records maintained by the agency concerning the current motor carrier, intermodal equipment provider, broker, and freight forwarder and its affiliated motor carrier, intermodal equipment provider, broker, or freight forwarder or its previous incarnation, for all purposes, upon a determination that the motor carrier, intermodal equipment provider, broker, and freight forwarder or officer, employee, agent, or authorized representative of the same, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

- Avoid complying with an FMCSA order;
- Avoid complying with a statutory or regulatory requirement;
- Avoid paying a civil penalty;
- 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 NAS 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.

### ***How to Initiate a RCO***

- **Coordination:** Experience has shown that coordination between two or more DAs may be needed, as attempts to reincarnate sometimes include incorporating in another State, to avoid detection. The investigator should begin collecting preliminary information and documents to establish the status of both the predecessor entity and the new entity. Coordination with field counsel is also recommended. Counsel can be a valuable resource in ensuring that the investigator is able to obtain sufficient information and documentation to support action under part 386.
- **Evidence Collection:** Reincarnation investigations require investigator analysis and documentation that differs slightly from the usual documentation needed to support typical violations discovered during routine investigations. [Appendix K: Reincarnated/Affiliated Carrier Analysis Factors and Checklist](#) provides a guide to the types of evidence that should be sought in a reincarnation/affiliation investigation. The checklist is intended to enable the investigator to take notes and comment on the availability of evidence, and otherwise describe the investigation as needed. For example, Attachment K refers to tax documents to be collected as part of the investigation. These types of tax documents may not be available for the three year period mentioned, or may not be available at all. If that is the case, investigators should describe the available evidence and document any information that is still needed. In some instances, subpoenas to third parties may be necessary to obtain documents that the motor carrier is not required to maintain, but may be available from the motor carrier's business contacts, such as an accountant, insurance agent, representative, or bank. Accordingly, when the carrier is unable to produce these important documents, the investigator should obtain the names and necessary identifying information for company accountants, insurers, banks, and other third parties.
- **Summary:** Investigators should prepare a brief summary of the evidence collected that led the investigator to first suspect reincarnation, identifying the suspected reason the motor carrier reincarnated (e.g., OOS Order of the previous entity) and providing a timeline, or chronology, of events and motor carrier actions. This summary should be provided via a separate Word document to the DA or in the manner (such as an email) directed by the DA.
- **Submission of evidence:** To the extent practicable, follow established procedures and time frames for Agency enforcement actions regarding submission of evidence to the DA. This information should be provided as soon as it is complete. The Division office should be working with the SCET and field counsel to ensure that necessary and sufficient evidence has been obtained.
- **Closeout:** Compliance review/investigation should not be closed out until all evidence supporting the reincarnation has been collected and reviewed by the SCET and a decision to conclude the investigation has been made by the Service Center Director or Service Center Enforcement Program Coordinator, in consultation with the Field counsel. A compliance review that involves a chameleon/affiliate investigation should not result in a safety rating prior to a determination on the evidence supporting enforcement action under § 386.73.

#### **2.4.4.15 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/SD 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***

The DAs have the authority to issue administrative subpoenas when a respondent refuses or fails to provide access to records or permit requested inspections pursuant to FMCSA's authority. The DA signs the administrative subpoena. The Division is responsible for service of the subpoena.



**Prior to issuing the subpoena the DA must consult with SC attorneys for exact language. Copies of the proposed subpoena must be provided to the SC attorneys.**

Notes regarding all efforts made to obtain documentation or inspection without subpoena should be maintained in the carrier file. These notes will be necessary if the carrier refuses to comply with the subpoena.

### ***Issuing Subpoenas in Aid of Enforcement***

It may be necessary to issue a subpoena when a carrier fails to comply voluntarily with a request to conduct an investigation, to examine records, or to inspect equipment. See [49 U.S.C. § 502](#).

### ***Action to Take if Carrier Does Not Comply with the Subpoena***

If the carrier does not comply, enforcement of the subpoena may be sought in the appropriate United States district court.



**The DA, or designee, 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.

### **2.4.4.16 Supplemental Policy on Assessing Maximum Penalties Under Section 222**

The supplemental policy on assessing maximum penalties under Section 222 does not replace the current policy. It is intended to expand FMCSA's implementation of Section 222 of the MCSIA. As a result, cases closed after the issuance of the original September 8, 2000, policy memorandum will continue to count as strikes under the existing three-strikes policy. Cases and Section 222-eligible investigations being used to support imposition of maximum fines under the supplemental policy must be initiated on or after April 1, 2009.

FMCSA is defining a "pattern of violations" as the discovery of two or more critical or acute violations in each of three or more different regulatory Parts (i.e., a minimum of six acute and/or critical violations). Thus, a "pattern of violations" does not require previous enforcement and can be found even during a first-time Section 222-eligible investigation. FMCSA is also establishing a "two-strikes" policy. Two-strikes differs somewhat from the existing three-strikes policy. Maximum fines will be applied in cases where an acute violation is discovered during a Section 222-eligible investigation within six years of one previously closed case containing a violation of a critical or acute regulation in the same Part. If a pattern of violations, two-strikes, or three-strikes situation is discovered, it must be documented, and maximum

finest 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.

#### ***2.4.4.16.1 Pattern***

A pattern of violations of critical or acute regulations is documented through the discovery, during a Section 222-eligible investigation, of two or more critical or acute violations in three or more regulatory Parts where the motor carrier has had previous significant contact with FMCSA, a State partner, or other FMCSA-designated representative on behalf of FMCSA.

Until the Compliance Analysis and Performance Review Information (CAPRI) system has been reprogrammed to identify such a “pattern,” investigators should use the [Section 222 Maximum Fines Worksheet](#) to help determine whether any Section 222-eligible investigation establishes a pattern of critical or acute violations.

A motor carrier will be subject to maximum fines when a “pattern” of critical or acute violations is discovered after having had previous contact with FMCSA, a State partner, or other FMCSA-designated representative on behalf of FMCSA. This contact may have been a previous New Entrant Safety Audit, Pre-Authorization Safety Audit, Expedited Action Letter, investigation, CR, NOV, NOC, Warning Letter, or other significant documented contact reasonably likely to have alerted the motor carrier to FMCSA’s regulatory and enforcement jurisdiction. This contact may have occurred prior to the effective date of this policy.

If a “pattern of violations,” as defined above, is discovered during a Section 222-eligible investigation, the investigator must document one count of each critical and/or acute violation that contributed to the pattern (i.e., the case will contain at least six separate violations). Each violation will be assessed for the maximum statutory penalty. If appropriate, additional violations that did not contribute to the pattern may be included, using the UFA software to calculate an appropriate penalty amount. For those violations that contributed to the pattern, it is not necessary to document the extent of the violation. The “extent” of the violation, as well as the other statutory factors FMCSA must normally take into account when assessing a fine, does not apply when assessment of the statutory maximum penalty is required by Section 222. However, the investigator must document at least the 10 percent violation rate of the critical regulations to establish the pattern.

**Example:** If violations of 49 CFR 395.8(e) - 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.

#### ***2.4.4.16.2 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.

#### ***2.4.4.16.3 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.](#)

#### **2.4.4.17 Unsatisfactory=Unfit OOS Order**

Unsat=Unfit refers to a motor carrier rated Unsatisfactory based on its Safety Fitness Determination. Proposed unsatisfactory safety ratings will indicate that, if the unsatisfactory rating becomes final, the motor carrier will be subject to the provisions of 49 CFR Section 385.13, which prohibits motor carriers rated unsatisfactory from operating in interstate and intrastate commerce.

#### ***Procedures for Issuing OOS Orders on Motor Carriers Rated Unsatisfactory***

The Unsat=Unfit OOS Order is entitled [Order to Cease All Interstate Transportation](#). A SCET should serve this order within two weeks of the effective date of the OOS Order. The SCET may serve this order by personal delivery using governmental or commercial entities, U.S. mail, commercial mail delivery, or facsimile, upon prior written consent of the parties. Written consent for facsimile service must specify the facsimile number where service will be accepted. When the SCET makes service by facsimile, it also must serve a copy by any other method permitted by this section. Facsimile service occurs when transmission is complete.

On the same day, or next business day if the order is effective on a weekend or holiday, the Unsat=Unfit OOS Order is effective, the appropriate SCET must inactivate the motor carrier in MCMIS with a "UNF" designation.

#### ***Procedures for Monitoring Compliance with OOS Orders on Motor Carriers Rated Unsatisfactory***

A Division should conduct onsite verification to determine compliance with the OOS Order within 10 days of the effective date of the order. The Division may summarize the verification findings in an inter-office memorandum format provided the motor carrier has ceased transportation. If onsite verification is not feasible, the Division will document and place in the motor carrier file any method used to verify the motor carrier is not operating in commerce. The Division must implement procedures to monitor motor carrier activity to maintain oversight of motor carriers that may violate the OOS Order.

Monitoring of Unsatisfactory Rated Motor Carriers - The Division office may obtain a list of motor carriers that are identified as operating after an Unsat OOS Order was effective. This list is available to

the Divisions and SCETs through MCMIS, the Portal, and also GOTHAM. All Agency Division Offices and SC should make use of these reports to facilitate their monitoring efforts.

If the Division determines that the motor carrier has violated an OOS Order, the Division should initiate enforcement action. The Division should consult with the SCET to consider seeking a U.S. District Court ordered injunction for repetitive violators of an OOS Order.

Information on motor carriers, including their most current safety rating, is available from the FMCSA on the Internet at [www.saferys.org](http://www.saferys.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.**

#### **2.4.4.18 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.

##### ***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.

##### ***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.

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.

#### ***2.4.4.19 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 and civil penalties initiated against a suspected reincarnated/affiliated carrier. For purposes of this policy, “chameleon,” “reincarnated,” and “affiliated” are being used interchangeably.
2. **Motor carriers**: Suspension or revocation proceedings and civil penalties initiated against a motor carrier for engaging in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.
3. **Motor carrier officers**: Suspension or revocation proceedings initiated against a motor carrier for permitting any Officer to exercise controlling influence over the motor carrier’s operations when that Officer engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.  
*(Guidance is currently being developed for the implementation of this process)*

## **2.5 Illustrations**

### **2.5.1 Illustration E-1: Photographic Declaration**

**Download PDF Form:** [Photographic Declaration](#)

The PHOTOGRAPHIC DECLARATION has been created as a PDF that can be filled out on the computer.

<b>PHOTOGRAPHIC DECLARATION</b>	
Date:	Location:
Carrier/Shipper:	USDOT#:
Vehicle Identification or Container/Packaging Specification #:	
<p>My name is _____. I am currently employed as a [title] in the Federal Motor Carrier Safety Administration’s [location] office.</p> <p>On [date], in the course and scope of my employment, I investigated a [type of investigation] involving [name of carrier].</p> <p>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).</p> <p>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.</p>	
<p><b>Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.</b></p>	
Executed on:	Investigator’s Name:

**2.5.2 Illustration E-2: Written Statement with Perjury Clause**

**Download PDF Form:** [Written Statement with Perjury Clause](#)  
[Written Statement with Perjury Clause in Spanish](#)

**SIGNED STATEMENT OF \_\_\_\_\_**

I, \_\_\_\_\_(name), \_\_\_\_\_(title), voluntarily give the following statement to \_\_\_\_\_ (investigator name), who has identified himself/herself as a Special Agent for the U.S. Department of Transportation, Federal Motor Carrier Safety Administration. No threats or promises have been made to me in exchange for this statement.

Narrative:

I have read the foregoing statement consisting of \_\_page(s). It is true, accurate and complete to the best of my knowledge. I reviewed any changes and they bear my initials. **I sign this statement under penalty of perjury and in the presence of** \_\_\_\_\_ [SI's name].

Witness'/Interviewee's signature

Date

I certify that I prepared and took the above statement and that it is a complete and accurate summary of my interview with the witness.	
Safety Investigator's signature	Date

**Declaración firmada de \_\_\_\_\_**

Yo, \_\_\_\_\_ doy voluntariamente la declaración siguiente a \_\_\_\_\_, quien se ha identificado como Agente Especial de la Administración Federal de Seguridad de Autotransportistas (FMCSA) del Departamento de Transporte (DOT) de los Estados Unidos de América. No he recibido ninguna amenaza ni promesa a cambio de esta declaración.

Narrativa:

<p>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. <b>Firmo esta declaración bajo pena de perjurio y en presencia de _____.</b></p>	
Firma del entrevistado / testigo	Fecha
<p>Certifico que elaboré y tomé la declaración antedicha y que es un resumen completo y exacto de mi entrevista con el testigo.</p>	
Firma del Investigador de Seguridad	Fecha

**2.5.3 Illustration E-3: Oral Interview Form**

**Download PDF Form:** [Oral Interview Form](#)

The Oral Interview Form has been created as a PDF that can be filled out on the computer.

<b>Oral Interview Form</b>	<b>Type of Contact</b>	<b>Date</b>
	q Telephone	
	q Personal	
<b>Place of Interview</b>		
<b>Interviewee's Name</b>	<b>Interview's Address</b>	
<b>Name and Title of Person Interviewed</b>		

**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**

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### 2.5.4 Illustration E-4: Imminent Hazard Guidelines

A motor carrier with a proposed unsatisfactory rating should be evaluated against the criteria below. However, a motor carrier with a conditional, or even a satisfactory rating, could be subject to an imminent hazard. A motor carrier poses an imminent hazard to the motoring public, when it meets the following criteria:

1. An evaluation of the BASICS with the highest correlation of future crash risk in SMS (Unsafe Driving, HOS Compliance, Vehicle Maintenance, and the Crash Indicator) identifies at least one of the following:
  - a. A motor carrier of property with a percentile of 85 or higher in 3 or more of the 4 crash-correlated BASICS.
  - b. A motor carrier of passengers or a motor carrier subject to the Hazardous Materials threshold with a percentile of 75 or higher in two or more of the four crash-correlated BASICS.
  - c. Notwithstanding the above, any single crash-correlated BASIC or combination of crash-correlated BASICS significantly exceeding the percentiles described above may meet this initial criterion when found in conjunction with the criteria listed in items 2-7 below.
2. The findings of an investigation that reveal at least 3 unsatisfactory rating factors, including Factors 2 and 3, and also
  - a. Factor 2 (Parts 382, 383, 391) is unsatisfactory based on drivers still operating after testing positive for controlled substances or alcohol use, or drivers still operating on suspended licenses when the licenses have been suspended or revoked for safety-related reasons; or
  - b. Factor 3 (Parts 392 and 395) is unsatisfactory based on a high violation rate and excess hours by drivers currently employed by the motor carrier.
3. Recent dispatch of vehicle(s) known by the carrier to be unsafe combined with evidence of an ineffective or nonexistent vehicle maintenance program.
4. Recent crash (es) caused by driver fatigue or lack of maintenance, combined with evidence of ongoing failure or refusal by the motor carrier to monitor vehicle repairs and maintenance and/or driver hours.
5. Ongoing pattern and practice of requiring or permitting drivers to falsify records of duty status or exceed maximum HOS limitations, combined with evidence showing a blatant disregard for safety and lack of knowledge of Federal Motor Carrier Safety Regulations.
6. Evasion of an OOS order, combined with evidence of ongoing failure or refusal to comply with driver and vehicle safety regulations. In these situations, the Agency may concurrently pursue injunctive relief, and/or an OOS or record consolidation order under 49 CFR § 386.73.
7. Evidence reveals a regulatory violation that is not described above, where the motor carrier's actions are so egregious (shocking the conscience) that the Agency would be negligent in its responsibility to protect the public, if it failed to take immediate steps to reduce the risk.

Additionally, if one or more of these circumstances exists and, in the course of an investigation, related ongoing violations are discovered, an imminent hazard situation may exist. When FMCSA declares a motor carrier with operating authority registration an imminent hazard, in addition to the Order, FMCSA will simultaneously serve a Revocation Order notifying the motor carrier that its operating authority registration is revoked.

A Revocation Order must include notification to the regulated entity that it must reapply for operating authority registration and demonstrate during the application process that the entity is fit, willing, and able to comply with appropriate regulations and statutes. A Revocation Order must be served using a delivery method that can be tracked and confirmed.

## 2.5.5 Illustration E-5: Roles and Responsibilities in the Imminent Hazard Out-of-Service (IHOOS) Order Process

### **Post-IHOOS Issuance Responsibilities and Considerations**

#### **Division Office**

- Send summary/background information to Service Center. Include:
  - Vehicle identification number (VIN) listing, driver listing, and photos of vehicles, if available.
  - Information on carrier principals, phone numbers, addresses, etc.
  - Any information on attempts to evade the IHOOS Order.
- Ensure investigation, IHOOS Order, IHOOS Order documentation of service, and above summary/background information are placed into EDMS.
- Confirm the OOS status; the revocation of operating authority and the suspension of safety registration have been updated on appropriate FMCSA websites. (Shared Responsibility with the Service Center, see below)
- Obtain from OOS carrier a written record of the whereabouts and disposition of all vehicles and drivers. Update periodically during the duration of the OOS status.
- Monitor motor carrier's activities to verify adherence to OOS conditions. If activity is discovered, refer to the section below titled Discovery of Continued Operation after being served an IHOOS.
- Conduct checks of known pickup or delivery locations for evidence of continuing activity in violation of OOS order.
- Send periodic status updates to Headquarters and Service Center personnel.

#### **Service Center**

- Distribute summary/background to the following offices in Headquarters: Director, Office of Enforcement and Compliance Assistant Chief Counsel for Enforcement and Litigation Associate Administrator (AA) for Field Operations
- Enter OOS status is entered into MCMIS and inactivate the USDOT number (Service Center Enforcement Team).
- Enter IHOOS Order into EMIS
- Confirm the OOS status; the revocation of operating authority and the suspension of safety registration have been updated on appropriate FMCSA websites. (Shared Responsibility with the Division Office)
- Provide notification to the Office of Communications (MC-CM), see Handling of External Communications section below.
- Revoke operating authority, if appropriate, in the Licensing and Insurance System Send notification to the Associate Administrator, Office of Research and Information Technology (MC-R) and to the Director of the Office of Registration and Safety Information (MC-RS) informing them about the actions taken (revoking operating authority, inactivating USDOT number) and if needed, to request a manual update of SaferSys, Query Central, and other status websites. SaferSys and other systems update information from MCMIS nightly; however, an immediate update is required.
- Forward a briefing packet with the summary and background information to the other Regional Field Administrators and Field Administrators. Provide directions to Division Offices to contact State and local law enforcement partners, the IRP/PRISM registration office, and other relevant State agencies.

**MC-CCE**

Notify Office of General Counsel, Office of Litigation (C-30).

**Handling of External Communications**

**Office of Communications**

The FA should notify the Office of Communications (MC-CM) and provide all the information needed for press releases. MC-CM will issue a press release to national and local media outlets. The press release will be distributed to state consumer protection distribution list for regions served by the carrier.

**Division Offices**

Notify local consumer groups, State and local consumer’s affairs offices, State licensing and registration agencies, local media, and local industry association contacts: utilize press release generated by the Office of Communications.

**Follow-up Actions**

Division Office

Obtain from OOS carrier a written record of the whereabouts and disposition of all vehicles and drivers. Update periodically during the duration of the OOS status. Monitor motor carrier’s activities to verify adherence to OOS conditions. Conduct checks of known pickup or delivery locations for evidence of continuing activity in violation of OOS order. Send periodic status updates to HQ and SC personnel.

Where circumstances suggest that the carrier may attempt to evade the IHOOS order by operating as or through another entity, provide detailed carrier, vehicle, driver, and corporate structure and personnel information to HQ Vetting Team. Alert persons overseeing and conducting new entrant safety audits to be on the aware of any potential reincarnated or affiliated carrier operations and/or attempts to reincarnate

**2.5.6 Violation Table**

**Note:** The Violation Table does not include all Serious Violations.

<b>49 CFR/VIOLATION</b>	<b>ELEMENTS OF THE VIOLATION</b>	<b>DOCUMENTS TO SUPPORT</b>	<b>CONTENT OF STATEMENT</b>
382.115(a) Failing to implement an alcohol and/or controlled substance testing program (Acute)	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL</p> <p>That the motor carrier did not have an alcohol and/or controlled substance program</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of</p>

			commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.201 Using a driver who has an alcohol concentration of 0.04 or greater (Acute)	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier (including any of its agents, officers, and representatives) knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL</p> <p>That the driver had an alcohol concentration of 0.04 or greater</p> <p>Investigator must include information that illustrates the date and time (if significant) that motor carrier knew that driver had an alcohol concentration of 0.04 or greater</p>	<p>Statement from motor carrier official</p> <p>Statement from person verifying alcohol concentration</p> <p>Result of alcohol test</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
382.211 Using a driver who has refused to submit to an alcohol or controlled substances test <u>required</u> under 49 CFR 382 (Acute)	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier (including any of its agents, officers, and representatives) knew or should have known of responsibility and violation</p> <p>That the driver performed a safety-sensitive function requiring a CDL</p> <p>That the driver refused to submit to an alcohol or controlled substances</p>	<p>Statement from motor carrier official</p> <p>Statement or documentation submitted to motor carrier from person verifying driver refused to submit to alcohol and/or controlled substance testing</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u></p>

	test <u>required under 49 CFR 382</u>		Statement should outline date of commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)
382.213(b) Using a driver who has used a controlled substance (Acute)	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier (including any of its agents, officers, and representatives) knew or should have known of responsibility and violation</p> <p>That the driver performed a safety-sensitive function requiring a CDL</p> <p>That the driver had used a controlled substance</p>	<p>Statement from motor carrier official</p> <p>Statement or documentation submitted to motor carrier from person verifying driver had used a controlled substance</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u></p> <p>Statement should outline date of commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
382.215 Using a driver who has tested positive for a controlled substance (Acute)	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier (including any of its agents, officers, and representatives) knew or should have known of responsibility and violation</p> <p>That the driver performed a safety-sensitive function requiring a CDL</p> <p>That the driver had tested</p>	<p>Statement from motor carrier official</p> <p>Statement or documentation submitted to motor carrier from person verifying driver had tested positive for a controlled substance</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated</p>

	<p>positive for use of a controlled substance</p> <p>Investigator must include information that illustrates the date and time (if significant) that motor carrier knew that driver had tested positive for a controlled substance</p> <p>Investigator should attempt to secure photocopy of MRO Report which outlines contact with driver and motor carrier</p>		<p>in <u>commerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>382.301(a) Using a driver before the motor carrier has received negative pre-employment CST results (Critical)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL</p> <p>That the driver had not submitted to a pre-employment CST or the motor carrier used the driver in commerce prior to receiving the results of the test</p> <p>If Investigator is citing a violation based on the fact the motor carrier used the driver prior to receiving the results of the test, the Investigator must include information that illustrates the date and time (if significant) that motor carrier actually received negative CST result</p>	<p>Statement from motor carrier official</p> <p>Statement or documentation submitted to motor carrier from person verifying that driver had not received a pre-employment CST or that it had not received results prior to use of driver in commerce</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>382.303(a) Failing to conduct post-accident testing on driver for alcohol and/or controlled</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific</p>	<p>Statement from motor carrier official</p> <p>Statement or documentation submitted to motor carrier</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement,</p>

<p>substances (Critical)</p>	<p>date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL</p> <p>The driver had not submitted to post-accident testing for alcohol and/or controlled substances</p> <p>That the driver was involved in an accident resulting in the loss of human life <b>or</b> the driver received a citation under State or local law for a <b><u>moving violation arising from the accident</u></b> if the accident involved (1) bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident <b>or</b> (2) one or more of the motor vehicles incurred disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other vehicle</p>	<p>from person verifying driver had not submitted to a post-accident alcohol and/or CST</p> <p>Photocopy of the accident report from police agency, driver, and insurance company showing disabling damage, injury requiring immediate transport, or fatality</p> <p>Photocopy of citation issued to the driver for a moving violation arising from the accident</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p> <p>Statement from driver that he/she was involved in the accident, received a citation for a moving violation arising from the accident (if not a fatal accident), when motor carrier was notified of accident and citation (if applicable), and time (number of hours subsequent to the accident he/she received the citation and was not tested for alcohol and/or controlled substances)</p>	<p>Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Date (and time, if possible) motor carrier knew of accident requiring the driver to be tested</p> <p>Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u></p> <p>Statement should outline date of commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>382.305 Failing to implement a random controlled substances and/or an alcohol testing program (Acute)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL</p> <p>That the motor carrier did</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p>	<p>Violation occurred – Motor carrier did not have a random controlled substance and/or alcohol testing program</p> <p>Average number of driver positions for the period used as aviolation</p> <p>Motor carrier admits that it knew or through statement,</p>

	<p>not have a random controlled substance and/or alcohol testing program</p> <p>Investigator must prove average number of driver positions for the period cited in the case report - Investigator must secure documentary evidence from motor carrier official</p>		<p>Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than 10 percent of the average number of driver positions (Critical)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL</p> <p>That the motor carrier did not have a random alcohol testing program which tested at an annual rate of not less than 10 percent of the average number of driver positions</p> <p>Investigator must prove average number of driver positions for the period cited in the case report - Investigator must secure documentary evidence from motor carrier official</p>	<p>Statement from motor carrier official</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p> <p>If motor carrier is using a consortium, statement should be obtained showing the number of random alcohol tests conducted</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Motor carrier had a random alcohol testing program and rate at which random alcohol tests were conducted, include number of tests to be conducted and number of tests actually completed</p> <p>Name of organization and/or individual responsible for determining drivers to be subject to random alcohol test</p> <p>Average number of driver positions for</p>

			<p>the period used as a violation and how determined</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent of the average number of driver positions (Critical)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL</p> <p>That the motor carrier did not have a random controlled substances testing program which tested at an annual rate of not less than 50 percent of the average number of driver positions</p> <p>Investigator must prove average number of driver positions for the period cited in the case report - Investigator must secure documentary evidence from motor carrier official</p>	<p>Statement from motor carrier official</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p> <p>If motor carrier is using a consortium, statement should be obtained showing the number of random controlled substances tests conducted</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Motor carrier had a random controlled substances testing program and rate at which random controlled substance tests were conducted, include number of tests to be conducted and number of tests actually completed</p> <p>Name of organization and/or individual responsible for determining drivers to be subject to random controlled substances test</p> <p>Average number of driver positions for the period used as a violation and how</p>

			<p>determined</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 (Acute)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL after being involved in conduct prohibited by 49 CFR 382, Subpart B–</p> <ol style="list-style-type: none"> <li>1. Reporting for or remaining on duty requiring performance of safety-sensitive function while having an alcohol concentration of 0.04 or greater</li> <li>2. Performing a safety-sensitive function within 4 hours after using alcohol</li> <li>3. Using alcohol within 8 hours following an accident requiring a controlled substances and alcohol test or until the driver undergoes a post-accident alcohol and controlled substances test, whichever occurs first</li> <li>4. Refusing to submit to a</li> </ol>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p> <p>Investigator must obtain documentary evidence that driver engaged in prohibited alcohol conduct as outlined in 49 CFR 382</p>	<p>Violation occurred – Motor carrier had evidence of previous prohibited alcohol conduct - Exact previous prohibited conduct must be stated (i.e., previous reasonable suspicion alcohol test disclosed alcohol concentration of 0.15 when the driver reported to work to drive a CMV requiring a CDL)</p> <p>The motor carrier did not require the driver to undergo return-to-duty alcohol test</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce (after</p>

	<p>required alcohol test</p>		<p>prohibited conduct), driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances (Acute)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL after being involved in conduct prohibited by 49 CFR 382, Subpart B–</p> <ol style="list-style-type: none"> <li>1. The driver had refused a required controlled substances test</li> <li>2. The driver reported for duty or remained on duty requiring performance of a safety-sensitive function when the driver had used a controlled substance except pursuant to the instructions of a licensed medical practitioner</li> <li>3. The driver had tested positive for controlled substances use in a test performed under 49 CFR 382</li> </ol>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p> <p>Investigator must obtain documentary evidence that driver engaged in prohibited controlled substance use as outlined in 49 CFR 382</p>	<p>Violation occurred – Motor carrier had evidence of previous prohibited controlled substance conduct - Exact previous prohibited conduct must be stated [i.e., previous reasonable suspicion CST (date) disclosed positive for cocaine and results were received by motor carrier on (date)]</p> <p>The motor carrier did not require the driver to undergo return-to-duty controlled substances test</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce (after prohibited conduct), driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>

<p>382.503 Driver performing safety-sensitive function after engaging in conduct prohibited by Subpart B without being evaluated by Substance Abuse Professional (SAP) as required by 49 CFR 382.605 (Critical)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>That the driver drove a vehicle requiring a CDL after being involved in conduct prohibited by 49 CFR 382, Subpart B–</p> <ol style="list-style-type: none"> <li>1. The driver had refused to submit to a required alcohol and/or controlled substances test</li> <li>2. The driver reported for duty or remained on duty requiring performance of a safety-sensitive function when the driver had used a controlled substance except pursuant to the instructions of a licensed medical practitioner</li> <li>3. The driver had tested positive for controlled substances use in a test performed under 49 CFR 382</li> <li>4. Reporting for or remaining on duty requiring performance of safety-sensitive function while having an alcohol concentration of 0.04 or greater</li> <li>5. Performing a sensitive function within 4 hours after using alcohol</li> <li>6. Using alcohol within 8 hours following an accident requiring an alcohol test or until the driver undergoes a post-accident alcohol test,</li> </ol>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p> <p>Investigator must obtain documentary evidence that driver engaged in prohibited controlled substances use and/or alcohol use</p> <p>Investigator must obtain statement from driver that he/she had not been evaluated as required by 49 CFR 382.605</p>	<p>Violation occurred – Motor carrier had evidence of previous prohibited alcohol and/or controlled substances conduct - Exact previous prohibited conduct must be stated [i.e., previous reasonable suspicion CST (date) disclosed positive for cocaine and results were received by motor carrier on (date)]</p> <p>That the motor carrier did not advise driver of resources available to driver in evaluating and resolving problems associated with misuse of alcohol and use of controlled substances</p> <p>That the motor carrier has no record of driver being evaluated</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce (after prohibited conduct), driver’s full name, and the to and from</p>
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	whichever occurs first, without having been evaluated by a SAP		of the trip (1 for each day documented as a violation)
<p>382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (Acute)</p>	<p>CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>Motor carrier knew driver was found with alcohol concentration of 0.02 or greater but less than 0.04</p> <p>That the driver drove a vehicle requiring a CDL within 24 hours of the alcohol test in which driver was found with alcohol concentration of 0.02 or greater but less than 0.04</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382</p> <p>Investigator must obtain documentary evidence that driver operated a vehicle requiring a CDL within 24 hours of the alcohol test in which driver was found with alcohol concentration of 0.02 or greater but less than 0.04</p> <p>Documentary evidence of any alcohol test results should be included in case report</p>	<p>Violation occurred – Motor carrier had evidence of driver having an alcohol concentration of 0.02 or greater but less than 0.04 because of a DOT- mandated alcohol test</p> <p>Driving in CMV requiring CDL occurred within 24 hours of the time of the alcohol test</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce (after prohibited conduct), driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>383.23(a) Operating a CMV without a valid CDL (Critical)</p>	<p>CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR</p>	<p>Violation occurred</p> <p>Motor carrier admits that it or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under</p>

	<p>and violation</p> <p>Driver operated a CMV without a valid CDL</p>	<p>383</p> <p>Certified Motor Vehicle Record from the State that issued the license</p> <p>Photocopy of current driver's license</p> <p>Statement from driver</p>	<p>the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV when the employee's CDL has been suspended, revoked, or canceled by a State (Acute)</p>	<p>CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>Motor carrier allowed, required, permitted, or authorized an employee with a CDL which is suspended, revoked, or canceled by a State or who is disqualified to operate a CMV</p> <p>Investigator should ensure that violation exists and there has been a conviction as defined in 49 CFR 383.5 - Investigator is to ascertain conviction date and ensure that documentation shows the violation occurred after the conviction date</p>	<p>Statement from motor carrier official</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 383</p> <p>Certified Motor Vehicle Record from the State that issued the license which shows that license is suspended, revoked, or canceled by a State</p> <p>If person is disqualified, disqualification letter</p> <p>Photocopy of current driver's license</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u> in vehicle over 26,000 lbs. or designed to transport 16 or more passengers including the driver or was transporting placardable quantities of HM (list the HM by proper shipping name, hazard class or division, identification number, packing group, and quantity and include copy of Material Safety Data Sheet)</p> <p>Statement should outline date of</p>

			commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV when the employee has more than one CDL (Acute)	<p>CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>Motor carrier allowed, required, permitted, or authorized an employee with more than one CDL to operate a CMV</p>	<p>Statement from motor carrier official</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 383</p> <p>Certified Motor Vehicle Records from each State that issued a CDL</p> <p>Photocopy of both driver's licenses</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
383.51(a) Allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV (Acute)	<p>CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date</p> <p>That the motor carrier knew or should have known of responsibility and violation</p> <p>Motor carrier allowed, required, permitted, or authorized a driver to drive who is disqualified to drive a CMV</p> <p>Investigator should ensure that violation exists and there has been a conviction as defined in 49 CFR 383.5 - Investigator is to</p>	<p>Statement from motor carrier official</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 383</p> <p>Certified Motor Vehicle Record showing disqualification</p> <p>Photocopy of current driver's license</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 382 and operated <u>incommerce</u></p> <p>Statement should outline date of commerce, driver's full name, and the to</p>

	ascertain conviction date and ensure that documentation shows the violation occurred after the conviction date		and from of the trip (1 for each day documented as a violation)
387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (Acute)	<p>Type of carriage by motor carrier subjecting it to 49 CFR 387 jurisdiction (See the Table at 49 CFR 387.9)</p> <p>That (nonhazardous) property, HM, hazardous substances, or hazardous waste was transported by the motor carrier on a specific date</p> <p>Note: See the specific identification requirements (i.e., hazard class, quantity) in the Table at 49 CFR 387.9 that must be proven when HM, hazardous substances, or hazardous waste is transported</p> <p>That the motor carrier did not have the required minimum levels of financial responsibility coverage at the time of this trip as indicated by its limits of public liability and the effective date of its insurance policy/surety bond coverage</p> <p>Investigator must ascertain whether the motor carrier has an umbrella insurance policy or surety bond that, by itself or in addition to its primary coverage for public liability, would meet the minimum levels of financial responsibility required</p> <p>There is no grace period during which the motor carrier is permitted to obtain the required minimum levels of financial responsibility -</p>	<p>Driver’s RODS and corresponding shipping paper</p> <p>If HM, hazardous substances, or hazardous waste was transported, then a Material Safety Data Sheet or other corroborating evidence showing that the cargo transported meets the definition of a HM, hazardous waste, or hazardous substance</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 387</p> <p>Copy of the motor carrier’s endorsement(s), surety bond, or authorization to self-insure showing its public liability coverage and the policy’s/surety bond’s effective date at the time of the documented trip (include copy of umbrella policy, if any, in effect at the time of this trip)</p> <p>Statement from the motor carrier official responsible for maintaining public liability coverage that the motor carrier did not have the minimum required levels of financial responsibility at the time of the documented trip</p> <p>Note: See the less than 10,000 lbs. GVWR any motor vehicle requirement if the motor carrier transported any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of Division 2.3, Hazard Zone A or Division</p>	<p>Violation occurred</p> <p>Statement from motor carrier official or other person (i.e., insurance broker) admitting that he/she failed to maintain reports</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Motor carrier transported (nonhazardous) property, HM, hazardous substances, or hazardous waste in a motor vehicle in interstate or intrastate commerce such as to be subject to 49 CFR 387 on this trip date</p> <p>Note: The Investigator should indicate the amount of financial responsibility in effect and the minimum levels of financial responsibility required given the type of carriage and commodity transported on this trip date</p> <p>Statement should outline date of commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a</p>

	<p>When the Investigator has discovered such a violation, it should be entered in Part B of the compliance review report and considered for enforcement action to cover any lapse in continuous coverage</p>	<p>6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material (49 CFR 173.403)</p>	<p>violation)</p>
<p>387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (Critical)</p>	<p>Type of carriage by motor carrier subjecting it to 49 CFR 387 jurisdiction (See the Table at 49 CFR 387.9)</p> <p>That (nonhazardous) property, HM, hazardous substances, or hazardous waste was transported by the motor carrier on a specific date</p> <p>That the motor carrier, upon request by the Investigator on a specific date, could not produce at its principal place of business a copy of its required proof of financial responsibility</p> <p>Note: See the specific identification requirements (i.e., hazard class, quantity) in the Table at 49 CFR 387.9 that must be proven when HM, hazardous substances, or hazardous waste is transported</p> <p>Note: In the isolated instances in which a self-insured motor carrier is involved, such authorization is contingent on that motor carrier maintaining a Satisfactory safety rating</p> <p>Investigator should review the less than 10,000 lbs. GVWR any motor vehicle requirement if the motor carrier transported any quantity of Division 1.1,</p>	<p>Driver’s RODS and corresponding shipping paper</p> <p>If HM, hazardous substances, or hazardous waste was transported, then a Material Safety Data Sheet, hazardous waste manifest, or other corroborating evidence showing that the cargo transported meets the definition of a HM, hazardous waste, or hazardous substance</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 387</p> <p>Statement of motor carrier official in charge of its public liability coverage stating that the motor carrier did not maintain proof of its required financial responsibility at its principal place of business at the time of the Investigator’s request and visit</p> <p>Investigator should document all of his/her attempts to obtain proof of financial responsibility from the motor carrier and should also identify the motor carrier’s principal place of business in the above statement</p> <p>Investigator should issue a written request to the motor carrier, in the Recommendations section of the compliance review report</p>	<p>Violation occurred</p> <p>Vehicle/driver under the control of the motor carrier on this trip date</p> <p>Motor carrier transported (nonhazardous) property, HM, hazardous substances, or hazardous waste in a motor vehicle in interstate or intrastate commerce such as to be subject to 49 CFR 387 on this trip date</p> <p>Motor carrier could not produce proof of its required financial responsibility in the form of a MCS-90, MCS-82, or authorization to be self-insured at its principal place of business</p> <p>Statement should outline date of commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>

	<p>1.2, or 1.3 material; any quantity of Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material (49 CFR 173.403)</p>	<p>citing a 10-calendar-day due date from the date of his/her request, to send a copy of proof of its financial responsibility to the Division Office - If the requested document is not received by the deadline date, then the Investigator should consider this violation for possible enforcement</p>	
<p>387.31(a) Operating a motor vehicle transporting passengers without having in effect the required minimum levels of financial responsibility (Acute)</p>	<p>A for-hire motor carrier of passengers                  CMV/driver subject to 49 CFR 387 and operated (used) by the motor carrier in interstate commerce on a specific date for compensation                  That a specific violation of 49 CFR 387 occurred                  That carried passengers in a motor vehicle with vehicle seating capacity as indicated in the Schedule of Limits under 49 CFR 387.33                  Note: See the exceptions to 49 CFR 387 jurisdiction in 49 CFR 387.27(b) when vehicle has a seating capacity of 15 passengers or less                  Without having in effect the required minimum levels of financial responsibility at the time of this trip as indicated by the amount of its public liability coverage and effective date of its insurance policy/surety bond coverage                  Note: The Investigator must ascertain whether the motor carrier has an umbrella insurance policy or surety bond that, by</p>	<p>Copy of operating authority, motor carrier statement, telephone or newspaper advertisements, or other evidence showing that the motor carrier is a for-hire motor carrier of passengers                  Driver's RODS and corresponding shipping paper/passenger manifest showing interstate transportation of passengers on a specific date for compensation                  Vehicle registration, photographs, or vehicle specification sheet indicating its seating capacity                  Note: The above documentary evidence must be able to identify the company vehicle number, VIN, or license plate number so that it can be tied to the driver's RODS and passenger manifest for the documented trip                  Copy of the motor carrier's endorsement(s) for policies of insurance or surety bond showing the amount of its public liability coverage and the policy's/surety bond's effective date at the time of the documented trip (include copy of umbrella policy, if any, in effect at the time of this trip)</p>	<p>Violation occurred                  Motor vehicle/driver under the control of the motor carrier                  Motor carrier is a for-hire motor carrier of passengers                  Motor carrier transported passengers in a vehicle with a seating capacity of (15 passengers or less) (16 passengers or more) in interstate commerce on a specific date(s) for compensation                  Note: The Investigator should indicate the amount of financial responsibility in effect and the minimum levels of financial responsibility required given the vehicle seating capacity operated by this for-hire motor carrier of passengers on this trip date                  Statement should outline date of interstate commerce, driver's full name, and the to and from</p>

	<p>itself or in addition to its primary coverage for public liability, would meet the minimum levels of financial responsibility required</p> <p>Note: There is no grace period during which the motor carrier is permitted to obtain the required minimum levels of financial responsibility - When the Investigator has discovered such a violation, it should be entered in Part B of the compliance review report and considered for enforcement action</p>	<p>Statement from the motor carrier official (owner, controller) responsible for maintaining public liability coverage that the motor carrier did not have the minimum required levels of financial responsibility at the time of the documented trip</p>	<p>of the trip (1 for each day documented as a violation)</p>
<p>387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger vehicles (Critical)</p>	<p>For-hire motor carrier of passengers</p> <p>CMV/driver subject to 49 CFR 387 and operated (used) by the motor carrier in interstate commerce on a specific date for compensation</p> <p>That a specific violation of 49 CFR 387 occurred</p> <p>That carried passengers in a motor vehicle with vehicle seating capacity as indicated in the Schedule of Limits under 49 CFR 387.33</p> <p>That the motor carrier, upon request by the Investigator on a specific date, could not produce at its principal place of business a copy of its required proof of financial responsibility whether in the form of Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory</p>	<p>Copy of operating authority, motor carrier statement, telephone or newspaper advertisements, or other evidence showing that the motor carrier is a for-hire motor carrier of passengers</p> <p>Driver's RODS and corresponding shipping paper/passenger manifest showing interstate transportation of passengers on a specific date for compensation</p> <p>Vehicle registration, photographs, or vehicle specification sheet indicating its seating capacity</p> <p>Note: The above documentary evidence must be able to identify the company vehicle number, VIN, or license plate number so that it can be tied to the driver's RODS and passenger manifest for the documented trip</p> <p>Statement of the motor carrier official in charge of its public liability coverage stating that</p>	<p>Violation occurred</p> <p>Vehicle/driver under the control of the motor carrier on this trip date</p> <p>Motor carrier is a for-hire motor carrier of passengers</p> <p>Motor carrier transported passengers in a vehicle with a seating capacity of (15 passengers or less) (16 passengers or more) in interstate commerce on a specific date(s) for compensation</p> <p>Motor carrier could not produce proof of its required financial responsibility in the form of a MCS-90B or MCS-82B at its principal place of business</p> <p>Statement should outline date of</p>

	<p>Reform Act of 1980 (Form MCS-90B) issued by the insurer or Motor Carrier Public Liability Surety Bond Under Section 18 of the Bus Regulatory Reform Act of 1980 (Form MCS-82B) issued by a surety</p> <p>Note: See the exceptions to 49 CFR 387 jurisdiction in 49 CFR 387.27(b) when vehicle has a seating capacity of 15 passengers or less</p> <p>Investigator should issue a written request to the motor carrier, in the Recommendations section of the compliance review report citing a 10-calendar-day due date from the date of his/her request, to send a copy of proof of its financial responsibility - If the requested document is not received by the deadline date, then the Investigator should consider this violation for possible enforcement</p>	<p>the motor carrier did not maintain proof of its required minimum levels of financial responsibility at its principal place of business at the time of the Investigator's request and visit</p> <p>Note: The Investigator should document all of his/her attempts to obtain proof of financial responsibility from the motor carrier and should also identify the motor carrier's principal place of business in the above statement</p>	<p>interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (Critical)</p>	<p>CMV/driver subject to 49 CFR 390 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That a specific violation of 49 CFR 390 occurred</p> <p>That a recordable accident occurred and that an accident report was filled out and not maintained by the motor carrier</p>	<p>Statement from motor carrier official or other person</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 390</p> <p>Obtain copies of reports that are alleged to be missing</p>	<p>Violation occurred</p> <p>Statement from motor carrier official or other person (i.e., insurance broker) admitting that he/she failed to maintain reports</p> <p>Vehicle/driver was involved in a recordable accident</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in <u>interstate</u></p>

			<p><u>commerce</u></p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>390.35 Making or causing to make fraudulent or intentionally false statements or reproducing records for fraudulent purposes (Acute)</p>	<p>CMV/driver subject to 49 CFR 390 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier knew or should have known of violation</p> <p>That the documented trip had occurred after the falsification occurred</p> <p>That a document was falsified, that a fraudulent document was reproduced, or that false statements were made</p>	<p>Statement from person involved in falsification</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 390</p> <p>Obtain copies of reports that were falsified and if possible copies of original document before falsified</p> <p>If medical examination is falsified, statement from medical examiner should be obtained</p>	<p>Violation occurred</p> <p>Person admits a violation of 49 CFR 390.35 occurred or through other documentary evidence, the Investigator is able to prove the falsification and who committed the act</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in <u>interstate commerce</u></p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>391.11(a) Using a physically unqualified driver (Acute)</p>	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier knew or should have known of violation</p> <p>That the driver was physically unqualified based on documentary</p>	<p>Statement from person that determined that driver is physically unqualified attesting to such fact</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the</p>

	<p>evidence (i.e., medical examination, medical report, etc.)</p> <p>That the documented trip is after the driver was determined to be physically unqualified</p>	<p>391</p> <p>Obtain copies of reports that show that the driver is physically unqualified</p>	<p>motor carrier</p> <p>Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u></p> <p>If possible, statement from driver should be obtained to substantiate that he/she is physically unqualified</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>391.15(a) Using a disqualified driver (Acute)</p>	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver was actually disqualified based on certified documentary evidence (i.e., Certified Motor Vehicle Record from the issuing State, etc.)</p> <p>That the documented trip is after the driver was disqualified and after the motor carrier knew or should have known of the disqualification</p>	<p>Certified Motor Vehicle Record from issuing State showing disqualification or other certified record proving the disqualification</p> <p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u></p> <p>Statement from driver involved should be obtained to prove who, what, when, where, and how</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each</p>

			day documented as a violation)
391.45(a) Using a driver not medically examined and certified (Critical)	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>Investigator should make sure that the driver was not medically examined and certified</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u></p> <p>If possible, statement from driver involved should be obtained admitting that he/she did not have a medical exam as required</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
391.45(b) Using a driver not medically examined and certified each 24 months (Critical)	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>Investigator should make sure driver was not medically examined and certified each 24 months</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR</p>

			<p>391 and operated in <u>interstate commerce</u></p> <p>Statement from driver involved should be obtained admitting that he/she did not have a medical exam within the last 24 months</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>391.51(a) Failing to maintain driver qualification file on each driver employed (Critical)</p>	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier did not maintain a driver qualification file on a particular driver for whom the Investigator has documented a trip</p>	<p>Statement from motor carrier official or Driver Qualification Worksheet</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391</p>	<p>Rather than a statement, the Investigator could use the driver qualification worksheet that is in CAPRI</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u></p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as</p>

<p>391.51(b)(7) Failing to maintain medical examiner's certificate in driver qualification file (Critical)</p>	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier did not maintain the medical examiner's certificate in driver qualification file</p>	<p>Statement from motor carrier official or Driver Qualification Worksheet</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391</p>	<p>a violation)</p> <p>Rather than a statement, the Investigator could use the Driver Qualification Worksheet that is in CAPRI</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u></p> <p>Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>391.51(b)(4) Failing to maintain inquiries into driver's driving record in driver qualification file(Critical)</p>	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier did not maintain inquiries into driver's driving record in driver qualification file</p>	<p>Statement from motor carrier official or Driver Qualification Worksheet</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391</p>	<p>Rather than a statement, the Investigator could use the Driver Qualification Worksheet that is in CAPRI</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have</p>

			<p>known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u></p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>391.63(a) Failing to maintain medical examiner's certificate in driver qualification file (Critical)</p>	<p>CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier did not maintain medical examiner's certificate in driver qualification file</p> <p>Multiple-employer driver</p>	<p>Statement from motor carrier official or Driver Qualification Worksheet</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391</p>	<p>Rather than a statement, the Investigator could use the Driver Qualification Worksheet that is in CAPRI</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u></p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as</p>

			a violation)
392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (Critical)	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier operated a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated</p> <p>Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Documentary evidence should be obtained proving the violation(i.e., conviction report, etc.)</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in <u>interstate commerce</u></p> <p>Statement from driver involved should be obtained admitting that he/she operated the motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it was being operated</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
392.4(b) Requiring or permitting a driver to drive if the driver possesses, is under the influence of, or uses a narcotic drug, amphetamine, or any other substance which renders the driver incapable of safely operating a motor vehicle (Acute)	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier required or permitted a driver to drive while under the influence of or in possession of a narcotic drug, amphetamine, or any other substance capable of</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Documentary evidence should be obtained proving</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV</p>

	<p>rendering the driver incapable of safely operating a motor vehicle</p> <p>Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement</p>	<p>the violation(i.e., conviction report)</p> <p>Statement from driver</p>	<p>subject to 49 CFR 390 and operated in <u>interstate commerce</u></p> <p>Statement from driver involved should be obtained admitting that he/she operated the motor vehicle while under the influence of or in possession of a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle</p> <p>Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle who has used alcohol or has been under the influence of alcohol within 4 hours before driving (Acute)</p>	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier required or permitted a driver to drive while under the influence of or in possession of an intoxicating beverage</p> <p>Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement</p>	<p>Statement from motor carrier official</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Documentary evidence should be obtained proving the violation(i.e., conviction report)</p> <p>Statement from driver</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in <u>interstate commerce</u></p> <p>Statement from driver involved should be obtained admitting that he/she operated the motor vehicle while under</p>

			<p>the influence of or in possession of an intoxicating beverage</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>392.5(b)(2) Requiring or permitting a driver who by his/her general appearance or conduct or by other substantiating evidence appears to have used alcohol within the preceding 4 hours (Acute)</p>	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier required or permitted a driver to drive who has consumed an intoxicating beverage within 4 hours</p> <p>Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Documentary evidence should be obtained proving the violation</p> <p>Statement from driver involved should be obtained admitting that he/she operated the motor vehicle and consumed an intoxicating beverage within 4 hours</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p> <p>Statement from driver involved should be obtained admitting that he/she operated the motor vehicle and consumed an intoxicating beverage within 4 hours</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in</p>	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on</p>	<p>Statement from motor carrier official</p> <p>Driver’s RODS and</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement,</p>

<p>excess of those prescribed (Critical)</p>	<p>a specific date</p> <p>That the motor carrier scheduled a run which would necessitate the vehicle being operated at speeds in excess of those prescribed</p> <p>Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement</p>	<p>corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Documentary evidence should be obtained proving the violation</p> <p>Statement from person(s) involved in scheduling the runs</p>	<p>Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p> <p>Separate statement from person(s) involved in scheduling the runs should be obtained outlining the scheduling of the runs in question and that they could not be completed within the speed limits prescribed</p> <p>Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (Critical)</p>	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier required or permitted a driver to drive without the vehicle's cargo being properly distributed and adequately secured</p> <p>Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement</p>	<p>Statement from motor carrier official</p> <p>Driver's RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Documentary evidence should be obtained proving the violation</p> <p>Photographs should be obtained showing that the vehicle's cargo was not properly distributed and</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p> <p>Statement from</p>

		<p>adequately secured</p> <p>Statement from driver</p> <p>Statement from shipper should be obtained if it loaded the vehicle</p>	<p>driver</p> <p>Statement from shipper should be obtained if it loaded the vehicle</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>392.9a(a)(1) – Operating a CMV without the required operating authority</p>	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier required or permitted a driver to drive without the proper operating authority</p>	<p>Statement from motor carrier official</p> <p>A declaration provided by the inspecting officer describing what was discovered</p> <p>Any transportation document which supports commerce and commodity being transported (i.e., bill of lading, delivery receipts)</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Roadside inspection report</p> <p>A detailed report from FMCSA’s L&amp;I System</p> <p>Documentary evidence should be obtained proving the violation</p> <p>Photographs should be obtained showing that the vehicle’s cargo was not properly distributed and adequately secured</p> <p>Statement from driver</p> <p>Statement from shipper should be obtained if it loaded the vehicle</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p> <p>Statement from driver</p> <p>Statement from inspecting officer</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>

<p>392.9a(a)(2) – Operating a CMV beyond the scope of the operating authority granted</p>	<p>CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier required or permitted a driver to drive beyond the proper operating authority</p>	<p>Statement from motor carrier official</p> <p>A declaration provided by the inspecting officer describing what was discovered</p> <p>Any transportation document which supports commerce and commodity being transported (i.e., bill of lading, delivery receipts)</p> <p>Driver’s RODS and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392</p> <p>Roadside inspection report</p> <p>A detailed report from FMCSA’s L&amp;I System</p> <p>Documentary evidence should be obtained proving the violation</p> <p>Photographs should be obtained showing that the vehicle’s cargo was not properly distributed and adequately secured</p> <p>Statement from driver</p> <p>Statement from shipper should be obtained if it loaded the vehicle</p>	<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p> <p>Statement from driver</p> <p>Statement from inspecting officer</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>395.1(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours (Driving in Alaska) (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove more than 15 hours</p> <p>Driving in Alaska only</p>	<p>Driver’s RODS (day before, day of violation, and day after) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have</p>

			<p>known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours (Driving in Alaska) (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove after having been on duty 20 hours</p> <p>Driving in Alaska only</p>	<p>Driver’s RODS (day before, day of violation, and day after) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.1(i)(1)(iii) Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove after having been on duty more than 70 hours in 7 consecutive days</p> <p>Driving in Alaska only</p>	<p>Driver’s RODS (complete 7-day period) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under</p>

			<p>the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.1(i)(1)(iv) Requiring or permitting driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove after having been on duty more than 80 hours in 8 consecutive days</p> <p>Driving in Alaska only</p>	<p>Driver’s RODS (complete 8-day period) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.3(a)(1) Requiring or permitting driver to drive more than 10 hours (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove more than 10 hours</p>	<p>Driver’s RODS (day before, day of violation, and day after) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p>

			Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.3(a)(2) Requiring or permitting driver to drive after having been on duty 15 hours (Critical)	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove after having been on duty 15 hours</p>	<p>Driver’s RODS (day before, day of violation, and day after) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
395.3(b) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days (Critical)	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove after having been on duty more than 60 hours in 7 consecutive days</p>	<p>Driver’s RODS (complete 7-day period) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR</p>

			390 and operated in interstate commerce
395.3(b) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days (Critical)	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver drove after having been on duty more than 70 hours in 8 consecutive days</p>	<p>Driver’s RODS (complete 8-day period) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Hours of Service Severity Sheet must be submitted with case report</p>	<p>Statement does not have to be obtained for this violation but CAPRI violations list should be printed and motor carrier official should sign it</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
395.8(a) Failing to require driver to make a RODS (Critical)	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier did not require its driver to make a RODS</p> <p>Investigator should ensure that driver did not make a RODS and is not just a matter of not filing the RODS</p>	<p>Statement from motor carrier official or Hours of Service Worksheet</p> <p>Shipping paper for the trip in question</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Statement of driver</p>	<p>Hours of Service Worksheet or statement from motor carrier must be obtained listing specific dates when the driver did not make a RODS</p> <p>Statement from driver must be obtained listing specific dates when he/she did not make a RODS</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p>

			<p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.8(e) False reports of RODS (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the driver falsified a RODS</p> <p>Two documents should be used to prove falsification</p> <p>One verifiable document/statement verifying document or two independent unverified documents</p> <p>Documents used must be obtained from motor carrier's own records or files</p> <p>Extensive notes must be taken</p>	<p>Driver's RODS (day before, day of violation, and day after) and corresponding shipping paper</p> <p>Document(s) used to prove falsification</p> <p>If one verified document is being used, be sure to include the statement from the originating source proving the accuracy of the document</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p>	<p>If one verified document is being used, be sure to include the statement from the originating source proving the accuracy of the document</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.8(i) Failing to require driver to forward within 13 days of completion the original RODS (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier did not require driver to forward within 13 days of completion the original RODS</p>	<p>Statement from motor carrier official or Hours of Service Worksheet</p> <p>Shipping paper for the trip in question</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p>	<p>Hours of Service Worksheet from CAPRI showing the missing RODS signed by a motor carrier official</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the</p>

			<p>motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.8(k)(1) Failing to preserve driver's RODS for 6 months (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated in interstate commerce on a specific date</p> <p>That the motor carrier failed to preserve driver's RODS</p>	<p>Statement from motor carrier official or Hours of Service Worksheet</p> <p>Shipping paper for the trip in question</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p>	<p>Hours of Service Worksheet from CAPRI showing the missing RODS signed by a motor carrier official</p> <p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>395.8(k)(1) Failing to preserve driver's RODS supporting documents for 6 months (Critical)</p>	<p>CMV/driver subject to 49 CFR 395 and operated in interstate commerce on a specific date</p> <p>That the motor carrier failed to preserve driver's RODS supporting documents for 6 months</p> <p>Substantial investigation must be conducted to prove this violation - Investigator must prove that supporting document was generated, that driver received it, and that the motor carrier failed to preserve it</p>	<p>Statement from motor carrier official</p> <p>RODS (day before, day of violation, and day after) and corresponding shipping paper</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395</p> <p>Statement from driver</p>	<p>Statement from motor carrier official admitting that it failed to preserve driver's RODS supporting documents for 6 months</p> <p>Statement from driver should be obtained to prove that he/she turned in supporting documents or that motor carrier told the driver to not turn in supporting documents to evade the regulations</p>

			<p>Violation occurred</p> <p>Motor carrier admits that it knew or through statement, Investigator proves that it should have known</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 390 and operated in interstate commerce</p>
<p>396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (Critical)</p>	<p>CMV subject to 49 CFR 396 and controlled by the motor carrier for 30 consecutive days or more</p> <p>Note: Exception for private motor carrier of passengers (nonbusiness)</p> <p>That the motor carrier operated this CMV in interstate commerce on a specific date</p> <p>That while operating or controlling this CMV on that specific date, the motor carrier failed to maintain (or failed to have its officers, drivers, agents, representatives, or employees directly concerned with the inspection or maintenance of such CMV to maintain) minimum records of inspection and maintenance on that CMV</p>	<p>Driver’s RODS and corresponding shipping paper clearly identifying the CMV being operated by company number, license plate number, or other designation</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396</p> <p>Note: If the CMV is a leased vehicle, a copy of the lease agreement showing that the motor carrier is controlling the CMV for 30 consecutive days or more</p> <p>Statement from the motor carrier official admitting that he/she has neither kept nor required any of its employees, drivers, agents, representatives concerned with the inspection and maintenance of this CMV to keep inspection and maintenance records as described in 49 CFR 396.3(b)(1)-(4)</p> <p>Note: The above statement should also rule out the possibility that such records or portions of the missing</p>	<p>Violation occurred</p> <p>CMV subject to 49 CFR 396 was controlled by the motor carrier for 30 consecutive days or more</p> <p>Motor carrier operated the CMV in interstate commerce on a specific date</p> <p>Motor carrier confirmed that it did not keep (or cause to be maintained) the minimum records of inspection and maintenance as required on this CMV</p>

		<p>records are kept at some other location than the motor carrier's principal place of business, since the motor carrier could have one of its maintenance shop vendors keep such records on the CMV</p> <p>Note: Cite this section if the motor carrier has no records of inspection and maintenance on the CMV - If the motor carrier has, by contrast, just kept a folder on the CMV merely identifying that CMV by company number, make, serial number, year, etc., then cite this recordkeeping violation under 49 CFR 396.3(b)(2) and/or 396.3(b)(3)</p>	
<p>396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared out-of-service before repairs were made (Acute)</p>	<p>CMV, subject to 49 CFR 396, declared out-of-service by an authorized Special Agent of FMCSA</p> <p>Note: This out-of-service declaration includes inspections performed by State personnel trained and certified to conduct CVSA inspections</p> <p>That the motor carrier or its representatives knew of the out-of-service condition prior to operating the CMV in transportation</p> <p>That the motor carrier operated this CMV in interstate commerce on a specific date after such CMV was declared out-of-service and before repairs were made</p> <p>That the motor carrier required or permitted the operation of this out-of-service CMV before repairs were made</p>	<p>Driver's RODS and corresponding shipping paper clearly identifying the CMV being operated by company number, license plate number, or other designation</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396</p> <p>Copy of the Driver-Equipment Compliance Check (MCS-63) obtained from the motor carrier's files indicating that its CMV was declared out-of-service based on equipment violations</p> <p>Note: Photographs of the out-of-service equipment defect(s) and the out-of-service sticker on the CMV (especially when the Investigator conducted the vehicle inspection during the course of the compliance review) are strongly recommended - Such</p>	<p>Violation occurred</p> <p>CMV subject to 49 CFR 396 was controlled by the motor carrier and declared out-of-service by an authorized Special Agent of FMCSA</p> <p>Motor carrier operated the CMV in interstate commerce on a specific date after the CMV was declared out-of-service and before repairs were made</p> <p>Motor carrier or its representatives had prior, actual knowledge that the CMV was declared out-of-service before requiring or permitting that CMV to be operated in transportation</p> <p>Statement should</p>

	<p>Note: The above elements establish the following facts: (1) the hazardous condition of the vehicle if allowed to be used in transportation before repairs are made, (2) notice to the driver of the CMV being placed out-of-service, and (3) the motor carrier's deliberate operation of the vehicle after it was placed out-of-service</p>	<p>photographs support the out-of-service declaration and notice to the motor carrier that the CMV is out-of-service based on equipment defects discovered during the inspection</p> <p>Statement from the responsible motor carrier official admitting that he/she had prior, actual knowledge that the CMV was declared out-of-service and therefore needed repairs before it could be placed back into transportation</p>	<p>outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>396.11(a) Failing to require driver to prepare DVIR (Critical)</p>	<p>CMV/driver subject to 49 CFR 396 and used by the motor carrier in interstate commerce on a specific date</p> <p>That the driver did not prepare a report in writing at the completion of his/her workday on each vehicle operated</p>	<p>Driver's RODS and corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate commerce</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396</p> <p>Copy of the DVIR, if available, indicating that the driver did not make any entries on that form</p> <p>Note: If the above DVIR is not the back page of the driver's RODS (and lacking any identifying information such as trip date and vehicle number), then the driver statement should cross-reference the driver's RODS to the blank DVIR (i.e., This blank DVIR, labeled Exhibit 13 by Safety Investigator Simmons, is the back page of my RODS dated 06/12/99)</p> <p>Statement from the motor carrier official that the company does not require the</p>	<p>Violation occurred</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 396 and operated in interstate commerce</p> <p>Motor carrier admits that it did not require its driver(s) to prepare DVIRs and that the driver did not prepare a DVIR for the CMV he/she operated on the documented trip date</p> <p>Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)</p>

		<p>driver(s) to prepare DVIRs</p> <p>Note: The above statement should also indicate that the driver did not prepare a DVIR for the CMV on the documented trip date</p> <p>Note: A driver statement admitting that he/she did not prepare a DVIR on the documented trip date and on other trip dates further supports the allegation that the motor carrier did not require its drivers to prepare DVIRs</p>	
<p>396.11(c) Failing to correct out-of-service defects listed by driver on a DVIR (Acute)</p>	<p>CMV/driver subject to 49 CFR 396 and used by the motor carrier in interstate commerce on a specific date</p> <p>That the driver prepared a DVIR on the CMV listing equipment defect(s) covered in Appendix G or in the CVSA Out-of-Service Criteria</p> <p>Note: The motor carrier must make repairs of defective or missing parts and accessories, listed in Appendix G to the FMCSR, before allowing the vehicle to be driven</p> <p>That the motor carrier failed to make repairs to correct the out-of-service defects listed by the driver in his/her DVIR prior to the documented trip date</p>	<p>Driver’s RODS and corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate commerce</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396</p> <p>Copy of the DVIR indicating the out-of-service defect(s) listed by the driver prior to the documented trip date</p> <p>Note: Photographs of the defect, if available, should be included as part of the documented violation - Such photographs serve as corroborating evidence of the out-of-service defect</p> <p>Statement from motor carrier official that the company did not correct the out-of-service defect(s) listed by the driver on his/her DVIR, dated ---, prior to the documented trip date</p>	<p>Violation occurred</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 396 and operated in interstate commerce</p> <p>Driver listed out-of-service defect(s) on his/her DVIR(s)</p> <p>Motor carrier admits that it did not correct the out-of-service defect(s) listed by the driver on his/her DVIR(s) prior to the documented trip date</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>396.17(a) Using a CMV</p>	<p>CMV/driver subject to 49</p>	<p>Driver’s RODS and</p>	<p>Violation occurred</p>

<p>not periodically inspected (Critical)</p>	<p>CFR 396 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier controlling the CMV did not periodically inspect, in accordance with the criteria in Appendix G of the FMCSR, this CMV within the preceding 12-month period of the documented trip date</p> <p>Note: The Investigator should examine the motor carrier’s maintenance files and Carrier Profile to see if the CMV received a “no equipment defect” roadside inspection performed by a State government agency or equivalent jurisdiction or FMCSA which meets the minimum standards contained in Appendix G</p>	<p>corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate commerce</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396</p> <p>Statement from motor carrier official admitting that the company has not conducted a periodic inspection, in accordance with the minimum criteria in Appendix G of the FMCSR, within the preceding 12-month period of the documented trip date</p> <p>Note: The above statement should also rule out the possibility that the motor carrier received a “no defect” roadside inspection conducted by an authorized State or Federal agency and in accordance with the Appendix G inspection criteria within the preceding 12-month period of the documented trip date</p> <p>In addition, the above statement should also rule out the possibility that a periodic inspection was conducted on this CMV by an agent of the motor carrier and that the required report is maintained by that agent</p>	<p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR 396 and operated in interstate commerce</p> <p>Motor carrier admits that it did not periodically inspect, in accordance with Appendix G criteria, this CMV within the preceding 12-month period of the documented trip date</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (Acute)</p>	<p>CMV/driver subject to 49 CFR 396 and operated (used) by the motor carrier in interstate commerce on a specific date</p> <p>That the motor carrier controlling the CMV did</p>	<p>Driver’s RODS and corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate</p>	<p>Violation occurred</p> <p>Vehicle/driver under the control of the motor carrier</p> <p>Involving a CMV subject to 49 CFR</p>

	<p>not periodically inspect, in accordance with the criteria in Appendix G of the FMCSR, this CMV within the preceding 12-month period of the documented trip date</p> <p>Note: The Investigator should examine the motor carrier’s maintenance files and Carrier Profile to see if the CMV received a “no equipment defect” roadside inspection performed by a State government agency or equivalent jurisdiction or the FMCSA which meets the minimum standards contained in Appendix G</p>	<p>commerce</p> <p>Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396</p> <p>Statement from the motor carrier official admitting that the company has not conducted a periodic inspection, in accordance with the minimum criteria in Appendix G of the FMCSR, within the preceding 12-month period of the documented trip date</p> <p>Note: The above statement should also rule out the possibility that the motor carrier received a “no defect” roadside inspection conducted by an authorized State or Federal agency and in accordance with the Appendix G inspection criteria within the preceding 12-month period of the documented trip date</p> <p>In addition, the above statement should also rule out the possibility that a periodic inspection was conducted on this CMV by an agent of the motor carrier and that the required report is maintained by that agent</p>	<p>396 and operated in interstate commerce</p> <p>Motor carrier admits that it did not periodically inspect, in accordance with Appendix G criteria, this CMV within the preceding 12-month period of the documented trip date</p> <p>Statement should outline date of interstate commerce, driver’s full name, and the to and from of the trip (1 for each day documented as a violation)</p>
<p>397.5(a) Failing to ensure a motor vehicle containing a Division 1.1, 1.2, or 1.3 (explosive) is attended at all times by its driver or a qualified representative (Acute)</p>	<p>In commerce</p> <p>Division 1.1, 1.2, or 1.3 explosives</p> <p>Vehicle not attended</p>	<p>RODS or timecard</p> <p>Shipping paper/bill of lading or other document to prove commerce</p> <p>Material Safety Data Sheet may also be necessary</p> <p>Photographs illustrating the violation</p>	<p>If a statement is used to prove this violation, it should cover the following-</p> <ol style="list-style-type: none"> <li>1. Division 1.1, 1.2, or 1.3 explosives were transported in commerce</li> <li>2. Location of driver/representative at the time</li> </ol>

			of violation
397.7(a)(1) Parking a motor vehicle containing a Division 1.1, 1.2, or 1.3 (explosive) within 5 feet of traveled portion of highway (Critical)	In commerce Division 1.1, 1.2, or 1.3 explosives Parked on or within 5 feet of traveled portion of a public street or highway	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation	A statement may not be necessary to prove this violation; however, if used, it should cover the fact that the motor vehicle was parked within 5 feet of traveled portion of highway
397.7(b) Parking a motor vehicle containing HM other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (Critical)	In commerce Placardable quantity of HM Parked on or within 5 feet of the traveled portion of public street or highway	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation	A statement may not be necessary to prove this violation; however, if used, it should cover the fact that the motor vehicle was parked within 5 feet of traveled portion of highway or street
397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar, or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials (Critical)	In commerce Class 1, 3, or 5 or Division 2.1, 4.1, or 4.2 Smoking within 25 feet	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation	A statement may not be necessary to prove this violation; however, if used, it should cover the fact that a person was permitted to smoke or carry a lighted cigarette, cigar, or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials
397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosives) with a copy of the rules of 49 CFR 397 and/or emergency response instructions (Critical)	In commerce Placardable quantity of HM (Division 1.1, 1.2, or 1.3) 49 CFR 397 and/or emergency response instructions not provided	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary	A statement should cover that a copy of 49 CFR 397 and/or emergency response instructions was not provided
397.67(d) Requiring or permitting the operation of a motor vehicle	In commerce Placardable quantity of HM (Division 1.1, 1.2, or	RODS or timecard Shipping paper/bill of lading or other document to prove	A statement should cover Division 1.1, 1.2, or 1.3

<p>containing Division 1.1, 1.2, or 1.3 (explosive) material that is not accompanied by a written route plan (Critical)</p>	<p>1.3) Route plan not prepared</p>	<p>commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation</p>	<p>transported</p>
<p>171.15 Motor carrier failing to give immediate telephone notice of an incident involving HM (Critical)</p>	<p>Commerce (interstate or intrastate) HM Incident occurred and not reported</p>	<p>Shipping paper/bill of lading or other document to prove commerce Shipping paper (Material Safety Data Sheet may also be necessary) Report or other evidence proving that one of the situations identified in 49 CFR 171.15(a)(1)-(a)(5) occurred Record from PHMSA indicating that no immediate notification was received</p>	<p>A statement is generally not necessary to prove this violation; however, if used, it should cover the fact that an incident involving HM occurred that meets the requirements for immediate reporting and that the incident was not reported</p>
<p>171.16 Motor carrier failing to make a written report of an incident involving HM (Critical)</p>	<p>Commerce (interstate or intrastate) HM subject to requirements of 49 CFR 171.16 Incident occurred and not reported</p>	<p>Shipping paper/bill of lading or other document to prove commerce Shipping paper (Material Safety Data Sheet may also be necessary) Report or other evidence proving that an incident occurred Record from PHMSA indicating that no immediate notification was received</p>	<p>A statement is generally not necessary to prove this violation; however, if used, it should cover the fact that an incident involving HM occurred and that the incident was not reported</p>
<p>177.800(c) Failing to train HM employees as required by the Hazardous Materials Regulations (Critical)</p>	<p>Individual is a HM employee and performed the functions of a HM employee Employee not trained in accordance with 49 CFR 172.704</p>	<p>Statement or other documentary evidence proving the individual is a HM employee and performed these functions (i.e., signature on a shipper's certification, test report, etc.) Identify the training that was not provided Include copies of any training program that does exist</p>	<p>For statement to prove training violations, it is advisable to obtain a statement from the employee in question and if possible, also from the individual- 1. Describe the functions of the employee 2. Describe any training that did</p>

			occur 3. Verify elements of the training that has not been conducted
177.817(a) Transporting a shipment of HM not accompanied by a properly prepared shipping paper (Critical)	Commerce (interstate or intrastate) transportation HM Improper shipping description per 49 CFR 172.200, 172.201, 172.202, 172.202(a), 172.203	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary)	A statement is not necessary to prove this violation
177.817(e) Failing to maintain proper accessibility of shipping papers (Critical)	Commerce (interstate or intrastate) transportation HM Shipping paper inaccessible	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary) MCS-63 or statement	If a statement is used for this violation, it must include a description verifying where the shipping papers were maintained in the vehicle
177.823(a) Moving a transport vehicle containing HM that is not properly marked or placarded (Critical)	Commerce (interstate or intrastate) transportation HM Vehicle not properly placarded	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary) Photographs of the vehicle & placards	A statement is not necessary to prove this violation
177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals (Acute)	Commerce (interstate or intrastate) transportation HM with a poison label and foodstuff on the vehicle	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary) and vehicle bill of lading Photographs of the locations of the different HM loaded in the vehicle illustrating the violation when available	A statement is not necessary to prove this violation
180.407(a) Transporting	Commerce (interstate or	Shipping paper/bill of	A statement is not

<p>a shipment of HM in cargo tank that has not been inspected or retested in accordance with 49 CFR 180.407 (Critical)</p>	<p>intrastate) transportation Specification cargo tank HM requiring a specification cargo tank Tank filled and transported after inspection due date</p>	<p>loading/RODS or other documentary evidence proving commerce and transportation Certificate of compliance/photograph of specification plate Shipping paper (Material Safety Data Sheet may also be necessary) Last test/inspection report Photographs of tank markings may be included</p>	<p>necessary to prove this violation</p>
<p>180.415 Failing to mark a cargo tank which passed an inspection or test required by 49 CFR 180.407 (Critical)</p>	<p>A specification cargo tank Tank was tested and not marked</p>	<p>Certificate of compliance/photograph of specification plate Copy of last test and inspection report Photographs of the tank documenting the markings on the tank - Be sure to include any test and inspection markings and the specification plate</p>	<p>A statement is not necessary to prove this violation</p>
<p>180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers as required (Critical)</p>	<p>A specification cargo tank Records not maintained</p>	<p>Photograph of specification plate, copy of test/inspection report, title, registration, or other document which supports the fact the tank is a specification tank Statement or cargo tank worksheet documenting missing papers</p>	<p>If a statement is used, it should at a minimum- 1. Identify the tank by Unit #, Serial #, and USDOT # 2. Identify the documents missing for each tank</p>
<p>180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (Critical)</p>	<p>A specification cargo tank Records not maintained</p>	<p>Photograph of specification plate, copy of test/inspection report, title, registration, or other document which supports the fact the tank is a specification tank Statement or cargo tank worksheet documenting missing papers</p>	<p>If a statement is used, it should at a minimum- 1. Identify the tank by Unit #, Serial #, and USDOT # 2. Identify the documents missing for each tank</p>

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

**Onsite Investigation – Focused**

	<b>Driver Fitness</b>	<b>Controlled Substances/Alcohol</b>	<b>Vehicle Maintenance</b>	<b>HOS Compliance</b>	<b>HM Compliance</b>	<b>Unsafe Driving</b>
<b>Safety</b>						
40 – Drug & Alcohol Testing		●				
380 – Special Training	●			⊗ .503(b), .505, .513		●
382 – Drug & Alcohol Testing		●				
383 – Commercial Driver’s License (CDL)	●	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR
390 – FMCSR General	⊗ .3, .15, .23, .25	⊗ .15	⊗ .3, .15, .21, .23, .25	⊗ .3, .15, .23, .25		⊗ .3, .15, .23, .25
391 – Driver Qualifications	●	⊗ .23(d-m), .41-.45	⊗ .13	⊗ .21, .41, .43		⊗
392 – Driving of Motor Vehicles	⊗ .3, .9a(a)	⊗ .9a(a)	⊗ .2, .9, .62, .9a(a)	⊗ .3, .6, .9a(a)	⊗ .2	●
393 – Vehicle Parts and Accessories			●			
395 – Hours of Service (HOS)				●		
396 – Vehicle Maintenance			●			

# Safety Audit Manual

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**

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## 3.0 Safety Audit Manual

### 3.1 Stage 1: Introduction

#### 3.1.1 The Safety Audit

##### *Definition of a Safety Audit (SA)*

The SA is an examination of a new entrant's operation. A SA also provides educational and technical assistance on safety and the operational requirements of the FMCSR and applicable HMR. The audit gathers critical safety data, needed to make an assessment of the motor carrier's safety performance and basic safety management controls. SAs do not result in safety ratings [Title 49, Part 385.101].

##### *The New Entrant (NE) Safety Assurance Program Applies to the Following*

The New Entrant Safety Assurance Program under 49 CFR Part 385, Subpart D applies to all new United States and Canada-domiciled motor carriers seeking to conduct interstate operations within the United States. Mexico-domiciled NEs are subject to 49 CFR Part 385, Subpart B. Non-North American-domiciled new entrants are subject to 49 CFR Part 385, subparts H and I.

##### *Motor Carriers Subject to the SA Requirement*

**Effective February 23, 2004:** All NE motor carriers (private and for-hire) seeking to operate in interstate commerce must undergo a SA. The SA is an educational opportunity for the NE. Civil penalties may not be levied against a motor carrier, but a motor carrier's registration may be revoked as a result of failing a SA.

**Effective February 17, 2009:** Any motor carrier granted a United States Department of Transportation (USDOT) number on or after February 17, 2009, will be subject to the NE Safety Assurance Program, Subpart D, as modified in the Final Rule. Any motor carrier still within the 18-month monitoring period, that was granted its USDOT number prior to February 17, 2009, will be subject to the New Entrant Safety Assurance Process, as it existed prior to the effective date of the new Final Rule. The Final Rule, effective February 17, 2009, is not retroactive. A SA conducted on a NE motor carrier that received its USDOT number prior to February 17, 2009 will be conducted under the previous rule, and the NE motor carrier is not subject to the automatic failure violations. Version 6.7 of CAPRI must be used by the auditor to complete the SA for these motor carriers. For NE motor carriers that fall under the previous rule, refer to the *Conducting a Safety Audit on a Motor Carrier That Received Its USDOT # Before February 17, 2009* section of the eFOTM, found in the eFOTM archives.

**Effective October 1, 2013:** The Moving Ahead for Progress in the 21st Century (MAP-21) reauthorization legislation reduces the length of time to conduct a new entrant safety audit. Beginning October 1, 2013, new entrant motor coach carriers with a new entrant entry date of October 1, 2013, or later, will be required to have a safety audit conducted within 120 days from the date of their new entrant entry date. All other motor carriers will be required to have a safety audit conducted within 12 months from their new entrant entry date.

##### *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 policy memo effective 6/14/2010](#)). For new entrant motor coach carriers with a NE entry date of October 1, 2013, or later, FMCSA will conduct a safety audit within 120 days from the date of their new entrant entry date.

**Note:** Hazardous materials (HM) safety permit motor carriers and HM motor carriers requiring a HM special permit generally do not receive a SA. An Onsite Comprehensive Investigation is conducted within the first 6 months of operation.

***Moving Ahead for Progress in the 21st Century (MAP-21) (Implementation of Agricultural Exemptions in the NE Safety Assurance Program policy, dated 4/8/2013)***

**Section 32101(d)**

This section of MAP-21 provides a statutory exemption from the hours of service (HOS) regulations for commercial motor vehicles (CMV) drivers engaged in the transportation of agricultural commodities and farm supplies for agricultural purposes. Transportation qualifying for this exemption must be conducted during “planting and harvesting seasons,” as defined by the State.

If a NE motor carrier engages in the transportation of agricultural commodities and farm supplies, it will be exempt from all of Part 395. Therefore, the related questions on the NE SA do not apply. However, transportation qualifying for this exemption must be conducted during “planting and harvesting seasons,” as defined by the State. If the NE motor carrier’s operations meet the requirements for this exemption, all Part 395 questions should be marked “Not Applicable (N/A).”

Responses to the remaining safety audit questions should be documented per standard procedures.

**Section 32934**

This section provides a wide exception from the regulations for the operation of *covered farm vehicles* (CFVs), including the individuals operating these vehicles. Because of these exceptions New Entrant Safety Audits will not be conducted on carriers solely operating covered farm vehicles.

This exemption is not available to a covered farm vehicle transporting quantities of hazardous materials (HM) requiring placards. States that made the exemptions available to CFVs transporting quantities of HM requiring placards would have regulations that are incompatible with 49 CFR Part 350 and may not qualify for full Motor Carrier Safety Assistance Program (MCSAP) funding.

To qualify for these exemptions, the NE motor carrier must meet the definition of a covered farm vehicle as described in Section 32934 of MAP-21. If qualified, motor carriers using only CFVs in their operations will not be subject to a SA. However, these carriers will remain in the NE program for monitoring for the complete 18-month time period.

At any point during the SA process, if a NE motor carrier claims eligibility for the CFV exception, the auditor shall provide the carrier with the self-certification documentation included as Attachment 1. The self-certification document must be signed by the owner of the company or his designee and must include the title of the person that is signing the document.

If a NE motor carrier’s operation changes to include non-covered farm vehicles, or it is determined the carrier does not qualify for the exemption for any reason, the exemption must be removed in the Portal and a SA conducted.

A CFV motor carrier is exempted from the SA, but not from the NE program. The motor carrier must still complete the 18-month monitoring period prior to receiving permanent registration.

If a SA was previously completed and uploaded as a motor carrier operating only covered farm vehicles, using the procedures described in the policy *ECS-2013-0003; Implementation of the Agricultural Exemptions in the New Entrant Safety Assurance Program dated April 8, 2013*, and it is subsequently determined that the NE motor carrier is not or no longer a CFV motor carrier, the Division Administrator shall determine the level of investigation/intervention necessary to assure compliance.

**Portal Procedures for Exempting a NE Motor Carrier from the SA**

The following guidelines for making changes in the Portal should be used. In addition, detailed directions regarding this process are provided in the [Covered Farm Vehicle Exemption Instructions PowerPoint](#).

***Exempting a New Entrant Motor Carrier***

- Log into the Portal;

- From the Home screen, navigate to the "Resolution Management" drop down;
- Choose the "Manage Safety Audit Exempted Companies" option;
- Enter the DOT # into the search screen and click 'Submit';
- Once the company information appears, there will be a green check mark in the "Edit" column;
- Click the green check mark;
- The SA Exemption Request box will appear which requires comments to be entered;
- Comments must include at a minimum: "Signed and Dated Covered Farm Vehicle confirmation sheet was sent to [Enter Division Office] on [Enter Date]." Additional comments may be included, if necessary;
- After entering comments, click the "Submit" button; and
- Click "OK" when the confirmation box appears.
- The system will reflect that the carrier has been exempted from the SA.

If it is determined that a NE motor carrier claiming the exemption does not meet the requirements, a SA must be conducted, and all violations of the regulations that are discovered, must be cited. An explanation detailing why the exemption does not apply must be included in Part C of the safety audit.

If at any time, a NE motor carrier's operation changes to include non-covered farm vehicles, the exemption must be removed in Portal.

- Go to the "Manage Safety Audit Exempted Companies" screen;
- Enter the DOT number; and
- Click the red "X" in the Edit field.
- The removal of the exemption also requires comments. In the comments field, you must enter the reason for removing the exemption.

Once the exemption has been removed, the NE will be placed back on the SA assignment list and the SA must be conducted as soon as practicable.

### ***The SA Process***

The SA will be conducted by an individual certified as a Safety Auditor or Safety Investigator (SI) under FMCSA regulations, and will consist of an interview session with a motor carrier official, and a two to four hour review of the NE's safety management systems, and a sample of required records and operational practices. The areas for review include the following:

- Driver qualifications
- Driver records-of-duty status (RODS)
- Vehicle maintenance including repair and maintenance
- Accident register
- Controlled substances and alcohol use and testing requirements
- Commercial Driver's License (CDL) standards
- Financial responsibility
- Transporting and marking HM
- Economic regulations, including Household Goods (HHG)
- Operating authority
- Reincarnated/chameleon motor carrier vetting
- When applicable:
  - Passenger
  - HM
  - HHG

### ***SA Question Guidance***

For guidance on how to answer the SA questions, the Auditor should refer to guidance provided for each individual SA question in the Senti SA program.

***During the SA, When Violations are Discovered and Corrective Action Has Been Taken by the Motor Carrier, the Safety Auditor Should Not Cite Those Violations***

If violations are discovered at the time of the SA, but sufficient evidence demonstrates that the NE motor carrier has taken subsequent corrective action that places the carrier into regulatory compliance, the safety auditor should not cite the violation ([see policy dated 4/8/2011](#)).

***Handling the NE Motor Carrier's Operating Authority When a Motor Carrier Fails the SA***

The motor carriers' operating authority is independent of its USDOT number and therefore the failed SA will not affect a motor carriers' operating authority status.

***The SA Format***

The SA has three parts: Parts A, B, and C.

- Part A - Multipurpose and provides the background/introductory information for the audit.
- Part B - Consists of questions (economic/safety/HM/HHG/passenger (ADA) and reincarnated/chameleon motor carrier detection). The questions are structured to provide the auditor with a systematic review of the motor carrier's operations. The answers serve as indicators for the effectiveness of a motor carrier's compliance with applicable FMCSR and/or HMR. Recommendations - Provide the motor carrier with suggestions and requirements to gain future compliance.
- Part C - Provides specific information about the SA such as the name and title of the individuals who were interviewed and comments from the auditor.

The pass/fail criteria for SA can be found in Appendix A to Part 385.

**Generally, the SA should only cover the questions on the SA. However, you should be prepared to explain the documents outlined in the Educational and Technical Assistance packet to ensure that the motor carrier is aware of safety expectations.**

***Where to Conduct a SA***

NE audits may be conducted either at the motor carrier's PPOB or in a group setting. Division Administrators (DAs)/State Directors (SDs) should determine which method is most efficient and cost effective to the Government. It is essential that all audits are standardized and conducted in a uniform manner from State to State.

 **Note: Only Federal staff will conduct audits on Canadian motor carriers and Mexico-domiciled motor carriers.**

***The Minimum Amount of Time a Motor Carrier is Required to be in Operation Before SA Can Be Performed***

Audits will be scheduled only after a motor carrier has sufficient evidence of interstate activity. Generally, this is 3 months after beginning their operations. This information may be obtained by asking the NE motor carrier directly when scheduling the SA and by checking the NE profile.

***Procedures to Follow if an Investigation was Already Completed on the Motor Carrier***

If an Onsite Comprehensive Investigation is conducted at any time on a motor carrier who hasn't had a SA, a SA will not be performed. The Onsite Comprehensive Investigation will satisfy the requirement that each NE undergoes a SA within the first 12 months of operation before receiving permanent authority. A non-rated review does not satisfy the requirement that each NE undergo a SA.

**3.1.2 Special Procedures For SAs*****Carrier Fails to Keep an Appointment After Several Attempts Have Been Made***

If a carrier fails to keep an appointment, and several attempts have been made to conduct the audit, the situation should be considered a refusal to permit a SA to be performed on a NE's operations. It is required that documentation be maintained for attempts, if refusal becomes an issue. [Illustration SA-2](#) may be used to document attempts to schedule an audit. The procedures outlined in 385.337 should be followed.

### ***Determining if the Carrier Refused to Submit to a NE Audit***

The SA is a required component of the NE motor carrier registration process and is a non-enforcement event. Therefore, it is expected that the number of carriers refusing to participate will be minimal. However, the determination a carrier has refused to submit to a NE audit is made by the Division Administrators/State Directors (DAs/SDs) on a case-by-case basis, or by the carrier not contacting the appropriate Division/MCSAP office. DAs/SDs 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:

- Carriers who received NE registration and do not contact the appropriate FMCSA Division or designated MCSAP Office, per policy 05-EC-0006, dated 5/6/05.
- 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. Carriers who received NE registration prior to February 23, 2004 are required to be contacted by FMCSA. The auditor must make at least 3 reasonable attempts to schedule the audit with a carrier, to no avail, before the carrier's actions may be deemed a refusal. The attempts should be clearly documented to validate every effort made to schedule the audit and ensure the carrier has had ample opportunity to comply with the request before proceeding to revoke the new entrant's registration under Section 385.337(b). The mere lack of a response to one FMCSA request to schedule the audit should not trigger a revocation proceeding. This is particularly important because the rules do not provide for administrative review if a carrier refuses to submit to an audit.

If a NE motor carrier's registration was revoked because FMCSA found that the NE motor carrier had failed to submit to a SA, the motor carrier must comply with Section 385.329(c)(1-3).

### ***NE Motor Carrier Provided False or Misleading Information During the SA***

- The auditor should notify the Division for appropriate handling.

### ***During a SA, the Auditor Suspects the Carrier is Reincarnated/Affiliated***

Questions within the SA are designed to elicit information that may identify a motor carrier that is a reincarnation, or affiliate, of a previous entity. Examples of these SA questions are:

- Has the carrier, or corporate officers for the carrier, ever been affiliated or had any relationship with any former or current carrier regulated by the FMCSA?
- Is the company using documentation from another carrier, other than the one being audited, to demonstrate compliance with the regulations?
- Is the company using the same phone number, email address, vehicles, location, or any other assets of any former or current FMCSA regulated entity?

- Did any of the documents reviewed, or information, provided by the carrier during the audit lead the investigator to believe the motor carrier is the continued operations of another motor carrier?

Affirmative answers to any one, or all, of these questions, is information that should cause the safety auditor/investigator to suspect reincarnation/affiliation. In that event, the safety auditor/investigator should consult with the FMCSA Division Administrator (DA) or his/her designee, and the DA, after consultation with the SCET, may choose to stop the Safety Audit and initiate a non-ratable review. Scheduling a non-ratable review prevents the possibility that a suspected reincarnated carrier could potentially pass a New Entrant Safety Audit.

Since there may be legitimate reasons that a motor carrier may establish a new identity, to manage the consultation with the DA (or his/her designee), the safety auditor/investigator should consult [Appendix K – Reincarnated/Affiliated Carrier Analysis Factors and Checklist](#) (Attachment A of the August 29, 2012 policy [Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers](#)). Specific attention should be placed on the “Prior History” section discussing a negative safety history that the company may be trying to avoid.

#### ***Auditor Determines that a NE Motor Carrier is Failing to Comply with the HHG Regulations***

- No further action is warranted by the SA; however, a report will be generated by the Commercial Enforcement Division to determine if further action is necessary.

#### ***NE Motor Carrier Reclassifies its Status Multiple Times***

- The SC NE Coordinator will provide notice for appropriate action to the respective DA of any carrier within their Division that has had more than 3 reclassifications. Such actions may include scheduling the carrier for an Onsite Comprehensive Investigation.

#### ***Situations Under Which a NE Will Receive an Investigation Rather than a SA***

An Onsite Comprehensive Investigation should be conducted in place of a SA if, during the 18-month monitoring process, one of the following conditions occurs:

- A NE motor carrier is involved in a significant crash;
- A NE motor carrier is the subject of a non-frivolous complaint;
- A NE motor carrier is involved in an HM incident;
- The NE meets the Mandatory definition; or
- A NE motor carrier is transporting materials that require a HM Permit.

**Note:** If a NE motor carrier receives an Onsite Comprehensive Investigation before a SA, a SA will **not** be conducted.

## **3.2 Stage 2: Pre-Audit**

### **3.2.1 Procedures that Should be Followed to Prepare for a Safety Audit**

***You should follow these steps to prepare for your audit:***

#### ***Making An Appointment***

It is FMCSA policy that you should make an appointment for all investigations. Why? In the majority of cases, the initial contact will ensure the necessary personnel and records will be available upon your arrival at their place of business.

When you make an appointment, you should identify yourself and explain the purpose of your visit to the appropriate motor carrier official. Once the appointment is made, you should send a confirmation letter and questionnaire to the carrier to ensure that the carrier receives this information in a timely fashion; it is

preferred that the letter and questionnaire be faxed to the carrier. The confirmation letter is used to inform the carrier of the place, time, and date of the SA. When the carrier completes the questionnaire, it will assist you in the completion of Part A and will prepare you for your investigation. Refer to [Illustration SA-1](#) for a sample of a confirmation letter and questionnaire.

Also, during this contact, you should explain the most common reasons for failing a NE SA and ask the motor carrier to provide legible, non-original documentation via fax, email, or any other appropriate means, addressing the following areas (if applicable), at least 7 days in advance of the date of the scheduled review:

- Documentation of an alcohol and/or controlled substance testing program, in accordance with 49 CFR 382.115(a) and (b), including a copy of the employer's policies, procedures, and educational materials implementing alcohol and controlled substances program, as described in 49 CFR 382.601.
- Documentation of a random testing program, in accordance with 49 CFR 382.305, including random testing policies and procedures, name and address of consortium, and testing summary from consortium or lab. If no consortium is used, the company's summary of drivers tested and random test rates should be provided.
- Evidence that the carrier is preparing and maintaining records of duty status (RODS), as required by 49 CFR 395.8(a). The documentation requested should include the RODS for one driver for 30 days, or, if appropriate, time records specified in 49 CFR 395.1(e).
- Evidence of periodic (annual) inspections, in accordance with 49 CFR 396.17. The documentation requested should be one annual inspection for one vehicle, and, if applicable, a copy of an inspector document of qualification, in accordance with 49 CFR 396.19.
- Evidence of the required minimum levels of financial responsibility, in accordance with 49 CFR 387.7(a), specifically, a properly executed form MCS-90.
- Evidence that the drivers maintain a valid commercial driver's license (CDL), in accordance with 49 CFR 383.23(a). The documentation requested should be a copy of one driver's CDL.

If the carrier is unable to produce sufficient documentation to ensure compliance or non-applicability in these areas, the Division/State should notify the motor carrier via phone or in writing, and encourage the motor carrier to prepare for the SA prior to the scheduled review, but the scheduled review should not be delayed.

### ***General Investigation Contact Procedure***

For the first 90-days a new entrant is in the program, neither the FMCSA Division or our State partners should contact a new entrant motor carrier. The initial 90 days is to allow the motor carrier enough time to have sufficient records to allow the agency to evaluate the new entrant's basic safety management controls. During the first 90-days, the new entrant is directed to contact the new entrant call center where the call center verifies the information that is provided in MCMIS.

Investigators/auditors have a difficult time locating motor carriers from the information currently in MCMIS (e.g., telephone number, physical address, and/or mailing address). Per the "New Entrant Issuance and 30-Day No Contact Letters" policy dated 8/28/2012, for the purposes of the new entrant program, FMCSA and State partners are permitted to only use the information provided in MCMIS when attempting to contact a new entrant motor carrier. We should ensure that we exhaust all contact methods provided in MCMIS before starting the no-contact process. All contact methods should include phone number(s), fax numbers and email contact information. FMCSA representatives should also check the "enter contact date" field found in MCMIS which may include addition contact information that was provided during the validation process.

The agency is no longer requiring article of incorporation verification, internet searches or additional measures in an effort to locate new entrant motor carriers.

**■** You must notify the appropriate Canadian government/provincial representative(s) of our intention to investigate a Canadian motor carrier and/or shipper.

### ***Confirm Location on MCS-150 is a Principal Place of Business (PPOB)***

If it is discovered that a motor carrier, or representative of the motor carrier, failed to designate a qualifying PPOB based on the information in MCMIS, you should provide the motor carrier a copy of the [July 2009 Regulatory Guidance on the Definition of Principal Place of Business](#). The Regulatory Guidance informs the company that FMCSA requires companies to designate a qualifying PPOB.

In addition, you should advise the motor carrier to update its MCS-150 using a qualifying PPOB. If the motor carrier updates its PPOB before the start of the audit, you should conduct your investigation at the newly designated PPOB. If the motor carrier does not agree to correct its PPOB designation, they will be subject to enforcement or even revocation of USDOT Registration and/or Operating Authority. Refer to the 10/31/12 policy: [Principal Place of Business Requirements](#).

You may use the following guidance to help determine if a location designated by a motor carrier is a qualifying PPOB: [Guidance for Determining PPOB](#).

### ***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 New Applicant Screening (NAS) Tool***

The FMCSA developed the New Applicant Screening (NAS) tool for use in vetting applicants for passenger carrier and household goods operating authority. Modifications to the NAS tool allow FMCSA to screen existing motor carriers for links to other motor carriers that may indicate reincarnation or affiliate activity. The NAS 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 NAS tool. In the event the NAS 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. (Note: Violations of Part 383.51 should not be used unless it includes a conviction).

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.

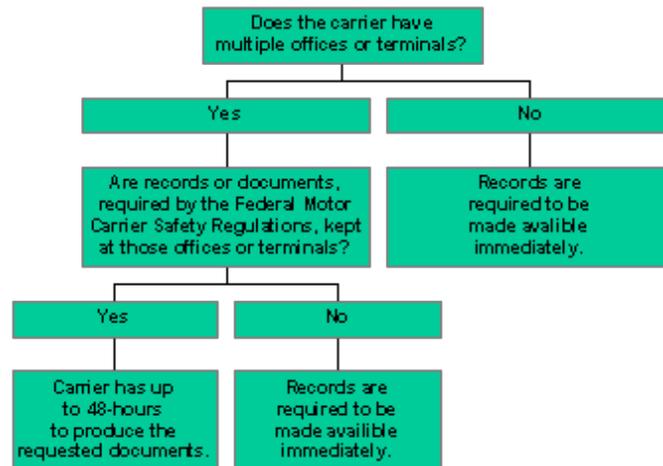
When you discover potential problems on the company profile, identify and record the drivers and/or vehicles that had the most violations. Include these in your sampling. Also, if the carrier doesn't have at

least three Level I, II, and/or V vehicle inspections, inform the carrier that vehicles must be made available during your audit for inspection.

### ***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, upon request. 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.



[Description of Does the carrier have multiple offices or terminals? diagram](#)

### ***Reviewing Other Motor Carrier Data***

You should review the motor carriers SMS percentiles at <http://ai.fmcsa.dot.gov/sms>. By identifying data that contributed to high SMS percentile rankings, you will be able to concentrate on those areas, such as false RODS, for which the carrier has demonstrated problems. Note drivers and vehicles that experience repeated violations and include them in your sampling during the audit.



**You should also review other sources, such as <http://www.fmcsa.dot.gov>, <http://ai.fmcsa.dot.gov/sms>, and <http://li-public.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>), to determine a motor carrier's safety and licensing posture. To expedite the audit process, you may want to request other data before arriving at the carrier's place of business, for example, obtaining drivers lists allows you to perform CDLIS checks beforehand.**

### ***Ensuring That You Have The Most Recent Software***

Prior to the initiation of an audit you should ensure that you have the latest versions of FMCSA software. You may check to ensure the latest versions available by logging into <http://infosys.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>).

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

1. Identify yourself and your employer.
2. Display your credentials.
3. Ask to speak to a motor carrier/shipper official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc.) If he/she is not available, you should ask for the individual in charge of safety.
4. Explain the purpose of the visit to the official. Explain that various company records will be reviewed and that you will need to talk to the individuals responsible for compliance with the safety, HM, financial responsibility, and commercial regulations.
5. If you were not able to meet with a corporate official, explain that you will need to meet with this person for your closeout.
6. If a questionnaire was not sent to the motor carrier prior to your arrival, or if no appointment was made, obtain the information needed to complete Part A of the SA.



**Explain to the carrier how long the audit is expected to take, and at what time certain records and carrier employees will be needed. This allows you and the carrier to most efficiently complete the review process.**

### 3.2.3 Areas to Cover During the Opening Interview with the Motor Carrier

#### *Operating Characteristics*

You should become familiar with the nature of the motor carriers operation by asking questions about the destinations of regular trips, the identity of customers that provide them the most business, and the carriers busiest and slowest times of the year. Also, inquire as to the manner in which drivers are compensated, the level of driver turnover, the extent to which the carrier uses electronics in its operation and record keeping, vehicle maintenance procedures, controlled substances and alcohol testing program, etc.

#### *Paperwork and Flow*

You should become familiar with the motor carriers paperwork system related to its operations, payroll systems, filing systems, etc. If the documentation of violations becomes necessary, this knowledge will enable you to gather and copy records about drivers trips quickly and efficiently. You should determine the supporting documents the motor carrier obtains and/or generates and where these records are maintained. Become familiar with any business records that disclose the location and activity of drivers at specific times or during certain time periods. These records will enable you to verify the accuracy of drivers' RODS.



**Ask the official to demonstrate the paperwork flow of its operation, if supporting documents are just arriving view how the documents are distributed. Understanding the process, what information is available, and who handles certain paperwork will enable you to determine which documents may be useful during the review process.**

#### *Electronic Signatures and Documents*

[For guidance concerning electronic signatures and documents, click here.](#)

### ***Driver Issues***

Ask the appropriate motor carrier official about the company's procedures for driver hiring, qualification, and training. This would be the appropriate time to request a list of drivers employed in the last 365 days, and their dates of hire and termination. Once the carrier provides you with the information, verify the accuracy of the list by reviewing the motor company profile, payroll records, dispatch records, bills of lading, and/or shipping documents during your audit.

### ***Tour the Facility***

Ask the carrier to tour their facility. Be observant of posted materials, related to the carrier's knowledge and compliance with the regulations, and how the general day-to-day operations work. During the tour look for the presence of HM, especially in the areas where products and goods are fabricated, cleaned, stored, or shipped. Some motor carriers and shippers may not know they are shipping and/or transporting HM.

## **3.2.4 Pre-audit Procedures**

### ***Questions to Ask Before Visiting the Carrier to Determine Whether a Safety Audit (SA) Should be Conducted***

- Why did you apply for a USDOT number?
- How long have you been operating with this new USDOT number?
- How many drivers do you currently have?
- How many power units do you have and what are the GVWRs?
- What is the commodity that you transport?
- When was your first interstate trip?
- What is the origin and destination of the commodity you transport?
- If not currently transporting interstate, do you plan to in the future?
- What types of HM are you transporting and in what quantities?

### ***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. Go into MCMIS and make carrier Intrastate. Instruct the motor carrier how to go online and change its operation from "INTRASTATE" to "INTERSTATE" when it begins interstate operations.

### ***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. Go into MCMIS and make carrier Intrastate. Instruct the motor carrier how to go online and change its operation from "INTRASTATE" to "INTERSTATE" when it begins interstate commerce.

### ***If the Carrier Has a USDOT Number Because the Company that it is Leased to Requires One; However, the Carrier is Not for-Hire and is Not Planning to Use its Authority on Interstate Business in the Future***

Do not conduct the SA but fax the carrier the Request to Inactivate USDOT Number and/or Request for Revocation of Registration forms.

### ***If the Carrier Has a USDOT Number, But it is Not Using it at the Moment, Because it is Using the USDOT Number from the Company it is Leased To***

Do not conduct the SA. Go into MCMIS and make the carrier Intrastate. If the carrier is domiciled in a PRISM state make the carrier Intrastate. Instruct the motor carrier how to go online and change its operation from “INTRASTATE” to “INTERSTATE” before it begins interstate operations under its own authority.

***If a U.S. Carrier has a USDOT Number But All the Vehicles are 10,000 lbs. or Less and is Not Transporting HM***

Do not conduct the SA. We do not have jurisdiction to regulate. Fax the carrier the Request to Inactivate USDOT Number and/or Request for Request for Revocation of Registration forms.

***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.

### **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. If the motor carrier refuses to release this figure, or the figure is for less than 12 months, document this information in Part C. When a carrier refuses to provide you a gross revenue figure, you should consult with your Supervisor, DA/SD, or SC to estimate the gross revenue. If no figure was provided, estimate the gross revenue using the following:

$$\text{Mileage (previous 12 months)} \times \$1.50 = \text{Estimated Gross Revenue}$$

Remember to convert foreign currency into US dollars.

### ***Mileage (Previous 12 Months)***

 For motor carriers domiciled in the United States, you will need to enter total commercial motor vehicle (CMV) mileage for all power units under the carrier's control recorded on Part A. Include mileage in interstate and intrastate commerce, and mileage in Canada and Mexico.

 For motor carriers domiciled in Canada, you will need to enter mileage occurring in the United States, or as part of an interstate trip to or from the United States. Remember to convert kilometers into US miles.

If the motor carrier has been operating for less than 12 months, you will need to estimate the annual mileage based on the total mileage since beginning operations. For example, a motor carrier has 800,000 total vehicle miles since beginning operations 8 months ago.



**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:

<b>Annual Mileage Estimate = <math>\frac{(12 \times \text{Miles Operated})}{\text{Months Operated}}</math></b>
<b>For this example:</b>
<b>Annual Mileage Estimate = <math>\frac{(12 \times 800,000)}{8} = 1,200,000</math></b>

### ***Equipment***

The data you enter should reflect the vehicles that are, or could be, operated at the time of the investigation with the exception of trip-leased vehicles. You should enter an average of trip-leased vehicles per month. If the same vehicle is used several times in a month, count each trip separately. "Term-leased" equipment is often used interchangeably with the term "permanent-leased." A term-lease lasts for 30 days or longer.



**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*

Ask the motor carrier to provide you with the number of drivers it used or who operated under its USDOT number during the 365-day period prior to the start of the investigation. The total number of drivers who are subject to the FMCSR include company drivers, owner-operators, leased drivers, and multiple-employer drivers. Although a driver may fit into more than one category, identify the driver in only one category and count the driver only once.

### **3.3.2 – Motor Carriers of Passenger**

#### *Important Issues to Remember when Investigating Carriers of Passengers*

Private motor carriers of passengers (PMCP) became subject to the FMCSR on January 1, 1995. They are separated into two groups, business or nonbusiness, and are exempt from certain requirements of the FMCSR. Motor carriers operating vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation became initially regulated by FMCSA on February 12, 2001. More information on each of these types of operations follows:

#### *For-Hire Carriers of Passengers*

##### *Three Factors to Consider in Determining whether a Passenger Carrier is For-Hire*

- Does the motor carrier provide interstate transportation of passengers for a commercial purpose?
- Is the motor carrier compensated, either directly or indirectly, for the transportation service provided?
- Is the transportation service generally available to the public at large?

#### *Conducting SAs on a For-Hire Passenger Carrier that has Applied for Operating Authority*

To harmonize FMCSA’s NE and Vetting Programs, SAs should not be conducted on NE for-hire passenger carriers until operating authority is granted. The SA should be conducted within 9 months of

the passenger carrier receiving operating authority, but not later than 18 months, as required by statute. When there is evidence that a passenger carrier operated illegally for-hire before receiving operating authority, a non-ratable review should be conducted in lieu of a SA, and appropriate enforcement action taken. Based upon this violation, FMCSA will reject the passenger carrier's application for operating authority. This 9-month policy about conducting SAs on passenger carriers that have applied for operating authority must be followed manually. 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.

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 simply an earlier deadline for a SA to be performed 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; examples include companies that use buses to transport their own employees and professional musicians who use buses for concert tours. Commercial businesses that provide passenger transportation to the general public are not business PMCP. SAs should be conducted on business PMCP 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***

<b>Part</b>	<b>Regulatory Topic</b>	<b>Applicable</b>
<b>380</b>	Special Training Requirements	Partial (Subject to Part 380 Subpart E, Entry-Level Driver Training Requirements)
<b>382</b>	Controlled Substances and Alcohol Use and Testing	Yes
<b>383</b>	Commercial Driver's License	Yes
<b>387</b>	Financial Responsibility (Insurance/Surety)	Yes
<b>390</b>	General Applicability and Definitions	Yes
<b>391</b>	Qualification of Drivers	Yes
<b>392</b>	Driving of Commercial Motor Vehicles	Yes
<b>393</b>	Parts and Accessories	Yes
<b>395</b>	Hours of Service of Drivers	Yes
<b>396</b>	Inspection, Repair, and Maintenance	Yes

### ***Exemptions***

Business PMCP are not subject to the road test requirements of Part 391. SAFETEA-LU mandates FMCSA make PMCP (including business PMCP) subject to some level of financial responsibility. Until FMCSA has published final regulations implementing the statutory section, business PMCP are not subject to a minimum level of financial responsibility.

### ***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, private schools, civic organizations, scout groups, and other charitable organizations that may purchase or lease 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.

#### ***Definition of Direct Compensation***

Direct compensation is payment made to the motor carrier by the passengers, or the individual 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. Direct compensation means payment for the highway transportation services is not included in a total package charge.

For example: when a business is solely engaged in passenger transportation, is not involved with any other type of service, and receives payment from the transported customers without any intermediary.

An example of a motor carrier operating 9 to 15 passenger-carrying CMVs **not** for direct 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 or entertainment, etc.), in addition to passenger transportation services for a total package charge.

#### ***Requirements Applicable to Operators of Small Passenger-Carrying Vehicles that are Directly Compensated***

Motor carriers that are directly compensated for the operation of small passenger-carrying vehicles are subject to all of the safety standards in Part 385 and Parts 390 through 396 of the FMCSR. These carriers are required to file a motor carrier identification report (Form MCS-150) 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 not directly compensated for the operation of small passenger-carrying vehicles are required to file a motor carrier identification report, 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 private motor carrier of passengers (non-business), 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 before receiving required passenger operating authority, a non-ratable CR or non-ratable on-site investigation should be conducted instead of a SA, and appropriate enforcement action taken. This policy applies only to a passenger carrier that has never previously had operating authority.

***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.

<b>Vehicle</b>	<b>For-hire Passenger Carrier</b>	<b>Business PMCP</b>	<b>Nonbusiness PMCP</b>
<b>Vehicle with a seating capacity of 16 or more</b>	\$5,000,000 insurance coverage required ( <a href="#">see Note 2 below</a> )	Not Subject ( <a href="#">see Note 1 below</a> )	Not Subject ( <a href="#">see Note 1 below</a> )
<b>Vehicle with a seating capacity of 15 or less</b>	\$1,500,000 insurance coverage required ( <a href="#">see Note 2 below</a> )	Not Subject ( <a href="#">see Note 1 below</a> )	Not Subject ( <a href="#">see Note 1 below</a> )

**Note 1:** The SAFETEA-LU statute mandates FMCSA make PMCP subject to some level of financial responsibility. Until FMCSA has published final regulations implementing the statutory section, nonbusiness PMCP are not subject to a minimum level of financial responsibility.

**Note 2:** 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.

***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***

<b>Type</b>	<b>Home-to-School or School-to-Home</b>	<b>Extracurricular School Activities</b>
<b>Public School Transporting Students</b>	Not Subject	Not Subject

<b>Private School Transporting Pre-primary, Primary, and Secondary Students</b>	Not Subject	Subject as Nonbusiness PMCP
<b>Private School Transporting Post-secondary Students</b>	Subject as Nonbusiness PMCP	Subject as Nonbusiness PMCP
<b>For-hire Contractors Transporting Pre-primary, Primary, and Secondary Students</b>	Not Subject	Subject as For-Hire Carrier
<b>For-hire Contractors Transporting Post-secondary Students</b>	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***

<b>Type of Passenger Carriage</b>	<b>Home-to-School or School-to-Home</b>	<b>Extracurricular School Trips Organized, Sponsored and Paid for by the School</b>	<b>Extracurricular School Trips Organized, Sponsored and Paid for by an Independent Group (e.g., booster clubs, etc.)</b>
<b>Transportation of Pre-primary, Primary, and Secondary Students and Accompanying Teachers</b>	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
<b>Transportation of Post-secondary Students</b>	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.  Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.  Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.	Bus seating capacity of 16 or more: \$5,000,000 insurance coverage required.  Bus seating capacity of 15 or less: \$1,500,000 insurance coverage required.

**3.3.3 Part 37 Subpart H – Americans with Disabilities Act (ADA) Questions**

***Understanding the Americans with Disabilities Act (ADA) Related SA Questions***

**Please Note:** ADA compliance questions are only applicable to **for-hire passenger carriers that operate one or more over-the-road buses (OTRB)** which is also known as a motorcoach.

**BACKGROUND:** New applicants for interstate operating authority who want to provide passenger transportation services must certify they are “fit, willing, and able” to comply with pertinent statutory and regulatory requirements including the ADA requirements of 49 CFR Part 37, Subpart H.

Auditors should not pose the ADA compliance questions to:

- Private Motor Carriers of Passengers that do not provide for-hire passenger transportation;
- Motor carriers of passengers that do not operate an OTRB; and

- Canadian for-hire motor carriers of passengers (unless passengers board an OTRB within the United States).

### **3.3.4 Safety Audit Procedures for Hazardous Materials Carriers**

#### **3.3.4.1 HM General**

- 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, an SCR must be performed in conjunction with the review or audit. See 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 HM incident, the SA must be expanded to an Onsite Comprehensive review.
- If substantial violations are discovered with one or more of the Carriers' Shippers, the information should be forwarded to the FMCSA Division Office in the State where the Shipper is located for further investigation.

#### **3.3.4.2 Part 107 – HM Registration**

##### ***Procedures for Determining a Motor Carrier Compliance with the PHMSA Registration Requirements***

- Determine whether the motor carrier has registered with the PHMSA in accordance with § 107.608.
- If a motor carrier cannot produce evidence of registration, but claims to be registered, a 10 working day period should be provided to the company to produce evidence of registration, or evidence of registration could be verified at <https://hazmatonline.phmsa.dot.gov/Services/companylookup.aspx>.

##### ***Dealing with an HM Carrier that Should be Registered, But is Not***

- If the Motor Carrier is not currently registered with PHMSA, inform a high-level company official that they must register immediately for each registration year in which they engaged in activities covered by the HM Registration program.
- If the carrier submits complete and accurate proof of registration within 10 working days after closeout of the investigation, no action needs to be taken.
- If the carrier fails to register within the 10 working days, the information should be forwarded to the Division Office of the FMCSA in the State where that carrier is located for further investigation

#### **3.3.4.3 Part 171 - HM Incident Reporting**

##### ***Determining if the Motor Carrier is in Violation of One of the Incident Reporting Requirements***

- Examine the accident reports, records, and files related to recordable and non-recordable accidents, which occurred during the previous 12 months, for the occurrence of HM incidents.
- Examine the motor carrier's OS&D records and cargo claim files, from the previous 12 months, for the occurrence of HM incidents.

- Examine the OSHA injury reports and workman's compensation claim records for injuries occurring from cargo handling (HM spills).
- Record all instances of an unintentional release of HM.
- If possible, tour the motor carrier's loading docks to identify damaged HM packages that would indicate spills.
- Determine compliance with the HM incident reporting requirements.
- If an incident meets the requirements for telephone notification, 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>.
- Note: Verify website; one possible alternative: <http://hazmat.dot.gov/enforce/spills/spills.htm>. MCSAP officers that are conducting reviews should contact appropriate Division Offices to obtain tools to select HM motor carrier for a review.
- 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 material 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.
- For carriers using permanent shipping papers, ensure the information on the shipping paper is complete and that documentation for each shipment required in 177.817(f) is maintained.

- Examine shipping papers given to of 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 accessibility requirements.
- See [HM 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. This requirement is found in § 177.817(f).
- Safety investigators (SIs) of FMCSA will generally cite the violation for failure to retain these shipping papers whenever the violation is discovered.
- Keep in mind that shipping papers may be retained electronically.

#### ***Number of Shipping Paper Documents that Should be Examined for Compliance***

- Sample shipping papers from the previous 12 months for: completeness, content, and accuracy.
- One shipping paper, at a minimum, should be examined for each proper shipping name or class/division of HM offered or transported.
- If substantial noncompliance is discovered from the minimum number of reviewed shipping papers, additional shipping papers should be examined to better determine the extent of noncompliance.
- Make comments and provide explanations in Part C of the investigation report as appropriate.
- When performing an investigation on a for-hire motor carrier of HM, document violations by HM shippers which provided improperly prepared shipping papers. Discuss the appropriate handling of these violations with the DA/SD.
- See [HM 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 (UHW) to serve as a shipping paper. The UHW must contain the information required by the HMR.
- If hazardous waste is being offered for transportation, review the company's compliance with the hazardous waste manifest requirements in § 172.205.

#### ***Location of the Emergency Response Information on a Shipping Paper***

- Verify that emergency response information is available during transportation, as required by § 172.600.
  - This requirement may be met a number of different ways, including attaching an MSDS 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 [Illustration HM-2 – Emergency Response Phone Number O&A](#)

### ***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.
- Record package inspections using HMPIP Software for packages originating at a location other than the shipper or carrier. See [Using HMPIP Software](#).
- 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 [Illustration HM-3 - Properly Cite HM Training Violations](#)

#### ***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 a SA, it is determined that the carrier is required to have a Security Plan in accordance with 49 CFR Part 172 Subpart I, an SCR must be performed in conjunction with the review or audit. If HM is transported in any quantity, a Security Sensitivity Visit (SSV) is required. See [Security Assessments of HM Companies](#).

### **3.3.4.5 Part 173 - Packaging**

#### ***Packaging and Loading Requirements that Apply to Motor Carriers***

- Many of the packaging and loading requirements do apply equally to shippers or 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. See [Illustration HM-4 – Package Inspection Q&A \(HMPIP\)](#).

#### ***Checking a Motor Carrier's Compliance with Part 173 Regulations***

- The packaging requirements in Part 173 specifically address the release of HM from a packaging.
- 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 to the DOT regulations.

#### ***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 49 CFR 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.

#### ***Additional Driver Training Requirements***

- 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 Part 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 - HM 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.

Review test and inspection documents required by 49 CFR 180.417(b) 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.
- Review receipts for a copy of Parts 397 for drivers transporting Division 1.1, 1.2 and 1.3 explosive materials.
- Review the route plans for explosives (required), radioactive materials (required), and others, if available (optional).

**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 ensured that drivers have undergone testing for controlled substances prior to performing a safety-sensitive function?" 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.

### ***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**

<b>Number of Drivers Hired in the Previous 365 Days* Subject to Part 382</b>	<b>Minimum Number of Pre-Employment Controlled Substance Test (CST) Results to Review</b>
1	1
2	2
3 or more	3

\*If less than 365 days, review from date motor carrier received their US DOT number, whichever is greater.

#### ***Select the Drivers Once the Sample Size Has Been Determined***

1. Review the motor carrier records to determine the drivers hired within the past 365 days; select the ones that were involved in either intrastate or interstate accidents first.
2. Select drivers that have been cited for driver violations during roadside inspections or drivers with moving violations. If the carrier hired three or fewer drivers, audit all the pre-employment tests.

#### ***Procedures to Follow When Pre-Employment Testing Problems are Encountered***

If a driver was not pre-employment tested for controlled substances, ensure that the carrier has not exercised the pre-employment controlled substances testing exception. You should answer "No" to the question "Has the carrier ensured that drivers have undergone testing for controlled substances prior to performing a safety-sensitive function?"

In addition, the motor carrier should be instructed to conduct a pre-employment test on all drivers hired during the previous 365 days who were not pre-employment tested for controlled substances and who were not otherwise tested for controlled substances during the previous 365 days. For example, a driver who was not pre-employment tested for controlled substances, but was later tested for controlled substances under the random testing requirements, would not be required to make up the missed pre-employment test.

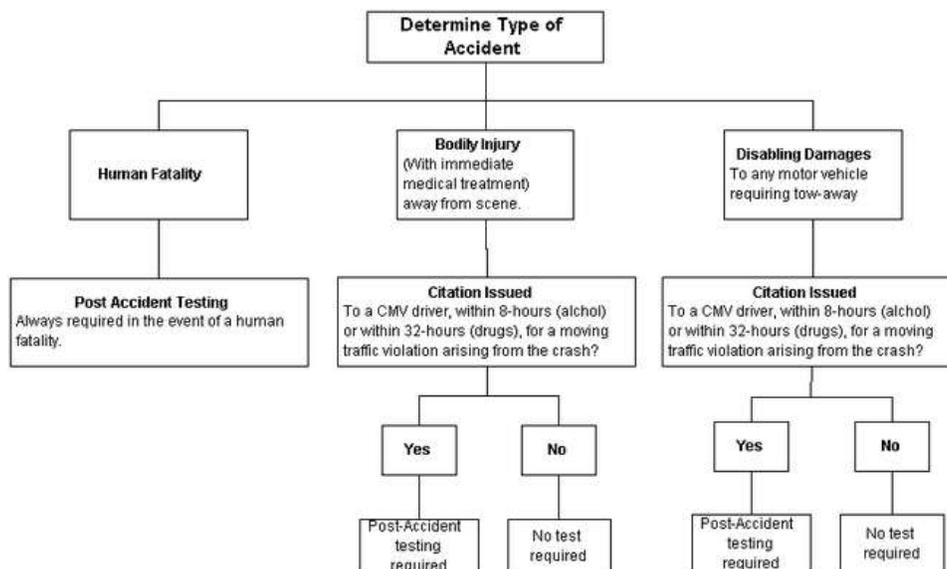
### ***SA Part 382 - Post-Accident Testing***

### ***Procedures to Use When Reviewing Post-Accident Test Results***

Verify that all drivers required to submit to post-accident controlled substances and alcohol tests are tested, as required by 382.303(c); this applies to all recordable accidents within the last 365 days. Validate carrier's reason for failing to complete tests within the required time limits.

### ***Post-Accident Testing is Required Under the Following Circumstances***

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



[Description of Determine Type of Accident flowchart](#)

### ***SA Part 382 - Random Testing***

#### ***A Carrier is Considered to Have a Random Testing Program if the Carrier Has Conducted At Least One Random Test or is Participating in a Consortium***

If the motor carrier has failed to implement a random controlled substance and alcohol-testing program, you must answer “No”, to the question “Has the carrier implemented a random testing program?”.

When a consortium fails to test for the required 50 percent for controlled substances, or 10 percent for alcohol, for the total number of average driver positions during a calendar year, you should check to confirm whether the carrier met the appropriate percentages. If the motor carrier has failed to meet the appropriate random testing rates for alcohol and controlled substances, you must answer “No” to the question “Has the carrier conducted random alcohol testing at an annual rate of not less than the applicable annual rate or prorated rate of the average number of driver positions?” and “Has the carrier conducted controlled substance testing at the applicable prorated rate of not less than the applicable annual rate of the average number of driver positions?” respectively.

Ensure random tests are reasonably spread throughout the year, as shown in Example 1, and the carrier is utilizing a scientifically valid random selection method.

Advise the appropriate Division Office that the consortium is in noncompliance.

#### ***Sampling Requirements for Random Testing***

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

number of random tests is based upon a reasonable estimate of the number of drivers subject to be tested by the motor carrier. Use the following example to determine how many random drug and alcohol tests should be performed.

**Formulas**

<b>Controlled Substances</b>	<b>Alcohol</b>
$T = .5 \times D/P$	$T = .1 \times D/P$
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**

<b>Controlled Substances</b>	<b>Alcohol</b>
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
$T = .5 \times D/P$ $T = .5 \times 350/4$ $T = .5 \times 87.5$ $T = 43.73$ (Round up) $T = 44$	$T = .1 \times D/P$ $T = .1 \times 350/4$ $T = .1 \times 87.5$ $T = 8.75$ (Round up) $T = 9$
How many drivers have to be tested in order to meet the 50 percent CST rate for the year? The answer is 44, which must be reasonably spread throughout the year.	How many drivers have to be tested in order to meet the 10 percent Alcohol rate for the year? The answer is 9, which must be reasonably spread throughout the year.

***Calculating the Number of Tests that Need To Be Completed for a Testing Period***

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.

<b>Examples -Test Period Rate (Controlled Substances)</b>			
<b>Carrier with four testing periods per year using drivers subject to be tested by employer or employer's C/TPA.</b>			
Testing Period	Number of Drivers	Formula	Drivers to be tested during period.
1	10	$T = .5 \times 10/4$	1
2	30	$T = .5 \times 30/4$	4
3	300	$T = .5 \times 300/4$	38
4	10	$T = .5 \times 10/4$	1
<b>Annual Total</b>			<b>44</b>
<b>Carrier with six testing periods per year using drivers subject to be tested by employer or employer's C/TPA.</b>			
1	10	$T = .5 \times 10/6$	1
2	30	$T = .5 \times 30/6$	3
3	300	$T = .5 \times 300/6$	25
4	10	$T = .5 \times 10/6$	1
5	20	$T = .5 \times 20/6$	2
6	10	$T = .5 \times 10/6$	1
<b>Annual Total</b>			<b>33*</b>

\*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
- 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**

<b>Number of Drivers Subject to CDL Requirements</b>	<b>CDLIS Checks</b>
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, and then follow this sequence:

- Answer "Yes" to question #30 or #31 in the SA

##### ***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:

- Answer "No" to question #30 or #31 in the SA,
- Advise the motor carrier of the driver's CDL status,
- Advise the motor carrier of their responsibility to relieve the driver of driving duties, and
- Document in Part C of the notification date/time and name of motor carrier official.

 The following chart can assist in reading a Mexico Licencia Federal CATEGORIA TO CLASS CROSS REFERENCE [LICENCIA FEDERAL](#).

<b>DRIVER HOLDING A LICENCIA FEDERAL WITH A CATEGORIA</b>	<b>EQUIVALENT TO A DRIVER HOLDING A CDL CLASS ENDORSEMENT/RESTRICTIONS</b>
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**

<b>Violation</b>	<b>Guidelines for Determining Automatic Failure of the Safety Audit</b>
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)—Knowingly using a driver who does not possess a valid commercial driver's license.	Single occurrence
7. 383.37(a)—Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver’s license which is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle.	Single occurrence
8. 383.51(b)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a	Single occurrence. This violation refers to a driver operating a

commercial motor vehicle.	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)—Knowingly using a disqualified driver.	Single occurrence
12. 391.11(b)(4)—Knowingly using a physically unqualified driver.	Single occurrence. This violation refers to a driver operating a commercial motor vehicle as defined under 49 CFR 390.5.
13. 395.8(a)—Failing to require a driver to make a record of duty status.	Requires a violation threshold (51 percent or more of examined records) to trigger automatic failure
14. 396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared “out-of-service” before repairs are made.	Single occurrence
15. 396.11(c)—Failing to correct out-of-service defects listed by driver in a Driver Vehicle Inspection Report before the vehicle is operated again.	Single occurrence
16. 396.17(a)—Using a commercial motor vehicle not periodically inspected.	Requires a violation threshold (51 percent or more of examined records) to trigger automatic failure

**Note:** Do not cite motor carriers for expedited action violations discovered during roadside inspections where a letter has been generated and mailed to the motor carrier.

### ***Automatic Failures***

Sixteen regulations have been identified as essential elements of basic safety management controls necessary to operate in interstate commerce (Part 385.321). A NE motor carrier’s failure to comply with any one of the 16 specified regulations results in an automatic failure of the SA. If the safety auditor discovers one of the sixteen specific automatic failures, the auditor is required to complete all required sampling and questions for each SA even if one of the automatic failure violations is discovered early in the audit. It is important to ensure that the SA assesses the overall adequacy of the carrier’s safety management program and that a NE motor carrier failing the SA takes adequate corrective action for every violation causing or contributing to the failure of the audit.

In order to cite an automatic failure violation that uses the term “knowingly,” the safety auditor must determine if the motor carrier knew or in exercising reasonable diligence should have known about the violation. Such information may come from documentation in the carrier’s files, previous notices from FMCSA or a State agency, previous roadside inspections citing the violation, or failing to obtain information, such as driver qualification (DQ) documentation as required by the FMCSR. A “knowingly” automatic failure violation may also be supported by an admission of the NE motor carrier in the form of a written statement, based on personal knowledge, by a person with some ability to control motor carrier operations or a person responsible for obtaining such information.

If the NE motor carrier passes the SA, it retains its NE registration and remains subject to the NE safety monitoring system for the remainder of the safety monitoring period.

If the NE motor carrier fails the SA, its NE registration will be revoked and its operations placed OOS unless it:

1. Provides evidence of adequate corrective action to SCD for the FMCSA SC where the NE's principal place of business (PPOB) is located within the time period specified for the motor carrier's operation; and/or
2. Requests administrative review of the SA which results in a determination that that FMCSA committed an error in its determination that the motor carrier failed the SA.

**When violations are discovered and corrective action has been taken by the motor carrier, should the Safety Auditor cite those violations during the safety audit?**

No. If violations are discovered at the time of the safety audit, but sufficient evidence demonstrates that the new entrant motor carrier has taken subsequent corrective action that places the carrier into regulatory compliance, the Safety Auditor should not cite the violation.

***Corrective Action Plan (CAP) Submittals for Failed SAs***

NE motor carriers operating vehicles designed or used to transport 16 or more passengers or placardable quantities of HM must submit evidence of corrective action within 45 days of the service date of the notice of the failed SA. All other NE motor carriers must submit evidence of corrective action within 60 days of notice of the failed SA.

A corrective action plan submittal must be in writing and sent to the SC Director for the FMCSA SC where the NE's PPOB is located. As outlined in the [NE Program Corrective Action Plan Procedures for Failed Safety Audits and Follow-Up Procedures](#) policy, dated 10-26-2012, extensions will not be granted.

***CAP Submission Guidance***

1. If a New Entrant submits a CAP that is received within 15 days from the date of the Agency's written notice to the New Entrant that it failed the SA, the Service Center Director or its designee will:
  - a) Ensure that the CAP is reviewed and a CAP decision rendered before the planned revocation date.
  - b) If the CAP is found to be unacceptable, the CAP will be rejected, the carrier's New Entrant registration will be revoked; its operations placed OOS, and the carrier must wait 30 days to reapply.
  - c) If the CAP is found to be acceptable, the CAP will be accepted and the New Entrant motor carrier will be allowed to continue operations and complete the New Entrant Program.
2. If the New Entrant submits a CAP that is received more than 15 days from the date of the written notice that it failed the SA but within the requisite regulatory timeframe, the Service Center Director or its designee will:
  - a) Make all reasonable efforts to review the CAP before the proposed revocation date. Passenger carriers and hazardous materials carriers, as defined in Section 390.5, will be given priority.
  - b) If FMCSA is unable to complete a review of the CAP within the requisite timeframe and the New Entrant motor carrier is placed OOS, but after the CAP is reviewed it is found to be acceptable, the revocation should be promptly rescinded and the carrier allowed to resume operating in interstate commerce without the need to wait 30 days to reapply. Evidence of the revocation and the OOS order shall remain as history in all applicable FMCSA Information Technology (IT) systems.
  - c) If once the CAP is reviewed it is found to be unacceptable, the CAP will be rejected, the carrier's New Entrant registration should be revoked; its operations placed OOS, and the carrier must wait 30 days to reapply.
3. A carrier that submits a CAP after the proposed revocation date must have its New Entrant registration revoked; its operations placed OOS, and must wait 30 days to reapply.
4. The Service Center Director can delegate its signature authority to another FMCSA official, who is not involved in the administrative review process, outlined in 49 CFR § 385.327.

5. No extensions to the above timeframes will be granted.

***If the new entrant motor carrier fails the safety audit, will corrective action be required for all violations, including violations of critical and acute regulations that did not cause the new entrant to fail the audit?***

No. The new entrant motor carrier is required to submit evidence of corrective action for all violations that contributed to the failure of the safety audit. Areas of non-compliance that did not result in or contribute to the failure of the audit will be brought to the carrier's attention with notice that violation of any regulation may result in enforcement and civil penalties.

***Extensions Under 49 CFR 385.323***

As outlined in the [NE Program Corrective Action Plan Procedures for Failed Safety Audits and Follow-Up Procedures](#) policy, dated 10-26-2012, extensions will not be granted.

***Administrative Adjudication***

A NE motor carrier may request administrative review of a determination of a failed SA. A NE motor carrier may also request administrative review of a determination by the SC Director that its submitted corrective action after a failed SA is insufficient and its safety management controls remain inadequate. Any request by a NE motor carrier for administrative review must be made to the FA of the FMCSA SC for the geographic area of the new entrant's PPOB. The NE motor carrier's request for administrative review must explain the error the NE motor carrier believes FMCSA committed and include a list of all factual and procedural issues it wishes to raise.

If a NE motor carrier believes FMCSA has committed an error in its determination of a failed SA, the NE motor carrier may request that FMCSA conduct an administrative review of the determination that the NE motor carrier's safety management controls are inadequate. If the NE motor carrier does not submit corrective action in response to FMCSA's notice of the failed SA, the NE motor carrier must request administrative review of the determination of a failed SA within 90 days of the service date of the written notice of the failed SA. Submittal of a request for administrative review will not put on hold the registration revocation and OOS provisions of the regulations. The NE should submit its request for administrative review within 15 days of the notice of failed SA, if it wants to ensure that the FA will be able to review the request and issue a decision before the NE's registration is revoked and its operations placed OOS. If the NE motor carrier fails to submit the request within 15 days of the notice of failed SA, its NE registration may be revoked and its operations placed OOS before completion of the administrative review.

If a NE motor carrier submits corrective action after a failed SA and FMCSA determines that the corrective action is insufficient, the NE motor carrier may request administrative review of FMCSA's determination that its safety management controls remain inadequate. The NE motor carrier must submit its request for administrative review within 90 days of FMCSA's notice that the corrective action submitted is inadequate.

The FA will complete his/her review and notify the NE motor carrier in writing of the decision during the administrative review proceeding. The Field Administrator's written decision will be issued within 30 days after receiving the request from a motor carrier required to submit corrective action within 45 days of notice of a failed SA and within 45 days after receiving the request for administrative review from a motor carrier required to submit corrective action within 60 days of notice of failed SA.

The Decision of the FA becomes the Final Agency Action in the administrative review proceeding.

In the New Entrant Safety Assurance Program the FA is the decision maker for administrative review proceedings for failed SAs and denied corrective action plan submittals that result from failed SAs. In order to ensure the neutrality and independence of the administrative review process, the FA, and any counsel and staff designated to assist the FA in administrative review determinations, must be separated from FMCSA personnel making determinations regarding SAs and corrective action plan submittals. The

FA may not have any involvement in conducting and reviewing SAs, corrective action plan submittals, or determining the adequacy of corrective action submittals. FMCSA and State personnel, including SC Directors, DAs, NE Coordinators, and corrective action plan submittal reviewers responsible for conducting and reviewing SAs and corrective action plan submittals for failed SAs may not, in any administrative review proceeding or a factually related matter, discuss or communicate the facts or issues involved with the proceeding with the FA (and counsel and staff assigned to assist the FA in administrative review determinations) except during conferences or written submittals during the administrative review proceeding.

Because of the need to ensure the separation of functions between the Field Administrator's adjudicatory role and the oversight responsibilities of the SC Director for SAs and corrective action plan determinations, the FA may only delegate his/her decision making functions under the NE rule to another FA.

### ***Ex Parte Communications***

Ex parte communication between the FA and the DA and/or Enforcement Team regarding the administrative review, except to request the documentation supporting the decision, is ***absolutely prohibited***.

### ***Expedited Action***

A NE motor carrier that commits any of the expedited action violations, in accordance with 49 CFR 385.308, may be subject to an expedited SA, investigation, or may be required to submit a written response demonstrating corrective action.

If a NE motor carrier commits any expedited action violation(s) and has not yet had a SA or an 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.

### ***Corrective Action Plan for Expedited Actions***

A NE is required to submit evidence of corrective action for the triggering violation within 30 days of the service date of the FMCSA expedited action notice. The evidence of corrective action should be sent to the Service Center Director (SCD) for the geographic area in which the NE's PPOB is located. However, to ensure that the corrective action will be reviewed prior to the expiration of the 30 day corrective action period, the corrective action must be received by the service center no later than 10 days from the date of the expedited action notice.

FMCSA does not grant extensions to the 30-day time frame a NE motor carrier has for submittal of corrective action in response to an expedited action notice.

If FMCSA determines the corrective action submitted by a NE in response to an expedited action notice is inadequate, the NE Coordinator in each Service Center (SC) will notify the Division Administrator (DA) for the NE motor carrier's PPOB that the carrier had a triggering EA and that the corrective action submitted by the carrier was inadequate. If the motor carrier has not received an SA, this investigation must be an Onsite Comprehensive Investigation.

The DA may take any action deemed appropriate, including scheduling the carrier for an investigation. If the motor carrier has not received an SA, this investigation must be an Onsite Comprehensive Investigation. The DA may also elect to take enforcement action for the underlying regulatory violation, if sufficient evidence has been documented.

### ***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
- Failure to Submit Corrective Action Plan (CAP) for an Expedited Action Notice.

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 [Procedures for Conducting a Roadside Inspection, CR or SA of a For-Hire Passenger Carrier that Is a FTA Grantee.](#)

### ***Verifying that the Carrier has Obtained and has the Required Minimum Level of Financial Responsibility***

If your SA involves a FTA grantee, see [Procedures for Conducting a Roadside Inspection, CR or SA of a For-Hire Passenger Carrier that is a FTA Grantee.](#)

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. The carrier providing copies of the MCS-90 or MCS-82 forms will show proof of the minimum levels of liability insurance.

## **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***

#### ***Time Period that Should be Looked at During Review of Accidents***

Your review of the motor carrier's interstate or intrastate recordable accidents **should** cover the 12-month period prior to the initiation date of the audit [(390.15(b) – 3 years, 12 months for rating].

***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) 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  $(2 \times 1,000,000) / 3,000,000$  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/SD (or FPS/DPS). The DA/SD 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.

***49 CFR 390 - Biennial Update***



To verify that the motor carrier has submitted its biennial MCS-150 update, you should ask the motor carrier if it has made the required update filing and verify an affirmative response. Additionally, you should check the MCS150 date shown in Federal Motor Carrier System, The Motor Carrier Management Information System (MCMIS), Safety and Fitness Electronic Records (SAFER) system, and Query Central. Additionally, you need to verify that the carrier has not been cited during roadside inspections and previous compliance reviews for not having an updated MCS150. Remember: If a motor carrier registers its vehicles in a PRISM state, it may be exempt from this requirement. Please see 49 CFR 390.19(g) for more information.

### ***PRISM States Eliminating Validating the MCS-150***

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

### **3.3.10 Part 391 – Qualification of Drivers**

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

#### ***Procedures to Follow During Audit of Part 391***

Your audit of Part 391 should consist of:

- Requesting a driver list of drivers employed in the last 12 months,
- Sample DQ files,
- Select files, and
- Review files.

#### ***Request for a Driver List Should Include the Following***

If a driver list was not requested before the SA or during the opening interview, you should request a list of drivers employed in the last 365 days, and the date they were hired and/or terminated. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

#### ***SA Part 391 - Determining DQ File Sample***

##### ***Sampling Requirements for the Minimum Number of DQ Files to be Reviewed***

You should follow the sampling requirements for the minimum number of DQ files, as set forth below:

**Sampling Requirements**

Number of Drivers Subject to FMCSR in the past 365 days	DQ Files Reviewed
1	1
2	2
3 or more	3

#### ***SA Part 391 - Selecting DQ Files***

##### ***Selecting the Drivers' Files Once the Sample Size has been Determined***

You should only review DQ files for drivers who operate in interstate commerce. Then:

- Select DQ files for those drivers who were involved in interstate recordable accidents.

- Select drivers that have been cited with Part 391 violations during roadside inspections, (e.g., medical card violations, disqualification issues).
- Select recently hired drivers, or drivers who were cited for serious traffic (or moving) violations.

### *If the Minimum Number of DQ Files Cannot be Reviewed*

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain in Part C of the SA why you did not meet your sample. You must also explain in Part C if you exceed the required sampling beyond the number set forth in the table above.

### *SA Part 391 - Reviewing DQ Files*

#### *DQ File Documents that Should be Reviewed*

The motor carrier is required to prepare and maintain DQ files in accordance with Part 391.51(b)(1-8). Below you will find guidance when reviewing each DQ file document:

- **Employment Application:** You should ensure employment application fields are completed, or fields are noted as non-applicable, and signed by the driver/applicant.
  - NOTE: For drivers of CDL (Part 383) required vehicles, must show previous 10 years employment history.
- **Previous Employment History Inquiry:** You should ensure motor carrier has performed inquiries into driver's/applicant's previous employers, by means of either written document or noting employment verification by telephone, within 30 days of date of hire. Motor carrier must make a good faith effort to contact driver's/applicant's previous employers regarding employment history and document their good faith effort.
- **Copy of Driver's License History Inquiry into State Agency:** You should ensure motor carrier has contacted each state agency where the driver/applicant holds an operators license and obtained a copy of the driver's license history within 30 days of date of hire. **Road Test/Certificate or Equivalent (Copy of Valid CDL):** You should ensure the motor carrier has performed a road test for their driver/applicant on the company vehicle the driver will be required to operate, and then document the results of the road test and subsequent issuance of road test certificate. The motor carrier may accept a copy of a valid CDL in lieu of the road test/certificate requirement.
- **Medical Examiner's Certificate:**
  - Effective Jan. 30, 2015 the Medical Examiner's Certificate (hard copy), will only be valid for the first 15 days after issuance. In order for Motor Carriers, Drivers and/or their authorized Agents to comply with the FMCSRs for the medical and driver qualification file requirements, the MVR must contain all of the required Medical Certification and self-certification information that is listed on the CDLIS driver record and be available upon request.
  - As of January 30, 2015, all states may not be completely up to date and some methods of electronic interchange may not contain all relevant data. As a result, you may see differences in the data obtained from the carrier, CDLIS, etc. Therefore, during a safety audit, if a company possesses the critical information (proof of unexpired medical certification and date of expiration of the medical or a valid MVR with the MEC information for the sampled drivers) then the carrier should not be cited for a violation.
  - You should ensure the motor carrier has obtained a current copy of the driver's medical examiner's certificate. While reviewing the driver's medical examiner's certificate, 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 lapse. 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 Part 391.41(b)(1-13). If you discover a medical examiner qualified a driver, and that driver did not meet the medical qualification requirements defined in Part 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 necessity to have the driver medically re-qualified. You will need to document, in Part C of the SA report, that you have made notification to the motor carrier official, in the event the motor carrier continues use of a medically unqualified driver.
- **Review of Medical Certificate** (See [Authentication of Medical Examiner's Certificates during Enforcement Activities](#) policy, dated 9/26/2012.)

The Federal Motor Carrier Safety Regulations require in 49 CFR 391.11 that all drivers be medically qualified to operate a CMV. The Federal Motor Carrier Safety Administration (FMCSA) developed a National Registry of Certified Medical Examiners (NRCME) that lists medical examiners qualified to conduct exams pursuant to Subpart E of 49 CFR Part 391. Further, per 49 CFR 383.71(h), all non-exempt applicants for commercial driver's licenses (CDL) must present valid Medical Examiners Certificates (MEC) to their State driver licensing agency (SDLA) at the time of application and at least every two years thereafter. Existing CDL holders must present valid MECs to their SDLAs by January 30, 2014. The SDLAs will load the MEC data elements into the driver history records, and this information will be available through the Commercial Driver's License Information System (CDLIS).

The FMCSA plans to link the NRCME to CDLIS to improve efficiencies and mitigate the risk of MEC fraud. However, FMCSA does not presently have a target date for when this link will be established. Until the link between NRCME and CDLIS is completed, FMCSA and State enforcement personnel should, when practicable, validate a sample of MECs. The medical information obtained by this inquiry shall not be used by enforcement personnel to independently evaluate a driver's medical qualification to operate a CMV. Rather, the purpose of this inquiry is to mitigate the risk of a driver or carrier presenting a fraudulent MEC by validating that the document presented is consistent with the records of the Medical Examiner (ME).

Type of Activity	Recommended Validation Rate
New Entrant Safety Audits	One

Inspectors are not required to check NRCME to verify that a medical examiner is certified at this time, but may do so. If it is determined the medical examiner used to conduct an exam after May 21, 2014 is not on the registry, the driver is not physically qualified and should be cited under 391.41(a).

While conducting roadside inspections, compliance reviews, New Entrant Safety Audits, or investigations during normal business hours, the following steps should be taken to validate the authenticity of MECs that expire prior to May 20, 2016 and are NOT tied to the NRCME:

- (a) Contact the ME's office at the telephone number indicated on the certificate.
- (b) Explain the purpose of the inquiry, and specifically indicate that the inquiry is solely intended to confirm that the document presented by the driver matches the records maintained by the ME, not to independently evaluate the driver's medical fitness to operate a CMV. An authorized staff member may provide the requested information; direct contact with the actual ME is not required.
- (c) 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.
- (d) Document the authentication, or authentication attempt, including the date and time, name and position of the person contacted and results of the inquiry as noted below.

Enforcement personnel must document authentication attempts as follows:

Type of Activity	Method of Documentation
Safety Investigations, Compliance Reviews, and New Entrant Safety Audits	Record information in Part C and include the following: <ul style="list-style-type: none"> <li>• Driver's Name</li> <li>• Driver's DOB</li> <li>• Driver's License Number</li> <li>• ME's license or certificate number and issuing state</li> <li>• Date of Issuance of the MEC</li> <li>• Results of the ME inquiry (the above Aspen codes are appropriate for reflecting the results in Part C)</li> </ul>

- If the information on the MEC does not match the information provided by the ME's office, this is cause to question the validity of the certificate. The inspector/investigator/auditor should reference the respective Part 391 – Qualification of Drivers sections in the eFOTM Investigator Manual, to include the appropriate violation codes (49 CFR Sections 390.35 or 391.41(a)(1)(i)), and to determine the appropriate enforcement action recommendation for violations found during an inspection, a compliance review, New Entrant Safety Audit or safety investigation.
- **Annual Review of Inquiry into State Agency (AKA Annual Driver's License Check):** If the driver has been employed a year or more, you should ensure that the motor carrier has requested and obtained a copy of the annual driver's license check from the state agency where the driver holds a license.
- **Annual List/Certification of Violations of Motor Vehicle Laws:** If the driver has been employed a year or more, you should ensure that the motor carrier has requested and obtained the annual list/certification of violations of all motor vehicle laws (except parking) from each driver.
- **Annual Review of Driver's Qualification:** If the driver has been employed a year or more, you should ensure that the motor carrier has performed the annual review with the driver, and has a document reflecting the annual review was performed.

- **NOTE:** As you perform your SA, you may wish to inform the motor carrier to perform the Annual Review for each driver after obtaining and reviewing the Inquiry to the State Agency (AKA Annual Driver's License Check), and the Annual List/Certification of Violations of Motor Vehicle Laws. By performing the Annual Review in this manner, the motor carrier will ensure that the Annual List/Certification of Violations of Motor Vehicle Laws submitted by the driver reflects the same data as the Inquiry to the State Agency (AKA Annual Driver's License Check) obtained from the State of License.

### **3.3.11 Part 392 – Driving of Motor Vehicles**

During your review of compliance with Part 392, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

#### ***Procedures to Follow During Audit of Part 392***

Your audit of Part 392 should consist of:

- Identifying the existence of extended runs (Are they completed within the regulations?);
- Discussing the commodities transported and how they are secured;
- How driver fatigue is addressed; and
- Discussing the company's policies concerning seat belts, radar detectors, and unauthorized passengers.

#### ***Auditing Compliance with Part 392***

You will probably find yourself limited during your audit of Part 392. Most of the violations of the part are generally found at the roadside. Audit of compliance with Part 392 will cover the 12-month period prior to the date of SA or since the motor carrier received its US DOT number.

### **3.3.12 Part 393 & 396 – Parts & Accessories, and Inspection, Repair & Maintenance**

During your review of compliance with Parts 393 and 396, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

#### ***SA Parts 393 & 396 – Vehicle Inspections***

#### ***Procedures to Follow During Audit of Parts 393 and 396***

Your audit of Parts 393 and 396 should consist of:

- Determining if vehicle inspections should be conducted during your audit,
- Selecting vehicles for inspection,
- Inspecting vehicles,
- Calculating the OOS rate,
- Determining the number of maintenance files to review, and
- Determine the number of DVIR to review.

#### ***Determining if Vehicle Inspections Need To Be Conducted During the Audit***

If the motor carrier does not have the minimum sample for vehicle inspections on its company profile, you are required to conduct Level V inspections during your investigation, when commercial motor vehicles are available.

#### ***Minimum Sample for Vehicle Inspections***

You should follow the sampling requirements for the minimum number of vehicle inspections, as outlined below.

#### **Minimum Sample for Vehicle Inspections**

<b>Number of Vehicles Subject to FMCSR*</b>	<b>Vehicles Inspections to Conduct</b>
<b>1</b>	<b>1</b>
<b>2</b>	<b>2</b>
<b>3 or more</b>	<b>3</b>

*\*\*Each power unit 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 or intrastate commerce within the previous 7 days, are ready for dispatch, and are available for inspection:

- First, select vehicles involved in accidents.
- Then, select vehicles that have been placed OOS (profile) or cited for equipment violations during roadside inspections within the previous 12 months, or from the date the motor carrier received its US DOT number, whichever is less.
- You will need to verify if the OOS violations and other equipment violations were repaired.

#### ***Conducting the Vehicle Inspections***

Your vehicle inspections should be conducted using the North American Vehicle/Driver Inspection Procedures. However, before you conduct your vehicle inspections, request the assistance of a driver, mechanic, or other individual capable of operating the controls of the vehicle. When you conduct the vehicle inspections, inspect at least one of each type of vehicle operated (straight truck, truck tractor, etc.) and perform Level V inspections. If Level V inspections are not appropriate, provide an explanation in Part C of the SA report.

#### ***If OOS Violations are Found During the Vehicle Inspections***

If you discover OOS violations during the vehicle inspections, you should inform the appropriate motor carrier official. Advise the individual that the vehicle(s) can't be legally operated until the necessary repairs are made. You should place the OOS Order (Form MCSA-64) on the OOS vehicle.

#### ***After Conducting the Vehicle Inspections***

Generate an ASPEN report for each inspection conducted during a SA. The inspection report should be uploaded through SAFETYNET into MCMIS. If you find violations during the SA and note them on the ASPEN report, you **cannot** include those violations on Part B of the SA.

#### ***If the Number of Vehicle Inspections Exceeds or Does Not Meet the Required Minimum to be Inspected***

If you exceed or do not meet the required minimum to be inspected, indicate the reason(s) in Part C of the SA.

#### ***SA Parts 393 & 396 – Calculating the OOS Rate***

##### ***Calculating the OOS Rate***

The carriers OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected. The calculation of the OOS rate should be based on using the carriers most recent Level 1, 2, or 5 interstate inspections on the company profile, conducted within the previous 12 months (or since the carrier has received its US DOT number, whichever is less). You should enter the data to calculate the motor carrier's OOS rate. Data needed are the number of vehicles placed OOS, and the number of vehicles inspected.

***Determining if Vehicle Inspections Should be Conducted to Calculate the OOS Rate***

**If the company profile does not show at least three Level 1, 2, or 5 inspections, you are required to inspect vehicles (if available for inspection)** to determine the carriers vehicle OOS rate. The OOS rate can **only** be calculated if you have data for at least 3 vehicle inspections. If the carrier does not have a minimum of three vehicle inspections, you should:

- Conduct enough inspections to reach at least three, or
- Review carrier records for more recent inspections that have been conducted but are not on the profile, or
- Use a combination of inspections from the profile, inspections discovered during the SA, and inspections conducted during the SA.

***If You are Unable to Obtain At Least Three Level 1, 2, or 5 Interstate Inspections from the Company Profile and Roadside Inspections for Calculation the OOS Rate***

If all efforts fail to achieve the desired number of Level 1, 2, or 5 inspections, you **should not** calculate the OOS rate. **If this situation occurs, explain why the OOS rate was not calculated in Part C of the SA.**

***If the Motor Carrier Only has One Vehicle, and There is Only One Vehicle Inspection on the Company Profile, Do Not Inspect that Vehicle Two More Times to Reach the Minimum of Three***

You could still inspect the vehicle (if available), however you **should not** calculate the OOS rate. **Explain why the OOS rate was not calculated in Part C of the SA.**

***If You Discover Roadside Inspections during the SA on the Company Profile that Do Not Belong to the Motor Carrier***

You must not include these inspections in the OOS rate calculation. Provide the Company Profiles State points-of-contact list to the carrier and have them contact the state in question directly.

Advise the motor carrier of the error(s) and explain that they must contact DataQs to resolve the issue. The DataQs web site address is <http://dataqs.fmcsa.dot.gov>.

***SA Parts 393 & 396 – Vehicle Maintenance******Length of Time to Go Back into a Carrier’s Vehicle History to Review Compliance with 396 During a SA***

Cover the 12-month period prior to the SA or the time period since the motor carrier received their US DOT number, whichever is less.

***Proving the Carrier has a Periodic Inspection Program***

Each vehicle that operates in interstate commerce must have a periodic inspection that has been conducted every 12 months, as part of its maintenance file. The following would serve as proof of a periodic inspection:

- A copy of the inspection and results conducted under Appendix G to 396;
- Evidence of an inspection conducted within the last 12 months, through a state inspection program that has been deemed to satisfy the federal requirements; or
- Evidence of a CVSA inspection conducted within the last 12 months, which indicates that the vehicle passed a Level 1 inspection with no violations of the critical vehicle inspection items.

***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**

<b>Number of Vehicles Subject to FMCSR*</b>	<b>Vehicles Inspections to Conduct</b>
<b>1</b>	<b>1</b>
<b>2</b>	<b>2</b>
<b>3 or more</b>	<b>3</b>

*\*Interstate operations only.*

### ***SA Parts 393 & 396 - Driver Vehicle Inspection Reports (DVIR)***

#### ***Determining the Number of DVIR to be Reviewed During a SA***

During a safety audit, the number of DVIR records checked is based on the number of days a DVIR was required. When a DVIR was required but not prepared, the carrier should be cited for a violation of 49 CFR 396.11(a).

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**

<b>Number of Vehicles Subject to DVIR</b>	<b>The number of different Vehicle DVIR Selected</b>
<b>1</b>	<b>1</b>
<b>2</b>	<b>2</b>
<b>3 or more</b>	<b>3</b>

***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;
- Requesting a driver list;
- Determining the minimum number of driver's time records/RODS to be sampled;
- Selecting driver's time records/RODS to be reviewed; and
- Reviewing driver's time records/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.

 ***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**

<b>Number of Interstate Drivers Subject to FMCSR</b>	<b>Number of Different Drivers Selected</b>	<b>Time Period of Records of Duty Status</b>	<b>Minimum Number Reviewed For False Logs, Excess Hours, &amp; Other Part 395 Regulations</b>
<b>1</b>	1	1-2 months from prior 6 months.	<b>30 x # of drivers</b>
<b>2</b>	2	1-2 months from prior 6 months.	60
<b>3 or more</b>	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. 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.
3. Select recently hired drivers, or drivers whom you conclude have a high likelihood of excessive driving
4. 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.

***If You Are Unable to Meet the Minimum Sample Size for Part 395***

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain in Part C of the SA why you did not meet your sample. You must also explain in Part C if you exceed the required sampling beyond the number set forth in the table above.

***SA Part 395 - Missing RODS******When RODS are Not Provided by the Motor Carrier, Answering the SA Question: Operations - Question #2 - Does the motor carrier require drivers to make a record of duty status?***

No, if the motor carrier is unable to produce all of the requested RODS.

If you answer “No” to this question, the audit will request the number of RODS missing and the number of RODS checked; if the percentage is 51% or greater, this question will result in an automatic failure. Continue and finish the SA.

For example, if the auditor requests 30 days of RODS and the motor carrier produces 20 days. The auditor would answer this question “No” and will fill in 10 days missing out of 30 days checked, which equals to 33% missing. This would not result in an automatic failure.

A second example is if the auditor requests 30 days of RODS and the motor carrier produces 10 days. The auditor would answer this question “No” and would fill in 20 days missing out of 30 days checked, which equals to 66% missing and would result in an automatic failure because the percentage missing is greater than 51%.

It is important that the Safety Auditor investigates each situation sufficiently, and makes the appropriate determination, to see if:

1. The carrier did not require the driver to make RODS (Question #2);
2. The driver failed to submit RODS (Question #3); or
3. The carrier failed to maintain RODS (Question #4).

***SA Part 395 - HOS - Maximum Driving Time******Driver’s RODS Indicates He/She Has Violated the 10/11 and 14/15-hour Rules***

Answer “Yes,” indicating you have discovered a violation of the 10/11 and 14/15-hour rule.

***Minimum Number of RODS to Audit for the 60-hour/7-day and 70-hour/8-day Rules***

When auditing the driver’s RODS for the 60/70-hour period violations, always review each day within the selected period for compliance. This will require each SI to review the last 6 or 7 days of the previous month from the selected driver’s RODS to verify compliance with the 60/70-hour rule.

***Driving During the Change from Standard Time to Daylight Savings Time or Vice Versa***

During the change from Standard Time to Daylight Savings Time or vice versa, the driver records his/her time “as is” and enters an explanation in the Remarks section of the RODS. It doesn’t matter exactly how the driver logs his/her time (as Standard Time or Daylight Savings Time), as long as it is clear how many hours are actually involved on each line of the RODS grid. He/she **DOES NOT** get to drive or work an hour more (or less).

***SA Part 395 - False RODS******Definition of a False RODS***

A RODS is considered to be false if the times compared to the supporting documents deviate by 1 hour or more, or if the miles deviate by 50 miles or more.

***Detecting False RODS***

To detect falsification of RODS and/or time records, compare the entries on these records to verified information on other documents.

### ***Various Types of Supporting Documents You May Use to Verify the Accuracy of RODS and What They Show***

A supporting document used to verify RODS 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, delivery 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, various trucking association safety council patrol reports, worker's compensation first report of injury reports, etc.

### ***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/SD prior to demanding access to any GPS or other advanced technology records.

## **3.4 Stage 4: Feedback and Closeout**

### ***During the Closeout of the Audit***

After you have completed your investigation, you will need to conduct a closeout session with the owner, partner, or corporate official. If none of these individuals are available, discuss the audit with the most appropriate person.

During the closeout, you should inform the motor carrier official of the company's proposed results (pass/fail) for the SAs. Explain that the final decision will be issued from FMCSA Headquarters. You should be prepared to explain how the results were determined in the event the motor carrier asks.

If the motor carrier fails their safety audit, the Safety Auditor for the Division Office, State, or Contractor must provide the written guidance and CAP template to each New Entrant at the SA closeout. The CAP Submission guidance and the CAP template provide guidance and assistance to the New Entrant for completing and submitting an acceptable CAP to FMCSA.

- The CAP Submission Guidance identifies the requirements of 49 CFR § 385.319 and provides a summary of the information that FMCSA expects to be provided.

The CAP Template provides a guide for New Entrants to assist them in implementing and providing the minimum acceptable documentation for each violation that contributed to the SA failure.

If the motor carrier has had any accidents in the previous 12 months, make the motor carrier aware of the accident countermeasures and Hazardous Materials Incident Prevention countermeasures information that is available on the agency's web site. The purpose of these countermeasures is to assist motor carriers in analyzing their accidents and incidents, and developing strategies to eliminate future occurrences.

You should use the closeout as an opportunity to discuss any other compliance and enforcement issues that you feel are necessary with the motor carrier.

***After the Closeout of the SA is Complete, Do the Following***

When the closeout session has concluded, the highest ranking motor carrier official or designated representative in the session should receive a copy of the Investigative Report. The motor carrier/shipper official or designated representative's signature is not required. The SI, Auditor or State MCSAP investigator must record his/her name and title on Part C of the investigative Report, the full name, title, name of carrier/shipper, date, and telephone number [if different from the information in the Motor Carrier Management Information System (MCMIS)] of the motor carrier official, or designated representative who received a copy of the Investigative Report. When a closeout session takes place with only a designated representative, a copy of the Investigative Report must be given to the designated representative and another copy must be mailed to the highest ranking motor carrier official. The mailing information must be recorded in Part C. Only copies of Parts A and B of the investigation report are given to the motor carrier. The motor carrier does not receive a copy of Part C.

If the motor carrier official refuses to accept a copy of the Investigative Report, the SI or Auditor must send a printed copy to the highest ranking motor carrier official via a mailing method that can be tracked and receipt confirmed. The refusal to accept a copy of the Investigative Report should be noted on Part C. In addition, when the copy was mailed, to whom and the tracking number must be recorded on Part C. Also, if the company phone number is different than the number in MCMIS, the new number should be recorded in Part C.

### **3.5 Stage 5: Conclusion of SA and Completion of Part C**

***Completing Part C After You've Closed Out the SA***

Part C of the SA is important to the FMCSA. Provide as much information as possible about other motor carrier issues not noted during the review that are important to the investigation. Describe the sampling sizes used during the investigation and what documents were reviewed.

***Issues that Should be Discussed in Part C (See Illustration SACN-1)***

- Statements made by motor carrier officials relative to correcting the violations or safety system breakdowns discovered during the investigation,
- The motor carrier's/shipper's actions related to compliance,
- The motor carrier's/shipper's level of understanding of applicable regulations,
- The degree of assistance and cooperation given by motor carrier/shipper officials to you during the investigation,
- The educational materials provided to the motor carrier/shipper,
- Anything atypical about the motor carrier's/shipper's operation,
- The extent and nature of any divisions or business locations of the motor carrier/shipper,
- The financial condition of the motor carrier/shipper,
- The names of any relevant company officials that were interviewed, but were not listed on Part A of the SA,
- The number of drivers hired in the within the past 12 months (if not already addressed as a violation in Part B),
- For HM carriers/shippers the number of employees required to have HM training (if not already addressee as a violation in Part B),
- The breakdown of commercial motor vehicles which have a GVWR between 10,001 pounds and 26,000 pounds, and greater than 26,000 pounds,
- The names and locations of any relevant documents,
- For carriers with authority indicate whether L&I was checked if any issues were discovered, and

- For carrier with CDL drivers indicate whether CDLIS checks were performed and whether any issues were discovered.

### ***Requirements for Uploading SAs***

It is important that all audits be electronically uploaded to MCMIS within seven days.

### **Illustration SACN-1: Part C - Comments**

#### **REQUIRED**

1. What specific supporting documents were requested and when” (was the carrier given 48 hours to produce records not located at the PPOB?)
2. What specific supporting documents were produced and when?
3. What is the name and title of the person from whom you requested the documents?
4. Where are the supporting documents located and how are they maintained (by driver, by trip, in trip envelopes filed by date, etc.),?
5. If supporting documentation was available and/or presented that did not contain valid or vital information that could be used to check the accuracy of the RODS, explain how and why?
6. Explain why a CDLIS licensing check was not conducted or that other methods were used to verify licenses.
7. Should explain why vehicles were not inspected when three or more inspections were not on profile.
8. Should note inspections in the motor carriers possession but not on the profile that were used to calculate the OOS rate.
9. Should explain reason for NOT taking enforcement action for acute violations.
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 consortium.
13. If extremely difficult to locate motor carrier explain how motor carrier was contacted.

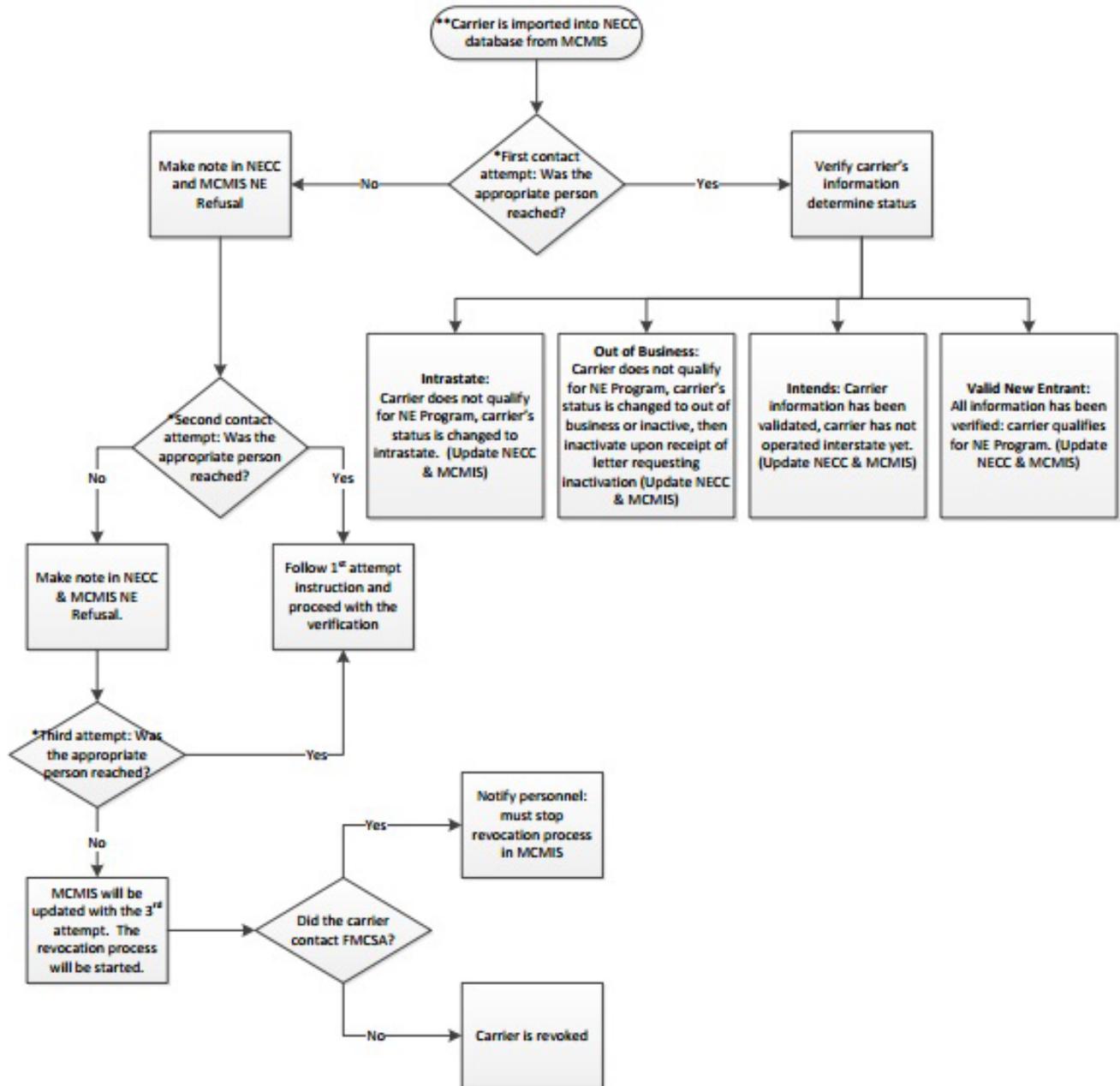
#### **SUGGESTED**

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

### 3.6.1 Illustrations

#### 3.6.1.1 New Entrant Call Center (NECC) Process



\*All contacts are at least 7 days apart  
 \*\*All attempts from the NECC stop 90 days from NE date

[Description of flowchart](#)

**3.6.1.2 Illustration SA-1: Confirmation Letter and Questionnaire**

**Download Word document:** [Safety Audit Confirmation Letter and Questionnaire](#)

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

Address  
**City, State, Zip Code**  
**Telephone**

**IN REPLY REFER TO:**

[Date]

USDOT Number: [Insert DOT#]

Carrier Official  
Name of Motor Carrier  
Address of Motor Carrier  
City, State, Zip Code

Dear Motor Carrier:

The Federal Motor Carrier Safety Administration is responsible for ensuring the safe operation of commercial motor vehicles on our Nation’s highways.

In an effort to fulfill our responsibility to the motoring public, an audit of your operations will be conducted. The audit will include: driver’s hours of service and licensing, vehicle maintenance and inspection, driver qualifications, accidents, and other safety and transportation records. Please bring/have available the documents as outlined in the enclosed.

Per our conversation on [Date], the audit is scheduled as follows:

[Place]  
[Date ]  
[Time]

If you have any questions regarding this notice, or if you need further information, please contact:

Federal Motor Carrier Safety Administration  
Address  
City, State, Zip Code

Telephone Number [your extension]

Sincerely,

Your Name  
Safety Investigator  
Enclosure

Carrier Information for Safety Audits

As applicable, have the following available at time of Safety Audit.

**Insurance and Economic Documentation:** Have available a current copy of Form MCS-90 or MCS-90B (Insurance Endorsement). Also have available a copy of Form BOC-3 (Designation of Process Agents)

**Controlled Substances and Alcohol Testing Administration Records:** Have available for review all administrative records related to controlled substances and alcohol testing. If you are enrolled with a consortium, obtain from the consortium and have available the consortium's current list of drivers for your company. Have available for review a copy of your company's Controlled Substances and Alcohol Testing Policy. Have available the quarterly/semi-annual summaries (from the laboratory) of Controlled Substances and Alcohol Tests for year 2002 (if applicable). Have available for review a copy of the annual calendar year summary for year 2002 (if applicable).

**Accident Records:** Have available for review all records related to accidents for the past 365 days, including an accident register. Also, have available a copy of your damage/loss run from your insurance company and/or any State accident reports maintained. Include all accidents resulting in fatality, injury, and/or tow – regardless of whether or not your driver or leased driver was found to have been “at fault”. **The accident register and copy of accident reports will only be reviewed for accidents occurring in the United States.**

**Driver Qualification:** Have available for review, driver qualification files for all drivers used within the past 12 months. If your company operates with drivers assigned to various locations or functions, be prepared to identify each driver's status (i.e., terminal location, commercial zone vs. long haul, van vs. flat bed operations, leased vs. company, etc.).

**Hours of Service:** Provide a driver specific listing showing assigned units and account numbers for phone and/or fuel charges for all drivers, including leased operators, used within the past six months.

Have available all records of duty status for previous six months for all drivers, including leased operators. Also have available all supporting documents (i.e. trip envelopes, driver expense receipts, telephone records, fuel reports, dispatch logs, payroll records, bills of lading, etc.) for previous six months for all drivers.

**Equipment/Maintenance:** For previous 12 months, provide a list showing all equipment owned/leased/trip leased and operated in intrastate and interstate commerce. Designate type of equipment (i.e., straight trucks, tractors, trailers, HM cargo tank trucks, HM cargo tank trailers, buses). If applicable, indicate terminal locations and/or date removed from service.

Have available all maintenance files and records for each unit, including leased units. Files and records include evidence of annual inspections, repair receipts, maintenance schedules, qualification of persons performing annual inspections and/or brake repair and adjustments. Also have available copies of drivers' daily vehicle inspection reports for the past three months.

**Hazardous Materials Records (if applicable):** Have available a current copy of the DOT/PHMSA registration, HM training materials and records of such training. Also have available a copy of the most recent shipping document for each class of materials transported.

**3.6.1.3 Illustration SA-2: Contact Report**

**Download PDF Form:** [Contact Record](#)

The Contact Record has been created as a PDF that can be filled out on the computer.

---

CONTACT RECORD

Legal name: \_\_\_\_\_

DBA: \_\_\_\_\_

USDOT #: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Person spoke with (or no answer): \_\_\_\_\_

Summary of conversation:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Person spoke with (or no answer): \_\_\_\_\_

Summary of conversation:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Person spoke with (or no answer): \_\_\_\_\_

Summary of conversation:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Person spoke with (or no answer): \_\_\_\_\_

Summary of conversation:

Recommend failure to permit SA letter: Yes \_\_\_\_\_ No \_\_\_\_\_ Sent on: \_\_\_\_\_

Revocation letter: Yes \_\_\_\_\_ No: \_\_\_\_\_ Letter sent on: \_\_\_\_\_



# COMMERCIAL ENFORCEMENT & HHG MANUAL

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**

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## 4.0 Commercial Enforcement & Household Goods (HHGs)

### 4.1 Introduction

#### 4.1.1 FMCSA's Role

##### *FMCSA's Policy for Administering Commercial Enforcement and Enforcing the HHG Regulations and Applicable Federal Statutes*

It is FMCSA's policy to administer a comprehensive and effective compliance and enforcement of the Federal Commercial Regulations and applicable Federal statutes. FMCSA uses education, outreach, and enforcement strategies to achieve its objectives. FMCSA will administer a comprehensive compliance and enforcement program that concentrates on the most problematic HHG motor carriers and brokers. Additionally, there are other transportation operations that FMCSA regulates, and it also requires comprehensive compliance and enforcement strategies.

#### 4.1.2 FMCSA's Jurisdiction Over Interstate Transportation of HHG

The Federal regulations that specifically apply to HHG motor carriers are included in 49 CFR 375 of the FMCSR. There are additional Federal regulations and statutes that apply to HHG motor carriers and other HHG transportation operations that FMCSA regulates.

The HHG regulations are included in 49 CFR 375 of the FMCSR and specifically apply to HHG motor carriers.

Other regulations that apply to HHG motor carrier operations include:

- **49 CFR 365** - Rules Governing Applications for Operating Authority.
- **49 CFR 366** - Designation of Process Agent.
- **49 CFR 370** - Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims.
- **49 CFR 372** - Exemptions, Commercial Zones, and Terminal Areas.
- **49 CFR 387** - Minimum Levels of Financial Responsibility for Motor Carriers.
- **49 CFR 392.9a (a)** - Operating Authority.

Federal statutes that are pertinent to the Interstate transportation of HHG include:

- **49 U.S.C. 13102** – Definitions.
- **49 U.S.C. 13702** – Tariffs.
- **49 U.S.C. 13902** – Registration Requirements for HHG motor carriers.
- **49 U.S.C. 13903** – Registration Requirements for Freight Forwarders.
- **49 U.S.C. 13904** – Registration Requirements for Brokers.
- **49 U.S.C. 13905** – Suspension and Revocations of Registrations.
- **49 U.S.C. 13907** – HHG agents.
- **49 U.S.C. 14706** – Carmack Amendment, Liability of Carriers.
- **49 U.S.C. 14708** – Dispute Resolution and Arbitration.
- **49 U.S.C. 14710** – Enforcement of Federal statutes and regulations by state agencies.
- **49 U.S.C. 14711** – Enforcement of Federal statutes and regulations by state attorneys general.
- **49 U.S.C. Chapter 149** – Penalties.
- **49 U.S.C. 14915** – HHG Shipments held hostage.

#### 4.1.3 FMCSA's Jurisdiction Over Brokers Operating in Interstate Commerce

FMCSA regulates transportation brokers operating in Interstate Commerce. Brokers subject to FMCSA jurisdiction come in two groups, Property or Freight Brokers and HHG Brokers. Other regulations and statutes that apply to broker operations include:

- **49 CFR 365** - Rules Governing Applications for Operating Authority.
- **49 CFR 366** - Designation of Process Agent.
- **49 CFR 371** - Brokers of Property and HHG.
- **49 CFR 372** - Exemptions, Commercial Zones, and Terminal Areas.
- **49 CFR 387.307** - Minimum Levels of Financial Responsibility.
- **49 U.S.C. 13901** and 14901(d)(3) - Unauthorized brokering.
- **49 U.S.C. 14916** – Unlawful Brokerage Activities

#### **4.1.4 FMCSA’s Jurisdiction Over Freight Forwarders Operating in Interstate Commerce**

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

FMCSA receives approximately 3000 complaints annually against HHG motor carriers and brokers, approximately 20% or 600 complaints are alleging deceptive business practices, and egregious acts of noncompliance with the Federal regulations and statutes. The Commercial Enforcement and Investigations Division conducts analysis of the complaint data stored in the National Consumer Complaint Database (NCCDB) and determines where the most noncompliant HHG motor carriers and brokers are and 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 will require immediate attention when resources are available. Complaints submitted by law enforcement and regulatory agencies, Federal, State, and Local will also receive priority for investigation. FMCSA is partnered with the Federal Maritime Commission to address complaints on international shipments of HHG and occasionally FMC investigators will request assistance with an investigation where it is determined that FMCSA has jurisdiction. Joint investigations will be handled by the team of Commercial Enforcement Specialists strategically located around the nation.

### **4.2.2 Some Reasons to Conduct HHG Investigations**

An investigation may be conducted for several reasons. These reasons may include but not be limited to:

- A motor carrier or broker appears on the National Consumer Complaint Database (NCCDB) with a high volume of complaints;
- A motor carrier appears on the “Top 100 HHG carrier List” (accessible via the NCCDB);
- A broker appears on the “Top 100 Broker List” (accessible via the NCCDB);
- The motor carrier appears on the SMS prioritization list, the safety investigation should be expanded to include commercial compliance;
- As the result of a significant crash, a safety review should be expanded to include commercial compliance; or
- In response to a complaint of an egregious violation such as an HHG shipment held hostage.

### ***Filing and Responding to Complaints in the NCCDB***

Any complaints making allegations of violations of the FMCCRs or Federal Commercial Statutes must be filed in the NCCDB regardless of the source. Especially complaints of HHG held hostage or deceptive business practices. Complaints that 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 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. You may also discover flagrant disregard for Federal statutes and regulations. FMCSA has worked successfully with USDOT, OIG and Federal Bureau of Investigation (FBI) investigating 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/SD, the Commercial Enforcement and Investigations Division in HQ, or other agency officials, so that the appropriate criminal law enforcement agencies can be made aware of the alleged criminal activity.

### ***Key Indicators Suggesting Criminal Activity***

Potential criminal violations 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 freight);
3. Failing to use its published rate schedules or tariffs. This generally results in the shipper being charged a much higher rate than that contained in the HHG motor carrier's published rate or tariff;
4. Knowingly assigning a fraudulent weight to a shipment (weight bumping);

5. Devising false or fraudulent schemes with the intent of defrauding shippers of money or property; this could include assessing charges for transportation services not actually performed or routinely stealing selected high value items from HHG shipments, such as jewelry, electronic equipment, paintings, etc.;
6. Interfering with commerce through theft, extortion, or threats of violence;
7. Making false statements and/or knowingly making or using false documents; and/or
8. Violating Federal criminal law by engaging in conspiracy, mail and wire fraud, or money laundering; this can occur when HHG motor carriers, HHG brokers, motor carrier officials and/or employees devise schemes to deliberately defraud consumers when using mail and wire services, including email.

### *The Rogue Mover Problem(s)*



#### **4.2.4 Responsibilities of the Investigator, Auditor, or Inspector**

Investigators, Auditors, and Inspectors are responsible for being familiar with the HHG regulations and the other applicable commercial regulations to determine compliance with the regulations and detecting deceptive business practices when conducting audits, inspections, and investigations of HHG motor carriers and/or HHG brokers. You may also be asked to assist the Commercial Enforcement Specialists with in-depth investigations.

#### **4.2.5 Definitions**

You may encounter the following terms when you conduct CRs or enforcement actions on HHG motor carriers or brokers as defined in 49 CFR 375.103 and U.S.C. 13102:

**110 Percent Rule** – When the actual transportation charges exceed the non-binding estimated charges provided by the HHG motor carrier, 49 CFR 375.217(e) and 375.405(b)(8) requires motor carriers to allow shippers to take possession of their goods upon payment of 110 percent of the original non-binding estimate at destination. The motor carrier must bill the shipper for the payment of the balance of any remaining charges 30 days after delivery.

**Advertisement** – Any communication to the public in connection with an offer or sale of any interstate HHG transportation service. This includes written or electronic database listings of the motor carrier's name, address, and telephone number in an online database. This excludes listings of the motor carrier's

name, address, and telephone number in a telephone directory or similar publication except for Yellow Pages advertising which is included in the definition.

**Agents** – A HHG motor carrier is allowed to use agents as part of its operations. HHG agents do not perform the services of HHG brokers or freight forwarders. A HHG agent differs from a HHG broker in that the HHG agent, as part of a contractual agreement, is allowed to act on behalf of the principal motor carrier; for example, in most instances, agents are local moving companies that are authorized to act on behalf of a larger national company. HHG agents are defined in 49 CFR 375.205 as one of the following two types of agents:

- **Prime Agents** – All agents who are permitted or required under the terms of any agreement or arrangement with a principal motor carrier to provide any transportation service on behalf of the principal motor carrier, including the selling of or arranging for any transportation service, loading and unloading of HHG, and who perform such services on other than an emergency or temporary basis
- **Emergency or Temporary Agents** – Provide origin or destination services on the motor carrier's behalf, excluding the selling of, or arranging for, a transportation service. The agent performs such services only on an emergency or temporary basis.

**Arbitration Program** – As a condition for registration, 49 CFR 375.211 requires HHG motor carriers to offer arbitration as a means of settling damage or loss to HHG transported. 49 CFR 375.211(a)(2), 375.213(b)(4) and U.S.C. 13902(a)(2)(A) require the motor carrier to produce and distribute a summary of its program.

**Bill of Lading** – The receipt or bill of lading is the contract for services between the HHG motor carrier and shipper and must comply with the provisions of 49 CFR 375.505. A copy of the receipt or bill of lading and its attachments must be given to the shipper before the vehicle leaves the origin.

**Broker** – 49 CFR 371 defines a broker as a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. Motor carriers or persons who are employees or bona fide agents of motor carriers are not brokers within the meaning of this section, when they arrange or offer to arrange, the transportation of shipments which they are authorized to transport, and which they have accepted and legally bound themselves to transport.

49 CFR 375.409 requires that HHG motor carriers have written agreements in effect with all HHG brokers that provide shipper estimates on behalf of the motor carrier.

**Cashier's Check** – A check that has all four of the following characteristics:

- Drawn on a bank, as defined in 12 CFR 229.2
- Signed by an officer or employee of the bank on behalf of the bank as drawer
- A direct obligation of the bank
- Provided to a customer of the bank or acquired from the bank for remittance purposes

**Certified Scale** – Any scale inspected and certified by an authorized scale inspection and licensing authority and designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, or designed as a platform or warehouse-type scale

**Commercial Shipper** – Any person who is named as the consignor or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation and other tariff charges for the account of the beneficial owner of the goods. The beneficial owner of the goods is normally an employee of the consignor and/or consignee. A freight forwarder tendering a shipment to a motor carrier in furtherance of freight forwarder operations is also a commercial shipper. The Federal Government is a government bill of lading shipper, not a commercial shipper.

**Commercial Zones** – 49 CFR 372 provides for certain exemptions of for-hire interstate transportation, including HHG. Subpart B of 49 CFR 372 - Commercial Zones exempts for-hire interstate transportation that is transported within specific geographical areas.

**Estimates** – Subpart D of 49 CFR 375.401(b) and U.S.C. 14104(b)(1)(C)(i) allows HHG motor carriers to provide one of two types of estimates to prospective shippers:

- **Binding** – The mover guarantees the price for all agreed upon transportation and transportation-related services prior to the move (“Guarantee,” “Not to Exceed,” and “Flat Rate” estimates are not binding estimates).
- **Non-binding** – The mover provides a reasonably accurate estimated price based on weight or volume and any accessorial services required (as prescribed in the motor carrier’s tariff).

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

**Freight Forwarder** – A person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business, assembles and consolidates or provides for assembling and consolidating shipments and performs or provides for break-bulk and distribution operations of the shipments; assumes responsibility for the transportation from the place of receipt to the place of destination; and uses for any part of the transportation a motor carrier subject to jurisdiction under this subtitle. The term does not include a person using transportation of an air carrier subject to Part A of Subtitle VII.

**Government Bill of Lading Shipper** – Any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the Federal Government to the motor carrier responsible for the transportation of the shipment

**Hostage Freight or Hostage Load** – This is term that describes one of the most egregious violations in the HHG industry. It involves motor carriers that withhold delivery of an individual shipper's HHG until they are paid a demanded price. At a minimum, holding HHG hostage means the knowing and willful refusal to deliver a shipment of HHG, unless the shipper pays more than 100 percent of a binding estimate or in the case of a non-binding estimate, more than 110 percent of the estimated charges for shipment. This practice has led to exorbitant and unjustified payments and the complete loss of a family's possessions. It is a very serious violation with very serious criminal penalties.

**Note:** This term is found in 49 U.S.C. 14915(c).

**HHG Motor Carrier** – A motor carrier that in the ordinary course of its business of providing transportation of HHG offers some or all of the following additional services:

1. Binding and nonbinding estimates
2. Inventorying
3. Protective packing and unpacking of personal items at personal residences
4. Loading and unloading at residences
5.
  - **Inclusions** – The term includes any person that is considered to be a HHG motor carrier under regulations, determinations, and decisions of FMCSA that are in effect on the date of the HHG Mover Oversight Enforcement and Reform Act of 2005.
  - **Limit Service Exclusions** – The term does not include a motor carrier when the motor carrier provides transportation of HHG in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.

**Individual Shipper** – Includes any person who is identified as the shipper or consignee on the HHG bill of lading contract. The individual shipper owns the goods being transported and pays the transportation charges. The term does not include moves involving business equipment or employee moves paid by

businesses or the government. The FMCSA consumer protection regulations for HHG were promulgated to protect individual shippers from abuse by the moving industry.

**Insurance Filing** – In addition to having the minimum amounts of bodily injury property damage (BI&PD) and cargo insurance in effect, HHG motor carriers, like all for-hire motor carriers, are also required to file evidence of BI&PD and cargo insurance with FMCSA as a condition for registration, as required by 49 CFR 387, Subpart C.

**Interlining** – Industry term for acting as a prime agent. Carriers that “interline” often do the line haul or delivery for the originating carrier.

**Loss and Damage Claims** – When their HHG are lost or damaged during transportation, shippers are allowed to file a claim with the HHG motor carrier to recover the costs for the lost or damaged items. HHG motor carriers are required to follow specific guidelines when handling and investigating loss and damage claims as provided by 49 CFR 370.

**Low-ball Estimates** – An illegal practice of intentionally luring shippers into using the services of a HHG motor carrier by intentionally providing a low estimate of the cost to transport their HHG; once the actual charges are assessed and submitted to the shipper, they are usually substantially higher than the original estimate quoted.

- **Note:** This term is currently not found in the FMCSR.

**Motor carrier** – The term "motor carrier" means a person providing motor vehicle transportation for compensation.

**Motor vehicle** – The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

**Operating Authority** – Motor carriers that transport HHG for-hire in interstate commerce are required to register with FMCSA and obtain the appropriate certificate or permit as required by 49 CFR 392.9a and U.S.C. 13902(a).

**Orders for Service** – Prior to loading a shipment of HHG, every HHG motor carrier must prepare an Order for Service, which must include specific information, as provided by 49 CFR 375.501(a). The Order for Service is a written list of all the services the HHG motor carrier will perform and shows the dates the HHG will be picked up and delivered. The Order for Service, when signed by the shipper and carrier employee, authorizes the carrier to take possession of the HHG shipment.

**Process Agent** – 49 CFR 366 requires every HHG motor carrier and broker to make a designation naming a person that will accept service of process on its behalf in each State in which it is authorized to operate and for each State traversed during such operations. The motor carrier must file a Designation of Process Agent form, BOC-3, with FMCSA as a condition for obtaining registration.

**Reasonable Dispatch** – When the HHG motor carrier transports on the dates or during the period agreed upon on the Order For Service/Bill of Lading; if a shipment is deliberately withheld from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, then the goods have not been transported with reasonable dispatch. The term reasonable dispatch excludes transportation provided under tariff provisions requiring guaranteed service dates.

**Tariffs** – A published schedule of the rates and charges assessed by the HHG motor carrier for transporting and handling HHG in interstate commerce; the tariff is the HHG motor carrier's legal basis for the charges it assesses for transporting and handling HHG shipments and is required by 49 CFR 375.215 and 49 U.S.C. 13702.

**"Your Rights and Responsibilities When You Move"** – This pamphlet provides a detailed explanation of the HHG motor carrier's responsibilities, the documents shippers will be asked to sign, and explains the shipper's rights if his/her HHG are lost or damaged. HHG motor carriers are required to provide prospective individual shippers with a copy of "Your Rights and Responsibilities When You Move" (FMCSA–ESA–03–006 or its successor publication) as required by 49 CFR 375.213(b)(1).

**Weight Ticket** – When a shipment's transportation charges are based upon the actual weight; every HHG motor carrier transporting HHG on a non-binding estimate must determine the weight of each shipment transported, prior to the assessment of any charges. The weight ticket is the document used to record the weight of the HHG being transported and is required by 49 CFR 375.507(a).

**Note:** HHG motor carriers are allowed to transport HHG shipments whose charges are based upon volume (cubic feet), as long as these charges are provided for in their tariffs and the HHG carrier provides a written explanation of the volume to weight conversions.

#### 4.2.6 General CR (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, a Comprehensive NRCR or a 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:

<b>Federal Regulations Subject to a Comprehensive NRCR</b>	<b>Federal Statutes Subject to a Comprehensive NRCR</b>
Part 366	US Code, Title 49, Chapter 137
Part 376	US Code, Title 49, Chapter 139
Part 370	US Code, Title 49, Chapter 147
Part 371 (Brokers only)	US Code, Title 49, Chapter 149
Part 372	
Part 373	
Part 375	
Part 376	
Part 379	
Part 386	
Part 387	
Part 390	
49 CFR § 392.9a	

Additionally, the Comprehensive NRCR should be conducted when a HHG motor carrier appears on the Top 100 List or is suspected of being reincarnated.

The **Focused** NRCR will be utilized for a specific noncompliance issue discovered either through a consumer complaint, public report, employee report, or receipt of other similar information. This type of review is used to investigate specific allegations of statutory or FMCCR noncompliance. A Focused NRCR can be used to investigate a report of unauthorized operation in violation of 49 CFR § 392.9a by a state partner, or a consumer complaint of a HHG shipment held hostage in violation of 49 U.S.C. § 14915.

The Focused NRCR allows the investigation of a specific noncompliance issue, increasing response to consumer complaints, and more effective mitigation when noncompliance is discovered.

Division Administrators 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 also:

- Review L&I Database Information.
- Determine if the motor carrier is authorized by FMCSA to conduct for-hire interstate transportation as provided by 49 CFR 392.9a (a).
- Determine if the motor carrier has the appropriate BI&PD and cargo insurance in effect and on file with the Commercial Enforcement Division as provided by 49 CFR 387.301.
- Determine if the motor carrier has a Designation of Process Agent, in effect and on file, with the Office of Registration and Safety Information, as provided by 49 CFR 366.
- If the investigation is in response to a complaint, *interview the complainant* and attempt to obtain a written statement, and copies of any available pertinent documents.

**Note:** The L&I database: <http://li-public.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>) provides information about the status of a HHG motor carrier's operating authority, filings of minimum levels of financial responsibility, and filings of Designation of Process Agents. When trying to determine ownership and control issues, the Licensing Team can be contacted to get copies of the HHG motor carrier's application for operating authority and its license and/or permit (copies of application form OP-1 are not available prior to 1996). The application lists the names of the motor carrier officials that were responsible at the time the application was submitted and can be used to identify the individuals that own and control the operations of the HHG entity. These documents can also be used as evidence if an enforcement action is initiated.

- Review Consumer-related complaints filed against the HHG motor carrier. Complaints filed against HHG motor carriers are entered in the FMCSA National Consumer Complaint Database (NCCDB) (<http://nccdb.fmcsa.dot.gov>). You should review the complaints filed against the HHG motor carrier in the NCCDB. Generally, you should only review complaints received during the previous 12 months for moves made interstate, beyond the motor carrier's commercial zone. These complaints can be used to identify for-hire interstate shipments.
- Interview the complainants that filed complaints in the NCCDB pertinent to the HHG CR. If possible, obtain written statements from those complainants. In the absence of written statements, use of the oral interview forms ([Illustration E-6](#)), especially for telephone interviews, will suffice.
- Determine if there were any third party witnesses, employees of storage facility, a neighbor, relative, landlord or realty agent that was involved in the movement of the HHG shipment and interview them obtaining a written statement or oral interview.

- Check with state and local police agencies for complaints filed against the HHG motor carrier reported to them and obtain any incident, investigation, or arrest reports. Also obtain copies of any summonses or other documentation of enforcement action by those agencies.
- Check with the state attorney general and/or other consumer protection organizations for complaints filed against the HHG motor carrier and obtain copies of the written complaints, written interviews of witnesses, evidentiary documents, intake or investigation reports.
- Review corporation records on file with the Secretary of State or other state corporate licensing authority to verify the status of the HHG motor carrier reported to FMCSA is the same reported to the state of domicile.
- Make an inquiry of the Vetting Team, Office of Registration and Safety Information and find out if there were any discrepancies detected when the HHG motor carrier applied for operating authority.
- Obtain and Review the Motor Carrier Profile.
  - The motor carrier profile may reveal potential indications of unauthorized operations or periods of operation when minimum levels of financial responsibility were not in effect and on file. If, after reviewing the profile, you determine the motor carrier has operated without the appropriate operating authority in effect, or the appropriate minimum level of financial responsibility filing, you should identify and obtain the necessary trip documents for those periods and include them in your sampling of the HHG motor carrier's operations.
- Thoroughly examine the HHG motor carrier's website, examining each webpage to ensure it is compliant with applicable regulations.

#### **4.3.2 Pre-Investigation – Brokers**

##### ***Special Procedures to Prepare for a Commercial Non-Ratable Comprehensive or Focused CR on a Broker***

Brokers are unique, they do not operate trucks or employ drivers but recognized by many segments of the Trucking Industry as necessary to successfully and efficiently move all forms freight including HHG. Brokers only “arrange” transportation matching shippers to carriers. Brokers function through “transactions” and rely on the Internet and Social Media to market and manage their businesses. Preparation to investigate a broker will entail developing an overview of how the broker does business and with whom.

Complaints from either shippers or motor carriers usually draw attention to a broker and a thorough review of those complaints develops the overview of that broker. Additionally, you should also:

- Interview the complainants, obtain written statements and copies of any documentation they have available;
- Check with the state attorney general and/or other consumer protection organizations for complaints filed against the HHG motor carrier and obtain copies of the written complaints, written interviews of witnesses, evidentiary documents, intake or investigation reports.
- Research the status of the broker's company with the state licensing authority for corporations and other businesses;
- While researching the broker's company with the state licensing authority determine who the principals are;
- Review the L&I Database information;
- Determine if the broker's surety bond or trust fund is valid and has the required amount of funds, \$75,000; and

- Thoroughly review the broker's website, examining all the webpages to ensure the broker is in compliance with all applicable regulations.

## 4.4 Stage 3 – Investigation

### 4.4.1 Introduction

#### ***Investigation – HHG***

##### ***HHG Issues to Discuss During the Opening Interview***

When you make contact with the carrier official and initiate the interview, be sure to discuss the following:

- You will need to interview individuals responsible for compliance with the commercial regulations, including but not limited to: staff in sales, dispatch, and operations (drivers and laborers);
- Explanation of the HHG motor carrier's system for preparing, issuing, and internally filing documents of interstate shipments it transported; and
- Explanation of the HHG motor carrier's procedures for estimating and rating all charges for interstate HHG shipments.

##### ***What to Look for When Touring and Working at the HHG Motor Carrier's Facility***

During the tour of the facility, and while working at the motor carrier's facilities, you should be aware of any materials that may:

- Relate to the HHG motor carrier's knowledge and compliance with FMCSA's commercial regulations;
- Identify other business names used by the entity;
- Identify the names of other HHG motor carriers or HHG brokers used by the respondent; and
- Any internal instructions to employees that may identify fraudulent practices that may be taking place.

While working at the HHG motor carrier's facilities, try to determine:

- The geographic territory serviced by the entity;
- The types of customers served by the entity;
- The average number of shipments transported per month;
- The entity's peak business season;
- Names, locations, and telephone numbers of HHG agents used by the HHG motor carrier; and
- The number of contracts it has with other HHG motor carriers and HHG brokers.

While working at the HHG motor carrier's facilities the following documents must be examined:

- The tariff, to ensure the HHG motor carrier is charging consumers and providing services exactly as stated in that document;
- All written agreements with brokers, obtain copies;
- All written agreements with agents, obtain copies; and
- Rental agreements from trucks rented to transport HHG shipments, obtain copies.

##### ***Conducting the CR***

When reviewing compliance with 49 CFR 365, 366, 370, 372, 375, 387, 392.9a(a), and 49 U.S.C. 13702, 13707, 13902, 14104, 14708, 14901, and 14915 requirements, you should use the following guidelines to assist in your investigation of HHG motor carriers.

##### ***Acute and Critical Regulations***

There are no acute or critical regulations in the commercial regulations, because these regulations are not used to determine a motor carrier's safety rating. As guidance, you should consider the protection of the

shipper and his/her HHG and cite those violations that may result in harming shippers economically. Generally, HHG regulations violations will be of two types:

- **Severe Level I Violations** - These are violations within the FMCCR and Statutes that demand immediate corrective actions by the HHG motor carrier. Enforcement action is strongly recommended when a violation is discovered during the review that is identified as severe in the following table. In all cases, when enforcement action is not initiated, you should provide an explanation in Part C of the CR report.
- **Severe Level II Violations** - These violations of the FMCCR indicate a breakdown in the management controls of the HHG motor carrier operations. When a violation is discovered that is a Severe Level II Violation that has, or will result in harm to the shipper, enforcement action is recommended. Otherwise, enforcement action for a Severe Level II Violation is taken upon the discovery of an unacceptable level of compliance. Noncompliance with Severe Level II Violations is generally considered unacceptable when it has been discovered that there was significant harm to the consumer/shipper. In all cases, when enforcement action is not initiated and it is proven that there was significant harm to the consumer/shipper, you should provide an explanation in Part C of the CR report.

### ***Initiating CAPRI***

When conducting commercial CRs, select "Non-Ratable" as review type in CAPRI. Then select "Commercial" as the reason for the non-ratable review. If a commercial CR is being conducted in conjunction with an investigation, you would follow the normal procedures for entering Ratable data appropriately. Also, in Part C, enter "HHG" under Special Studies.

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

## **4.4.2 Investigation Procedures to Determine Compliance with Specific Regulations and Statutes**

### **4.4.2.1 Part 365, 366, 387 & 392 - Licensing & Insurance (L&I) Registration Requirements**

#### 4.4.2.1.1 Investigative Procedures

#### ***FMCSA's Jurisdiction with Regards to HHG Motor Carriers Registration & Filing Requirements***

FMCSA requires that all motor carriers who transport HHG, as a for-hire motor carrier in interstate commerce beyond the commercial zone, are registered and have submitted the proper filings.

#### ***Authority and Insurance Filing Requirements***

HHG motor carriers who operate for-hire in interstate commerce (beyond their commercial zone) transporting HHG 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.

If you discover the authority was revoked, suspended, dismissed or rejected within the past year, you may only cite the carrier if you discover trips. As you examine records of trips, determine if any trips were made while the carrier did not have active operating authority. Also, determine if the commodity transported matches the authority granted. If a motor carrier with property carrier authority made trips transporting HHG, then those trips were beyond the scope of that carrier's authority.

When reviewing if the carrier is in compliance with the Designation of Agent for Service of Process (Form BOC-3), ensure that there is one on file in the L&I Database: <http://li-public.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>). Verify, during the CR, that the motor carrier has a Process Agent in place for each State in which it operates and/or traverses, and a copy is maintained at its PPOB. Carriers can obtain a copy of Form BOC-3 from their Process Agent.

***HHG or Other Motor Carrier Has Operated For-Hire in Interstate Commerce and Does Not Have an Active Certificate or Docket Number Assigned by FMCSA***

You should cite the HHG motor carrier for:

- **Section 392.9a(a)(1)/14901(d)(3)** – Operating a motor vehicle requiring operating authority without valid operating authority. (Severe Level I violation)

You should cite the any other motor carrier requiring operating authority for:

- **Section 392.9a(a)(1)** – Operating a motor vehicle requiring operating authority without valid operating authority. (Severe Level I violation)

***HHG Motor Carrier Has Operated For-Hire in Interstate Commerce and Operated Beyond the Scope of the Operating Authority Granted by FMCSA***

You should cite the HHG motor carrier for:

- **Section 392.9a(a)(2)/14901(d)(3)** – Operating a motor vehicle requiring operating authority beyond the scope of the operating authority granted. (Severe Level I violation)

***HHG or Other Motor Carrier Does Not Have the Required Administrative Filings in Effect***

You should cite the HHG motor carrier for:

- Section 387.7(a) - Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. (Note: Use only when citing a carrier that operates vehicles with a GVWR greater than 10,000 lbs.) (Severe Level I violation)
- Section 387.301(a) - Failing to file evidence of public liability insurance with the Federal Motor Carrier Safety Administration. (Severe Level II violation)
- Section 387.301(b) - HHG motor carrier failing to file evidence of cargo insurance with the Federal Motor Carrier Safety Administration. (Severe Level II violation)
- Section 387.303(b) - Failing to maintain adequate public liability insurance as required by the Federal Motor Carrier Safety Administration. (Severe Level I violation). (Note: Use only when citing a carrier that operates vehicles with a GVWR less than 10,000 lbs.)
- Section 387.303(c) - HHG motor carrier failing to maintain adequate cargo insurance as required by the Federal Motor Carrier Safety Administration. (Severe Level I violation)

***Broker Does Not Have the Required Financial Responsibility***

You should cite the broker for

- Section 387.307(a) – (Until December 31, 2011) Broker failing to have the required surety bond or trust fund in effect for \$10,000. (Severe Level I violation)

- Section 387.307(a)(1) – Property broker failing to have the required surety bond or trust fund in effect for \$10,000. (Severe Level I violation)
  - Section 387.307(a)(2) – Household goods broker (after January 1, 2012) failing to have the required surety bond or trust fund in effect for \$25,000. (Severe Level 1 violation)
  - Section 14916(a)(2) – Any broker failing to have the required surety bond or trust fund in effect for \$75,000
- **Note:** All brokers are required to have a surety bond or trust fund in effect for \$75,000 after October 1, 2013.

***HHG Motor Carrier Does Not Comply with the Designation of Process Agent (Form BOC-3) Requirements as Outlined in Part 366***

You should cite the HHG motor carrier for:

- **Section 365.109(a)(6)** - Failing to have on file Designation of Agent for Service of Process (Form BOC-3) with the Federal Motor Carrier Safety Administration. [First-time Compliance Review - one instance; subsequent Compliance Reviews - each instance in which it transported for-hire interstate shipments in violation of Section 365.109(a)(6)].
  - **Section 366.4(a)** – Failing to have a Designation of Agent for Service of Process. [First-time Compliance Review - one instance; subsequent Compliance Reviews - each instance in which it transported for-hire interstate shipments in violation of Section 366.4(a)].
- **Note:** Obtain a copy of the carrier’s Designation of Agent for Service of Process (Form BOC-3) if there isn’t one on file.

4.4.2.1.2 CAPRI Procedures

***Completing Part A***

If you discover that a HHG motor carrier has never applied for operating authority (MC #) (not found in L & I), under Part A:

- Go to – **Identification tab**
- Select – **Other** in carrier classification field

If you discover that a HHG motor carrier has applied for operating authority (MC #), but their MC # is inactive (in L & I database – authority history) due to a dismissal (has never been granted authority), under Part A:

- Go to – Identification tab
- Select – Other in carrier classification field
- Enter the MC # assigned to the carrier in the MC/MX # field.
- Select – Other
- Enter Dismissal in the other classification field.

If you discover that a HHG motor carrier has been granted operating authority (MC #), but their MC # is inactive (in L&I database – authority history) due to an involuntary revocation or OOS, under Part A:

- Go to - Identification tab
- Select – Other in carrier classification field
- Enter the MC # assigned to the carrier in the MC/MX # field.
- Select – Other
- Enter Revoked in the other classification field.

**Recording Violations of Part 365, 366, 387 & 392.9a (a) Regulations and Chapter 139 and 149 Statutes**

You should record the number checked as follows:

- **Note:** Drivers Checked/Vehicles Checked must be 0 of 0.

**Violations of Parts 365, 366, 387 & 392.9a(a)**

<b>CITATION</b>	<b>TYPE</b>	<b>DESCRIPTION</b>
<b>365.109(a)(6)/13304(a)</b>	<b>General</b>	Failing to have on file Designation of Agent for Service of Process (Form BOC-3) with the Federal Motor Carrier Safety Administration. <b>Number discovered: First-time Compliance Review - one of one; subsequent Compliance Reviews - one each instance in which it transported for-hire interstate shipments in violation of Section 365.109(a)(6).</b>
<b>366.4(a)/13304(a)</b>	<b>General</b>	Failing to have a Designation of Agent for Service of Process. <b>Number discovered: First-time Compliance Review - one of one; subsequent Compliance Reviews - one each instance in which it transported for-hire interstate shipments in violation of Section 366.4.</b>
<b>387.7(a)</b>	<b>Severe Level I</b>	Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. <b>Number discovered: One each occurrence.</b> ■ <b>Note:</b> Use only when citing a carrier that operates vehicles with a GVWR greater than 10,000 lbs.
<b>387.301(a)</b>	<b>Severe Level I</b>	Failing to file evidence of public liability insurance with the Federal Motor Carrier Safety Administration. <b>Number discovered: One filing. (One of one.)</b>
<b>387.301(b)</b>	<b>Severe Level I</b>	Household goods motor carrier failing to file evidence of cargo insurance with the Federal Motor Carrier Safety Administration. <b>Number discovered: One of one.</b>
<b>387.303(b)</b>	<b>Severe Level I</b>	Failing to maintain adequate public liability insurance as required by the Federal Motor Carrier Safety Administration. <b>Number discovered: One each occurrence.</b> ■ <b>Note:</b> Use only when citing a carrier that operates vehicles with a GVWR less than 10,000 lbs.
<b>387.303(c)</b>	<b>Severe Level I</b>	Household goods motor carrier failing to maintain adequate cargo insurance as required by the Federal Motor Carrier Safety Administration. <b>Number discovered: One each occurrence.</b>
<b>387.307(a)</b>	<b>Severe Level I (until December 31, 2011)</b>	Broker failing to have a surety bond or trust fund in effect for \$10,000 (applies to both Property and household goods brokers). <b>Number discovered: One of one.</b>
<b>387.307(a)(1)</b>	<b>Severe Level I</b>	Property broker failing to have a surety bond or trust fund in effect for \$10,000. <b>Number discovered: One of one.</b>

<b>387.307(a)(2)</b>	<b>Severe Level I (after January 1, 2012)</b>	Household goods broker failing to have a surety bond or trust fund in effect for \$25,000. <b>Number discovered: One of one.</b>
<b>14916(a)(2)</b>	<b>Severe Level I (after October 1, 2013)</b>	Unlawful Brokerage Activities – any broker failing to have a surety bond or trust fund in effect for \$75,000
<b>392.9a(a)(1)/14901(d)(3)</b>	<b>Severe Level I</b>	Household goods motor carrier operating without active authority. <b>Number discovered: One for each trip when household goods carrier was discovered without active authority.</b>
<b>392.9a(a)(1)</b>	<b>Severe Level I</b>	Motor carrier operating without active operating authority. <b>Number discovered: One for each trip when a motor carrier was discovered without active authority.</b>
<b>392.9a(a)(2)/14901(d)(3)</b>	<b>Severe Level I</b>	Motor carrier operating beyond the scope of its authority. <b>Number discovered: One for each trip when the motor carrier was transporting a commodity beyond the scope of the authority granted.</b>  <b>Note:</b> Applies to a motor carrier with property carrier authority transporting household goods.
<b>14916(a)(1)</b>	<b>Severe Level I</b>	Unlawful Brokerage Activities – any broker operating without active authority.

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

##### **4.4.2.2.1 Investigative Procedures**

##### ***FMCSA's Jurisdiction in Regards to HHG Loss and Damage Claims Filed with HHG Motor Carriers***

FMCSA's authority over loss and damage claims is limited to processing & handling of claims. FMCSA does not determine or decide loss and damage claims amounts.

##### ***Requirements for Handling Loss and Damage Claims***

49 C.F.R. Part 370 provides specific requirements and time limits for handling and investigating claims for loss of damage, injury, or delay to freight (such as motor vehicles) by property motor carriers and household goods by HHG motor carriers. Additionally, Part 370 requires loss and damage claims must be in writing and filed with the carrier in accordance with the terms and provisions described in its bill of lading, or other contract of carriage, and in the case of HHG motor carriers all of its tariff provisions. Also, the claim requesting payment must be for a specified, or determinable amount of money, as provided by Section 370.3(b) (3). 49 U.S.C. Section 14706(e) states, in part, that the minimum amount of time that carriers must allow for the filing of loss and damage claims is 9 months after the delivery of the household goods.

##### ***Procedures to Follow During Investigation of Compliance with Part 370***

Your investigation of compliance with Part 370 should proceed as follows:

- Reviewing complaints contained in FMCSA's NCCDB which may indicate that consumers' loss and damage claims are not being handled or handled as required by Part 370\*\*.
- Requesting the carrier's loss and damage claim files for ALL moves conducted during the past 12 months; ( **NOTE:** Select the interstate moves conducted beyond the motor carrier's commercial zone);
- Reviewing the appropriate number of loss and damage claim records. See the sampling table in this Section; and Identify and cite violations and consider whether enforcement is appropriate.

**\*\*DO NOT DISCLOSE THE IDENTITY OF COMPLAINANT(S), AS STATED IN PART 386.12(c)**

***Records to Review for the Applicable Time Period***

When reviewing HHG carrier records, you should use the following table to sample and review an appropriate number of loss and damage claims records:

**Number of loss and damage claims received by the carrier, subject to 370, in the previous 365 Days**

<b>Number of Loss &amp; Damage Claims Received</b>	<b>Number of Loss &amp; Damage Claims to Review</b>
1-10	All
10-300	10
300 or more	15

***Check the Following When Examining the Carrier's Loss and Damage Claims***

You should determine if:

- Each claim received is acknowledged in writing, or electronically, within 30 days of receipt, unless the carrier pays or denies it, in writing or electronically, within 30 days of receipt, as provided by Section 370.5(a),
- The carrier creates a separate file and assigns a successive claim file number for each claim received and notes that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the acknowledgment of receipt as provided by Section 370.5(b),
- All claims received are noted with the date of receipt and the date acknowledged, as provided by Section 370.5(b),
- All claims are paid, declined, or a settlement offer made in writing, or electronically, to the claimant within 120 days of receipt by the carrier. If the claim could not be processed and disposed of within 120 days, the carrier shall at that time, and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition as provided by Section 370.9(a).

***Procedures to Follow if the HHG Carrier Does Not Comply with the Loss & Damage Requirements, as Outlined in Part 370***

You should cite the motor carrier for:

- Section 370.5(a) - Failing to acknowledge receipt of a written or electronic process loss and damage claims within 30 days of receipt. (General violation).
- Section 370.5(b) - Failing to create a separate file and assign a successive claim file number for each claim received and note that number on all documents filed in support of the claim. (General violation).
- Section 370.7(a) - Failing to promptly and thoroughly investigate each claim. (  NOTE: Use when no action is taken on any Loss & Damage claim received.) (Serious Level II violation).
- Section 370.9(a) - Failing to promptly and thoroughly investigate each claim within 120 days or within extension period. (Serious Level II violation).

- Section 379.13 – Failing to retain loss and damage claim records up to one year after settlement. (Serious Level II violation).

#### 4.4.2.2.2 CAPRI Procedures

Once you have completed your investigation of Parts 370, you should ask yourself, "Can I prove each discovered violation in Part 370?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part-B Violations Tab of the CAPRI Software:

#### *Recording the Violations of Part 370 Regulations*

You should record the number checked as follows:

- **Note:** Drivers Checked/Vehicles Checked must be 0 of 0.

#### Violations of Part 370 Regulations

CITATION	TYPE	DESCRIPTION
370.5(a)	General	Failing to acknowledge receipt of a written or electronic loss and damage claim within 30 days of receipt. <b>Number discovered: One for each claim received and not acknowledged within 30 days.</b>
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. <b>Number discovered: One for each claim received and not assigned a successive claim file # or claim # not noted on all documents.</b>
370.7(a)	Severe Level II	Failing to promptly and thoroughly investigate each claim. <b>Number discovered: One for each claim received and no action was taken to promptly and thoroughly investigate.</b>
370.9(a)	Severe Level II	Failing to promptly and thoroughly investigate each claim within 120 days or within extension period. <b>Number discovered: One for each claim not promptly and thoroughly investigated.</b>
379.13	Severe Level II	Failing to retain loss and damage claim records for one year after settlement. <b>Number discovered: One for each claim record not retained for one year after settlement.</b>

#### 4.4.2.3 Part 371 – Transportation in Interstate Commerce – Commercial Enforcement: Brokers

##### 4.4.2.3.1 Investigative Procedures

#### *FMCSA's Jurisdiction in Regards to the Arrangement of For-hire Transportation of HHG by Brokers*

In 1999, Congress authorized FMCSA to regulate HHG brokers engaged in interstate operations in the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The Broker regulations are included in 49 CFR Part 371 of the FMCSR and the statutes are found in the ICC Termination Act. FMCSA is authorized to investigate interstate for-hire HHG brokers to ensure compliance and take enforcement when necessary.

#### *Requirements for Complying with 49 CFR Part 371*

FMCSA requires that all brokers that arrange the transport of freight and HHG for authorized for-hire motor carriers in interstate commerce beyond the commercial zone are registered and have submitted the proper filings. Property and HHG brokers that arrange transportation by for-hire motor carriers in interstate commerce (beyond their commercial zone) are subject to complying with Part 371.

### ***Investigation – Brokers***

#### ***Sections of Part 371 to Review for Compliance by all Brokers***

**Section 371.3** - Records kept by brokers.

**Section 371.7** - Misrepresentation by brokers.

**Section 371.10** - Duties and obligations of brokers.

**Section 371.13** - Accounting.

**Sections 13901, 13904, 14916** - Registration of brokers.

#### ***Sections of Part 371 to Review for Compliance by HHG Brokers***

**Section 371.105** - Using HHG motor carriers with valid USDOT numbers and valid operating authority.

**Section 371.107** - Required information to be displayed by HHG brokers on all advertisements and Internet websites.

**Section 371.109** - Notification to individual shippers motor carriers used by HHG brokers.

**Section 371.111** - Providing individual shippers with required Federal consumer protection information.

**Section 371.113** - HHG brokers providing written estimates to individual shippers.

**Section 371.115** - Agreements between HHG brokers and HHG motor carriers on behalf they provide written estimates.

**Section 371.117** - Policies concerning cancellation, deposits, and refunds to be provided to individual shippers.

***Brokers are also required to be registered with the FMCSA, and are currently issued “MC numbers” only but will be issued USDOT numbers as part of the Unified Registration System (URS) rulemaking.***

#### ***Procedures to follow to determine if any Broker is in Compliance with Section 371.3***

Brokers are required to keep a record of each transaction. These records 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 freight bill number
- Amount of compensation received by the broker for the brokerage service performed and the name of the payer
- Description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer
- Amount of any freight charges collected by the broker and the date of payment to the carrier

Also, the broker ***must*** keep those records for a period of **three years**.

#### ***Procedures to follow to if a Broker is in Violation of Section 371.3***

You should cite the broker for the violation of:

**Section 371.3(a)** – Failure to keep records as required. (Severe Level II violation)

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

A broker shall not perform, or offer to perform, any brokerage service (in advertising), in any name other than in which its registration (USDOT and/or MC number) is issued. A broker shall not directly, or indirectly, represent its operations to be that of a carrier. Any advertising must show the broker status of the operation.

Be sure to review all of the broker's advertising, especially its website examining all webpages from that website, to ensure that it is in compliance.

***Procedures to follow when a Broker is in Violation of Section 371.7***

You should cite the broker for the violation of:

**Section 371.7(a)** - Broker performing or offering to perform any brokerage service in any name other than that in which its registration is issued. (Severe Level II violation).

**Section 371.7(b)** - Broker representing its operations to be that of a carrier. (Severe Level II violation).

**Section 371.7(b)** - Broker failing to show its broker status in its advertising. (Severe Level II violation).

***Procedures to follow in determining that a Broker is in Compliance of Section 371.13***

Brokers that are engaged in any other business (such as also operating as a motor carrier) shall maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Brokers that also operate as motor carriers, and have expenses in common, shall allocate those expenses on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

Examination of broker's financial records including but not limited to Accounts Payable, Accounts Receivable, and Payroll can provide evidence that revenue and expenses are properly or improperly segregated from another business.

*Enhanced Investigative Technique – Interview employees that do customer service working with shippers and determine if they are arranging transportation for the brokerage, and dispatching drivers for the motor carrier during their workday. Determine if those employees are paid by one entity or both the brokerage and the motor carrier for their services.*

*Enhanced Investigative Technique – Request the annual financial statement from the company principal, often s/he will need to obtain it from the company's accountant. Review the financial statement to determine if the finances of the brokerage and motor carrier are comingled causing a violation of 371.13.*

***Procedures to follow when a Broker is in Violation of Section 371.13***

You should cite the broker for the violation of:

**Section 371.13** – Failing to segregate revenues and expenses of the brokerage. (Severe Level II violation).

***Procedures to follow when a Broker is Not Registered with FMCSA and is an Unauthorized Operation***

You should cite the broker for the violation of:

**Section 14916(a)(1)** – Unlawful brokerage activities, unauthorized broker operation (operating without authority). (Severe Level I violation).

***Procedures to follow when a HHG Broker is Not Registered with FMCSA and is an Unauthorized Operation***

You should cite the broker for the violation of:

**Section 13901(primary)/14901(d)(3)(secondary)** – Unauthorized broker operation (operating without authority). (Severe Level I violation).

**Section 14916(a)(1)** – Unlawful Brokerage Activities – Unauthorized broker operation (operating without authority). (Severe Level 1 violation).

■ **Note:** Enforcement for unauthorized HHG brokering results in a mandatory \$25,000 penalty. Citing Unlawful Brokerage Activities is a discretionary option, because enforcement of this section results in

a mandatory \$10,000 penalty. When deciding which section to cite, consider the extent of noncompliance of the errant broker.

***Procedures to follow to determine if a Broker is in compliance of Other Registration Requirements***

**Sections 13904** – All brokers, as a condition of registration, must have an officer that has at least three years of relevant experience or provide satisfactory evidence that its officer(s) have knowledge of rules, regulations, and industry practices.

The officers of a brokerage must be clearly identified, and then a background investigation conducted on those officers to verify that there is at least three years of relevant experience in their employment history. Request copies of résumés or curricula vitae from the officers of the brokerage under investigation and verify the references and work history stated on those documents. Certificates of training or academic degrees can be considered documentation of knowledge of rules, regulations, and industry practices.

***Procedures to follow when a Broker is in Violation of Sections 13904***

You should cite the broker for violation of:

**Section 13904(c) (1)** – Broker failing to employ an officer with at least three years of relevant experience (General violation).

**Section 13904(c) (2)** – Broker failing to employ an officer with knowledge of rules, regulations, and industry practices (General violation).

**Section 13905(c)**

All brokers must renew their USDOT number registration every five years.

***Procedures to follow when a Broker is in Violation of Section 13905(c)***

You should cite the broker for violation of:

**Section 13905(c)** – Failing to renew USDOT registration after five years. (Severe Level II violation).

***Subpart B of Part 371 only applies to HHG Brokers.***

***Procedures to Follow to Determine that an HHG Broker is in Compliance of Section 371.105***

An HHG broker can only arrange transportation for HHG motor carriers that have a valid USDOT number and valid HHG motor carrier authority.

***Procedures to follow when a HHG Broker is in Violation of Section 371.105***

You should cite the HHG broker for the violation of:

**Section 371.105** – Failing to arrange transportation for a HHG motor carrier that has a valid USDOT number and valid HHG motor carrier authority. (Severe Level II violation).

***Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.107***

A HHG broker must prominently display in all its advertisements, and on the home page of its Internet website, the following information:

- The physical location of the HHG brokerage;
- The MC Docket number issued to the HHG brokerage by FMCSA;
- The HHG brokerage is a broker that arranges transportation of HHG by an authorized HHG motor carrier;
- Estimates from the HHG broker are based on rates in HHG motor carrier's tariff; and
- That the HHG motor carrier is required to make its tariff available for public inspection upon a reasonable request.

The HHG broker is in violation of the regulation if any of those elements are missing from any of its advertisements, especially on the home page of its Internet website. If the required information is displayed on pages other than the home page of the Internet website, the HHG broker is not in compliance.

***Procedures to follow when a HHG Broker is in Violation of Section 371.107***

You should cite the HHG broker for the violation of:

**Section 371.107** – HHG broker failing to prominently display the required information on all advertisements including the homepage of its Internet website. (Severe Level II violation).

***Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.109***

HHG brokers are required to provide to all potential individual shippers a list of all authorized HHG motor carriers, including their USDOT and MC Docket numbers, and a statement saying the HHG broker is not a motor carrier authorized by the Federal Government but are only arranging transportation and additional services, if applicable, by an authorized HHG motor carrier. The list of carriers and the statement can be the closing on all emails from the HHG broker to potential shippers. To determine compliance, it is recommended that you request from the HHG broker copies of emails it submitted to potential individual shippers, to ensure the required information was transmitted.

***Procedures to follow when a HHG Broker is in Violation of Section 371.109***

You should cite the HHG broker for the violation of:

**Section 371.109** – HHG broker failing to provide required information to potential individual shippers. (Severe Level II violation).

***Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.111***

HHG brokers must provide to potential individual shippers Federal Consumer Protection Information, consisting of two publications:

- “Ready to Move – Tips for a Successful Interstate Move”; and
- “Your Rights and Responsibilities When You Move”

HHG brokers have the option of providing hard copies of the publications to disseminate to potential individual shippers, or installing a hyperlink on their Internet website to the FMCSA website containing the publications. You should anticipate finding the hyperlink when you examine the HHG broker’s Internet website for compliance of other regulations. Check the hyperlink to ensure it works.

***Procedures to follow when a HHG Broker is in Violation of Section 371.111***

You should cite the HHG broker for the violation of:

**Section 371.111** – HHG broker failing to provide potential individual shippers with required Federal consumer protection information. (General violation).

***Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.113***

An HHG broker can provide estimates of transportation and accessorial charges to individual shippers on behalf of an authorized HHG motor carrier. The estimates must be in writing and based on a physical survey that can be conducted by either the HHG broker or HHG motor carrier, providing that either the HHG broker or motor carrier is within a 50 mile radius of the HHG shipment’s point of origin. 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 arranged to move those HHG shipments. When determining compliance, it is recommended that you examine copies of written estimates prepared by the HHG broker and determine if physical surveys were done, the exemption from the physical surveys was valid, or if the waivers were done properly.

*Enhanced Investigation Technique – create a sample of brokered transactions, review the cost estimates, determine which HHG motor carriers moved the shipments, contact those HHG motor carriers and review their tariffs to determine if the estimates submitted to the shippers were on file in those tariffs.*

***Procedures to follow when a HHG Broker is in Violation of Section 371.113***

You should cite the HHG broker for the violation of:

**Section 371.113** – HHG broker failing to provide an estimate as required. (Severe I violation).

**Section 371.113(b)** - HHG broker failing to provide an estimate based on the carrier's tariff. (Severe Level I violation)

***Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.115***

Before an HHG broker can provide written estimates on behalf of an HHG motor carrier, it must have a written agreement as required by the regulation, 375.409. To determine compliance, you must examine the written agreements between the HHG broker and the HHG motor carriers it does business with. Make sure that the agreement is valid.

***Procedures to follow when a HHG Broker is in Violation of Section 371.115***

You should cite the HHG broker for the violation of:

**Section 371.115** – HHG broker providing estimates on behalf of a HHG motor carrier without a written agreement. (Severe Level II violation).

***Procedures to follow to determine that an HHG Broker is in Compliance of Section 371.117***

A HHG broker must prominently display on its Internet website, and in the agreements with individual shippers, its policies concerning cancellation of shipments, deposits on shipments, and refund of deposits on shipments. The HHG broker must have records of all cancellations of shipments and refunds of deposits on shipments. The records of refunds must document that the individual shipper cashed or deposited the refund.

***Procedures to follow when a HHG Broker is in Violation of Section 371.117***

You should cite the HHG broker for the violation of:

**Section 371.117(a)** – Failure to display cancellation, deposit, and refund policies on its Internet website or agreements with individual shippers. (Severe Level II violation).

**Section 371.117(b)** – Failure to maintain records of canceled shipments and refunds to individual shippers. (Severe Level II violation).

**4.3.1.3.2 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**

<b>CITATION</b>	<b>TYPE</b>	<b>DESCRIPTION</b>
<b>371.3</b>	<b>Severe Level II</b>	Failure to keep records as required. <b>Number discovered: One for each record discovered not in compliance or missing.</b>

371.7(a)	Severe Level II	Broker performing or offering to perform any brokerage service in any name other than that in which its registration is issued. <b>Number discovered: One for each brokered transaction when the broker was performing or offering to perform any brokerage service in any name other than that in is registered.</b>
371.7(b)	Severe Level II	Broker representing its operations to be that of a carrier. <b>Number discovered: One for each brokered transaction when the broker misrepresented itself as a carrier.</b>
371.7(b)	Severe Level II	Broker failing to show its broker status in its advertising. <b>Number discovered: One for each advertisement discovered where the broker does not show its broker status.</b>
371.13	Severe Level II	Failing to segregate revenues and expenses of the brokerage. <b>Number discovered: One for each financial account discovered with co-mingled revenues.</b>
14916(a)/13901	Severe Level I	Unlawful Brokerage Activities (operating without authority). <b>Number discovered: One for the required registration.</b>
13904(c)(1)	General	Broker failing to employ officer with at least three years of relevant experience. <b>Number discovered: One for each officer without three years of experience.</b>
13904(c)(2)	General	Broker failing to employ officer with knowledge of rules, regulations, and industry practices. <b>Number discovered: One for each officer without evidence of knowledge of rules, regulations, and industry practices.</b>
14916(a)/387.307(a)	Severe Level I	Unlawful Brokerage Activities (property broker operating without minimum financial security – occurred prior to 10/01/2013) <b>Number discovered: One for inadequate financial security</b>
14916(a)/387.307(b)	Severe Level I	Unlawful Brokerage Activities (HHG broker operating without minimum financial security – occurred prior to 10/01/2013) <b>Number discovered: One for inadequate financial security</b>
13901/14901(d)(3)	Severe Level I	Unauthorized HHG broker operation (operating without authority). <b>Number discovered: One for the required registration.</b>
371.105	Severe Level II	Failure to use HHG motor carriers with valid USDOT numbers and valid operating authority. <b>Number discovered: One for each HHG motor carrier discovered without a valid USDOT number or operating authority.</b>
371.107	Severe Level II	Failure to display required information on all advertisements and Internet websites. <b>Number discovered: One for each advertisement or Internet website that does not display required information.</b>
371.109	Severe Level II	HHG broker failing to notify individual shippers of motor

		carriers it used. <b>Number discovered: One for each brokered transaction where an individual shipper was not notified of the HHG motor carriers the HHG broker used.</b>
371.111	General	Failure to provide required Federal consumer protection information. <b>Number discovered: One for each brokered transaction where an individual shipper did not receive the required Federal consumer protection information.</b>
371.113	Severe Level I	Failure to provide a written estimate as required. <b>Number discovered: One for each brokered transaction where the written estimate was not provided as required.</b>
371.113(b)	Severe Level I	Failure to provide a written estimate based on the carrier's tariff. <b>Number discovered: One for each brokered transaction where the written estimate was not based on the carrier's tariff as required.</b>
371.115	Severe Level I	Providing an estimate to an individual shipper on behalf of a HHG motor carrier without a written agreement with that motor carrier. <b>Number discovered: One for each brokered transaction where the broker did not have a written agreement with a HHG motor carrier.</b>
371.117(a)	Severe Level II	Failure to display cancellation, deposit, and refund policies on its Internet website or agreements with individual shippers. <b>Number discovered: One for each Internet website or written agreement with an individual shipper discovered not displaying cancellation, deposit, and refund policies.</b>
371.117(b)	Severe Level II	Failure to maintain records of canceled shipments and refunds to individual shippers. <b>Number discovered: One for each missing record of a canceled shipment and refund to individual shipper.</b>

### ***Additional Instructions***

Until the CAPRI software has been upgraded to fully accommodate broker investigations follow these instructions.

In Part A, Identification Section, enter the assigned USDOT number. In the Carrier/Shipper Operation Type Section enter "Interstate Non-HM Carrier", and under "Classification" enter "Authorized for Hire" and "Other". Enter the assigned MC Docket number and under other classification, enter "BROKER". In the Cargo/HM Section, input the selected cargo categories that the broker arranged transportation for, and in the Driver/Vehicle Section enter one truck and one driver. Check off "No Inspections" and "No Accidents" in the Performance Section. Completions of the Address and Miscellaneous sections are done the same way as they are in other investigations.

Recommendations will be customized. In the General Section of Part C, enter "BROKER" in the first special study code and "HHG" in the second special study code only if the broker reviewed is an HHG broker. In the Remarks Section of Part C, enter above the Part C Template, "This investigation report was conducted on a broker, and due to limitations of the current version of the software "Interstate Non-HM Carrier", one truck and one driver were reported in order to process. The subject of this review, an

(authorized or unauthorized) broker is not a motor carrier, does not operate trucks or employ drivers. Corrections were made to the hard copy Part A section of the investigation report to reflect that.”

After entering the data into the CAPRI software, do not upload the investigation report. Print a hard copy put a single line through Interstate Non-HM Carrier and writes in “Interstate Broker”, where the truck and driver information was reported. Initial each correction. Scan the copy with the corrections into a PDF. Submit the PDF to the Division Office. Ensure that the copy of the report given to the broker has the same corrections as the initialed copy submitted to the Division Office.

When the PDF of a completed broker investigation report is submitted to the Division Office it will be reviewed to ensure accuracy of the data reported. After completion of the review, the investigation report is submitted into the Electronic Document Management System (EDMS) instead of uploading to the Motor Carrier Management Information System (MCMIS). The EDMS has special folder for broker investigations. If the completed investigation is included in 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**

###### ***FMCSA's Jurisdiction in Regards to For-hire Transportation of HHG by Motor Carriers***

In 1999, Congress authorized FMCSA to regulate HHG carriers engaged in interstate operations in the Motor Carrier Safety Improvement Act (MCSIA) of 1999. The HHG Consumer regulations are included in 49 CFR Part 375 of the FMCSR and the statutes are found in the ICC Termination Act. FMCSA is authorized to investigate interstate for-hire household motor carriers to ensure compliance and take enforcement when necessary.

###### ***Requirements for Complying with 49 CFR Part 375***

FMCSA requires that all motor carriers, who transport HHG as a for-hire motor carrier in interstate commerce beyond the commercial zone, are registered and have submitted the proper filings. HHG motor carriers, who operate for-hire in interstate commerce (beyond their commercial zone) transporting HHG, are subject to complying with Part 375 (i.e., providing and maintaining a tariff, estimates, orders for services, bills of lading, weight receipt, etc.)

###### ***Reviewing Agent Agreements***

###### ***Regarding Agents and Requirements to Having an Agent***

A HHG motor carrier is allowed to utilize the services of a Prime Agent and/or Emergency or Temporary Agent. These agents are permitted to perform services on behalf of the HHG motor carrier. The HHG motor carrier must obtain and maintain a written agreement with its Prime Agents. The agreement should be retained for at least 24 months following the date of termination of each agreement.

■ **Note:** The HHG motor carrier’s responsibility for acts or omissions by its agents is stated in 49 U.S.C. 13907.

###### ***Procedures to Follow to Determine the HHG Motor Carrier’s Compliance with Part 375.205***

During the opening interview, you should have discussed the use of prime and/or emergency/temporary agents. Request a copy of the written agreement between the carrier and its prime agent(s) used within the past 2 years.

###### ***Procedures to Follow if a HHG Motor Carrier Uses Prime or Emergency/Temporary Agents and it Does Not Comply with the Requirements as Outlined in Part 375.205***

You should cite the HHG motor carrier for:

- **Section 375.205(b)** - Failing to have a written and signed agency agreement in effect with your Prime Agent(s). (General violation)
- **Section 375.205(c)** - Failing to retain a copy of the written agreement between you and your Prime Agent for at least 24 months following the date of termination of each agreement. (General violation)

### ***Reviewing Liability of Carriers Under Receipts and Bills of Lading***

#### ***Definition of Liability of Carriers Under Receipts and Bills of Lading***

A carrier or group of carriers may petition to modify, eliminate, or establish rates for the transportation of HHG under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement. Unless the carrier receives a written waiver, a motor carrier's maximum liability for HHG that are lost, damaged, destroyed, or otherwise not delivered to the final destination, is an amount equal to the replacement value of such goods. The released rates shall not apply to the transportation of HHG by a carrier, unless the liability of the carrier for the full value of such HHG is waived, in writing, by the shipper.

#### ***Procedures to Determine if the HHG Motor Carrier is in Compliance with Part 375.201***

During the opening interview, you should discuss the HHG motor carrier's policy and insurance requirements, as it relates to their liability for loss and damage to goods accepted from an individual shipper.

#### ***Procedures to Follow if a HHG Motor Carrier Fails to Comply with the Requirements Contained in Part 375.201***

You should cite the HHG motor carrier for:

- Section 375.201(a)/U.S.C. 14706(a) - Failing to provide loss of damage during the performance of any transportation of household goods and related services identified on the bill of lading. (Severe Level I violation).
- Section 375.201(b)/14706(f)(2) - Failing to provide liability for household goods that are damaged, destroyed, or otherwise not delivered to the final destination in an amount equal to the replacement value of the household goods. (Severe Level I violation).
- Section 375.201(c)/14706(f)(3) - Failing to maintain a copy of the written waiver from the shipper for the liability of the full value of the household goods. (Severe Level II violation).
- Section 375.201(d) - Failing to issue a copy of the insurance policy or other appropriate evidence of insurance. (Severe Level II violation).
- Section 375.201(e) - Failing to disclose in a clear and concise manner, the limits of liability to the individual shipper. (Severe Level II violation).

### ***Reviewing HHG Advertisements***

#### ***Definition of an Advertisement and its Requirements***

An advertisement is any means of communication to the general public in connection with an offer or sale of any interstate HHG transportation services. This includes written or electronic database listings of the HHG motor carrier's name, address and telephone number on Internet websites. This excludes listings of the motor carrier's name, address and telephone number in a telephone directory or similar publication. Listings in telephone directories (i.e., Yellow Pages, Donnelly Directories, Yellow Book, etc.) are not considered advertisements, if they only identify the motor carrier's name, address and telephone number. Section 375.207(b) requires all HHG motor carriers, and their agents, to include, in every advertisement:

- The name or trade name of the HHG motor carrier under whose operating authority the advertised service will originate; and
- The USDOT number assigned by the FMCSA. Section 375.207(c) requires all HHG motor carriers to display the assigned USDOT number in a specific manner:
  - The USDOT number must be displayed as U.S. DOT No. (assigned number).

#### ***Procedures to Determine if the HHG Motor Carrier is in Compliance with 375.207***

■ **Note:** Investigator should research the motor carrier's Internet website and advertisements in telephone directories prior to arriving at the motor carrier's PPOB. Obtain a copy of any hard copy advertisements. Obtain a printout of any electronic advertisements (i.e. motor carrier's pages for its Internet website). Obtain any advertisements made by a Broker on behalf of the carrier. Obtain any advertisements made by an Agent for the motor carrier. Review the advertisement(s) for compliance.

If you discover that a HHG carrier is using deceptive advertising on its website, the most common method of advertising, you must capture *each page* of the website, as evidence. When you capture the web page using a "screenshot" (making a copy of the web page as it appears on the screen of your computer), you must document the date captured, and the URL address, on the screenshot or series of screenshots.

#### ***Procedures to Follow if the HHG Motor Carrier's Advertisements Do Not Comply with the Requirements as Outlined in Part 375.207***

You should cite the HHG motor carrier for violation of:

- **Section 375.207(a)** - Providing false, misleading or deceptive information in advertisements. (Severe Level I violation).
- **Section 375.207(b)(1-2)** (naming the appropriate section) - Failing to include and not require agents to include in all advertisements for all services required information. (General violation).
- **Section 375.207(c)** - Failing to display the USDOT number in the prescribed manner. (General violation).

### ***Reviewing Tariffs***

#### ***Federal Statutes that Apply to Tariffs***

The USDOT Surface Transportation Board (STB) has general jurisdiction of tariff requirements. FMCSA has the jurisdiction to enforce the requirements for tariffs in 49 U.S.C. 13702. Section 1310.2(a) requires that tariffs be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to shipments transported by the HHG motor carrier. Section 13702 requires a tariff for the interstate transportation of HHG, that an HHG motor carrier cannot charge a rate not specified in a tariff, and that a HHG motor carrier must make its tariff available for inspection upon a reasonable request.

■ **Note:** If during your investigation, you discover that the motor carrier's tariff is not in full compliance of Section 1310.2(a), you should consult with your supervisor, who should determine if further review of the motor carrier's tariff by the STB is necessary.

#### ***Reasons Why Not Having a Tariff is a Significant Violation***

The tariff is the HHG motor carrier's legal basis for the charges it assesses for transporting and handling HHG shipments. If the HHG motor carrier does not have a tariff in effect, it has no legal basis for collecting its transportation-related charges. 49 U.S.C. Section 14903(a) provides for a civil penalty of not more than \$100,000.00 per violation, and possible criminal action, for failing to have a tariff and/or not assessing charges, as provided in the HHG motor carrier's tariff.

**Note:** Request and review a copy of the motor carrier's tariff. If the motor carrier informs you that they have an electronic tariff (contained in software), then they must provide a hard copy that can be examined. The motor carrier must have a copy of its tariff available for inspection by FMCSA or any

shipper upon a reasonable request. In the absence of a hard copy of the tariff, the Investigator can request that the motor carrier download pertinent data from the software to determine if the motor carrier is charging accordingly. If the motor carrier cannot provide a hard copy of its tariff for inspection, but does have its tariff contained in software, it is in violation of 49 U.S.C. 13702(C)(1).

#### ***Areas to Review When Confirming Tariff Compliance***

FMCSA's primary concern in regards to the HHG tariff compliance is to determine if:

- All charges for transportation and other services are included in the HHG motor carrier's tariff. Other service charges could include provisions for: accepting credit cards, selling additional insurance coverage for loss and damage to the shippers' HHG, and accessorial items and services, such as packing and unpacking materials. (Carriers also must identify whether or not they would provide binding estimates in accordance with 375.403.)
- The tariff can be based upon weight, mileage, hourly rate or volume (e.g., cubic feet), provided it's identified in the carrier's tariff. If the tariff is based on cubic feet, there should be a conversion table for determining the volume of the various HHG items to weight conversions.
  - **Note:** You should compare the rates and charges identified on the Orders for Service and bills of lading, in order to verify if the rates and charges comply with the tariff.

#### ***Procedure to Follow if the HHG Motor Carrier Has No Tariff***

You should cite the HHG motor carrier for violation of:

- **49 U.S.C. Section 13702(a)(2)** - Charging a rate without a tariff. (Severe Level I violation).

#### ***Procedure to Follow if the HHG Motor Carrier Does Not Have a Tariff Available for Inspection***

You should cite the HHG motor carrier for violation of:

- **49 U.S.C. Section 13702(c)(1)** – Failure to make tariff available for inspection. (Severe Level I violation).

#### ***Procedure to Follow if the HHG Motor Carrier Fails to Charge its Applicable Tariff Rate***

You should cite the HHG motor carrier for violation of:

- **§ 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.

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.

#### ***Procedures to Follow if it is Discovered that the HHG Motor Carrier's Tariff is Not in Compliance (Form & Manner)***

You should cite the HHG motor carrier for violation of:

- Section 13702(a)(2) - Charging a rate without a tariff. (Severe Level I violation).
- Section 13702(a)(2)(A-C) - Failing to provide the minimum required contents in the tariff as prescribed. (Severe Level II violation).
- Section 13702(c)(1) - Failing to make tariff available for inspection. (Severe Level II violation).
- Section 375.221(a) - Failing to identify a reference in the tariff for the acceptance of charge or credit cards for payment. (Use when charge or credit cards are not referenced in the tariff as an acceptable method of payment and it was discovered that charge and/or credit cards were accepted). (Severe Level II violation).

- Section 375.221(d) - Failing to identify in the tariff the charge or credit card plans you participate in. (Use when charge or credit cards are identified as an acceptable method of payment, but the plan is not described and it was discovered that charge and/or credit cards were accepted). (Severe Level II violation).
- Section 375.303(c)(1) - Failing to furnish proof of insurance coverage. (Severe Level II violation).
- Section 375.303(c)(6) - Failing to provide a provision in the tariff for selling, offering to sell, or procuring liability insurance coverage. (Severe Level II violation).

### *Reviewing the Arbitration Program*

#### *Definition of Arbitration and Why a HHG Motor Carrier Must Participate in a Dispute Settlement Program*

As a condition for registration (operating authority), HHG motor carriers are required by Section 375.211(a) and U.S.C. 14708(a) to offer arbitration as a means of settling claims for damage or loss to the HHG transported and disputes about additional motor carrier charges collected at delivery.

Prior to transporting a HHG shipment, the HHG motor carrier must provide shippers with information advising of the availability of neutral arbitration, including:

A concise, easy to read, accurate summary of the arbitration procedures

Any applicable costs

A disclosure of the legal effects, if they elect to use arbitration

The arbitration that is offered cannot provide any special advantage to the HHG motor carrier when shippers that reside at a place distant from the carrier's PPOB file claims.

The HHG motor carrier must promptly provide shippers with the necessary arbitration forms and information upon request.

The arbitrator must be independent of the parties in the dispute and capable of resolving disputes fairly and expeditiously.

Shippers cannot be required to pay more than 50 percent of the charges for initiating an arbitration proceeding.

The motor carrier cannot require a shipper to agree to use arbitration prior to the time that a dispute arises.

The arbitrator must provide a decision in a dispute within 60 days.

The arbitration is binding for claims of \$10,000 or less, if the individual shipper requests the arbitration.

If the claim is more than \$10,000, the decision of the arbitrator is binding, if the motor carrier agrees to use arbitration.

#### *Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Arbitration Program*

You should cite the motor carrier for violation of:

- **Section 375.211(a)/14708(a)** - Failing to participate in an arbitration program. (Severe Level I violation).
- **Section 375.211(a)(1-11)** (naming the appropriate section) - Using an arbitration program that does not meet the requirements of Section 375.211. (Severe Level II violation).
- **Section 375.211(b)** - Failing to produce and distribute a concise, easy to read, accurate summary of your arbitration program. (Severe Level II violation).
- **Section 375.211(b)(4)** - Failing to provide its shippers with a concise, easy to read, accurate summary of your arbitration program. (Severe Level II 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 provide the pamphlet "Ready to Move." (Severe Level I violation).

#### ***"Your Rights and Responsibilities When You Move" Booklet***

All motor carriers are required to publish the booklet "Your Rights and Responsibilities When You Move" as it appears in Appendix A of Part 375, as required by Section 375.213(b)(1). Prior to the execution of an Order for Service for a shipment of HHG, Section 375.213(b)(1) requires all HHG motor carriers to provide prospective shippers with a copy of the booklet "Your Rights and Responsibilities When You Move."

#### ***Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Requirements to Produce and Distribute "Your Rights & Responsibilities When You Move" Booklet***

You should cite the motor carrier for violation of:

- **Section 375.213(c)** - Failing to produce the booklet "Your Rights and Responsibilities When You Move." (Severe Level I violation).
- **Section 375.213(c)(1-3)** (naming the appropriate section) - Failing to produce the booklet "Your Rights and Responsibilities When You Move" that meets the requirements of Section 375.213(b)(1-3). (General violation).
- **Section 375.213(b)(1) / 14104(a)(2)** - Failing to provide shippers with the booklet "Your Rights and Responsibilities When You Move." (Severe Level II violation).

- **Note:** The State version of the moving pamphlet is not acceptable, neither is a reference to the Internet (including the motor carrier's website and FMCSA's website).

### ***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 four of the following items:

- A communications system allowing individual shippers to communicate with the PPOB by telephone
- A telephone number
- A clear and concise statement about who must pay for complaint and inquiry telephone calls
- A written or electronic record system for recording all inquiries and complaints received from an individual shipper by any means of communication

### ***Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Complaint & Inquiry-Handling Program***

You should cite the motor carrier for violation of:

- Section 375.209(a) - Failing to establish a complaint & inquiry-handling program. (General violation).
- Section 375.209(b)(1-4) (naming the appropriate section) - Producing a summary of your complaint & inquiry-handling program that does not meet the requirements of Section 375.209(b)(1-4). (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)(5) - Failing to provide shippers with a concise, easy to read, accurate summary of your complaint & inquiry-handling program. (General violation).
- Section 375.213(b)(5)(i) - Failure to provide the main telephone number the shipper may use to communicate with you. (General violation).
- Section 375.213(b)(5)(ii) - Failure to provide a clear and concise statement as to who must pay for telephone calls. (General violation).

### ***Reviewing Shipping Documents***

#### ***Types of Transportation Documents to Request and Review to Determine Compliance with Part 375***

You should request trip records that include:

- Estimates
- Orders for Service
- Inventories
- Bills of lading
- Weight tickets (if charges are based on weight)
- Freight invoice payment records, including copies of checks and credit card slips contained in the individual trip records. Bills of lading can also be checked to determine if they contain notations of cash payments received.

### ***Sampling***

#### ***Determining Sample Size for Reviewing and Documenting Carrier Operations***

In general, you will look at shipping documents for jurisdictional movements that took place during the past 12 months. There may be extenuating circumstances during the investigation of complaints that might require reviewing documents for jurisdictional movements taken place beyond the past 12 months; when that occurs, document the reason why in Part C of the CR.

When reviewing HHG motor carrier records, you should use the following table to sample and review an appropriate number of for-hire interstate shipments transported beyond the commercial zone:

**Number of Shipments Transported by HHG Motor Carrier in Previous 365 Days Subject to Part 375**

<b>Number of Shipments Completed</b>	<b>Number of Shipment Documents to Review</b>
1-10	All
10-300	10
300 or more	15

- **Note:** A complete shipping document should have the estimate (binding or non-binding), order for service, inventory, bill of lading, and in some cases, weight tickets.

### ***Reviewing Moving Estimates (\$)***

#### ***Definition of Estimate and its Requirements***

Estimates describe the shipment and all services to be provided. It describes the approximate charges the shipper would be expected to pay. HHG motor carriers are required to estimate the total charges for each shipment transported. HHG motor carriers are also required to provide a copy of the written estimate of the total charges to each shipper. Estimates must be retained for each move performed for at least one year from the date the estimate was prepared, and kept as an attachment to be made an integral part of the bill of lading contract.

#### ***Requirement of HHG Motor Carriers to Conduct a Physical Survey Before Providing a Written Estimate to Individual Shippers***

Section 375.401(a) and 14104(b)(1)(A) require the HHG motor carrier to conduct a physical survey before providing a written estimate based on the physical survey unless:

- The HHG are located beyond a 50-mile radius of the location of the HHG motor carrier agent preparing the estimate.
- The individual shipper elects to waive, in writing, the physical survey.

#### ***Procedures to Follow to Determine that HHG Carrier Does Not Comply with the Physical Survey Requirements***

- Section 375.401(a)/14104(b)(1)(A) - Failing to prepare a physical survey when required. (Severe Level II violation).
- Section 375.401(a)(2)(i) - Failing to produce a written copy of a physical survey waiver. (General violation).
- Section 375.401(b)(2)(ii) - Failing to produce a signed written copy of a physical survey waiver. (Severe Level II violation).
- Section 375.401(b)(2)(iii)/14104(b)(1)(B) - Failing to retain a copy of the waiver agreement as an addendum to the bill of lading. (Severe Level II violation).

#### ***Types of Estimates HHG Motor Carriers are Allowed to Offer Shippers***

Section 375.401(b)/14104(b) allow HHG carriers to provide one of two types of estimates to prospective shippers:

- **Binding** - The mover guarantees the price for all agreed upon transportation and transportation related services prior to the move; (“Guarantee,” “Not to Exceed,” “Flat Rate” estimates are not binding estimates) or
  - **Non-binding** - The mover provides a reasonably accurate estimated price based on weight or volume, and any accessorial services required (as prescribed in the motor carrier’s tariff).
- **Note:** Section 375.403 and 14104(b)(1)(C)(ii) describe the requirements for providing binding estimates. Section 375.405 and 14104(b)(1)(C)(iii) describe the requirements for providing non-binding estimates.

#### ***Determining if a HHG Motor Carrier's Estimates Comply with the Requirements of Section 375.401, 375.403 & 375.405 and 14104(b)***

You should review the written estimates associated with each shipment reviewed during the compliance review.

- **Note:** Carefully review documents labeled as “Revised Estimates” or “Rescission of Original Estimate,” to determine if these documents are valid. Sections 375.403 and 375.405 require that these documents must show what caused the increase in cost, accurately and in detail. If these documents fail to show what caused the increase in cost, they are invalid and should not be considered the true estimate.

***Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Binding Estimate Requirements***

You should cite the HHG motor carrier for violation of:

- Section 375.401(b)(1)/14104(b)(1)(A) - Failing to prepare a written binding estimate for each move performed. (Severe Level II violation).
- Section 375.401(c) - Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. (Severe Level II violation).
- Section 375.401(g) - Failing to ensure a company representative and shipper sign the estimate of charges. (NOTE: Estimates provided via the Internet must be signed.) (Severe Level II violation).
- Section 375.401(h) - Failing to amend the estimate by mutual agreement with you and the shipper prior to loading the shipment. (Severe Level II violation).
- Section 375.403(a)(1-11) (noting the appropriate sections) - Failing to prepare a binding estimate in the form and manner prescribed.
  - **Note:** DO NOT USE THIS CITE FOR 375.403(a)(6); 375.403(a)(7) OR 375.403(a)(10). (General violation).
- **Section 375.403(a)(6)** - Failing to reaffirm or negotiate the written binding estimate listing the additional household goods or services. (Severe Level I violation).
- **Section 375.403(a)(7)** - Collecting more than the original amount of the binding estimate. (Severe Level I violation).
- **Section 375.403(c)** - Failing to retain a copy of the binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading. (Severe Level II violation).

***Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Non-Binding Estimate Requirements***

You should cite the HHG motor carrier for violation of:

- Section 375.401(b)(2) - Failing to prepare a written non-binding estimate for each move performed. (Severe Level II violation).
- Section 375.401(c) - Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. (Severe Level II violation).
- Section 375.405(b)(1) - Failing to provide an individual shipper with a written explanation of the formula used to calculate the conversion of a volume based estimate to weight. (General violation).
- Section 375.401(d) - Failing to provide a reasonably accurate non-binding estimate of the approximate cost the individual shipper should expect to pay for the transportation and services of such shipment.
- Section 375.401(g) - Failing to ensure a company representative and shipper sign the estimate of charges.
- Section 375.405(d) - Failing to retain a copy of the non-binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading. (Severe Level II violation).
- Section 375.405(b)(1-10) (noting the appropriate sections) - Failing to prepare the non-binding estimate in the form and manner prescribed.
  - **Note:** DO NOT USE THIS CITE FOR 375.405(b)(7) OR 375.405(b)(8). (General violation).
- **Section 375.405(b)(7)** - Failing to reaffirm or negotiate the written non-binding estimate listing the additional HHG or services. (Severe Level I violation).

- **Section 375.405(b)(8)** - Collecting more than 110 percent of the original non-binding estimate at destination. (Severe Level I violation).
- **Section 375.405(c)** - Failing to enter estimated charges on Orders for Service and bill of lading. (General violation).

### ***Reviewing Order for Service***

#### ***Definition of an Order for Service and its Requirements***

The Order for Service shows all of the services that will be performed by the HHG motor carrier and it should contain minimum information, as provided by Section 375.501(a). Prior to transporting a shipment of HHG, Section 375.501 requires every HHG motor carrier to prepare a written Order for Service. The HHG motor carrier must provide a signed and dated copy of the Order for Service. A copy of the Order for Service must be retained for one year as an integral part of the bill of lading. The motor carrier has an option of entering the valuation statement on the Order for Service or the bill of lading.

■ **Note:** Addendums to the Orders for Service are not acceptable.

#### ***Procedures to Follow a HHG Motor Carrier Does Not Comply with the Orders for Service Requirements***

You should cite the HHG motor carrier for violation of:

- Section 375.501(a) - Failing to prepare a written Order for Service for each move performed. (Severe Level II violation).
- Section 375.501(a)(1-15) (noting the appropriate sections) - Failing to prepare the Orders for Service in the form and manner prescribed. (General violation).
- Section 375.501(c) - Failing to ensure a company representative and shipper date & sign the Orders for Service. (General violation).
- Section 375.505(e) - Failing to provide the individual shipper the opportunity to rescind the order for service without any penalty for a 3-day period after the shipper signs the order for service if shipper schedules the shipment to be loaded more than three-days after signing the order. (Severe Level II violation).
- Section 375.501(f) - Failing to amend Orders for Service, and upon mutual agreement with the individual shipper, prior to loading shipment. (Severe Level II violation).
- Section 375.501(g) - Failing to retain a copy of the Orders for Service for each move performed for one year from the date the Orders for Service was prepared, as an integral part of the bill of lading. (Severe Level II violation).
- Section 375.501(h) - Failing to place the valuation statement on the Orders for Service if not entered in the bill of lading. Note: Placing the improper valuation statement on the bill of lading or Orders for Service is considered not placing a statement at all. (General violation).

### ***HHG Inventory Sheet***

#### ***Definition of HHG Inventory Sheet and its Requirements***

An inventory sheet is a detailed listing of all of the shipper's HHG that will be, or have been, transported by the HHG motor carrier. The inventory shows the condition of the HHG at time of pick-up and delivery. Section 375.503(a) requires that all HHG motor carriers prepare a written, itemized inventory for each shipment of HHG it transports. Inventories must be signed at origin and retained for one year from the date it was prepared as an integral part of the bill of lading.

#### ***Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Requirements of an Inventory as Outlined in Part 375.503***

You should cite the HHG motor carrier for violation of:

- Section 375.503(a) - Failing to prepare a written inventory for each shipment of HHG transported. (Severe Level II violation).
- Section 375.503(a) - Failing to prepare an inventory in the form and manner prescribed. (General violation).
- Section 375.503(b) - Failing to prepare the inventory before or at the time of loading in the vehicle for transportation in a manner that provides the shipper the opportunity to observe and verify the accuracy of the inventory if he or she so requests. (General violation).
- Section 375.503(c) - Failing to ensure a company representative and shipper sign an inventory. (General violation).
- Section 375.503(e) - Failing to retain a copy of an inventory for each move performed for one year from the date the inventory was prepared, as an integral part of the bill of lading. (Severe Level II violation).

***Procedures to Follow if a HHG Motor Carrier Does Not Prepare an Inventory with the Required Information***

You should identify the specific information that is missing and reference the specific part contained in Section 375.503(a) - Failing to prepare an inventory in the form and manner prescribed. (Record keeping violation).

***Procedures to Follow if a HHG Motor Carrier Does Not Retain Copies of Written Inventories as Required***

You should cite the HHG motor carrier for Section 375.503(e) - Failing to retain written copies of inventories as required. (Record keeping violations).

***Review of Bills of Lading and Receipts***

***Definition of a Bill of Lading and its Requirements***

Section 375.505(a) requires every HHG motor carrier to prepare a bill of lading for each HHG shipment it transports. The bill of lading is the contract for services between the HHG motor carrier and shipper. A copy of the bill of lading must be given to the shipper before loading the shipment. The bill of lading must include minimum information as provided by Section 375.505(b). The bill of lading must accompany the shipment at all times. A copy of the bill of lading must be retained for one year from the date it's created for each move performed. In addition, the valuation statement must be entered on the bill of lading, if it's not entered on the Orders for Service.

🚩 **Note:** Refer to the [Tariff](#), [Orders for Service](#), and [Bill of Lading](#) sections.

***Procedures to Follow to Determine that a HHG Motor Carrier Does Not Comply with the Requirements of a Bill of Lading as Outlined in Part 375.505***

You should cite the HHG motor carrier for:

- Section 375.505(a) / 373.101 - Failing to prepare a bill of lading for each move performed. (Severe Level II violation).
- Section 375.505(b)(1-14) (note the appropriate sections) - Failing to prepare a bill of lading in the form and manner prescribed. (Severe Level II violation).
- Section 375.505(c) - Failing to ensure the bill of lading accompany the shipment at all times (to be cited mainly during roadside inspection).
- Section 375.505(d) - Failing to retain a copy of a bill of lading for each move performed for one year from the date it's created. (Severe Level II violation).

- Section 375.505(e) - Failing to place the valuation statement on the bill of lading if not entered in the Orders for Service. Note: Entering the improper valuation statement on the bill of lading or Orders for Service is considered not placing a statement at all. (General violation).

### ***Reviewing Weighing of the Shipment***

#### ***Weighing the Shipment and its Requirements***

Every HHG motor carrier transporting HHG on a non-binding estimate shall determine the weight of each shipment transported, prior to the assessment of any charges, dependent on the shipment weight as provided by Section 375.507(a). Section 375.509 provides the methods for weighing a HHG shipment and the minimum information required to be included on the weight ticket. Generally, the weight shall be obtained on a scale meeting the definition of a certified scale as provided in Section 375.103. Carrier must not refuse to allow shippers to view the original weigh or re-weigh of their shipment. If a shipper elects not to observe a weighing, it's presumed they have waived that right. If a shipper elects not to observe the re-weighing of their shipment, the shipper must waive that right in writing. The motor carrier must obtain a separate weight ticket for each weighing, unless both weighing are performed on the same scale. The original weight tickets must be retained for each shipment weighed as part of the file.

#### ***Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Weighing the Shipment Requirements as Outlined in Part 375.507***

You should cite the HHG motor carrier for violation of:

- Section 375.507(a) - Failing to weigh a shipment for each move transported on a non-binding estimate. (Severe Level I violation).
- Section 375.507(b) - Failing to weigh shipments on a certified scale. (Severe Level I violation).
- Section 375.513 - Refusing to allow shippers to view the re-weigh of their shipment. (Severe Level I violation).
- Section 375.515(b) - Failing to obtain a written waiver from shippers who waive their right to observe the re-weighing of their shipment. (Severe Level II violation).
- Section 375.517- Failing to base the freight bill charges on the re-weigh weight. (General violation).
- Section 375.519(a)(1-6) (note the appropriate section) - Failing to prepare a weight ticket in the form and manner prescribed. (Severe Level I violation).
- Section 375.519(a) - Failing to obtain a separate weight ticket for each weighing, if not in accordance with Part 375.519(b). (Severe Level I violation).
- Section 375.519(c) - Failing to retain the original copy of the weight tickets for each shipment weighed as part of the file. (Severe Level I violation).
- Section 375.519(d)/390.35 - Making, or causing to make fraudulent or intentionally false weight tickets and/or reproducing fraudulent weight tickets. Part 390.35 should be entered as secondary. (Severe Level I violation). Note: If this violation is discovered, consult with your supervisor about contacting the OIG.

*Enhanced Investigative Technique - While examining certified weight tickets determine if the vehicle had a gross weight over 26001 pounds then determine if the driver had the appropriate class of license in compliance of Part 383.*

#### ***Determining that a HHG Carrier has Failed or is Failing to Relinquish a HHG Shipment (Holding a Load Hostage)***

In order to determine if a HHG motor carrier has failed or is failing to relinquish a HHG shipment, as defined by **49 U.S.C.14915(c)**, you have to prove the following elements:

- The HHG are being transported in Interstate Commerce;
- The HHG were transported based on an (binding or non-binding) estimate submitted by the HHG motor carrier or HHG broker on behalf of the HHG motor carrier;
- The HHG motor carrier did fail to deliver the HHG shipment on the delivery date or period of time stated on the Order for Service and Bill of Lading;
- The HHG motor carrier knowingly and willfully violated the contract (Order for Service/Bill of Lading) with the shipper; and
- The shipper of the HHG tendered payment to the HHG motor carrier, based on 100 percent of the binding estimate or 110 percent non-binding estimate.

■ **Note:** Determining if payment was “tendered” is extremely important in an investigation of a HHG shipment held hostage. To “tender” is defined by "Black's Law Dictionary" as a valid and sufficient offer of performance, specifically, an unconditional offer of money or performance to satisfy a debt or obligation. The shipper would have to pay, or have the ability to pay and attempted to pay, in order to tender payment. Evidence of tendering a payment would be documentation of the shipper submitting payment for 100 percent of a binding estimate or 110 percent of a non-binding estimate, an attempt to submit payment. Examples of documentation of tendering payment would be photocopies of cashier checks, money orders, or credit card slips. Examples of an attempt to submit payment would be emails from the shipper to the motor carrier stating that he or she has the amount of money to make payment and is willing to submit it, or a written statement from the shipper that he or she had the money and attempted to pay 100 percent of a binding estimate or 110 percent of a non-binding estimate. Ideally, the combination of documentation of the payment, emails, and a written statement from the shipper would be strong evidence of tendering payment.

### ■ *Failing to Relinquish HHG Shipments (Hostage Loads)*

#### *Procedures to Follow if a HHG Motor Carrier has Failed or is Failing to Relinquish a HHG Shipment (Holding a Load Hostage)*

Providing that you have all the elements, you should cite the HHG motor carrier for the violation of:

- **Section 14915(c)** - Failing to relinquish possession of a household goods shipment for which the shipper has tendered payment. (Severe Level I violation)

■ **Note:** HHG motor carriers and/or brokers found to be in noncompliance of Section 49 USC14915(c) are liable to a **penalty of \$10,000** for each violation and subject to suspension of the registration of the carrier/broker for 12 to 36 months. This penalty is **fixed** at \$10,000.

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

If you do not have all the elements to go forward with an enforcement action for a violation of 14915(c), there are other options:

- **Section 375.403(a)(10)** - Failing to relinquish possession of a household goods shipment if the shipper offers to pay the original binding estimated price. (Severe Level I violation).
- **Section 375.407(b)** - Failing to relinquish possession of a household goods shipment if the shipper offers to pay up to 110 percent of non-binding estimated price. (Severe Level I violation).

A key element proving failing to relinquish possession is that the shipper offers to pay 100 percent of the binding estimated price or 110 percent of the non-binding estimated price. "To offer" is defined in

“Black’s Law Dictionary” as the act or an instance of presenting something for acceptance. Evidence of an offer can be copies of emails between the shipper and the motor carrier stating that, depending on the estimate, 100 percent or 110 percent of the estimate will be paid and/or a written statement from the shipper that an offer to pay the estimated price was made to the motor carrier.

The other elements that must be present to prove failing to relinquish possession as stated in Part 375 are the following:

- The HHG is being transported in Interstate Commerce;
- The HHG is being transported based on a binding or non-binding estimate; and
- The HHG motor carrier did fail to deliver on the agreed date or period of time for delivery.

#### ***Some Important Evidence to Obtain in Order to Prove that a HHG Carrier is Failing to Relinquish a HHG Shipment***

You should interview the shipper, and if possible, obtain a written statement stating that the shipper did in fact pay 100 percent (binding) or 110 percent (non-binding) of the estimate or attempted to pay and the HHG carrier refused. If a written statement is not possible, then document the interview with an **Oral Interview Form** (see [Illustration E-3](#)).

You should also obtain copies of the estimate, order for service, and bill of lading for that shipment. Be sure to compare the copies of those documents coming from the shipper and the HHG carrier. Copies of email communication between the shipper and the HHG carrier may prove valuable to corroborate that the carrier knowingly and willfully failed to relinquish the shipment.

■ **Note:** A written statement not done in your presence should be notarized.

#### **4.4.2.4.2 CAPRI Procedures**

Once you have completed your investigation of Section 375, you should ask yourself, "Can I prove each discovered violation in Section 375?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part B Violations Tab of the CAPRI software:

#### ***Recording Violations of Part 375 Regulations and Federal Statutes***

You should record the number checked as follows:

■ **Note:** Drivers Checked/Vehicles Checked must be 0 of 0.

#### **Violations of Part 375 Regulations and Federal Statutes**

<b>CITATION</b>	<b>TYPE</b>	<b>DESCRIPTION</b>
<b>375.201(a)/14706(a)</b>	<b>General</b>	Failing to provide loss of damage during the performance of any transportation of household goods and related services identified on the bill of lading. <b>Number discovered: One violation for each shipment.</b>
<b>375.201(b)/14706(a)</b>	<b>General</b>	Failing to provide liability for household goods that are damaged, destroyed, or otherwise not delivered to the final destination in an amount equal to the replacement value of the household goods. <b>Number discovered: One violation for each shipment.</b>
<b>375.201(c)/13902(a)(2)(C)</b>	<b>General</b>	Failing to maintain a copy of the written waiver from the shipper for the liability of the full value of the household goods. <b>Number discovered: One violation for each shipment.</b>
<b>375.201(d)/13902(a)(2)(C)</b>	<b>General</b>	Failing to issue a copy of the insurance policy or other appropriate evidence of insurance.

		<b>Number discovered: One violation for each shipment.</b>
<b>375.201(e)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to disclose in a clear and concise manner, the limits of liability to the individual shipper. <b>Number discovered: One violation for each shipment.</b>
<b>375.205(b)</b>	<b>General</b>	Failing to have a written and signed agency agreement in effect with your Prime Agent(s). <b>Number discovered: One for each agency agreement required.</b>
<b>375.205(c)</b>	<b>General</b>	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. <b>Number discovered: One for each agency agreement not retained on file at the carrier's principal place of business.</b>
<b>375.207(a)/390.35</b>	<b>Severe Level I</b>	Providing false, misleading, or deceptive information in advertisements. <b>Number checked: One violation for each advertisement in violation.</b>
<b>375.207(b)(1-2)</b>	<b>General</b>	Failing to include and not require agents to include in all advertisements for all services required information. <b>Number discovered: One for each advertisement that does not include the prescribed information.</b>
<b>375.207(c)</b>	<b>General</b>	Failing to display the USDOT number in the prescribed manner. <b>Number discovered: One for each USDOT number that is not displayed on vehicle.</b>
<b>375.209(a)/13902(a)(2)(C)</b>	<b>General</b>	Failing to have a complaint & inquiry-handling program. <b>Number discovered: One program. (One of one.)</b>
<b>375.209(b)(1-4)/13902(a)(2)(C)</b>	<b>General</b>	Producing a summary of your complaint & inquiry-handling program that does not meet the requirements of Section 375.209(b)(1-4). <b>Number discovered: One program summary. (One of one.) Describe the required contents not provided.</b>
<b>375.209(c)/13902(a)(2)(C)</b>	<b>General</b>	Failing to produce a concise easy to read, accurate summary of your complaint & inquiry-handling program. <b>Number discovered: One program summary not produced. (One of one.)</b>
<b>375.213(a)/14104(b)(2)</b>	<b>Severe Level II</b>	Failing to provide the pamphlet "Ready to Move." <b>Number discovered: One booklet. (One of one.)</b>
<b>375.213(b)(5)/13902(a)(2)(C)</b>	<b>General</b>	Failing to provide shippers with a concise, easy to read, accurate summary of your complaint and inquiry-handling program <b>Number discovered: One for each program summary not provided to shippers.</b>
<b>375.213(b)(5)(i)/13902(a)(2)(C)</b>	<b>General</b>	Failure to provide the main telephone number the shipper may use to communicate with you. <b>Number discovered: One for each occurrence the number is not provided to the shipper.</b>

375.213(b)(5)(ii)/13902(a)(2)(C)	General	Failure to provide a clear and concise statement as to who must pay for telephone calls. <b>Number discovered: One for each occurrence the number is not provided to the shipper.</b>
13702(a)(2)/13902(a)(2)(C)	Severe Level I	Charging a rate without a tariff. <b>Number discovered: One for each shipment transported without a tariff.</b>
375.215/13902(a)(2)(C)	Severe Level I	Failing to charge applicable tariff rate. <b>Number discovered: One for each shipment using a rate not contained in tariff.</b>
13702(a)(2)(A-C)/13902(a)(2)(C)	Severe Level II	Failing to provide the required minimum contents in your tariff, as prescribed. <b>Number discovered: One tariff. (One of one.) Describe the required contents not provided.</b>
375.221(a)/13902(a)(2)(C)	General	Failing to identify a reference in the tariff for the acceptance of charge or credit cards for payment. <b>Number discovered: One tariff reference. (One of one.)</b>  <b>Note:</b> Use when charge or credit cards are not referenced in the tariff as an acceptable method of payment and it was discovered that charge and/or credit cards were accepted.
375.221(d)/13902(a)(2)(C)	General	Failing to identify in the tariff the charge or credit card plans you participate in <b>Number discovered: One tariff reference. (One of one.)</b>  <b>Note:</b> Use when charge or credit cards are identified as an acceptable method of payment- but the plan is not described and it was discovered that charge and/or credit cards were accepted.
375.303(c)/13902(a)(2)(C)	Severe Level II	Failing to furnish proof of insurance coverage to the individual shipper. <b>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.</b>
375.303(c)(6)/139029(a)(2)(C)	General	Failing to provide a provision in the tariff for selling, offering to sell, or procuring liability insurance coverage <b>Number discovered: One tariff reference. (One of one.)</b>
375.211(a)/14708(a)	Severe Level I	Failing to participate in an arbitration program. <b>Number discovered: One program. (One of one.)</b>
375.211(a)(1-11)/14708(b)	Severe Level II	Using an arbitration program that does not meet the requirements of Section 375.211. <b>Number discovered: One program. (One of one.) Describe the requirements not in compliance.</b>
375.211(b)/13902(a)(2)(C)	Severe Level II	Failing to produce a concise, easy to read, accurate summary of your arbitration program <b>Number discovered: One program summary. (One of one.)</b>
375.213(b)(4)	Severe	Failing to provide its shippers with a concise, easy to read,

	<b>Level II</b>	accurate summary of your arbitration program. <b>Number discovered: One for each program summary not provided</b>
<b>375.213(c)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to produce the booklet "Your Rights and Responsibilities When You Move." <b>Number discovered: One booklet. (One of one.)</b>
<b>375.213(c)(1-3)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to produce the booklet "Your Rights and Responsibilities When You Move" that meets the requirements of Section 375.213(b)(1-3) <b>Number discovered: One booklet. (One of one.)</b> <b>Describe the required contents not provided.</b>
<b>375.213(b)(1)/14104(b)(2)</b>	<b>Severe Level II</b>	Failing to provide shippers with the booklet "Your Rights and Responsibilities When You Move." <b>Number discovered: One for each shipment discovered where the carrier did not give the shipper the required booklet.</b>
<b>375.401(a)/14104(b)(1)(A)</b>	<b>Severe Level II</b>	Failing to prepare a physical survey when required. <b>Number discovered: One for each shipment discovered where the carrier did not conduct a physical survey.</b>
<b>375.401(b)(1)/14104(b)(1)(A)</b>	<b>Severe Level II</b>	Failing to prepare a written binding estimate for each move performed. <b>Number discovered: One for each shipment discovered where the carrier did not prepare a written binding estimate.</b>
<b>375.401(c)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. <b>Number discovered: One for each estimate not specifying the form of payment honored.</b>
<b>375.401(d)/14104(b)(1)(C)(iii)</b>	<b>Severe Level II</b>	Failing to provide a reasonably accurate non-binding estimate of the approximate cost the individual shipper should expect to pay for the transportation and services of such shipment. <b>Number discovered: One for each grossly inaccurate non-binding estimate.</b>
<b>375.401(h)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to amend the estimate by mutual agreement with you and the shipper loading the shipment. <b>Number discovered: One for each shipment discovered where the carrier did not amend the mutual agreement.</b>
<b>375.405(b)(1)/13902(a)(2)(C)</b>	<b>General</b>	Failing to provide an individual shipper with a written explanation of the formula used to calculate the conversion of a volume based estimate to weight. <b>Number discovered: One for each shipment estimated based on volume and then converted to weight.</b>
<b>375.401(g)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to ensure a company representative and shipper sign the estimate of charges. <b>Number discovered: One for each binding estimate not signed by the company representative and/or shipper.</b>

		<p> <b>Note:</b> Estimates provided via the Internet must be signed.</p>
<b>375.403(a)(1-11)/13902(a)(2)(C)</b>	<b>General</b>	<p>Failing to prepare a binding estimate in the form and manner prescribed.  <b>Number discovered: One for each shipment found where the written binding estimate does not contain the prescribed information.</b>   <b>Note:</b> DO NOT USE THIS CITE FOR 375.403(a)(5); 375.403(a)(6) or 375.403(a)(9).</p>
<b>375.403(a)(6)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	<p>Failing to reaffirm or negotiate the written binding estimate listing the additional household good or services.  <b>Number discovered: One for each shipment found where the written binding estimate was not reaffirmed or negotiated.</b></p>
<b>375.403(a)(7)/14104(b)(1)(C)(ii)</b>	<b>Severe Level I</b>	<p>Collecting more than the original amount of the binding estimate.  <b>Number discovered: One for each shipment found where the carrier collected more than the original binding estimate amount.</b></p>
<b>375.403(c)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	<p>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.  <b>Number discovered: One for each shipment binding estimate was not retained.</b></p>
<b>375.401(b)(2)/14104(b)(1)(A)</b>	<b>Severe Level II</b>	<p>Failing to prepare a written non-binding estimate for each move performed.  <b>Number discovered: One for each non-binding estimate not prepared.</b></p>
<b>375.401(g)/13902(a)(2)(C)</b>	<b>General</b>	<p>Failing to ensure a company representative and shipper sign the estimate of charges.  <b>Number discovered: One for each non-binding estimate not signed.</b></p>
<b>375.405(b)(1-10)/13902(a)(2)(C)</b>	<b>General</b>	<p>Failing to prepare the non-binding estimate in the form and manner prescribed  <b>Number discovered: One for each shipment found where the written non-binding estimate does not contain the prescribed information.</b>   <b>Note:</b> DO NOT USE THIS CITE FOR 375.405(b)(7) or 375.405(b)(8).</p>
<b>375.405(b)(7)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	<p>Failing to reaffirm or negotiate the written non-binding estimate listing the additional household good or services.  <b>Number discovered: One for each shipment found where the written non-binding estimate was not reaffirmed or negotiated</b></p>
<b>375.405(b)(8)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	<p>Collecting more than 110 percent of the original non-binding estimate at destination.  <b>Number discovered: One for each shipment found where carrier required payment in excess of 110 percent</b></p>

		<b>of original estimate before delivery of HHG.</b> <b>Note: DO NOT USE FOR HOSTAGE LOADS.</b>
<b>375.405(c)/13902(a)(2)(C)</b>	<b>General</b>	Failing to enter estimated charges on Orders for Service and bill of lading. <b>Number discovered: One for each estimated amount not entered on the Orders for Service and bill of lading.</b>
<b>375.405(d)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	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. <b>Number discovered: One for each non-binding estimate not retained for one year.</b>
<b>375.501(a)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to prepare a written Orders for Service for each move performed. <b>Number discovered: One for each Order for Service not prepared.</b>
<b>375.501(a)(1-15)/13902(a)(2)(C)</b>	<b>General violation</b>	Failing to prepare Orders for Service in the form and manner prescribed. <b>Number discovered: One for each Order for Service that does not contain the required information.</b>
<b>375.501(c)/13902(a)(2)(C)</b>	<b>General</b>	Failing to ensure a company representative and shipper date and sign the Orders for Service. <b>Number discovered: One for each Orders for Service not signed.</b>
<b>375.501(f)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to amend Orders for Service, and upon mutual agreement with the individual shipper, prior to loading shipment. <b>Number discovered: One for each Orders for Service not amended.</b>
<b>375.501(g)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to retain a copy of the Orders for Service for each move performed for one year from the date the Orders for Service was prepared, as an integral part of the bill of lading. <b>Number discovered: One for each Orders for Service not retained.</b>
<b>375.501(h)/13902(a)(2)(C)</b>	<b>General</b>	Failing to place the valuation statement on the Orders for Service, if not entered in the bill of lading. <b>Number discovered: One for each Orders for Service the valuation statement is not entered if not entered in the bill of lading.</b>  <b>Note:</b> Entering the improper valuation statement on the bill of lading or Order for Service is considered not placing a statement at all.
<b>375.503(a)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to prepare a written inventory for each shipment of HHG transported. <b>Number discovered: One for each shipment reviewed that does not include a written inventory.</b>
<b>375.503(a)/13902(a)(2)(C)</b>	<b>General</b>	Failing to prepare an inventory in the form and manner prescribed.

		<b>Number discovered: One for each inventory reviewed that does not include the required information.</b>
<b>375.503(b)/13902(a)(2)(C)</b>	<b>General</b>	Failing to prepare the inventory before or at the time of loading in the vehicle for transportation in a manner that provides the shipper the opportunity to observe and verify the accuracy of the inventory, if he or she so requested. <b>Number discovered: One for each inventory reviewed that failed to allow the shipper the opportunity to observe/verify the accuracy of the inventory</b>
<b>375.503(c)/13902(a)(2)(C)</b>	<b>General</b>	Failing to ensure a company representative and shipper sign an inventory. <b>Number discovered: One for each inventory not signed.</b>
<b>375.503(e)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	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. <b>Number discovered: One for each inventory not retained.</b>
<b>375.505(a)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to prepare a bill of lading for each move performed. <b>Number discovered: One for each shipment in which the carrier did not provide the shipper with a bill of lading.</b>
<b>375.505(b)(1-14)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to prepare a bill of lading in the form and manner prescribed. <b>Number discovered: One for each shipment in which the bill of lading does not include the required information.</b>
<b>375.505(c)</b>	<b>General</b>	Failing to ensure the bill of lading accompany the shipment at all times. <b>Number discovered: One for bill of lading not accompanying each shipment.</b> <b>Note:</b> To be cited mainly during roadside inspections.
<b>375.505(d)/13902(a)(2)(C)</b>	<b>General</b>	Failing to retain a copy of a bill of lading for each move performed for one year from the date it's created. <b>Number discovered: One for each receipt or bill of lading not retained.</b>
<b>375.505(e)/13902(a)(2)(C)</b>	<b>General</b>	Failing to provide the individual shipper the opportunity to rescind the order for service without any penalty for a 3-day period after the shipper signs the order for service if shipper schedules the shipment to be loaded more than three-days after signing the order. <b>Number discovered: One for each violation discovered.</b>
<b>375.505(h)/13902(a)(2)(C)</b>	<b>General</b>	Failing to place the valuation statement on the bill of lading, if not entered in the Orders for Service. <b>Number discovered: One for each bill of lading; the valuation statement is not entered if not entered in the Orders for Service.</b>  <b>Note:</b> Entering the improper valuation statement on the bill of lading or Orders for Service is considered not placing a statement at all.
<b>375.507(a)/14104(b)(1)(C)(iii)</b>	<b>Severe</b>	Failing to weigh a shipment for each move transported on a

	<b>Level I</b>	non-binding estimate. <b>Number discovered: One for each shipment required to be weighed.</b>
<b>375.513/13902(a)(2)(C)</b>	<b>Severe Level I</b>	Refusing to allow shippers to view the re-weigh of their shipment. <b>Number discovered: One for each shipment a shipper was not allowed to view the re-weigh.</b>
<b>375.515(b)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to obtain a written waiver from shippers who waive their right to observe the re-weighing of their shipment. <b>Number discovered: One for each shipment a waiver for observing a re-weigh was not obtained from a shipper.</b>
<b>375.517/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to base the freight charges on the re-weigh weight. <b>Number discovered: One for each violations discovered.</b>
<b>375.519(a)(1-6)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	Failing to prepare a weight ticket in the form and manner prescribed. <b>Number discovered: One for each weight ticket not prepared in the form and manner prescribed.</b>
<b>375.519(a)/13902(a)(2)(C)</b>	<b>Severe Level II</b>	Failing to obtain a separate weight ticket for each weighing, if not in accordance with Part 375.519(b). <b>Number discovered: One for each separate weight ticket not obtained when required.</b>
<b>375.519(c)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	Failing to retain the original copy of the weight tickets for each shipment weighed as part of the file. <b>Number discovered: One for each original weight ticket not retained.</b>
<b>375.519(d)/390.35</b>	<b>Severe Level I</b>	Making, or causing to make fraudulent or intentionally false weight tickets and/or reproducing fraudulent weight tickets. <b>Number discovered: One for each weight ticket falsified.</b>  <b>Note:</b> If this violation is discovered, consult with your supervisor about contacting OIG.
<b>375.603/13902(a)(2)(C)</b>	<b>General</b>	Failing to tender a shipment in the prescribed manner. <b>Number discovered: One violation for each shipment found where the carrier did not identify the information, regarding where the shipper's HHG are stored as required by this section.</b>
<b>375.605(a)</b>	<b>General</b>	Failing to notify shipper, or other representative responsible for payment, of time that delayed shipment can be picked up or delivered. <b>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.</b>
<b>375.701</b>	<b>General</b>	Requiring shippers to sign documents containing language purporting to release the carrier or its agents from liability. <b>Number discovered: One for each document, bill of lading, Orders for Service, inventory sheet, the carrier has required the shipper to sign and found in violation.</b>
<b>375.705</b>	<b>Severe</b>	Requiring payment of all freight charges prior to delivery of

		all split or divided shipments. <b>Number checked: One for each instance in which the shipper was required to pay for non-delivered portions of household goods in advance.</b>
<b>375.709(a)</b>	<b>Severe</b>	Collecting freight charges when shipment is totally destroyed or lost in transit. <b>Number checked: One for each shipment totally lost and destroyed while in transit and the carrier collected its transportation charges.</b>

**Violations of Part 375 Regulations and Federal Statutes: Citations for HHG Shipments Held Hostage**

<b>CITATION</b>	<b>TYPE</b>	<b>DESCRIPTION</b>
<b>14915(c)</b>	<b>Severe Level I</b>	Failing to relinquish possession of a household goods shipment for which the shipper has tendered payment. <b>Number discovered: One for each shipment discovered held hostage.</b>
<b>375.403(a)(10)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	Failing to relinquish possession of a household goods shipment if the shipper offers to pay the original binding estimated price. <b>Number discovered: One for each shipment not relinquished.</b>  <b>Note: ALTERNATIVE OPTION FOR USE WHEN HOSTAGE LOADS ARE DISCOVERED.</b>
<b>375.407(a)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	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. <b>Number discovered: One for each shipment found where carrier did not relinquish the household goods after shipper paid 110 percent of non-binding estimate.</b>  <b>Note: ALTERNATIVE OPTION FOR USE WHEN HOSTAGE LOADS ARE DISCOVERED.</b>
<b>375.407(b)/13902(a)(2)(C)</b>	<b>Severe Level I</b>	Severe Level I Failing to relinquish possession of a household goods shipment if the shipper offers to pay up to 110 percent of the non-binding estimated price. <b>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.</b>  <b>Note: ALTERNATIVE OPTION FOR USE WHEN HOSTAGE LOADS ARE DISCOVERED.</b>

**4.4.2.5 Part 376 – Transportation in Interstate Commerce – Commercial Enforcement Leasing**

4.4.2.5.1 Investigation 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*

**Authorized carrier** – A person or persons authorized by FMCSA to engage in transportation of property as a motor carrier (or HHG motor carrier) under the provisions of Section 13901 or 13902.

**Equipment** – A motor vehicle, straight truck, tractor, semitrailer, full trailer, and any combination these and any other type of equipment used by the authorized carrier in the transportation of property for hire.

**Owner** – A person (1) who title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment registered and licensed in any State in the name of that person.

**Lease** – A contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation.

**Lessor** – The party in a lease granting the use of equipment, with or without driver, to another.

**Lessee** – The party in a lease acquiring the use of equipment, with or without driver, from another.

**Sublease** – A written contract in which the lessee grants the use of leased equipment, with or without driver, to another.

**Addendum** – A supplement to an existing lease which is not effective until signed by the lessor and the lessee.

**Private motor carrier or Private carrier** – A person, other than a motor carrier, that transport property it owns or leases in interstate commerce to be sold or rented to further a commercial enterprise.

**Shipper** – A person who sends or receives property which is transported in interstate commerce.

**Escrow Fund** – Money deposited by the lessor with either a third party or the lessee to guarantee performance, repay advances, or cover repair expenses, handle claims, handle licensing and State permit costs, and for any other purposes mutually agreed upon by the lessor and lessee.

**Detention** – The holding by a consignor or consignee of a trailer, with or without power unit and driver, beyond the free time allocated for the shipment, under circumstances not attributable to the performance of the carrier.

#### **4.4.2.5.1 Investigative Procedures**

##### *Sections of Part 376 to Review*

[Section 376.11 – General Leasing Requirements](#)

[Section 376.12 – Written Lease Requirements](#)

##### **Primary Requirements for Compliance with Part 376**

There are general leasing requirements that all motor carriers authorized to transport property in interstate commerce that operate leased equipment must follow, and there are requirements how the leases are written.

##### **Section 376.11 - General Leasing Requirements**

The general leasing requirements are stated in Section 376.11:

- There must be a written lease granting use of the equipment by the authorized carrier;
- There must be receipts provided by the authorized carrier for the equipment identifying the equipment to be leased, date and time the equipment is transferred;
- The authorized carrier taking possession of the equipment must identify the equipment, as required by Part 390;
- The authorized carrier must keep records documenting the trips made by the leased equipment while in its service; and
- The authorized carrier must keep copies of the leasing records with the equipment.

### ***Section 376.12 - Written Lease Requirements***

Written Leases, as stated in Section 376.12, are required to have the following provisions:

- The lease is between the authorized carrier and the owner of the equipment;
- The lease will specify the time and date when the lease begins and ends;
- The lease will state that the authorized carrier has exclusive control of the leased equipment and is responsible for it ;
- The lease can have an option allowing the authorized carrier to sublease the equipment;
- When an authorized HHG carrier leases equipment exclusive control of and responsibility for the leased equipment only during the time the leased equipment is operated;
- The amount paid by the authorized carrier to lease the equipment is clearly stated;
- The lease will specify who is responsible for removal of identification devices at the termination of the lease, if a receipt is required how the receipt for the equipment will be returned to the authorized carrier at the termination of the lease, and who is responsible for miscellaneous expenses;
- Payment to the owner of the leased equipment within 15 days after submission of delivery documents to the authorized carrier, and that submission of hours of service records (logbooks) and documents the authorized carrier needs to secure payment from the shipper, can occur before payment to the owner (refers to leases of owner-operators);
- Copies of freight bills, or other form of freight documentation, will be given to the owner of the leased equipment when the lessor's revenue is based on a percentage of the gross revenue of the shipment (also refers to leases of owner-operators);
- Items that will be initially paid by the authorized carrier but deducted from the payment to the owner of the leased equipment;
- That the owner of the leased equipment is not required to purchase or rent any products, equipment, or services from the authorized carrier;
- That the authorized carrier is responsible for insuring the leased equipment;
- If escrow funds are required, the amount of the escrow fund to be paid to the authorized carrier or third party, and what specific items the escrow fund will be applied; and
- That there are an original and two copies of the lease signed by both parties, and a copy of the lease, or a statement as set forth in 376.11, is kept on board the leased equipment.

*Enhanced Investigative Technique – Leasing records often contain time sensitive information, mileage in and out, and the driver authorized to use that vehicle. Cross reference this information with Hours of Service records to determine compliance with Part 395.*

### ***Exemptions to the Leasing Regulations***

General exemptions to the Leasing Regulations are contained in Section 376.21. The exemption that appears often is the regulations do not apply to leased equipment used in transportation exclusively in a Commercial Zone (see Part 372). Section 376.22 address exemptions for leasing between authorized motor carriers, and between authorized motor carriers and private motor carriers. Another exemption that appear often is authorized and private carriers under common ownership may lease equipment from each other without complying with the requirements for identification of equipment and creation and maintenance of receipts (see Section 376.22(d). Section 376.26 address the exemption to the regulation for leases between authorized carriers and their agents.

***Procedures to Follow in Order to Determine if a Motor Carrier is in Compliance with Section 376.11(a)***

If a motor carrier states that they are leasing equipment, there should be a written lease agreement.

***Procedures to Follow When a Motor Carrier is in Violation of Section 376.11(a)***

You should cite the motor carrier for the violation of:

- **Section 376.11(a)** – Leasing equipment without a written lease agreement. (General violation).

***Procedures to Follow to determine if a Motor Carrier is in Compliance with Section 376.11(b)***

If a motor carrier is leasing equipment, there should be a copy of a receipt for each piece of equipment leased. The receipts should identify the equipment leased, date and time the equipment was transferred to the motor carrier. The owner or lessor of the equipment should have the original receipt and should confirm it a receipt was issued.

***Procedures to Follow when a Motor Carrier is in Violation of Section 376.11(b)***

You should cite the motor carrier for the violation of:

- **Section 376.11(b)** – Failure to issue a receipt for leased equipment. (General violation).

***Procedures to Follow to determine when a Motor Carrier is in Compliance with Section 376.11(c)***

A motor carrier that leases equipment must properly identify the equipment as required by Part 390. The motor carrier must carry a copy of the lease or a statement certifying that the equipment is being operated by it on board the equipment.

***Procedures to Follow when a Motor Carrier is in Violation of Section 376.11(c)***

You should cite the motor carrier for the following violations:

- Section 376.11(c)/390.21(b) – Commercial motor vehicle leased for more than thirty days not properly marked. (General violation).
- Section 376.11(c)/390.21(e)(iii) – Failure to have rental agreement with the required information about a commercial motor vehicle rented for less than thirty days. (Severe Level II violation).
- Section 376.11(c)/390.21(e)(iv) – Failure to have the rental agreement with the required information on a commercial motor vehicle rented for less than thirty days. (Severe Level II violation).
- Section 376.11(d)(1) – Failure to prepare and/or keep documents of each trip when leased equipment was used. (General violation).
- Section 376.11(d)(1) – Failure to prepare and/or keep required documents of each trip on board leased equipment. (General violation).

***Procedures to Follow to determine if a Motor Carrier is in Compliance with Section 376.12(a–k)***

The written lease agreement is required to have specific items as stated in Section 376.12(a–k). Lease agreements have to be closely examined to ensure the documents are in compliance.

***Procedures to Follow to determine if a Motor Carrier is in Violation of Section 376.12(a-k)***

Depending on the item that is deficient on the lease agreement you should cite the motor carrier for the violation of:

- **Section 376.12(a-k)** – Written lease agreement without the required information. (General violation).

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

The motor carrier leasing equipment is required to keep the original copy of the lease and a copy on board the leased equipment during the period of the lease. In lieu of a copy of the lease the motor carrier can place a statement as provided for in Section 376.11(c)(2) in the leased equipment.

***Procedures to Follow when a Motor Carrier is in Violation of Section 376.12(l)***

You should cite the motor carrier for the violation of:

- **Section 376.12(l)** – Failure to keep the original copy of the lease. (General violation).
- **Section 376.12(l)** – Failure to keep a copy of the lease or leasing statement on board leased equipment. (General violation).

***Guidance to Follow when Verifying Compliance and Documenting Violations of Part 376***

Consider the following when documenting for enforcement as result of an investigation involving contracts, subcontracts or lease arrangements.

- Compliance with 49 CFR Part 376 leasing regulations. 49 CFR § 376.11 provides that, other than through an interchange of equipment or the exemptions in 49 CFR §§ 376.21 – 376.26, an authorized carrier may perform authorized transportation in equipment it does not own only under the conditions set forth therein. Collect evidence to permit consideration of whether the motor carrier's arrangements with others meet the Part 376 leasing requirements.
- Statements and/or supporting evidence from the other parties involved, including the shippers. Consider interviewing and obtaining statements from shipper officials and contract carrier drivers. Who did the shipper believe was going to transport the load? What was the basis for that belief? What did the principal carrier tell the shipper regarding who would be responsible for the transportation? If a shipper had a problem with a driver or a particular trip, who would it contact? Obtaining evidence from multiple sources can be helpful in showing which carrier is responsible for providing the transportation services.
- Consider expanding review of principal carrier to include interviewing and/or conducting reviews of at least some contract carriers. What does the contract carrier understand of its relationship with the principal carrier? Do the contract carriers have appropriate authority, permits and licenses, including FMCSA operating authority, State licensing/permits, and apportioned plates and fuel licenses (IFTA/IRP). Are contract carriers managing the safety compliance for drivers and vehicles. Document any lack of safety management control over contract drivers and vehicles by contract carriers.
- Look to and document overall safety performance. Consider what the safety performance of the principal carrier would be if it included the performance of its contract drivers and vehicles.
- Collect evidence to show payments made to the principal carrier and contract carriers. Consider expanding your investigation to other contract carriers and shippers, in order to conduct an effective collection of evidence.
- Collect copies of contracts between the principal carrier and shippers. Collect copies of contracts or agreements between the principal carrier and the contract carriers.

- When the property transported is a hazardous material, consider whether the principal carrier's business practices meet the requirements of the HMR. Who is responsible for providing HM training to contract drivers? Who actually provided the training and maintains the documentation of training? If the principal carrier has agreed with the shipper to transport HM in commerce, does it have a security plan that addresses the vehicles being used by the contract carriers? Does the security plan address the drivers being used by the contract carriers? While reviewing a security plan, driver interviews and training documentation can provide useful information to show which carrier is responsible for providing the transportation services.
- To show that the principal carrier is responsible for the contract carrier drivers' compliance with the FMSCR and HMR, we must establish that the contract carrier and drivers are subject to the principal carrier's control.
  1. Who had the power to hire, train, and terminate drivers? Collect evidence, such as employment agreements, training documentation, termination letters, and related correspondence between the principal and contract carriers to corroborate any statements made. If the principal trains the contract carrier drivers, does the contract carrier also train those drivers? Collect evidence on training from both the principal carrier and the contract carriers.
  2. Who assigns loads to drivers? Who had the ability to control the route? Who controls drivers' activities during transit? Interview drivers, shippers, contract carriers.
  3. Are contract carrier drivers or vehicles assigned exclusively to servicing the contract with the principal, or do these vehicles/drivers also perform contracts for other shippers? Could the contract carrier substitute or reassign a driver without the principal's authorization? What 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**

<b>CITATION</b>	<b>TYPE</b>	<b>DESCRIPTION</b>
<b>376.11(a)</b>	<b>General</b>	Failure to lease equipment using a written lease agreement. <b>Number discovered: One for each piece of leased equipment without a written lease agreement.</b>
<b>376.11(b)</b>	<b>General</b>	Failure to issue a receipt for leased equipment. <b>Number discovered: One for each piece of leased equipment without a receipt.</b>
<b>376.11(c)/390.21(b)</b>	<b>General</b>	Commercial motor vehicle leased more than 30 days not properly marked.

		<b>Number discovered: One for each commercial motor vehicle leased not properly marked.</b>
<b>376.11(c)/390.21(e)(iii)</b>	<b>Severe Level II</b>	Failure to have rental agreement with the required information about a commercial motor vehicle rented for less than thirty days. <b>Number discovered: One for each rental agreement without the required information.</b>
<b>376.11(c)/390.21(e)(iv)</b>	<b>Severe Level II</b>	Failure to have the rental agreement with the required information on a commercial motor vehicle rented for less than thirty days. <b>Number discovered: One for each rented commercial motor vehicle without the rental agreement or the rental agreement without the required information on board.</b>
<b>376.11(d)(1)</b>	<b>General</b>	Failure to prepare and/or keep documents of each trip when leased equipment was used. <b>Number discovered: One for each required record missing or not properly prepared.</b>
<b>376.11(d)(1)</b>	<b>General</b>	Failure to prepare and/or keep required documents of each trip on board leased equipment. <b>Number discovered: One for each required record missing or not properly prepared on board leased equipment.</b>
<b>376.12(a-k)</b>	<b>General</b>	Written lease agreement without the required information. <b>Number discovered: One for each lease agreement found not in compliance.</b>
<b>376.12(l)</b>	<b>General</b>	Failure to keep the original copy of the lease. <b>Number discovered: One for each original lease agreement the motor carrier is required to have.</b>
<b>376.12(l)</b>	<b>General</b>	Failure to keep a copy of the lease or leasing statement on board leased equipment. <b>Number discovered: One for each copy of the lease or leasing statement the motor carrier is required to have on board the equipment.</b>

#### 4.4.2.6 Enforcement of Violations of Holding Household Goods Hostage

##### *Failing to relinquish a household goods shipment (Hostage Loads)*

A “Hostage Load” is defined as a failure to give up possession of HHG when the motor carrier knowingly and willfully, in violation of a contract (the bill of lading and all its integral parts), fails to deliver to or unload at the destination a shipment despite having provided an estimate for the move and the shipper tendering payment.

Hostage load violations occur when a HHG motor carrier or broker, attempting to coerce more money from an individual shipper than was originally agreed, refuses to relinquish the shipper’s household goods until he or she concedes to the demand of the carrier.

Holding HHG hostage, in violation of 49 U.S.C. § 14915, is one of the most egregious violations of the Federal commercial statutes.

Hostage loads violations are often committed by an organized criminal enterprise whose activities amount to theft, extortion, and/or fraud. Involvement by the USDOT Office of Inspector General may be necessary when these violations occur.

**Policy Concerning Hostage Loads**

FMCSA will prioritize investigations and enforcement on HHG motor carriers and brokers that are alleged to be holding the HHG shipment hostage. Assigned staff will follow procedures provided to ensure that the documentation to support enforcement actions is sufficient.

**How do I determine that a HHG carrier has failed or is failing to relinquish a household goods shipment (holding a load hostage)?**

In order to determine if a HHG carrier has failed or is failing to relinquish a household goods shipment as defined by 49 U.S.C. 14915(c) you have to prove the following elements:

- The HHG are being transported in Interstate Commerce;
- The HHG were transported based on an (binding or non-binding) estimate submitted by the HHG carrier or HHG broker on behalf of the HHG carrier;
- The HHG carrier did fail to deliver the household goods shipment on the delivery date or period of time stated on the Order for Service and Bill of Lading;
- The HHG carrier knowingly and willfully violated the contract (Order for Service/Bill of Lading) with the shipper; and
- The shipper of the HHG tendered payment to the HHG carrier based on 100% of the binding estimate or 110% non-binding estimate.

**Note:** Determining if payment was “tendered” is extremely important in an investigation of a HHG shipment held hostage. To “tender” is defined by “Black’s Law Dictionary” as a valid and sufficient offer of performance, specifically, an unconditional offer of money or performance to satisfy a debt or obligation. The shipper would have to pay, or have the ability to pay and attempted to pay in order to tender payment. Evidence of tendering a payment would be documentation of the shipper submitting payment for 100% of a binding estimate or 110% of a non-binding estimate, an attempt to submit payment. Examples of documentation of tendering payment would be photocopies of cashier checks, money orders, or credit card slips. Examples of an attempt to submit payment would be e-mails from the shipper to the carrier stating that he or she has the amount of money to make payment and is willing to submit it, or a written statement from the shipper that he or she had the money and attempted to pay 100% of a binding estimate or 110% of a non-binding estimate. Ideally the combination of documentation of the payment, e-mails, and a written statement from the shipper would be strong evidence of tendering payment.

**What procedures should I follow if I determine that a HHG carrier has failed or is failing to relinquish a household goods shipment (holding a load hostage)?**

Providing that you have all the elements, you should cite the HHG motor carrier for the violation of:

**Section 14915(c)** - Failing to relinquish possession of a household goods shipment for which the shipper has tendered payment. (Severe Level I violation)

**Note:** Household goods motor carriers and/or brokers found to be in noncompliance of Section 49 USC 14915(c) are liable to a **penalty of \$10000** for each violation and subject to suspension of the registration of the carrier/broker for 12 to 36 months. This penalty is set at \$10000 by statute.

**IMPORTANT:** Each day a HHG motor carrier fails to relinquish possession of a HHG shipment constitute a separate violation of Section 14915(c). If the facts surrounding a particular violation suggest the carrier should be penalized for more than one violation contact your Division Administrator for further guidance, seek the assistance of the nearest Commercial Enforcement Specialist and the Service Center Attorney.

**What is some important evidence to obtain in order to prove that a HHG carrier is holding hostage a household goods shipment?**

You should interview the shipper and if possible obtain a written statement stating that the shipper did in fact paid 100% (binding) or 110% (non-binding) of the estimate or attempted to pay and the HHG carrier refused (See Illustration HHG-4). If a written statement is not possible then document the interview with an **Oral Interview Form** (See Illustration E-9).

Try to interview and obtain a statement from the driver or any other employee that had custody of the HHG shipment and refused to deliver it. Attempt to ascertain what caused the dramatic increase in price, can the reason for the increase be proven, where was the shipment diverted to, who authorized the refusal of the delivery of the shipment, and who is named as in control of the shipment were it has been taken.

Evidence to prove the elements of a violation of 49 U.S.C. § 14915(c) includes but not limited to:

- Copies of signed estimates;
- Copies of receipts for payment of or checks made out to the motor carrier or broker, or documentation of offers of payment by the shipper, for 100% of the binding or 110% of the nonbinding estimate or the prorated amount of a partial delivery in the manner specified in the contract;
- Copies of bills of lading;
- Copies of contracts and/or orders for service;
- Photographs of HHG held in storage or on vehicles;
- Documentation of any change or amendment of an estimate, including documentation of any change or amendment of an estimate made after the shipper's HHG were loaded;
- Statement and documentation the shipper did not agree to amend the original signed estimate before the motor carrier loaded the HHG, if applicable;
- Any pertinent statements or documentation from the shipper;
- Any pertinent statements from the driver or laborers that handled the shipment;
- Any police incident or investigation reports that were generated in response to the hostage load complaint being reported to the local police; and
- Documentation uploaded to hostage load complaints filed in the National Consumer Complaint Database (NCCDB)

**Note:** It is recommended that a written statement not done in your presence should be notarized.

**4.4.2.6.1 CAPRI Procedures**

Once you have completed your investigation of 49 U.S.C. § 14915, you should ask yourself, "Can I prove each discovered violation in Section 375?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part B Violations Tab of the CAPRI software:

***Recording Violations of the Federal Statute concerning Hostage Loads***

You should record the number checked as follows:

**Note:** Drivers Checked/Vehicles Checked must be 0 of 0.

**Violations of the Federal Statutes: Citations for HHG Shipments Held Hostage**

CITATION	TYPE	DESCRIPTION
14915(c)	Severe Level I	Failing to relinquish possession of a household goods shipment for which the shipper has tendered payment.

		<b>Number discovered: One for each shipment discovered held hostage.</b>
--	--	--

### **Order to Return Household Goods**

Pursuant to 49 U.S.C. § 14915(a)(1), the Agency may order the return of HHG shipments held hostage by a motor carrier. An Order to Return can be issued when the Field Administrator after consultation with the Office of the Assistant Chief Counsel for Enforcement and Litigation determine that sufficient evidence exist that an HHG shipment is being held hostage. All the elements of a hostage load violation must be present and well supported with evidence to necessitate an order.

### **When Should an Order to Return be considered?**

Providing that there is sufficient evidence that all elements of a hostage load violation has been discovered, if any of the following conditions are discovered an Order to Return should be considered:

- There are items in the shipment that are crucial to the health of the shipper or shipper's family such as medical equipment, supplies, or medications;
- There are items in the shipment that could create a substantial risk to the Public if lost such as firearms and/or ammunition; or
- The loss or destruction of the shipment appears imminent and action is needed immediately.

### **What procedures should I follow to initiate an Order to Return?**

If during your investigation it becomes apparent that an Order to Return is necessary immediately notify your DA to begin the process. Seek the assistance of the nearest Commercial Enforcement Specialist. Prepare all the evidence collected proving the elements of the hostage load violation along with a summary of why the order is necessary for review by the FA and Service Center Attorney so they can determine if an order is warranted and there is sufficient evidence to support it and submit via your DA.

If an order will be initiated you will receive further instructions from your DA. If the need for an order is urgent discretion to precede the submission of the investigation and enforcement case reports can be applied with the approval of your DA. If an Order to Return is initiated and ultimately executed prior to the submission of reports it must be documented in both the investigation (Part C) and enforcement case reports. A copy of the Order to Return and supporting documents would be letter exhibits in the enforcement case report.

If the Order to Return is initiated after the submission of the investigation report but prior to the submission of the enforcement case report it should be documented in the enforcement case report as corroboration to support the Notice of Claim (NOC). A copy of the Order to Return and supporting documents would be letter exhibits.

The DA and the Service Center can apply discretion how the Order to Return is documented and there could be further instructions to follow.

## **4.5 Stage 4 Investigation Feedback and Closeout**

### **4.5.1 HHG Recommendations**

#### ***Recommendations that should be made for HHG CR Findings***

If at the conclusion of a compliance review, it appears that a HHG carrier is not in compliance with the HHG commercial regulations, you should also prepare and review recommendations for compliance on the Part B - Recommendations section of the CR. The recommendations should be tailored to the HHG motor carrier's specific compliance problems. The standard recommendations used in the CAPRI software can be used as a starting point with more detailed and specific recommendations added. The recommendations should identify at least the minimum areas needing improvement and state that it is

only intended as a tool to assist the motor carrier in improving its commercial compliance. You should request an opportunity to discuss the potential problems with the highest-ranking official of the motor carrier (sole proprietor, partner or corporate officer). The official should be asked to sign and date the compliance review, to receive a copy. You should keep signed copies of all documents.

## **4.6 Stage 5 Post Investigation Invention – Enforcement Actions**

### **4.6.1 HHG Parts 366, 370 & 375 – Enforcement Procedures**

After you have entered violations discovered in the FMCCR (i.e., parts 366, 370 and 375) or statutes of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), into Part B of CAPRI and you have decided to initiate 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 actually transported HHG for compensation in interstate transportation. This may be accomplished by collecting (but not limited to) the following:

- a) A copy of the HHG carrier's tariff giving all the details of its HHG operation
- b) A copy of the carrier's certificate of authority or motor carrier authority letter issued by FMCSA
- c) Advertisements that show the carrier offers to transport HHG in interstate commerce; and
- d) Documents that demonstrate the carrier was compensated for transporting HHG shipments in interstate commerce.

#### **2. Establish the carrier provided the transportation or controlled it.**

- a) Copies of bills of lading and other transportation related documents assist in proving the carrier provided HHG transportation and/or controlled the shipment.
- b) Copies of trip leases or long term leases can be used to assist in demonstrating the carrier was the controlling carrier for HHG shipments transported by other carriers.
- c) Signed statements provided by carrier officials and/or employees admitting the carrier was responsible for transportation should be obtained when possible.
- d) Signed statements

#### **3. Carrier transported the shipment.**

Specific shipments should be documented to show the carrier transported interstate shipments for-hire. This can be accomplished by using bills of lading and/or other HHG supporting documents. Copies of payment records and written statements by carrier officials and/or employees should be obtained, whenever possible.

#### 4. Carrier violated a specific Part of the commercial regulations.

- 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.
- Once an area of noncompliance has been identified during the HHG investigation, you should obtain appropriate and more than sufficient documentation, including shipping documents and written statements signed by carrier officials and/or employees of the HHG carrier, and/or shipper's statements.

#### *Some Examples of Documents that Can be Used to Prove Violations of the FMCCRs and the Federal Statutes*

Examples of documents to support your discovered violations are listed below:

- Statements from motor carrier officials and/or employees;
- Documentation from a FMCSA office demonstrating that the required filing information was not on file;
- Tariffs;
- Advertisements; and
- Copies of carrier brochures;
  - "Your Rights and Responsibilities When You Move;"
  - Arbitration Programs; and
  - Complaint and inquiry handling procedures;
- Loss and damage claim file, to include;
  - Loss and damage claim letters filed by the claimant;
  - Acknowledgement letters; and
  - Disposition letters;
- Shipping documents, including;
  - Written estimates;
  - Orders for service;
  - Bills of lading;
  - Inventory sheets; and
  - Weight tickets;
- Complaint information contained in the NCCD;
- Other supportive evidence, such as emails and other written correspondence; and
- Signed statements from shippers.
- Signed statements from employees or former employees

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

#### *Civil Penalty Amounts*

#### *Determining the Appropriate Civil Penalty Amounts for Violations of the FMCCRS and the ICCTA*

- If the appropriate UFA software is not available, you should manually prepare a Civil Penalty Worksheet to determine the appropriate civil penalties. You shall consider the following factors when considering civil penalties for a HHG motor carrier:
  - Culpability;
  - History of prior conduct;

- Degree of harm to shipper(s);
  - Ability to pay/stay in business
  - Whether shipper has been adequately compensated before institution of enforcement proceeding;
  - Subject's attitude towards compliance & willingness/ability to comply; and
  - Such other matters as fairness may require.
- Violations of the FMCCR and the Federal statutes relating to the protection of individual shippers is liable for a minimum penalty of \$1,100 for each violation and each day the violation occurs, as provided by Appendix B to Part 386, subsection (g).
  - A person who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of HHG by motor carrier, or freight forwarder to evidence the weight of a shipment, or who charges for services which are not performed, or are not reasonably necessary in the safe and adequate movement of the shipment, is liable for a minimum penalty of \$2,200 for the first violation and \$6,500 for each subsequent violation as provided by Appendix B to Part 386, subsection (g).
  - Unauthorized transportation: If a person provides transportation of HHG subject to jurisdiction under subchapter I of chapter 135 [49 USCS §§ 13501 et seq.] or provides broker services for such transportation without being registered under chapter 139 [49 USCS §§ 13901 et seq.] to provide such transportation or services as a motor carrier or broker, as the case may be, such person is liable to the United States for a civil penalty of not less than \$25,000 for each violation as provided by Section 14901(d)(3).
  - Violation relating to transportation of HHG of any person that knowingly engages in, or knowingly authorizes an agent or other person, to falsify documents used in the transportation of HHG subject to jurisdiction under subchapter I or III of chapter 135 which evidence the weight of a shipment or to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment is liable to the United States for a civil penalty of not less than \$2,000 for each violation and of not less than \$5,000 for each subsequent violation as provided by Section 14901(e)(3).

### ***Exhibit Abstract***

#### ***Preparing the Exhibit Abstract***

The exhibit abstract for each count must contain sufficient evidence to support the government's allegation that the carrier committed a violation. This means the exhibit abstract should contain the elements described in general guidelines for documenting violations. Great care should therefore be taken in the preparation of this abstract. Refer to [Illustration HHG-1](#) for an example of an exhibit abstract of a documented violation of Part 375.

### ***Statement of Charges***

#### ***Include the Following in the Statement of Charges***

The Statement of Charges is important because it is a part of the first official notification to the carrier and its legal counsel that it is being assessed civil penalties for specific violations of the FMCCR. The Statement of Charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by our documented evidence, which establishes the motor carrier committed a violation.

## 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. Order For Service, dated May 1, 20XX;
  - c. Bill of Lading, dated June 15, 20XX; and
  - d. Inventory Sheet, dated June 15 and July 1, 20XX.
2. Copy of ABC Moving & Storage, Inc.'s invoice, dated July 1, 20XX, which shows Susan Harpsichord, shipper, paid \$3,500 for the transportation and accessorial charges at the time of delivery of her household goods in Phoenix, Arizona.
3. Copy of Susan Harpsichord's written loss and damage claim, dated August 31, 20XX. This claim shows Ms. Harpsichord claimed \$1,000 for loss and damages that occurred to her household goods. This loss and damage claim shows ABC Moving & Storage, claim number is XXXXXX.
4. Copy of ABC Moving & Storage, Inc. correspondence, dated September 14, 20XX, making a settlement offer of \$200 to Ms. Harpsichord in response to her filed loss and damage claim.
5. Copy of Ms. Harpsichord's written request, dated September 21, 20XX, to use ABC Moving & Storage, Inc.'s arbitration program.
6. Copy of ABC Moving & Storage, Inc.'s letter, dated October 1, 20XX, advising Ms. Harpsichord that it does not have an arbitration program in place.
7. Signed statement by Mr. Halil Savala, owner of ABC Moving & Storage, Inc., admitting that the carrier does not have an arbitration program in place. Mr. Savala states that ABC Moving & Storage, Inc.'s arbitration agreement with In-Depth Arbitration Associates of New York, NY, expired on April 1, 1999 and that a replacement program was not initiated.
8. Signed statements by Ms. Harpsichord confirming ABC Moving & Storage, Inc. did in fact transport her household goods from New Haven, CT to Phoenix, AZ. Ms. Harpsichord verifies that she did request arbitration in an effort to recover additional loss and damages charges, and that ABC Moving & Storage, Inc. admitted it had no arbitration program in place.

9. See Exhibit A, a copy of ABC Moving & Storage, Inc. published tariff. The document does not contain any provisions for an arbitration program.

#### 4.7.2 Illustration HHG-2: Part C Template for Focused NRCRs

##### PART C Template for the Commercial NRCR

**PURPOSE:** The purpose of this template is two-fold – it documents the investigation and aids in penalty assessment, if applicable. This template is intended to increase the uniformity of the investigative process. Each section should be completed, as applicable. The content and context of each section should be completed with details from the investigation.

**HOW TO USE:** Provide details of the investigation that are not obvious or evident from reading Parts A and B of the report. All remarks should be based in fact or actual statements made by carrier staff. All information contained in this report must be accurate and legally defensible. Items noted as [REQUIRED] are required to be in Part C. Those noted as [SUGGESTED] are suggested items for Part C.

##### REMARKS:

##### REASON FOR INVESTIGATION:

[REQUIRED] Note if there is more than one reason for initiating this review (i.e., High-Risk List, Complaint, etc.)

##### SCOPE OF INVESTIGATION:

[REQUIRED] If a Focused Review was conducted, document any reasons why items outside of the originally assigned scope were reviewed.

**CARRIER OPERATION DESCRIPTION:** [Include information in this section describing the Carrier operation, such as, commerce, goods, operating area, etc.]

[REQUIRED] Describe the financial condition of the subject, focusing on any information that impacts the carrier's safety operation. The objective is to gather information to support making safety assessments, determining ability to pay and reincarnated carrier.

- Include:

- o Gross Revenue - If carrier refuses to provide explain how the amount was determined, list major assets such as buildings, land, airplanes, other companies, etc.
- o Document the officers of the company.
- o 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 Part B, and would increase the accuracy of the evaluation process, and would aid the follow-up investigator.

#### **FOLLOW-UP ACTION:**

[REQUIRED] Note the reason for NOT taking enforcement action for acute violations.

[SUGGESTED] Note the reason for NOT initiating enforcement action in response to any discovered pattern of critical violations.

#### **DOCUMENTS PROVIDED TO CARRIER:**

[REQUIRED] List materials provided TO the carrier and any materials the carrier had on hand.

#### **4.7.3 Illustration HHG-3: Sample Complainant Statement**

##### **STATEMENT OF [Complainant Name]**

I, [Complainant Name], voluntarily make the following written voluntary statement, under penalty of perjury to [Safety Investigator Name], who has identified himself to me as a special agent for the Federal Motor Carriers Safety Administration, U.S. Department of Transportation. No threats or promises of any kind have been made to me, nor have I been coerced in any way.

**Question:** During your interstate move with (HHG Motor Carrier), were you given the booklets “Your Rights & Responsibilities when You Move,” “Ready to Move,” and a summary of the carrier’s Complaint & Inquiry handling program?

**Answer:**

**Question:** What was the amount of your original estimate?

**Answer:** \$

**Question:** Was your estimate Binding or Non-binding?

**Answer:**

**Question:** On moving day, did the carrier prepare a new estimate with increased charges before your shipment was packed and loaded onto their truck(s)?

**Answer:**

**Question:** Did the mover give you the opportunity to view the weighing of your shipment?

**Answer:**

**Question:** Did the mover provide copies of the weight tickets to support the additional charges?

**Answer:**

**Question:** Did the carrier give you the opportunity to pay the estimate plus 10 percent of your charges in order to receive your goods?

**Answer:**

**Question:** Have you received delivery of your shipment yet?

**Answer:**

**Question:** When did the carrier advise you of the higher charges pertaining to your move?

**Answer:**

**Question:** Did (HHG Motor Carrier) sell you insurance and if so, did you receive a policy or certificate?

**Answer:**

**Question:** How much is the carrier requiring you to pay in order to receive your goods?

**Answer:**

Additional comments:

I have read the foregoing statement consisting of (state number of pages, 2 of 2, 3 of 3, etc.) It is true, accurate, and complete to the best of my knowledge. I reviewed any changes and they bear my initials. I make this statement under the penalty of perjury.

Signature

Date

I certify that I prepared and took the above statement and that it is a complete and accurate summary of my interview with the witness.

Witnessed by (Safety Investigator)

US (Your number)

Date:

**4.7.4 Illustration HHG-4: Statement for Commercial Non-ratable Investigations**



**STATEMENT**

I \_\_\_\_\_, voluntarily give the following statement to \_\_\_\_\_, who has identified to me as a Special Agent for the United States Department of Transportation, Federal Motor Carrier Safety Administration. No threats or promises have been made to me in exchange for this statement.

I understand this statement may be shared with and used as evidence by any Federal, State, or local authority working with the Federal Motor Carrier Safety Administration in connection with the enforcement of Federal laws and regulations.

(Insert the text forming the body of the statement.)

I have read the foregoing statement consisting of \_\_\_\_ page(s). It is true accurate and complete to the best of my knowledge. I reviewed any changes and they bear my initials.

I sign this statement under penalty of perjury in the presence of \_\_\_\_\_

Witness/Complainant signature

Date

\_\_\_\_\_

\_\_\_\_\_

I certify that prepared the above statement and that is an accurate summary of this interview of the witness/interviewee.

Special Agent's signature

Date

\_\_\_\_\_

\_\_\_\_\_

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# Inspection manual

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**



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## 5.0 Inspection Manual

### 5.1 Stage 1-Roadside Inspection Guidelines

#### 5.1.1 Inspection Manual General

##### 5.1.1.1 Roadside Inspections

###### ***Definition of a Roadside Inspection***

A roadside inspection is an examination of a motor carrier's CMV(s) and/or its driver(s). It is performed at a fixed or roadside facility and consists of an examination of a driver's hours of service (HOS), commercial driver's license requirements, operating authority, financial responsibility, vehicle maintenance, hazardous materials (HM), and other transportation records. A roadside inspection is intended to assess the compliance of a company's motor vehicles and/or its drivers with FMCSA safety, economic, and HM regulations. The inspection should be conducted in such a manner that assures violations are not missed, overlooked, or unrecorded.

###### ***Objectives of a Roadside Inspection***

There are several objectives for conducting a successful driver and vehicle examination. They include, but are not limited to, the following:

- Removing potentially unsafe drivers and imminently hazardous vehicles from our Nation's highways.
- Ensuring compliance with the provisions of the FMCSR, Federal Motor Vehicle Safety Standards (FMVSS), and HMR, by requiring repairs of vehicle defects and appropriate remedial action for vehicle and/or driver violations.
- Documenting violations that can be used in subsequent enforcement actions.
- Obtaining information regarding carriers, drivers, vehicles, and cargo relative to safety and compliance with the FMCSR, FMVSS, and HMR, and overall program direction and evaluation.

###### ***Personnel Authorized to Perform Roadside Inspections***

- Every special agent of FMCSA (as defined in Appendix B to this subchapter) is authorized to enter upon and perform inspections of motor carrier's vehicles in operation, including Certified Safety Investigators (SIs), Safety Auditors, and Roadside inspectors

###### ***A Roadside Inspection Can Be Initiated Against the Following***

Roadside inspections can be initiated on any CMV (e.g., passenger carriers, HM carriers, carriers of property) operating in interstate, international, or intrastate commerce. Generally, motor carriers with a high Inspection Selection System (ISS) value are selected first.

*Inspectors have the discretion whether to conduct an inspection on a motor vehicle that has a current CVSA decal. Reasons for re-inspection include, but are not limited to, discovery of OOS violations, visible or audible mechanical defects, transportation of HM, load securement violations, special operations, etc.*

 When conducting pre-authorization safety audits at a "long haul" carrier's principal place of business (PPOB), outside of the United States, vehicle inspections must be conducted on all vehicles without current CVSA decals. These inspections should be limited to the vehicles the carrier intends to operate beyond the border commercial zones within the United States.

###### ***You Can Initiate a Roadside Inspection of Bus Operations by For-Hire, Private, or School Bus Carriers***



For-hire, private, and school bus carriers are subject to the FMCSR. However, they are subject to specific regulations depending on their operations.

***SAFETEA-LU Section 4114 Intrastate Operations of an Interstate Carrier Provides FMCSA with the Authority to Conduct a North American Standard Inspection of an INTERSTATE Motor Carrier whose Driver/Vehicle is Involved in INTRASTATE Commerce at the Time of Inspection***

However, the agency cannot take enforcement for violations discovered, and this practice is not encouraged. Vehicle and/or driver may be placed out-of-service (OOS) if warranted.

**5.1.1.2 Authority to stop and Inspect Commercial Motor Vehicles (CMVs) and their Drivers**

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 4143 authorizes every special accredited agent of FMCSA (as defined in Appendix B to this subchapter) to enter upon and perform inspections of motor carrier's vehicles in operation, for examination and inspection of the driver(s) and the CMV, which subject to the Federal Motor Carrier Safety Regulations (FMCSR), FMCCRs, and Hazardous Materials Regulations (HMR). Suspected violations of 18 U.S.C. 39 must be referred to the Office of the Inspector General (OIG) for possible criminal enforcement action. FMCSA will not establish new inspection locations. Inspections will continue to be conducted at existing inspection sites.

***Scope of Authority You Have as a Special Agent to Conduct HM Inspections***

The inspection of HM Carriers is very critical to the FMCSA safety program. Special Agents have the authority under 49 CFR Part 109 to place HM vehicles OOS. FMCSA utilizes the current edition of the Commercial Vehicle Safety Alliance's North American OOS Criteria (NAS-OOSC) to apply 49 CFR Section 109.17 during roadside inspections.

The NAS-OOSC was developed jointly by state regulators and industry representatives through an open committee process established by CVSA. The FMCSA is represented during these meetings and contributes to the NAS-OOSC development. Once approved, the NAS-OOSC is updated and a new edition is published with an effective of date of April 1 of each year. Because the conditions that cause an OOS in the NAS-OOSC are considered to be imminent hazards, the most current NAS-OOSC will be used to determine those conditions where a FMCSA Special Agent may place a CMV or its driver out of service and exercise enhanced authority under § 109.17.

**5.1.1.3 Locations Where Inspections Can Be Conducted**

Currently, FMCSA policy allows employees to conduct inspections of drivers and CMVs at pre-determined inspection sites with our Motor Carrier Safety Assistance Program (MCSAP) partners. For the safety and security of all those involved, this policy will not change. The process of inspecting CMVs throughout the country shall be conducted with the presence of our MCSAP partners whenever possible.

**5.1.1.4 Identification by Authorized Employees When Stopping a CMV for Inspection**

To ensure drivers of CMVs are fully aware that the persons stopping their vehicle for inspection are authorized FMCSA employees, such employees must be wearing proper attire that clearly identifies the Agency. This should include Agency identification on hats, shirts, coveralls, and jackets. In addition, employees shall identify themselves to the driver by displaying their credentials.

**5.1.1.5 A Driver of a CMV Refuses to Stop for Inspection When Directed or Leaves the Inspection Site Without Authorization**

If a driver of a CMV knowingly fails to stop for an inspection when directed to do so by an authorized employee, contact a MCSAP partner who has the authority to pursue the driver/vehicle in question and detain the driver for questioning and possible inspection. FMCSA authorized employees do not have the authority to pursue and detain drivers and vehicles.

### ***Citing a Driver Who Has Refused to Stop for Inspection or Leaves the Inspection Site Without Authorization***

FMCSA does not have the authority to cite Title 18, United States Code violations because they are criminal violations.

### ***Bringing Enforcement Against a Driver Who Has Refused to Stop for Inspection or Leaves the Inspection Site Without Authorization***

Suspected violations of 18 U.S.C. 39 must be referred to the OIG for possible criminal enforcement action.

If an authorized FMCSA employee believes that a referral for criminal prosecution is warranted, he/she must first consult with his/her supervisor. The decision to refer a case to the OIG will be left to the discretion of the Division Administrator (DA). The DA must ensure his/her actions are coordinated with the appropriate Service Center (SC) and MC-CCE Field Attorney. If the DA, after consultation with the SC and MC-CCE Field Attorney, determines that criminal prosecution should be pursued against a driver, the matter must be referred to the OIG. The OIG is the Department of Transportation's law enforcement component and it is mandatory to coordinate any criminal prosecutions with it.

## **5.2 Stage 2-Pre-inspection**

### ***Procedures that Should be Taken to Prepare for Roadside Inspections***

Prior to conducting a roadside inspection, you should do the following:

- Inform your first line supervisor that you will be conducting roadside inspections.
- Contact your State MCSAP personnel to confirm that inspection pits are available and schedule a day and time that you will be using their facilities.
- Ensure that you have the latest versions of FMCSA software [ASPEN, ISS, and Previous Inspection Query (PIQ)] on your laptop computer. You may check to ensure that you have the latest version available by logging into <http://infosys.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>). You will need to have the ability to print the completed report for both your records and for the driver.
- Be properly attired (e.g., full inform). Proper attire should include: coveralls or work pants/shirt, hard hats, safety shoes, gloves, and safety goggles.
- Be properly equipped. Tools needed to conduct your inspection are as follows: ruler, tire gauge, load seal, soapstone, pen and paper, etc. Other safety equipment, such as chock blocks and creepers, should be on hand and available.



Pre-inspection planning is different for various types of inspections. There are three types of passenger-carrying vehicle inspections. Carrier Terminal Facility, Destination or En route - Extensive pre-inspection planning must be completed for each type of inspection process. The preplanning varies slightly depending on the type of inspection, but key elements are always performed.

1. **Terminal Inspections:** Advanced notice is necessary for terminal inspections since this type of inspection has a direct impact on the carrier's operations. While selecting vehicles at a terminal facility, consideration must be given to whether a vehicle is in service or if it is awaiting service. Since the vehicles are usually parked together, carrier management will need to point out the vehicles that are appropriate to be inspected.

2. **Point of Destination (POD) Inspections :** This type of passenger vehicle inspection is performed at an attraction or destination such as a casino, amusement park, state fair, athletic event, etc. The pre-inspection planning for a Point of Destination inspection is typically performed by 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 inspections, there are four steps to pre-inspection planning.
    1. Determine which level of inspection to perform

Level	Title	Explanation
1	North American Standard Driver/Vehicle Inspection	All driver documentation and complete vehicle inspection
2	Walkaround Driver/Vehicle Inspection	Same as Level 1, but do not check under the vehicle
3	Driver Only Inspection	Driver documentation only
4	Special Inspection	Any aspect of the safety inspection, usually done for data gathering
5	Vehicle Only Inspection	Complete vehicle inspection without a driver present conducted at any location
6	Enhanced Radioactive Inspection	For specific radioactive shipments that are route controlled
7	Jurisdictional Mandated Inspection	Inspection does not meet any other level. Not limited to school buses, etc. No CVSA issued

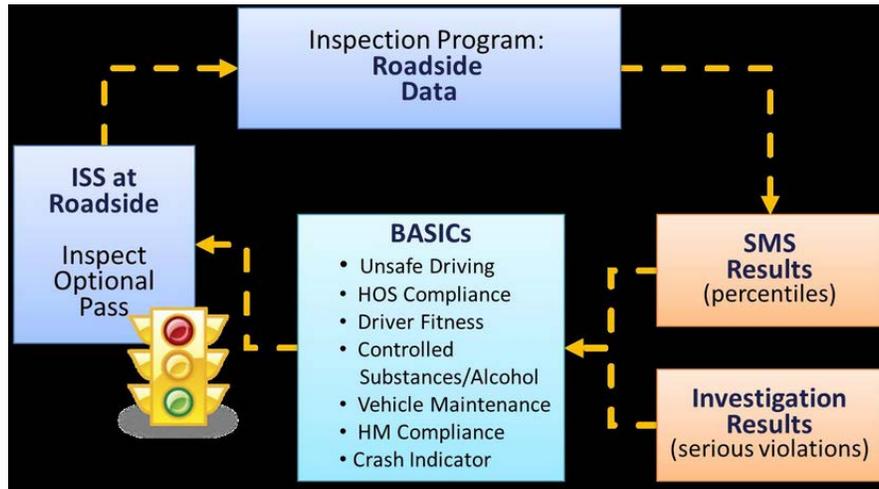
2. Determine the destination inspection site.  
Site should accommodate:
  - Safety considerations
  - Reasonable distance from passenger vehicle arrival/parking area
  - Major equipment (ramps) readily available
  - Parking area for OOS vehicles
3. Schedule adequate personnel.
  - Team Leader  
Inspects driver compartment and interior,
  - Front Inspector  
Inspects front and left side.
  - Rear Inspector  
Inspects rear and right side.
4. Secure authorization from private property owners/operators.  
Ensures that the destination management or carrier facility will be prepared for your visit and you'll be allowed to conduct your inspections without dispute or delay

## 5.3 Stage 3-Inspection

### 5.3.1 Selecting a Vehicle for Inspection

Whenever possible, select vehicles for inspection using available technology (e.g., ISS, which is embedded in ASPEN, and PIQ). Presented below are two figures related to ISS. The first figure presents

the foundational data for the ISS. The second figure presents an example ISS screenshot and shows the BASICs tab, which displays an overall BASIC assessment, on-road performance percentiles from the SMS, and an indicator of previous investigation violations.



**Figure: Foundational Data for ISS**  
[Description of flowchart](#)

The screenshot shows the 'BASICs' tab in the 'Inspection Selection System v2.14.2 - USDOT # 01717350'. The table below summarizes the data displayed in the screenshot.

BASIC	BASICs Status	On-Road Performance	Investigation
Unsafe Driving	Alert	91.8	
HOS Compliance	Alert	81.7	
Driver Fitness	Alert	96.7	
Drugs/Alcohol		0%	
Vehicle Maintenance		46.8	
HM Compliance		No HM Veh. Insp.	
Crash Indicator		< 2 crashes	
Insurance/Other		Not Applicable	
SMS Date: 3/22/2013		Last Investigation Date:	

BLUE SKY BUS TOURS INC

**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](#).

**5.3.3 Roadside Inspection Procedures and Guidelines for the Hazardous Materials Regulations**  
***Scope of Authority You Have as a Special Agent of the USDOT 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 Out-Of-Service. FMCSA utilizes the current edition of the Commercial Vehicle Safety Alliance's North American Out-Of-Service Criteria (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 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.

Special Agents will not open HM packages or packages suspected to contain HM at any time.

Special Agents will record all HM violations and HM OOS violations on the inspection report in accordance with current FMCSA policies and procedures.

See the policy titled, "Hazardous Materials Enhanced Enforcement Policy and Guidelines" dated May 5, 2014, for more details.

For procedures on applying 49 CFR Part 109 in circumstances other than roadside inspections, see, Part 109, Hazardous Materials Procedural Regulations for Opening of Packages, Emergency Orders, and Emergency Recalls," in the Compliance Manual.

### ***Establish the Following When Checking HM Paperwork***

Ensure shipping papers are properly prepared and maintained, in accordance with Part 172. Check for proper shipping name, hazard class, identification number, packing group, total quantity, additional description requirements, if applicable, and a valid emergency response number. Special Agents should also review the Material Data Safety Sheet for any additional information that needs to be known about the HAZMAT being transported.

All information must be entered on the shipping paper in order for it to be in compliance with the HM regulations.

**Note:** Verify that emergency response information is available during transportation, as required by §172.600. You may call the telephone number to ensure the emergency response number is available 24 hours, by a knowledgeable representative, as required.

### ***HM Placards When a CMV is Transporting HM***

Examine the vehicle and determine whether there are any placards visible. Placards representing the appropriate HM class must be displayed on each side and each end of the vehicle when:

- Transporting any quantity of material which is listed in Table 1 of Section 172.502; or,
- Transporting 1,000 pounds or more (aggregate gross weight) of materials listed in Table 2 of Section 172.504.
- Placards must be securely attached and readily visible.
- Placards are not required for materials classified as ORM D, or when shipping papers identify the material as "limited quantity."
- The display of identification numbers on a placard is permitted, when applicable.

***If I Inspect a Motor Carrier/Shipper that Transports Placardable HM, it Must Register with PHMSA***

A motor carrier/shipper must be registered, in accordance with Part 107.608. If the carrier/shipper cannot produce evidence of registration, but claims to be registered, provide the carrier 10 working days to produce evidence of registration, or evidence of registration, can be verified at <https://hazmatonline.phmsa.dot.gov/Services/companylookup.aspx>. This also applies to Class 9 shipments in bulk packages of more than 3,500 gallons.

***If the Motor Carrier/Shipper Fails to Produce Evidence of PHMSA Registration Within 30 Working Days of the Roadside Inspection***

Enforcement action should be initiated against a motor carrier/shipper that fails to produce evidence of registration within 30 working days.

***If the Verification Shows that the Carrier/Shipper is Not Currently Registered with PHMSA***

You should inform a high-level company official that they must register immediately for each registration year in which they engaged in activities covered by the registration program. If the motor carrier/shipper submits complete and accurate proof of registration, within 10 working days after the closeout of the inspection, enforcement should not be initiated. However, if the carrier/shipper fails to register within 10 working days, enforcement should be initiated.

***Other HMR that a Motor Carrier/Shipper Must Abide by during the Transportation of Placardable Amounts of HM***

Check the vehicle to determine the compliance of the shipment. The review should include:

- Inspecting the vehicles: Determine if the vehicle is required to be marked with the UN Number of the hazardous material(s) transported.
- Inspecting packages: Examine the labels and marking on the packages for consistency with the information indicated by the shipping papers. Ensure proper packaging, marking, and labeling.
- Verify that the packages are authorized for the HM being transported and check for the presence of any PHMSA special permits.

***Requirements for How HM Must be Loaded***

- Determine whether the HM is properly loaded, blocked, and braced on vehicles.
- Determine whether 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)].
- The cargo must not be incompatible and must be loaded, in accordance with specified requirements (176.83 and 176.144).

***Safety Equipment is Needed On Board a CMV Carrying HM***

Vehicles are required to be placarded, shall be equipped with a 10 B.C. rated fire extinguisher which must be properly filled, operative, and securely mounted on the vehicle.

***Inspection Items to Look for on a Cargo Tank Transporting HM***

- Verify the cargo tank is authorized for the HM being transported
- If a DOT specification cargo tank, inspect the specification plate and verify whether it meets the requirements for that DOT specification
- Determine whether an ASME Name Plate (U Stamp) is required, and if so, present
- If subject to Part 180 Subpart E, inspect for current test date markings applicable to the cargo tank and the HM being transported

- Inspect the components of the cargo tank per NTC's Cargo Tank Inspection Course procedures
- Any unusual circumstances or suspected CT facility test/inspection violations should be reported to your local HM Specialist or HM Program Manager
- Special Agents may climb on the top of the cargo tank at their discretion.

### ***If You Ever Come Across HM That is Leaking***

Leaking of any product classified as hazardous material, inside or outside of a vehicle, is to be handled as follows:

- Contact appropriate local enforcement official and make arrangements to park vehicle, in suitable location, until disposition of the matter is resolved. The vehicle is to be placed OOS for violating 396.9(c).

Contact the motor carrier and other appropriate agency, advise of the nature and extent of the leak, and the location of the vehicle. Do not directly obtain clean up services, as that may subject the agency to financial obligations. Obtaining clean up services is the responsibility of the motor carrier.

Special Agents will not open HM packages or packages suspected to contain HM at any time.

Special Agents will record all HM violations and HM OOS violations on the inspection report in accordance with current FMCSA policies and procedures.

See the policy titled, [Hazardous Materials Enhanced Enforcement Policy and Guidelines](#) dated May 5, 2014, for more details.

For procedures on applying 49 CFR Part 109 in circumstances other than roadside inspections, see Part 109, Hazardous Materials Procedural Regulations for Opening of Packages, Emergency Orders, and Emergency Recalls, in the Compliance Manual.

### **5.3.4 ASPEN Procedures**

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

You should begin completing ASPEN, the software used by FMCSA to capture information obtained during a roadside inspection. The inspection report is divided into seven parts: Start, Location, Carrier, Driver, Vehicle, Violations, and Finish.

1. The Start Page provides basic information pertaining to the inspection report number, the inspection start date and time (including time zone), and the inspection level (1, 2, 3, 4, or 5). You would also indicate here if HM would be a part of this inspection, and the type of cargo tank inspected (if any).
2. The Location Page provides the current inspection location (e.g., location description, highway, milepost, state, county, county code and location code for fixed facility, roadside location, and your favorite inspection locations).
3. The Carrier Page provides accurate information on name of the motor carrier performing the transportation. You must ensure proper identification of the motor carrier.
  - The Carrier Page provides accurate information on name of the motor carrier performing the transportation. You must ensure proper identification of the motor carrier.
  - If ISS or Query Central (QC) was used to help identify the motor carrier, the carrier's information will automatically be filled in. If ISS was not used, but it is installed on the computer, the inspector may enter the USDOT # or the MX/MC # and the fields will automatically populate. This will assist in the accurate identification of carriers.
  - Also required is Cargo Information (e.g., Origin, Destination, Bill of Lading number, Cargo description and shipper Name). You will also be able to indicate specific Hazardous Materials Information (e.g., Placardable amount, Class of HM, Reportable Quantity, or HM Waste).

4. The Driver Page provides specific information about the driver (e.g., name, date of birth, license number and state of license, and if necessary, co-driver information). You would enter driver/co-driver violations here.
5. The Vehicle Page provides the identification of the power unit and trailer [e.g., Vehicle Type, Make, Year, License Plate number, State of License, Company Number, Vehicle Identification Number, and Gross Vehicle Weight Rating (GVWR)]. You will enter the number of axles here, and the type of brake chamber and their pushrod measurement (if applicable).
6. The Violation Page describes all the violations discovered during an inspection. It also contains the “driver out-of-service until” text that provides notification to the driver when he/she may drive again. The violations will determine if:
  - The driver will be placed OOS;
  - The vehicle will be placed OOS; and
  - Enforcement action is needed.
7. The Finish Page provides specific information about the conclusion of the inspection (e.g., Inspection end date/time, whether CVSA decals were applied, who prepared the report and the inspector’s notes). The inspector’s notes provide information about the inspection including comments from the inspector. The comments may include a driver’s statement regarding their employer’s knowledge of violations, warnings given to drivers regarding violations, inoperable system checks (CDLIS), and contacts made to a company regarding OOS violations.

#### ***Application of CVSA Decals and Recording Decal Information***

1. To qualify for a CVSA decal, a commercial vehicle must not have any critical vehicle inspection item violations.
2. CVSA decals, when affixed, shall remain valid for a period not to exceed three consecutive months.

#### ***Application of CVSA Decals for Mexico-Domiciled Carriers***

1. Every Mexico-domiciled long-haul carrier is required to display a current CVSA decal on every CMV it operates in the United States, attesting to satisfactory inspection by a CVSA inspector.

#### ***Roadside CVSA Decal Issuance Scenarios***

1. If an inspector breaks any seal during a roadside inspection, a replacement seal should be furnished.
2. If the vehicle did not previously have a seal or if the prior seal was broken, a replacement seal should not be applied to the vehicle.
3. When a replacement seal is affixed to a motor vehicle, a notation must be made on the driver-vehicle examination report and the signature of a witness obtained.
4. Cargo Seal removal and replacement information are required to be recorded in the ASPEN inspection report.
5. Under no circumstance should a U.S. Postal Service or U.S. Department of Defense (DOD) seal or lock be broken for the purpose of inspecting cargo on the vehicle.

#### ***Roadside CVSA Decal Issuance Scenarios***

<b>SCENARIO</b>	<b>ACTION</b>
Current decal is found.	Record current decal information.
An expired decal is found.	Record expired decal number, conduct inspection, issue a decal if applicable, 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 Interviewing the Driver*****Opening Interview with the Driver***

- Identify yourself and your employer, display your credentials, and initiate an interview with the driver(s). Explain why the driver/motor carrier was selected for the inspection and the purpose of the inspection. In addition, inform the driver(s) that various company records will be reviewed. A motor carrier and its drivers must have all the required records maintained on the vehicle available for inspection upon request by the Inspector.
- The interview should include, but not be limited to, inquiries into the proper legal name of the motor carrier, the shipment's origin and destination, and type of cargo. The information that is gathered during the roadside inspection should then be transferred to ASPEN. You may use the Inspection Collection Form to document the information you received during the interview and inspection.
- During the interview, it is important to collect any pertinent documentation to identify the proper motor carrier and to verify its compliance with the Federal regulations. The vehicle registration is a good source of information for identifying the proper motor carrier.



**Instruct the driver(s) to turn off the vehicle and place the keys on the floorboard. Even though you informed the driver to turn off the ignition, verify the driver has complied with your instructions. This is a safety precaution. Inform the driver(s) to stay in the cab and not to start the engine or apply the brakes until told to do so. This will allow you to conduct a safe roadside inspection.**

***Determining the Driver's English Proficiency***

The confirmation of a driver's ability to communicate in English sufficiently to understand and respond to official inquiries and directions will be made by the Inspector on the basis of a driver interview conducted during the driver/vehicle inspection. The driver interview must be conducted in English and should include, at a minimum, the following inquiries

- The origin and destination of the trip;
- The amount of time spent on duty, including driving time, and the record of duty status (RODS) or logbook;
- The driver's license; and
- The vehicle component and systems subject to the FMCSR.

If the Inspector determines the driver is unable to understand and respond to official inquiries and directions in English, the driver should be cited for a violation of 49 CFR 391.11(b)(2) and placed OOS in accordance with the CVSA OOS criteria.

***Documents the Driver Must Provide***

- Current CDL
- Current medical certificate, if it is not already tied to the CDL via CDLIS (see guidance in Medical Examiner's Certificate Enforcement policy release (MC-ECE-2015-0001))
- 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

### ***Opening Interview for Drivers Operating Intermodal Equipment***

During the roadside inspection, you will need to ask two additional questions when interviewing a driver operating a chassis. These two questions will help to establish whether the IEP is providing the driver sufficient space to conduct a pre-trip inspection, and whether the driver is conducting pre-trip inspections of the chassis being offered to him or her.

How the driver answers these questions will determine whether the motor carrier or the IEP will be responsible for the violations discovered during the inspection; and whether additional outreach efforts need to be pursued.

The additional questions that need to be asked during the opening interview of the driver are:

1. Did the IEP provide sufficient space for you to conduct a pre-trip inspection on the chassis you are currently operating?
2. Did you conduct a pre-trip inspection on the chassis you are currently operating?

If a driver answers “no” to question #1, FMCSA will analyze that information to determine whether additional outreach or enforcement efforts are needed for the industry. Inspectors are not required to do anything with the information gathered.

How the driver answered question #2 above, will determine which entity the violations will be attributed to during the inspection.

If during your interview, the driver answered “yes” to question #2, any violations found on the chassis, which could be visually inspected during the pre-trip inspection, as set forth in 49 CFR Section 392.7(b), will be attributed to the motor carrier. It is the driver’s responsibility to ensure that the intermodal equipment he or she selects and then operates on our Nation’s highways is in good working order. Violations found during the inspection which could not be visually inspected, such as brakes out of adjustment or tire tread less than 2/32” in an area of the tire not visible by the driver, will be attributed to the IEP.

On the other hand, if during your interview the driver answered “no” to question #2, any violation found on the chassis will be attributed to the IEP. Motor carriers; however, must be cited for a violation of 49 CFR Section 392.7(b) – Requiring or permitting a driver to drive without assuring that the safety parts and accessories on the intermodal equipment he or she is operating are in good working order (pre-trip inspection).

The inspector will need to capture the answers to these questions in the Special Study Fields section. To do so, you should:

1. Open your ASPEN software and begin your inspection.
2. Click on the “Finish” Tab.
3. Click on the “Special Study Fields” box.
4. When the “Special Study Fields” pop-up window appears, enter the answer of either “yes” or “no” in the “Special Study Field #1” section for question number one and the “Special Study Field #2” section for question number two. See example below.

The screenshot displays the ASPEN v2.11 software interface. A 'Special Study Fields' dialog box is open, featuring ten text input fields labeled 'Study #1' through 'Study #10'. The first two fields contain the text 'YES'. The 'OK' button is highlighted with a green checkmark, and the 'Cancel' button is highlighted with a red X. The background shows the main software interface with a 'Finish' button and a 'Start' button.

### 5.3.6 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.**

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:
  - o 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.
  - o 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

### 5.3.7 Part 365 - Investigative Procedures by Part

#### 5.3.7.1 Part 365 – Rules governing Applicatrions for Operating Authority(Mexico-Domiciled Carriers,Long-Haul Operations)

##### 5.3.7.1.1 Part 365 – Investigative Procedures

In your review of compliance with Part 365, you should use the following guidelines to assist in your investigation of motor carriers of property and passengers.

[Verifying Operating Authority](#)

[Procedure for Identifying Carriers Operating with Invalid Authority](#)

#### ***Part 365 - Verifying Operating Authority***

##### ***Verifying a Carrier's Operating Authority and Insurance Status***

All Federal and MCSAP personnel shall verify the operating authority and insurance status of motor carriers subject to the operating authority requirements in 49 CFR 392.9a(a) during all roadside inspections, safety audits, and investigations.

You should ask the carrier for its operating authority paperwork. The paperwork will indicate where the carrier is authorized to operate and any other limitations on the authority to operate in the United States. Ensure the motor carrier has current operating authority and is operating within the scope of the authority.

#### ***Part 365 - Procedure for Identifying Carriers Operating with Invalid Authority***

Described below is a set of procedures that should be used to identify vehicles operating with invalid authority, and to enforce Section 205 of the Motor Carrier Safety Improvement Act (MCSIA) requirements, as a regular part of the vehicle inspection process.

<b>Step 1</b>	<b>Determine Whether the Vehicle is Subject to Federal Operating Authority and Insurance Requirements</b>
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.	
<b>Step 2</b>	<b>Identify Vehicles Operated For-Hire by U.S. and Canadian Motor Carriers</b>
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.	
<b>Step 3</b>	<b>Check Operating Authority and Insurance Status</b>
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: <a href="http://li-public.fmcsa.dot.gov">http://li-public.fmcsa.dot.gov</a> 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.

#### 5.3.7.1.2 Part 365 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 365, you should use these guidelines to assist in the completion of the Violations Tab of ASPEN.

#### [Recording Operating Authority Violation for a Mexico-Domiciled Carrier](#) [Accessing Operating Authority at the Roadside](#)

#### *Recording Operating Authority Violation for a Mexico-Domiciled Carrier*

A Mexico-domiciled long-haul motor carrier granted standard operating authority must have its vehicles inspected by CVSA-certified inspectors every three months and display a current inspection decal attesting to the successful completion of such an inspection for at least three consecutive years after receiving standard operating authority from FMCSA.

#### Recording Violations of Part 365 OOS/Possible OOS

Citation	Type	Description
365.511	N	Failure to display a current CVSA decal - Mexico-domiciled long-haul carrier with standard authority.
392.9a(a)1	Y	Operating without the required operating authority
392.9a(a)2	Y	Operating beyond the scope of operating authority granted

#### *Accessing Operating Authority at the Roadside*

#### Options for Researching the Motor Carrier's Operating Authority and Insurance at the Roadside

<b>Option 1:</b> Access the L&I public website: <a href="http://li-public.fmcsa.dot.gov">http://li-public.fmcsa.dot.gov</a> or <a href="https://portal.fmcsa.dot.gov">https://portal.fmcsa.dot.gov</a> . ID and password required	Access the L&I public website or contact someone by phone or radio that has access to the Internet.
<b>Option 2:</b> Access the QC website: <a href="http://qc.fmcsa.dot.gov">http://qc.fmcsa.dot.gov</a> or <a href="https://portal.fmcsa.dot.gov">https://portal.fmcsa.dot.gov</a> . ID and password required.	Access the QC website or contact someone by phone or radio that has access to the Internet.
<b>Option 3:</b> 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.
<b>Option 4:</b> 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.
<b>Option 5:</b> 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.

### 5.3.7.1.3 Part 365 - Enforcement Procedures

Once you have entered the violations discovered in ASPEN and have decided to initiate enforcement action for Part 365 violations, use the following guidelines.

#### **Part 365 - Documentation**

At a minimum, obtain the following evidence during the roadside inspection to support Federal enforcement and immediately forward it to the FMCSA Division with jurisdiction over the carrier:

1. The Mexican motor carrier's Certificate of Registration
2. A copy of the motor carrier's Form MCS-90 and other insurance document issued by an authorized insurer specifying the effective date and the expiration date of the insurance coverage (49 CFR 387.303(b)(4)(iii))
3. Any transportation document which supports interstate commerce (i.e., bill of lading, pickup or delivery instructions, a delivery receipt, etc.)
4. The Roadside Inspection Report
5. A copy of the vehicle registration
6. The carrier's detail report from the L&I website at: <http://li-public.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>)--there will not be any information if the carrier is not registered-- and a declaration provided by the inspecting officer describing what was discovered at the roadside (i.e., the driver could not produce a copy of the Certificate of Registration).
7. A copy of the lease agreement, if applicable

#### **Part 365 - Enforcement Procedures**

Enforcement Action for Vehicles Operating With Invalid Operating Authority or Insufficient Insurance:

- If a U.S. or Canadian motor carrier is found to be operating in interstate commerce without valid operating authority, the appropriate citations should be entered in ASPEN and the vehicle will be placed OOS. The two new codes that inspectors can cite in ASPEN and SAFETYNET are 49 CFR 392.9a(a)(1) - Operating without registration and 49 CFR 392.9a(a)(2) - Operating beyond registration scope.

OOS status for a vehicle can only take place under the following conditions:

1. Arrange For An Authorized Carrier To Deliver The Cargo

In order to correct the OOS violation, the carrier must offload any cargo and arrange for an authorized carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects needing correction. If the vehicle is empty and not under dispatch to pick up a load, then the carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load, the same procedure will be followed and the driver will be instructed to return to the terminal.

2. Tow the Vehicle Back To The Carrier's Terminal

If Option 1 is not feasible, then the vehicle may be permitted to leave the OOS lot if the carrier arranges to have the vehicle and its load towed back to the carrier's terminal.

In addition to citing the carrier in ASPEN and placing the vehicle OOS, the following steps shall be taken at the roadside:

1. An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the FMCSA Division and the motor carrier's PPOB along with the inspection report.
2. A copy of the OOS Order and inspection report will be given to the driver.
3. The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed. Refer to flowchart: [North American Standard Inspection Procedures for Operating Authority](#).

### ***5.3.7.2 Part 368 – Applications for Certificates of Registration by Foreign Motor Carriers and Foreign Privates Motor Carriers (Mexico-Domiciled, Commercial Zone Operations)***

#### **5.3.7.2.1 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.

#### **5.3.7.2.2 Part 368 ASPEN Procedures**

Once you have completed the investigation of compliance with Part 391, you should use the following guideline in the completion of the violations tab in the ASPEN software.

#### **Recording Violations of Part 368 OOS/Possible OOS Violations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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.

#### **5.3.7.2.3 Part 368 - Enforcement Procedures**

Once you have entered the violations discovered into the Violation tabs in ASPEN software and decided to initiate enforcement action for 368 violations, use the following guidelines.

##### ***Mexico-Domiciled Carrier Without a Certificate of Registration: Does Not Have Authority or is Operating Beyond the Scope of its Authority***

If a Mexico-domiciled motor carrier is found to be operating beyond the scope of its Certificate of Registration (authority) or without having registered with FMCSA, the appropriate citations in the

ASPEN roadside inspection software will be used and the vehicle will be placed OOS. The motor carrier can only correct the OOS violation by not conducting interstate transportation in the United States (if it is not registered) or outside of the border commercial zone (if it has a Certificate of Registration).

In addition to citing the motor carrier with the ASPEN software and placing the vehicle OOS, the following steps shall be taken at the roadside:

1. An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the motor carrier's PPOB along with the inspection report,
2. A copy of the OOS Order and inspection report will be given to the driver, and
3. The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed.

In order to correct the OOS violation, the motor carrier must off-load any cargo and be encouraged to arrange for an authorized motor carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects that have to be corrected. If the vehicle is empty and not under dispatch to pick up a load, then the motor carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load in the United States beyond the border commercial zone, the same procedure will be followed and the driver will be instructed to return to Mexico or the border commercial zone (if the carrier has a Certificate of Registration).

Section 219(d) of MCSIA prohibits a Mexico-domiciled motor carrier from leasing a CMV to a motor carrier for transportation in the United States. The intent of Section 219(d) is to ensure that Mexican motor carriers and their equipment are restricted to the Southern border commercial zones consistent with the moratorium on granting authority to Mexican motor carriers to operate beyond the border commercial zones codified at 49 U.S.C. 13902(c). The leasing prohibition ensures they cannot avoid the restriction by leasing their vehicles and drivers to a motor carrier authorized to operate in the United States.

Lease agreements for Mexico-domiciled motor carriers' equipment leased to United States motor carriers are only valid within the border commercial zone. Therefore, the operation of Mexico-domiciled motor carrier equipment beyond the border commercial zone is the same as operating without a lease. A Mexico-domiciled motor carrier operating without registration or beyond the scope of its registration should be placed OOS as required by 49 U.S.C. 13902(e) as well as 49 CFR 392.9a and [FMCSA policy](#).. Furthermore, monetary penalties in accordance with 49 U.S.C. 14901 may be imposed.

### ***5.3.7.3 Part 383 – Commercial Driver's License (CDL) Standards***

#### ***5.3.7.3.1 Part 383 - Investigative Procedures***

In your review of Compliance with Part 383, you should use the following guidelines to assist in your investigation of both property and passenger carriers.

#### **[Part 383 - CDL](#)**

#### **[The Appropriate Type of CDL](#)**

#### ***Part 383 - CDL***

#### ***Drivers that Should Have a CDL***

Every driver of a CMV (as defined in Part 383) operating in the United States must have a valid CDL.

**When the GCWR is not marked by the manufacturer on the power unit, or is not otherwise available, at the time of inspection, from a credible source (e.g. the manufacturer's specifications for the vehicle), the following guidance must be used to determine the applicability of the Federal Motor Safety and CDL regulations:**

- a) Add the GVWR marked by the manufacturer on the power unit and the actual weight, or Gross Vehicle Weight (GVW), of the towed trailer, or;
- b) Add the actual weight, or GVW, of both units together, or;

- c) When the unit cannot be weighed, add the GVWR of the power unit and the GVWR marked by the manufacturer on the towed unit.

If the vehicle's GCWR requires that the driver have a CDL to operate and he/she does not have one, document the appropriate CDL violation in ASPEN and place driver Out of Service.

If the vehicle cannot be weighed and your respective State MCSAP partner's regulations or policy do not allow the options listed above, the MCSAP lead agency should provide information regarding the carrier and the vehicles to the FMCSA Division Office for further investigation.

***An Individual Moving His/Her Personal Household Goods (HHG) from Maryland to Ohio Using a CMV Greater Than 26,000 lbs. Subject to 49 CFR 382, 383, and the FMCSR***

Based on the scenario below, the following apply:

Scenario	Applicability
A person, who moves his/her own HHG, rents a CMV greater than 26,000 lbs. and operates the vehicle from Maryland to Ohio.	Not subject to Drug and Alcohol testing, CDL requirements or any other provisions of the FMCSR.
A person, who is moving, hires a driver from a company to move his/her HHG from Maryland to Ohio in a CMV greater than 26,000 lbs.	Driver and his/her company subject to 49 CFR 382 and 383
A person, who is moving, rents a vehicle greater than 26,000 lbs. and hires a driver from a company to drive the vehicle from Maryland to Ohio.	Person making the move and the driver subject to 49 CFR 382, 383, and the FMCSR
A person, who is moving, hires a driver from a company and that driver rents a vehicle greater than 26,000 lbs. and drives the vehicle from Maryland to Ohio.	Person making the move and the driver subject to 49 CFR 382, 383, and the FMCSR
A person, who is moving, hires a driver from a company and the company providing the driver rents 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 Secretaría de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS) with the proper vehicle class and without any restriction for operating in the United States.

 **Inspectors should ensure that all passenger-carrying drivers have the proper class of CDL, the required endorsements, and note any restrictions displayed on the CDL.**

***The Appropriate Type of CDL***

***Type of CDL that is Needed to Drive a Passenger Vehicle that Seats More than 16 Passengers, Including the Driver***

The driver of a passenger CMV should have, at the least, a class C CDL with a P endorsement.

 **A Mexico-domiciled driver of a passenger CMV should have the categoria "A" that is the equivalent of a class C CDL with a P endorsement.**

### 5.3.7.3.2 Part 383 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 383, you should use the following guidelines to assist you in the completion of the Violation Tab of the ASPEN software.

#### ***Checking the License History/Status and Driving Record of Drivers at the Roadside***

Verify the driver's CDL history/status through CDLIS, QC or other acceptable methods [e.g., National Law Enforcement Telecommunications System (NLETS), National Crime Information Center (NCIC), or State Licensing System]. You should ensure the driver operating the CMV has a valid commercial driver's license issued by one State or jurisdiction and all proper endorsements and restrictions applicable to the CDL are in compliance.

Despite Federal requirements that drivers surrender their previous license when obtaining a CDL in a new state of domicile, this does not always happen. The official State of Record (SOR) for a CDL holder is considered to be the true source of information on that driver. This is true even if the driver presents a CDL from another State (which is a violation of the FMCSR). To ensure that you are reviewing the most accurate driver history record, you should use the CDLIS functionality to establish which State is actually the official SOR.

With QC, you can use the AKA function to ensure that the license information presented by the driver is from the current SOR. QC will return the State and driver's license number of possible matches. Choose the driver that matches the information you have. Once that is established, you can conduct a History check directly to that State. With [cdlis.dot.gov](http://cdlis.dot.gov), you should always use the "Current" application. When using CAPRI, use the AKA function from the drop-down menu to verify that the license information you entered is for the SOR. You should not use QC or the previous version of [cdlis.dot.gov](http://cdlis.dot.gov), or CAPRI when conducting a History check without using the AKA check first to determine the official SOR.

 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

#### ***Recording Violations of Part 383 OOS/Possible OOS Regulations***

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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	<b>Learner's permit.</b> 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	<b>Vehicle group descriptions.</b> 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	<b>Endorsement descriptions.</b> 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 <a href="#">§383.5</a>
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 <a href="#">§383.73(j)(3)</a> that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDLIS driver record and the CDL document, if issued, using the restriction code “V” indicating there is information about a medical variance on the CDLIS driver record. If there is a ‘V’ restriction on the history record, there will also be issue and expiration dates for the SPE, the exemption, or both. NOTE: In accordance with the agreement between Canada and the United States ( <a href="#">see footnote to §391.41</a> ), drivers with a medical variance restriction code on their commercial driver license are restricted from operating a CMV in the other country.

#### 5.3.7.3.3 Part 383 - Enforcement Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for 383 violations, use the following guidelines.

#### **Part 383 – Documentation**

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

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

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

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

 **Note:** A CDLIS printout is acceptable for the Mexican LFC.

- Photograph or copy of current CDL or other photographs that support the violation.

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

***Part 383 - Enforcement Action Against Drivers***

The following violations warrant considering enforcement action against a driver:

- 383.21(a) - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.\*
- 383.23(a) - Operating a commercial motor vehicle without a valid commercial driver's license.\*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.
- 383.51(a)-SIN - Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance.\*
- 383.51(a)-SOUT - Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.\*
- 383.91 (a) - Operating a CMV with improper CDL group.\*

(\* ) denotes Red Flag Violation

***Part 383 - Placing a Driver OOS***

***Placing a Driver OOS for Violations of 383***

If the driver operates in the US:

- Without a CDL or **LFC** (not in possession or not having been issued one)
- Without a valid CDL or  **LFC**
- **Without a proper class () indicated on the license**
- Operating in violation of a restriction on the license
- **Note:** If the status of the CDL returns as suspended, revoked, invalid, or if it cannot be verified, the driver should be placed OOS. The driver should advise the motor carrier it is their responsibility to relieve him/her from driving duties.

The driver must then be placed OOS in accordance with the North American Uniform OOS Criteria or standard departmental policy followed by enforcement officers.

** *49 CFR 383 - MX CDL Guidance******Requirement to Check the Status of a Mexican LFC***

All CDL (or LFC) records should be checked via CDLIS. Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR 383, in the United States, must have a valid Mexican Licencia Federal issued by the Secretaria de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS) with the proper vehicle class, and without any restriction for operating in the United States.

***Calling the Local Secretaria de Comunicaciones y Transportes (SCT) Office to Verify a Mexican LFC***

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

The following chart can assist in reading a Mexican LFC.

**MX DRIVER LICENSE New and Old**

<b>Driver Holding a LFC with a Categoria</b>	<b>Equivalent to a Driver Holding a CDL Class Endorsement/Restrictions</b>
<b>A</b>	Any bus; roughly comparable to a US class B CDL with a P (passenger) endorsement.
<b>B</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.
<b>C</b>	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.
<b>D</b>	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.
<b>E</b>	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.
<b>F</b>	No comparable US CDL definition; authorizes holder to operate taxis from any airport or seaport in Mexico (because airports and seaports are federal and require a federal license, similar to driving a commercial vehicle on a federal road).

### 5.3.7.4 Part 385 – Safety Fitness Procedures

#### 5.3.7.4. 1 Part 385 - Investigative Procedures

In your review of compliance with Part 385, you should use the following guidelines to assist in your investigation of motor carriers both of property and passengers.

#### **Part 385 – General**

##### **When Should Operations Cease After a Motor Carrier is Issued an “Unsatisfactory” Rating**

- Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after the date of the FMCSA notice of proposed “unsatisfactory” rating 385.13(a)1.
- All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of the FMCSA's notice of proposed "unsatisfactory" rating.
- If FMCSA determines the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days. 385.13(a)2

#### **49 CFR 385 – CVSA Decals**

##### **Issuance of CVSA Decals**

The North American Standard Levels I and V are the only inspections that may result in the issuance of a CVSA decal. To qualify for a CVSA decal, a commercial vehicle must not have any Critical vehicle inspection item violations.

Inspectors are required to record CVSA decal information in the ASPEN inspection report. ASPEN now allows Inspectors to record both existing decals and those issued as a result of the inspection but in two different fields. This gives FMCSA the ability to monitor the number of motor carriers inspected with current decals, expired decals, issued decals per inspection and per Inspector

##### **A CMV is stopped for inspection and...**

SCENARIO	ACTION
Current decal is found.	Record current decal information.
Expired decal is found.	Record expired decal number, conduct inspection, issue decal if applicable, and record new information.
No decal is found.	Record no decal, inspect, issue new decal if applicable, and record new information.

#### **49 CFR 385 – Cargo Seals**

##### **Roadside Cargo Seals**

If for any reason during a driver-vehicle examination the Inspector breaks any seal, a replacement seal should be furnished. The replacement seals should not be applied to vehicles that did not previously have a seal or to vehicles with prior broken seals. A notation must be made on the driver-vehicle examination report and the signature of a witness obtained. Inspectors are required to record cargo seal removal and replacement information in the ASPEN report.

##### **A CMV is stopped for inspection and...**

SCENARIO	ACTION
A cargo seal is broken or	Inspect and replace cargo seal and record

removed.	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.

***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."
- 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***

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](http://www.safersys.org).

## 5.3.7.4.2 Part 385 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 385, you should use the following guidelines to assist in the completion of the Violation Tab of the ASPEN software.

***Recording Violations of Part 385 OOS/Possible OOS Regulations*****Part 385 – OOS/Possible OOS Violations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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.

## 5.3.7.4.3 Part 385 - Enforcement Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for Part 385 violations, use the following guidelines .

***Part 385 - Documentation******Documents that Should be Gathered When Initiating Roadside Enforcement***

- CVSA decal for Mexico domiciled carriers
- Carriers Safety rating (via [www.safersys.org](http://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 MSDS.
2. Where a MSDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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 MSDS.
2. **Establish that the HMSP-required hazardous material was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading and other such document may be used to establish this fact. In addition, photographs of the shipment that indicate that it was in commerce may also be useful. Amounts of the HM, or proof of meeting the definition of a Hazard Zone, is crucial in some instances.
3. **Establish that a violation of Part 385 occurred.** Documenting a violation of Part 385 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements that establish the facts of the case as outlined above. These photographs should clearly show any specification or other markings found on the package, and the amount of HM on the vehicle.

### ***Preparing the Exhibit Abstract***

- The exhibit abstract for each count must contain sufficient evidence to support the Government's allegation that a violation was committed. This means the exhibit should contain the elements described in [Documents Needed for an HMSP Enforcement Case](#).
- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- See [Appendix F](#) for examples of Exhibit Abstracts for Part 385.

### ***Preparing the Statement of Charges***

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR (the HMSP rule penalized under the hazardous material penalty provisions of the US Code). The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR. The statement of charges is found in the Remarks section of the Exhibit of Abstract. The statement of charges for a Part 385 violation should read as follows:

On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a CMV transporting «AMOUNT OF» «PROPER SHIPPING DESCRIPTION», a hazardous material requiring a Hazardous Materials Safety Permit, from «ORIGIN» to «DESTINATION». During this transportation the company did not comply with the requirements of 49 CFR 385 Subpart E. «DESCRIBE VIOLATION».

### ***Part 385 - Enforcement Actions Against Drivers***

#### ***Taking Enforcement Against a Carrier Exercising Inadequate Corrective Action***

Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to FMCSA. 385.105 (b)

#### ***Time When Suspension and Revocation of a Mexico-Domiciled Carrier Registration Should be Initiated***

If a Mexico-domiciled carrier is assigned an "Unsatisfactory" safety rating following an investigation conducted under this subpart, or a SA conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the investigation or SA contains material error (385.111(a)).

Suspending the carrier's provisional or standard operating authority or provisional or permanent Certificate of Registration and requiring it to immediately cease all further operations in the United States 385.111 (c) (1); and notifying the carrier that its provisional or standard operating authority or provisional or permanent Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order (385.111 (c) (2)).

**Note: These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.**

### ***5.3.7.5 Part 386 – Rules of Practice for Motor Carriers, Broker, Freight Forwarder, and Hazardous Materials (HM) Proceedings***

#### ***5.3.7.5.1 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.

#### ***5.3.7.5.2 Part 386 - ASPEN Procedures***

Once you have completed your investigation of compliance with Part 386, you should use the following guidelines to assist in the completion of the violations tab of the ASPEN software.

#### ***Violation Types that Should be Considered for a Carrier Operating a CMV While an Existing OOS Issued by FMCSA is in Effect***

##### **Part 386 – OOS/Possible OOS Violations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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**





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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#: <a href="#">521652</a>
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.

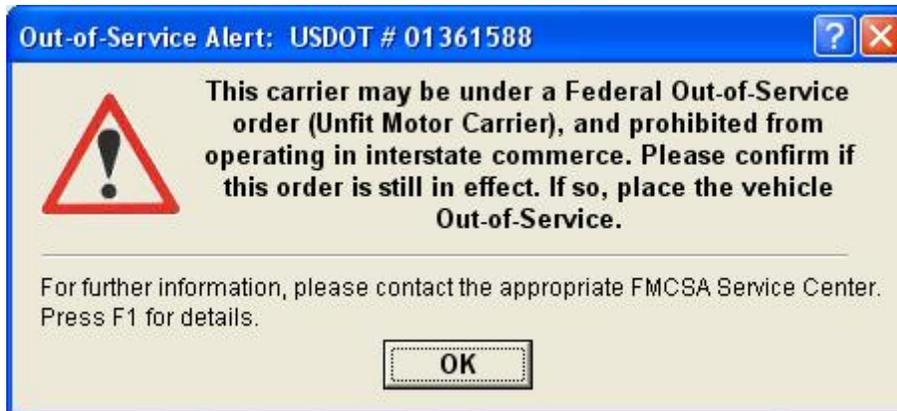
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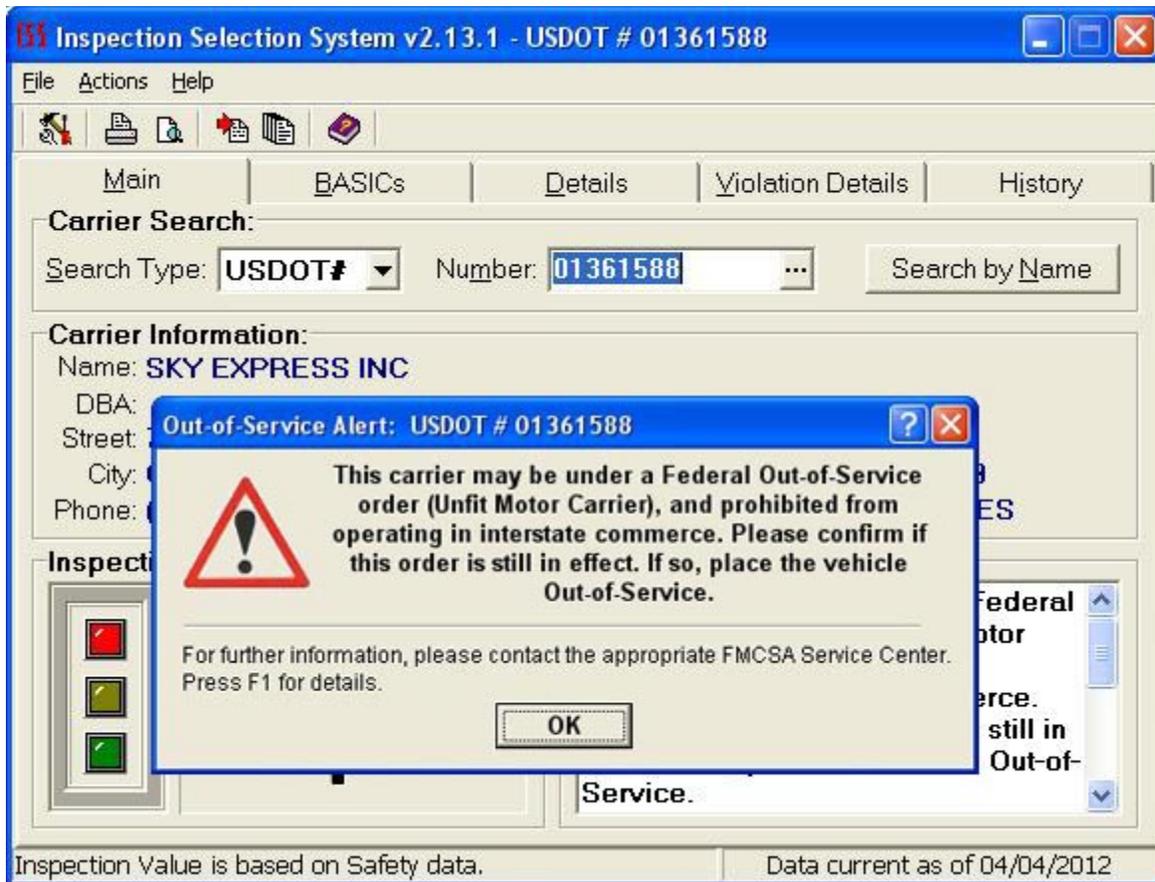


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Federal Motor Carrier Safety Administration  
 1200 New Jersey Avenue SE, Washington, DC 20590 • 1-800-832-5660 • TTY: 1-800-877-8339

Screenshot of an OOS Alert in ISS





#### 5.3.7.5.3 Part 386 - Enforcement Procedures

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate an enforcement action for the Part 386 violations, use the following guidelines.

#### *Part 386 - Documentation*

##### *Documents that Should be Gathered When Initiating an Enforcement Action*

- Registration and cab card
- USDOT Number
- Proof of MCS 150 Registration
- Bills of Lading/Shipping Documents
- RODS
- Supporting Documents (toll, fuel, hotel, etc.)

#### *Part 386 - Enforcement Against Drivers and Company*

##### *For Failure to Pay Civil Penalties or Abide by Payment Plan (Operation in Interstate Commerce Prohibited)*

*General rule:* A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until FMCSA has received full payment of the penalty (386.83(a)(1)).

**For Failure to Pay Civil Penalties or Abide by Payment Plan (Suspension or Revocation of Registration)**

*General rule:* The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (i.e., the 91st) day. The suspension continues until FMCSA has received full payment of the penalty (386.84(a)(1)).

**Note:** These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.

**Screenshot of an OOS Alert in QC**

The screenshot displays the 'CARRIER SUMMARY' page for SKY EXPRESS INC. At the top, there is a navigation bar with links for Driver, Vehicle, Carrier, Help, and Home. Below this is a secondary navigation bar with links for Carrier Summary, Carrier Detail, Violation History, 55 Past Inspection(s), PRISM, and Summary Report. The main content area features a red alert banner: 'ALERT: Carrier is currently under a Federal OOS'. Below the banner is a table with three rows of OOS data:

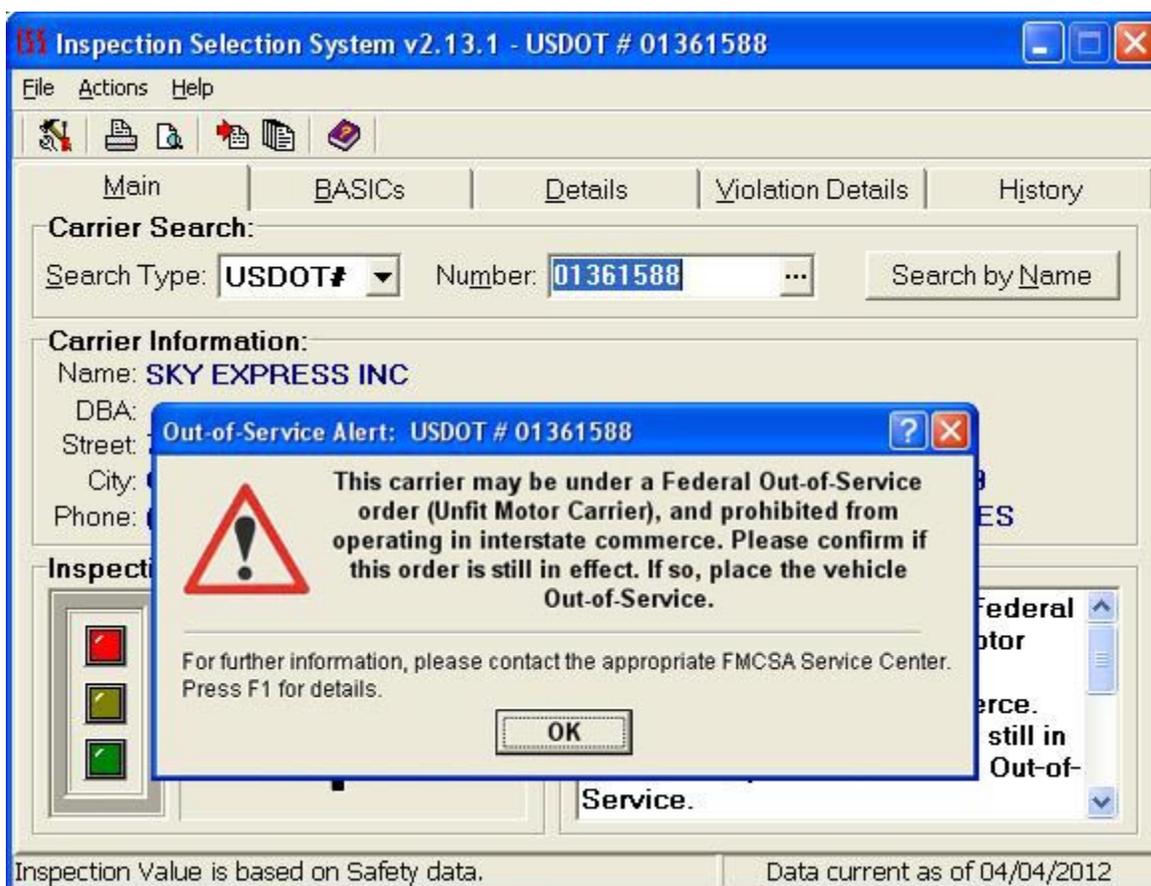
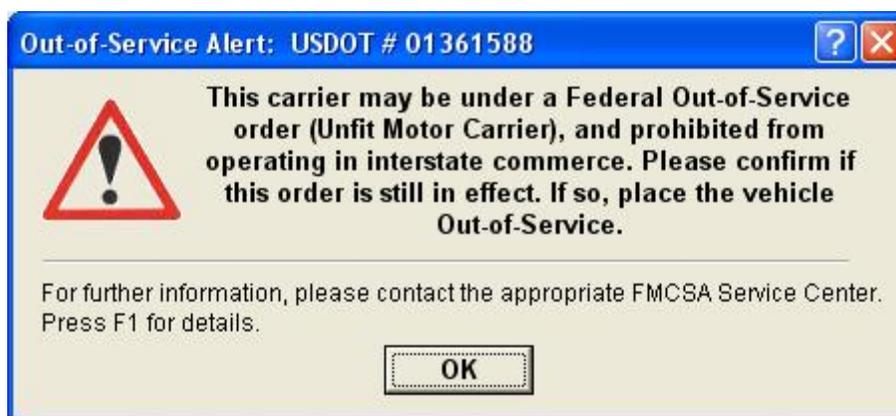
OOS Date: 11/21/2011	State:	Reason: 90 DAY FAILURE TO PAY FINE	Rescinded Date:
OOS Date: 09/07/2011	State:	Reason: 90 DAY FAILURE TO PAY FINE	Rescinded Date:
OOS Date: 05/31/2011	State:	Reason: UNSATISFACTORY = UNFIT	Rescinded Date:

Below the table, there is a note: 'For further information, please contact the appropriate FMCSA Service Center. Click here to review a reference to the applicable section of 49 CFR'. The section 'Motor Carrier Identification & Safety Data' follows, with a note: 'Please Note: You can now access L&I detail by clicking on the MC/MX number(s)'. A table provides carrier details:

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

Below the table, the 'Inspection Value: 98 - INSPECT' is displayed, with a note: 'Inspection Value is based on Safety data.' Further down, there are links to the SAFER Website and UCR information. The footer contains the FMCSA logo, contact information (1200 New Jersey Avenue SE, Washington, DC 20590), and various policy links. The browser status bar at the bottom shows 'Done', 'Trusted sites | Protected Mode: Off', and '100%' zoom.

**Screenshot of an OOS Alert in ISS**



### 5.3.7.6 Part 387 – Minimum Levels of Financial Responsibility for Motor Carriers

#### 🇩🇪 Checking Insurance of a Mexico-Domiciled CMV Operating in the United States Roadside

Every vehicle, subject to the Financial Responsibility requirements as specified in Part 387, operating within the United States by a motor carrier domiciled in a contiguous foreign country shall have on board a legible-signed copy, in English, of the proof of financial responsibility used by the carrier. Request the carrier's form MCS-90 (endorsement), form MCS-82 (surety bond), or self-insurance authorization.

**Note:** U.S. carriers do not need the MCS-90 or MCS-82 on board at the time of the inspection.

If the motor carrier has an insurance policy available, verify the insurance is currently in effect. If possible, the motor carrier's current status and history regarding operating authority and insurance filing can be checked by accessing the FMCSA L&I website at: <http://li-public.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>).

Any motor vehicle, checked at a border crossing, not having the required minimum level of financial responsibility on file or not having other proof of the required financial responsibility, shall be denied entry into the U.S.

**For Mexico-domiciled carriers only:** Any motor vehicle, checked at any other location other than a border crossing, not having the required minimum level of financial responsibility on file or not having other proof of the required financial responsibility shall have enforcement brought against it.



### ***Minimum Levels of Financial Responsibility Needed for a Passenger Carrier***

The minimum levels of financial responsibility found in Part 387 are only applicable to for-hire carriers transporting passengers in interstate commerce. For-hire motor carriers of passengers operating vehicles with a seating capacity of 16 passengers or more (including the driver) are required to have \$5 million of public liability coverage. For-hire motor carriers of passengers operating vehicles with a seating capacity of 15 passengers or less are required to have \$1.5 million of public liability coverage.

### ***Procedures for Conducting a Roadside Inspection, Investigation or SA of a For-Hire Passenger Carrier that is a Federal Transit Administration (FTA) Grantee***

You need to understand the exemption of the Federal minimum financial responsibility requirements.

- The Interstate Commerce Commission Termination Act of 1995 (ICCTA) amended the minimum financial responsibility levels which FTA grantees must observe.
- FTA Grantees operating interstate for-hire passenger carrier services are subject to a required minimum level of financial responsibility, even though that amount differs from the “schedule of limits” provided under 49 CFR Section 387.33.
- The Bus Regulatory Reform Act of 1982 requires limits of financial responsibility according to vehicle seating capacity; not the number of passengers currently being transported, however,
- For FTA grantees providing interstate, for-hire, transit service operations funded by grants under 49 U.S.C. 5307 (urbanized public transit service in geographic areas with a population of 200 thousand or greater), 5310 (public transit service for the elderly and persons with disabilities), or 5311 (public transit service in non-urbanized areas), or carriers that contract to provide transportation service funded in whole or in part by such grant funds, the general Federal insurance requirement of \$1.5M or \$5M (based upon designed seating capacity), does not apply.
- All FTA grantees providing interstate, for-hire, transit service operations funded by grants under 49 U.S.C. 5307, 5310, or 5311, or carriers that contract to provide such transportation service funded in whole or in part by such grant funds are required to maintain the highest level of insurance required by any of the States in which they operate, as their required minimum level of financial responsibility.

### ***Operations Covered by the Exemption of the Federal Minimum Financial Responsibility Requirements***

All FTA grantees providing interstate, for-hire, transit service operations funded by grants under 49 U.S.C. 5307, 5310, or 5311, or carriers that contract to provide such transportation service funded in whole or in part by such grant funds.

### ***These FTA Grantees Are Not Exempt From All FMCSA Requirements***

- The ICCTA does not relieve FTA grantees with interstate transit services of their obligation to register with the Federal Motor Carrier Safety Administration (FMCSA) and obtain operating authority as required of all interstate for-hire carriers under 49 U.S.C. 13902.
- The ICCTA does not relieve FTA grantees of their obligation under 49 U.S.C. 13906 to file with FMCSA evidence of insurance under 49 CFR 387 as a condition of registration.
- The ICCTA does not relieve FTA grantees of any applicable requirements within the FMCSR in 49 CFR parts 390 to 396.

### ***How This Impacts Federal and State Enforcement Officers***

- When the exemption applies, Federal and State enforcement officials must be aware that the general Federal insurance requirement of \$1.5 million or \$5 million (based upon designed vehicular seating capacity), does not apply.
- Federal and State enforcement officials should use FMCSA's L&I database to determine compliance with the required minimum level of financial responsibility. Compare "BIPD Insurance Required" against "BIPD Insurance on File."
- "BIPD" under Insurance Type stands for Bodily Injury and Property Damage. If the amount of BIPD insurance on file is less than the amount of BIPD insurance required, the FTA grantee has not complied with its minimum required level of financial responsibility.
- If the FTA grantee is operating in a State that requires a higher amount of insurance than the value listed under "BIPD Insurance on File," contact the Commercial Enforcement Division in FMCSA Headquarters about this matter.



### ***Registration Documents to Check for Commercial/Border Zone Operations during a Driver/Vehicle Inspection***

Passenger carriers authorized to only operate within the border commercial zones must have their Certificate of Registration on board the vehicle and ready for inspection. The registration must show the carrier's authorized scope of operations.

### ***Insurance Verification Procedures for Foreign Entities***

Each State has its own laws and regulations for all types of insurance, including car, homeowners, and health. FMCSA regulations require that the insurer be licensed to do business in (1) each State in which the carrier is authorized to operate; (2) the State in which the carrier has its principal place of business or domicile; or (3) any State as an excess or surplus lines insurer in which business is written. For options 2 and 3, the insurer must have a process agent representative in each State in which the motor carrier operates. FMCSA regulations allow Canada-based insurers for Canadian motor carriers also as long as the Canadian insurer has process agent representatives in each State in which the Canadian motor carrier operates.

The State's insurance commissioner grants licenses to foreign entities. This license allows foreign insurance companies (i.e., The Lloyds of London) to conduct business in the U.S. Licenses can only be granted through the State office. After an insurance company has been granted permission to conduct business within the U.S., that insurance company must open an insurance filer account with FMCSA. The insurance filer account allows FMCSA to accept insurance filings from that company.

To open an insurance filer account, the insurance company must provide a written request to open a filer account with the Insurance Compliance Division of FMCSA. The request must be on insurance company letterhead and must include:

- The home office address of the insurance company
- The name of the contact person within the insurance company

- A telephone number
- A fax number for the contact person

After the information from the insurance company has been verified, the insurance company is assigned an FMCSA account number. This account number allows foreign insurance companies to file insurance with FMCSA. The L&I database will not accept insurance filings without the FMCSA filer number. Additionally, this number is used to bill insurance companies for filing fees.

If a question arises regarding the legitimacy of an insurance company representing a Mexico-domiciled motor carrier contact the Insurance Compliance Division for verification of an insurance filer account.

### ***5.3.7.7 Part 390 – General Requirements***

#### ***5.3.7.7.1 Part 390 - Investigative Procedures***

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

#### ***Procedures to Follow During Your Investigation of Part 390***

Your investigation of Part 390 should begin by reviewing:

- Marking of vehicles
- Biennial update of the MCS-150

#### ***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.

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.

#### ***5.3.7.7.2 Part 390 - ASPEN Procedures***

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

### **Recording Violations of Part 390 OOS/Possible OOS Regulations**

Citation	Type	Description
390.21	N	a) General. Every self-propelled commercial motor vehicle, as defined in <a href="#">§390.5</a> , 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.

### 5.3.7.7.3 Part 390 - Enforcement Procedures

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

#### ***Part 390 - Documentation***

##### ***Documents to Gather in Order to Initiate an Enforcement Action***

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

##### ***Some Examples of Documents That May Be Used to Prove Violations of Part 390***

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 390
- Driver's RODS, and corresponding shipping/paper/bill of lading
- Vehicle registration showing GVWR, or other documentary evidenced, proving that the vehicle was subject to Part 390
- Copies of documents required by Part 390 that are falsified

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

#### ***Part 390 - Enforcement Action Against Drivers***

You should consider enforcement action against a driver for violating:

- 390.35 - Making or causing to make a fraudulent or intentional false statement on an application, certificate, report, or record, and from falsifying, reproducing, or altering any original supporting document

Related to the final rule published September 27, 2010, titled "Limiting the Use of Wireless Communication Devices" and regarding States with delayed adoption of the FMCSR, until their new regulations are adopted, such States may cite a driver for the appropriate violation citation as follows:

- 390.17 – Operating a commercial motor vehicle while texting
- 390.17 – Operating a commercial motor vehicle while using additional equipment and accessories that decrease the safety of operations

FMCSA and States that adopted the new regulation should refer to [Part 392](#).

#### ***Procedures to Determine What CMV Should be Inspected***

First, you must ensure the motor vehicle being selected for inspection meets the definition of a commercial motor vehicle (49 CFR Section 390.5):

- GVWR 10,001 to 26,000 pounds non-CDL (in interstate commerce)
- GVWR 26,001 pounds (intra- or interstate commerce)
- Transporting passengers 16 or more including the driver (intra- or interstate commerce)
- Or transporting any placarded amount of Hazardous Materials

**✚** **AMexico-domiciled carrier with a GVWR of under 10,000 pounds and hauling placardable hazardous materials needs insurance and registration inspection only.**

### *Other Part 390 Requirement to Check During an Inspection*

The review of the motor carrier's vehicles should include a determination of whether the vehicles are properly marked.

#### **Notes:**

- When citing a carrier for not having required biennial of MCS-150, cite 392.9a(b).
- When citing a carrier for not having MC authority, cite 392.9a(a).
- When citing a rental truck for not having proper marking or paperwork under a rental agreement, cite 390.12(e).
- When citing a carrier for knowingly producing fraudulent documents, cite 390.35.
- When citing a carrier for not submitting accurate information, cite 390.19(e).
- When citing a new entrant carrier for not having the required USDOT number and/or operating authority, cite 385.301.

### *5.3.7.8 Part 391 – Qualification of Drivers*

#### *5.3.7.8.1 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*

At the time of a roadside inspection, a check of the CDL driver's information via CDLIS or NLETS will verify that the driver is medically qualified. This constitutes "possession of a valid medical certificate" and compliance with 391.41(a) (1).

*If your check indicates that the CDL is valid, however, the medical indicator shows no medical information on file. Verify whether the driver has a current medical in their possession.*

**Note:** As of January 30, 2015, all State Driver Licensing Agencies (SDLAs) will be posting driver's medical examiner's certificate information into CDLIS. However, some States may not be completely up

to date on uploading, and some methods of electronic interchange may not contain all relevant data, and as a result, you may see differences in the data obtained from the carrier, CDLIS, etc.

For additional guidance to ensure consistent, fair enforcement during reviews see *MC-ECE-2015-0001*

### ***Part 391 - English Proficiency***

#### ***Verifying if a Driver is Able to Speak the English Language***

A person shall not drive a CMV unless he/she can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

The confirmation of a driver's ability to communicate in English sufficiently to understand and respond to official inquiries and directions will be made by the CMV inspector, on the basis of a driver interview conducted during the driver/vehicle inspection. The driver interview must be conducted in English and should include, at a minimum, the following inquiries:

- The origin and destination of the trip.
- The amount of time spent on duty, including driving time, and the RODS (or logbook).
- The driver's license.
- Vehicle components and systems subject to the FMCSR.

The illustration below contains strategies for communication with non-native speakers of English and examples of driver interview questions:

#### **Strategies for Communication with Non-Native Speakers of English and Examples of Driver Interview Questions**

Inspectors should explain in Spanish or other languages commonly used by inspectors in communicating with foreign drivers, that

- (1) **they must conduct a portion of the road inspection in English, specifically the driver interview;**
- (2) drivers must respond appropriately in English as a means of establishing their proficiency; and
- (3) drivers' failure to establish their ability to respond to these basic questions in English will result in an OOS violation of Section 391.11(b)(2).

The inspector should speak slowly, but naturally. Be mindful not to rush the questions, and paraphrase (in English) as appropriate.

<b>No.</b>	<b>General Driver Interview Questions</b>	<b>Possible Paraphrasing</b>
1.	Where did you start your trip today?	"Where are you coming from today?"
2.	Where are you driving to today?	"Where are you going today?"
3.	How long have you been driving today?	"What time did you start today?" and "What time are you planning to stop driving today?"
4.	What are you "hauling" today?	"What's in your truck/trailer?" or "What cargo do you have in your truck/trailer?"
5.	Who are you driving for today?	"Who are you working for?" or "Who is paying you for the load?" or "What is the name of your employer?"
6.	What is the telephone number for the trucking company you are driving for today?	"What telephone number would you call if you had a problem today?" or "What telephone number at the company would you call if you

		had an accident today?"
7.	Show me your driver's license please	"Show me your CDL"
8.	Show me the proof of insurance for your vehicles (If applicable)	"Where is your insurance card?"
9.	Show me the registration for your vehicle(s)	"Where is your cab card?" or "Where is your IRP cab card?"
10.	What year was your truck manufactured?	"What is the year of your truck?" or "What year was your truck made?"
11.	Did you perform your pre-trip inspection before you started driving today?	"Did you do your pre-trip inspection today?"
12.	Do you use time cards or log books?	"How do you report the time you worked?" or "Do you use a time clock at work?"
	Hazardous Material Question (If applicable)	
13.	What hazardous materials do you have on the truck today?	"What hazmat do you have on board today?" or "What hazmat do you have in the truck/trailer?"
14.	What telephone number would you call in case of an emergency?	"What telephone number would you call if you had a problem today?" or "What telephone number at the company would you call if you had an accident today?"

### ***Part 391 - Driver Disqualification***

#### ***Determining Whether or Not a Driver is Disqualified***

Run a CDLIS check on the driver (Federal)

#### 5.3.7.8.2 Part 391 - ASPEN Procedures

Once you've completed your investigation of compliance with Part 391, you should use the following guidelines to assist in the completion of the violations tab in the ASPEN software.

#### ***Recording Violations of Part 391 OOS/Possible OOS Regulations***

##### **Part 391 - OOS/Possible OOS Violations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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 <a href="#">§391.63</a> , 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)(2)	P	Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.
391.11(b)(4)	Y	Is physically qualified to drive a commercial motor vehicle in accordance with <a href="#">Subpart E</a> - 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 <a href="#">§391.15</a> .
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.

#### 5.3.7.8.3 Part 391 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for part 391 violations, use the following guidelines.

#### ***Part 391 - Documentation***

##### ***Documents that Should be Gathered to Initiate an Enforcement Action***

- The driver is an employee (or controlled by the motor carrier).
- The CMV was operated in interstate commerce on a specific date.
- A violation of Part 391 occurred.
- Vehicle registration showing GVWR, or other documentary evidenced, proving that the driver was subject to Part 391.
- A Medical Examination Certificate.
- A Skills Performance Evaluation (SPE).

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

#### ***Part 391 - Enforcement Against the Driver***

##### ***Consider Enforcement Action Against a Driver for the Following Violations***

- 391.11(b)(5) - Driving without a current valid motor vehicle operator's license or permit.
- 391.15(a)-SIN - Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance.
- 391.15(a)-SOUT - Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
- 391.15(a)-NSIN - Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance.
- 391.15(a)-NSOUT - Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance.
- 390.35/391.45 - Fraudulently or intentionally making a false entry on a required medical examiner's certificate.

#### ***If a Canadian Driver is Declared OOS for Part 391 Violations***

The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian CDL is proof of medical fitness to drive. Therefore, Canadian CMV drivers are no longer required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid CDL issued by a Canadian Province or Territory. However, Canadian drivers who are insulin-using diabetics, who have epilepsy, or who are hearing impaired as defined in §391.41(b)(11) are not qualified to drive CMVs in the United States. Furthermore, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers but who have been issued a waiver by one of the Canadian Provinces or Territories are not qualified to drive CMVs in the United States.

***If a Driver is Declared OOS for Part 391 Violations***

You should ensure he or she does not operate a CMV until the driver may lawfully do so under the rules.

**Note: When an inspector has knowledge and/or evidence that a driver is/is not in possession of a valid medical certificate, and is not in possession of all required exemptions for the following conditions: vision, hearing, insulin-using diabetes, epilepsy, or any other condition which is likely to cause a loss of consciousness or any loss of ability to control a CMV 391.11(b)(4). Place Driver OOS.**

***Part 391 - Enforcement for Non-English Speaking Driver***

If the inspector determines the driver 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) and placed OOS in accordance with CVSA OOS criteria.

***5.3.7.9 Part 392 – Driving of Motor Vehicle******5.3.7.9.1 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-IMX)** operating authority. The transportation of hazardous materials, household goods, and/or passengers remain restricted from authority for long-haul operations until the Land Transportation provisions of NAFTA are fully implemented. Carriers may request commercial zone (OP-2) operating authority restricting operations to recognized municipalities and border zones along the Southern border until that time.

### ***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.

#### ***5.3.7.9.2 Part 392 - ASPEN Procedures***

Once you have completed your investigation of compliance with Part 392, you should use the following guidelines to assist in the completion of the Violation tab in the ASPEN software.

**Recording Violations of Part 392 OOS/Possible OOS Regulations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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

**5.3.7.9.3 Part 392 - Enforcement Procedures**

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 392 violations, use the following guidelines .

***Part 392 - Documentation******Evidence that Should be Obtained to Prove a Motor Carrier has Violated Part 392***

In order to prove a violation of Part 392.9a by a U.S. or Canadian motor carrier, FMCSA must show that transportation provide was:

- For-hire transportation
- Not a shipment of exempt commodities
- An interstate/international shipment

Shipping documents, such as bills of lading and freight bills, can be used to document the need for operating authority. Similar documentation can be used to prove a Mexico-domiciled motor carrier has operated in violation of Part 392.9a. In either case, the violation should be cited as §392.9a(a) - Operating without operating authority.

***Part 392 - Enforcement Action Against Drivers******Circumstances Under Which Enforcement Action Can Be Considered Against a Driver***

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated
- 392.4(a) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle
- 392.9a – Operating a commercial motor vehicle without authority.
- 392.80(a) - Operating a CMV while texting
- 392.80(b) - Using a driver operating a CMV while texting
- 392.82 – Using a hand-held mobile device while driving a CMV

### ***5.3.7.10 Part 393/396 – Parts, Accessories, Inspection, Repair & Maintenance***

#### ***5.3.7.10.1 Part 393/396 - Investigative Procedures***

In your review of compliance with Part 393, you should use the following guidelines to assist in your investigation of motor carriers both of property and passengers.

#### ***Conducting the Inspection of 393/396***

The review of a vehicle's parts and accessories, and its inspection, repair, and maintenance should be consistent with the North American Uniform Driver-Vehicle Inspection Procedures.

The purpose of reviewing these parts is to:

- Ensure vehicles are equipped with the necessary parts and accessories,
- Establish the effectiveness of the vehicle maintenance of the motor carrier or its agents,
- Determine general condition of the motor carrier's vehicles,
- Verify periodic inspection of commercial motor vehicles (power unit and trailer), and
- Identify all imminent safety violations under 49 CFR Part 393.

#### ***Part 393 - Brake Adjustment Limit Violation***

#### ***Definition of Brake Adjustment Limit Violation***

Per April 1, 2006, in North America OOS Criteria under Section 1. Brake System states a brake found at the adjustment limit is not a violation. In addition, one brake at ¼ inch or more beyond the adjustment limit would be one defective brake and two brakes at less than ¼ inch would equal one defective brake. Made effective April 1, 2006, when the 2006 OOS Criteria became effective, brakes at the readjustment limits are to be considered a violation, BUT NOT CONSIDERED toward the 20 percent OOS rule. This was changed to reflect the change in 393.47(e) that was effective 9/14/05.

The Vehicle Committee determined that the best way to address the 80 percent of the rated stroke “provision of 393.47(e) was to make it a violation if the stroke measurement met the readjustment limit shown in the OOS criteria. The readjustment limits listed in the OOS criteria are generally not equal to 80 percent of the rated stroke but are so close as to have minimal effect.

- Examples: A Type 30 (regular) brake has a rated stroke of 2 ½”. 80 percent of this is 2” (the readjustment limit). 393.47 (e) states the stroke must be less than 80 percent. A Type 30 brake stroke measured at 2” would be a violation of 393.47(e).

- A Type 30 (long stroke) brake has a rated stroke of 3". 80 percent of this is 2.4 percent (2-3.2/8ths of an inch).
- A Type 24 (regular) brake has a rated stroke of 2 – ¼". 80 percent of this is 1.8" (1-3.2/4ths of an inch).

As can be seen from the examples, it would be very difficult to measure 0.4 or 0.8 of an inch using a conventional ruler.

The Vehicle Committee determined not to include brakes meeting the readjustment limit back into the 20 percent OOS criteria.

### *Part 393 – Motorcoach Inspections*



#### ***Inspect the Following Within the Passenger Compartment of a Motorcoach***

Ensure the passenger carrier has the following:

- A standing line or bar and sign near the front, requiring passengers to stay behind the line when the bus is in operation,
- A fire extinguisher,
- Floors free of holes or openings,
- Seats securely fastened to the vehicle,
- No aisle seats unless they automatically fold out of the way leaving the aisle clear when not in use,
- All emergency window and door exits properly labeled,
- Operating red exit light over emergency doors,
- Emergency windows that are fully operative (the driver must demonstrate), and
- Baggage and freight stored and secured to allow unobstructed access to all exits and protect passengers from falling cargo.

**Daily Vehicle Inspection Reports.** Passenger carriers are required to prepare a daily vehicle inspection report for every day the vehicle is operated. The regulatory change allowing the omission of the “No Defect DVIR ” is only applicable to property carriers.

**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**

<b>Motor Carriers</b>	<b>Applicable Vehicle Safety Requirements</b>	<b>Certification Label Requirements</b>	<b>Exceptions for Displaying Labels</b>
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.**

### 5.3.7.10.2 Part 393/396 - ASPEN Procedures



Passenger Vehicle types within ASPEN.

The following vehicle configurations should be used to designate the vehicle type in the ASPEN drop-down list. By using these designations, FMCSA is able to accurately monitor passenger carrier operations.

Use “motorcoach” when the vehicle:

- Is designed for long distance.
- Has an elevated passenger deck over the luggage compartment

Bus” and “motorcoach” should not be used interchangeably.

Use “bus” when the vehicle is designed or used to transport more than 15 passengers and it is not a motorcoach or school bus.

Use “school bus” when the vehicle is:

( Designed to transport school children. Typically painted yellow and black.)

Use “passenger van” when the vehicle:

( Is designed to transport 9-15 passengers, and not a stretch limousine.

( May be a “high cube” vehicle.

Use “limousine” when the vehicle is designed to transport 9-15 passengers.

Once you’ve completed your investigation of compliance with Part 393/396, you should use the following guideline in the completion of the violations tab in the ASPEN software.

#### ***Recording Violations of Part 393/396 OOS/Possible OOS Regulations***

Citation	Type	Description
393.11	P	No or defective lighting devices or reflective material as required.

### 5.3.7.10.3 Part 393/396 - Enforcement Procedures

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate enforcement action for 393/396 violations, use the following guidelines.

#### ***Parts 393 & 396 - Documentation***

##### ***Documents to Gather in Order to Initiate an Enforcement Action***

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

##### ***Specific Documents that Should be Used to Document these Violations***

Specific documentation may be needed to support some of the above referenced critical and acute regulation violations.

- 396.9(c)(2) - Copy of the original out-of-service order.

- 396.11(c) - Copy of DVIR indicating the defects or deficiencies listed by the driver and a statement from carrier official that the defect was not corrected.
- 396.17(g) - Copy of the periodic inspection report with defects identified; statement of carrier official that defects were not repaired.

### ***Documents that Can be Used to Support the Violation***

Examples of documents to support your discovered violations are listed below.

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

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation; therefore, you may use other documents to prove your violation. A statement from a motor carrier official, driver, or other person responsible for compliance with Part 396. See [Illustration E-2](#).

### ***Parts 393 & 396 - Enforcement Action Against Drivers***

#### ***Considering an Enforcement Action Against a Driver***

The following violations warrant considering enforcement action against a driver:

- 396.9 - No driver shall operate any motor vehicle declared and marked “out-of-service” until all repairs required by the “Out-of-Service Notice” have been satisfactorily completed.
- 396.9(c)(2) - Operating an "out-of-service" vehicle.\*
- 396.11(a) - Each driver shall report, and every driver shall prepare a report in writing at the completion of each day’s work, on each vehicle operated in commerce (driver has 10 percent or greater violations for at least 30 days checked).

(\* ) denotes Red Flag Violation

#### ***If I Find a CMV in "Out-of-Service" (OOS) Condition***

If a CMV is discovered in a condition likely to cause an accident or breakdown, you should:

- Prohibit the operation of the CMV.
- Specify the defect(s) or violation(s) that must be corrected before the vehicle is placed in operations as described on form MCS-64.
- Place the vehicle(s) OOS using Form MCS-64 (OOS Order).

#### ***If I find a Mexican Carrier Out of Compliance with the Motor Vehicle Safety Standards***

No adverse action will be taken against vehicles operated by Mexico-domiciled motor carriers with labels certifying compliance with the CMVSS in effect at the time of manufacture. With only a few differences, the Canadian motor vehicle safety standards are identical to the U.S. manufacturing performance standards (FMVSS), and FMCSA’s operating regulations incorporate the FMVSS critical to continued safe operation.

However, whether a vehicle has a certification label, vehicles with violations of the FMCSR that are serious enough to meet the current OOS criteria are to be placed OOS. FMCSA will continue to impose civil penalties for violations of Part 393 of the FMCSR concerning parts and accessories necessary for safe operation, including regulations that cross-reference the FMVSS.

### ***5.3.7.11 Part 395 – Hours-of-Service (HOS)***

#### ***5.3.7.11.1 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.

#### ***Checking a Driver's HOS on a Device installed with Logging Software and/or Applications Without Electronic Signature Capabilities at Roadside***

Drivers using logging software programs and/or applications that do not have electronic signature capabilities and who do not have the previous 7 days RODS printed, signed, and in their possession at the time of inspection, are in violation of 49 CFR 395.8(k)(2) and should be cited. The driver must be given the opportunity to print the current and prior 7 days RODS at roadside before being placed OOS. If the driver is able to print the current and prior 7 days RODS at roadside the driver should be cited 49 CFR 395.8(k)(2) but not placed OOS.

 **Note: Mexico-domiciled motor carriers/drivers are not required to keep track of their HOS until the driver reaches the United States.**

#### ***There is No Authority Under 395.13(d) to Cite/Penalize a Carrier/Driver Violating a State-Issued OOS Order***

No jurisdiction, as the OOS Order was issued by a State for violating a State regulation.

#### ***Time When the Actual Violation of the HOS Rules Occurs***

Violations of Part 395 occur **after** a driver has driven in excess of the maximum permitted hours. If a driver is placed OOS for a violation of Part 395, ensure the driver does not drive.

#### ***A Carrier and/or Driver Cannot be Cited for Falsification and Exceeding One of the HOS Rules on the Same Day***

When you discover that a RODS contains a HOS violation and false entries on the same day, you would cite 395.8(e) - False records of duty status. If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e) - False records of duty status.

#### ***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.

#### ***PC Miler Cannot be Used to Support a False Log***

PC Miler 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***

As of July 1, 2013, the HOS were changed to:

- 30 minute rest before 8 continuous hours on duty and driving
- 11 hours of driving
- 14 hours of working
- 10 hours of rest after driving 11 hours or working 14 hours



**Remember: Passenger-carrying motor carriers are not subject to the new HOS rule.**

Passenger carriers also utilize the Travel Time provision, referred to as Dead Head on a Cushion.

### ***Nominal HOS***

A nominal HOS violation is a violation that is less than 15 minutes. These violations have been added to Aspen, and are designated as “nominal” in the software. These nominal violations have a lower severity weight than standard HOS violations in the Safety Measurement System (SMS). A driver should be cited for a nominal HOS violation only for previous day(s) HOS violations. Do not use the nominal HOS violation citation for a violation that occurs on the current day. For example, if a driver’s RODS exceeds a HOS violation by 10 minutes on day 2 of the previous 7 days, the inspector should cite the driver for a nominal HOS of service violation. If a driver’s RODS show a 10-minute HOS violation on the current day, the inspector should cite the drive for a standard HOS violation.

### ***Driving During the Change from Standard Time to Daylight Savings Time or Vice Versus***

During the change from Standard Time to Daylight Savings Time or vice versus, the driver records his/her time “as is” and enters an explanation in the Remarks section of the RODS. It doesn’t matter exactly how the driver logs his/her time (as Standard Time or Daylight Savings Time) as long as it is clear how many hours are actually involved on each line of the RODS grid. He/she **DOES NOT** get to drive or work an hour more (or less).

### ***34-Hour Restart***

A driver of a property carrying vehicle may restart the 60/70 hour period with an off-duty. The driver can use the 34-hour restart at any time. He/she does not have to be compliant with the 60/70-hour rule to use the restart provision. This is because the 34-hour restart wipes clean all past time regardless of whether such time constituted a violation or not. While the time is wiped clean, the violation is not undone. The driver and the motor carrier would still be subject to appropriate enforcement.

### **Definition of Off-Duty Time**

On-duty time does not include any time resting in a parked vehicle or up to 2 hours riding in the passenger seat of a property-carrying commercial motor vehicle (CMV) moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth. All other sections of the definition of on-duty time remain unchanged.

### ***Compliance with the Enforcement of the On-Duty Time Provision***

The time spent resting in a parked vehicle or up to 2 hours riding in a passenger seat of a property-carrying CMV moving on the highway, immediately before or after a period of at least 8 consecutive hours in the sleeper berth, is considered off-duty time. The 2 hours riding in the passenger seat plus the 8 consecutive hours in the sleeper berth is equivalent to the required 10 consecutive hours off duty time.

The key elements to consider relating to the new on-duty time provision are as follows:

1. The “up to 2 hours” riding in a passenger seat of a property-carrying CMV, in conjunction with 8 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 will be included in the calculation of the 14-hour period. For 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 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.
  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 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 commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty.

### ***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 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.

### ***Use of Automatic On-Board Recording Device (AOBRD) and Device installed with Logging Software and/or Applications***

#### ***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 AOBDR***

If the vehicle is equipped with an AOBDR and the driver provides paper RODS at the time of the inspection, the inspector may use any data generated from the AOBDR 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 AOBDR, 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 AOBDR, the information contained within the FMS may be used to verify non driving periods on the AOBDR.

Device Type	Required to have printout during roadside inspection:	Guidance found in:
Automatic On-Board Recording Device	No.	Notice of Regulatory Guidance: Automatic On-Board Recording Devices (FR 79 26869)
Logging software and application device with electronic signature capabilities	Yes, at the request of an enforcement official. If the driver is unable or refuses to provide the requested printout, the driver should be cited 395.8(a) or 395.8(k)(2). Driver must be given the opportunity to print current and prior seven days RODs at roadside.	Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Records of Duty Status Generated by Logging Software Programs (79 FR 39342)
Logging software and application device without electronic signature capabilities	Yes. Driver must be given the opportunity to print current day RODS at roadside.	Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Records of Duty Status Generated by Logging Software Programs (79 FR 39342)

***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.

Summary Chart of the Printing Requirements

***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.

*5.3.7.11.2 Part 395 - ASPEN Procedures*

**Recording Violations of Part 395 OOS/Possible OOS Regulations**

<b>Citation</b>	<b>Type</b>	<b>Description</b>
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 or sleeper-berth 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)	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.”

#### 5.3.7.11.3 Part 395 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 395 violations, use the following guidelines .

#### ***Part 395 - Documentation***

##### ***Detecting False RODS***

To detect falsification of RODS, compare the entries on the records to verified information on other documents. Documents that include mileage, time, date and location information can be used to verify RODS entries. Some examples of documents that might be used are: bills of lading, shipping papers, toll receipts, fuel receipts, lodging receipts, weight slips, CAT scale receipts, manifests, U.S. Customs documents, etc. Discovery of these violations will be cited under 395.

##### ***A Carrier and/or Driver Should Not be Cited for Falsification and Exceeding One of the HOS Rules on the Same Day***

When you discover that a RODS contains a HOS violation and false entries on the same day, you would cite 395.8(e) - False records of duty status. If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e) - False records of duty status.

#### ***Part 395 - Enforcement Procedures Against the Driver***

##### ***Driver Violations Cited During Roadside Inspections Cannot Also be Cited in the Investigation***

As cited for the purposes of a rating- no, because it already affects the rating as outlined. It would be double punishment for the same violation; for the purpose of a civil penalty- yes, unless a fine was already assessed at the roadside.

#### ***Part 395 - Enforcement Action Against a Driver***

##### ***Time When Enforcement Action Should be Considered Against a Driver***

Enforcement action should be considered against drivers on the following violations when they have 10 percent or more violations recorded on the number of RODS reports checked for at least 30-day period.

- 395.3(a)(1) - Driving more than 11 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(a)(2) - Driving for any period after having been on duty 14 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.3(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.5(a)(1) - Driving more than 10 hours following 8 consecutive hours off duty (passenger-carrying vehicles).

- 395.5(a)(2) - Driving for any period after having been on duty 15 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.5(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.8(a)(1) - Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.
- 395.8(e) - Making of false reports in connection with such duty activities on the driver's record of duty status report.
- 395.8(i) - The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.
- 395.13(d) - No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this Part.

### ***5.3.7.12 Part 397 – Transportation of Hazardous Materials; Driving and Parking Rules***

#### ***Verifying Compliance with HM Driving and Parking Rules***

Part 397 is applicable to any transportation of hazardous material that requires the motor vehicle to be marked or placarded.

#### ***Sections Applicable to All HM Subject to Part 397***

- 397.7(b), Parking
- 397.11, Fires
- 397.15, Fueling
- 397.17, Tires

#### ***No Smoking within 25 feet***

397.13 is applicable to Class 1, Division 2.1, Class 3, Division 4.1, Division 4.2, Class 5, or an empty cargo tank still requiring marking or placarding that was transporting Division 2.1 or Class 3.

#### ***Sections Applicable to Division 1.1, 1.2, and 1.3 Explosives***

In addition to the sections listed above, the transportation of Division 1.1, 1.2, or 1.3 materials are subject to:

- 397.5, Attendance and Surveillance
- 397.7(a), Parking
- 397.19, Instructions and Documents
  - Written Route Plan
  - Copy of Part 397
  - Emergency instructions, including contact name and phone number
- Remember to check for a HMSP
- Check EX#s on PHMSA's web site

#### ***Verifying HM Routing***

- Check FMCSA's website for current routing restrictions by state
- Verify CMV is not being operated on a restricted route, 397.67
- Verify CMV is not being operated on a restricted route for RAM requiring placards, 397.101(b)

### ***Shipments of HRCQ Radioactive Materials***

Highway Route Controlled Quantities (HRCQ) of Class 7 are subject to Section 397.101(d):

- Written Route Plan
- Emergency telephone numbers for each State to be entered
- Driver must have training certificate on person, valid for 2 years

### ***Enforcement Procedures for Part 397***

Once you have entered all Part 397 violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 397 violations, use the following guidelines.

Check the current OOSC for out-of-service violations.

Take enforcement action when appropriate.

### ***Evidence Required to Successfully Prosecute a Violation of Part 397***

To successfully prosecute a violation of Part 397, establish the following facts:

- That the material in question is a hazardous material, requiring the motor vehicle to be marked or placarded, in accordance with title 49 CFR § 177.823
- That the hazardous material was transported in commerce
- That a violation of Part 397 occurred
- That knowledge or willfulness was established

### ***Look for the Following When Compiling Case on Part 397***

Ensure that the material in question is a hazardous material in a quantity requiring marking or placarding.

- In some cases a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available and in cases where no shipping paper was ever prepared, it may be necessary to obtain a MSDS.
- You must also be able to prove the quantity. A MSDS 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 MSDS.
2. **Establish that the hazardous material was transported in commerce.** Shipping papers, bills of lading, records of duty status and other such document may be used to establish this fact. In addition, photographs of the shipment indicated that it has been offered for, or is in commerce may also be useful.
3. **Establish that a violation of Part 397 occurred.** Documenting a violation of Part 397 generally requires a statement and/or photographs documenting the violation. Often the violations are found through a roadside inspection or personal observation; therefore, an inspection or observation

report may also be used to support the violation. Parking violations must prove that the driver was not conducting activities which are an operational necessity.

### ***Preparing the Exhibit Abstract***

The exhibit abstract for each count must contain sufficient evidence to support the government's allegation that a violation was committed. This means the exhibit should contain the elements described in [Documents needed for a Part 397 Enforcement Case](#).

- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- Refer to [Appendix F](#) for an example of an exhibit abstract for a violation of Part 397.

### ***Preparing the Statement of Charges***

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR.

The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR.

The statement of charges is found in the "Remarks" section of the Exhibit of Abstract. The statement of charges for a Part 397 violation should read as follows:

On or about «DATE», «CARRIER NAME» transported a marked or placarded amount of «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION» while «DESCRIBE THE VIOLATION».

## **5.4 Stage 4-Inspection Feedback and Closeout ASPEN Procedure**

### **5.4.1 Conclusion of the Roadside Inspection**

Roadside inspections should be completed using ASPEN. The inspection report is divided into seven sections (as defined earlier) and each must be completed to properly identify the motor carrier, driver, vehicle, and violations discovered.

### ***Citing Violations***

During the roadside inspection, when it is determined that the driver claiming the exemption does not meet all the conditions of the exemption, the Inspector must cite all violations of the FMCSR for sections where violations occurred. For example, when the vehicle has insufficient brake linings, the Inspector should cite a violation of 49 CFR 393.47(d). Violations will be cited using the selections that already exist in ASPEN.

### ***Enforcement***

Consult legal staff at one of the Service Centers before undertaking enforcement action where an exemption under this provision may apply. If, in consultation with legal staff, a determination is made that the exemption does not apply and enforcement action will be pursued for violations discovered during a roadside inspection, the Inspector should follow standard operating procedures detailed in the eFOTM. Evidence establishing that the driver was not within the scope of the exemption must be included in the case documentation for any enforcement action taken.

### ***Implementation of Emergency Conditions***

A driver of a CMV used primarily in the transportation of propane winter heating fuel or of a CMV used to respond to a pipeline emergency is exempt from the regulations in 49 CFR 390-396, 397 Subpart A, and 399, if compliance with the regulations would prevent the driver from responding to an emergency condition requiring an immediate response.

#### 5.4.2 Closeout and Completion of Inspection Process

##### *Procedures that Should be Followed When Closing Out the Inspection with the Driver*

- During the closeout session, the inspector should review the inspection with the driver.
- Inform the driver of the vehicle and driver violations discovered. If the driver or the vehicle is to be placed OOS, instruct him/her of their responsibilities.
- If enforcement action is planned, the inspector should call the motor carrier directly to inform it that an enforcement action may result from the inspection.
- When the closeout has concluded, the inspector should request the driver to sign the report. The driver must sign the report on each page that is given to him/her. Only the actual copy of the inspection is to be given to the driver/carrier. The driver/carrier does not receive the “inspection notes” portion of the report.
- Obtain the signature of the driver or company representative whose name appears on the report. If the individual refuses to sign the report, advise him/her that the signature only constitutes a receipt of the report. If he/she still refuses, enter “REFUSED TO SIGN” on the signature line and, if possible, have another FMCSA employee sign by their name with the notation: “witnessed by.”
  - In every case, the driver must be given a copy of the report.
  - **Note:** The refusal in the inspection notes and provide a copy of the report to the driver. A copy of the “REFUSED TO SIGN” report should be mailed to the carrier care of the process agent. Process agent information is available online at: <http://li-public.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>).

##### *Procedures for Uploading Federal Inspections to MCMIS*

- From within ASPEN-by selecting Tools, Manager Configuration, Communications, Destination-the SAFER State Mailbox field is configured for his/her local SAFETYNET mailbox.
- From within the ASPEN software Manager Configuration utility, under Printed Report, the ASPEN Report Header is changed to reflect the Division office mailing address.
- The local SAFETYNET administrator ensures prompt inspection uploads and confirmations.
- For more information, log on to the Portal and view The Roadside Inspection Technical Guidance Manual.
  - **Note:** You must have a UAS user name and password to view this information.

##### *Certification of Federal Inspections*

**Each Division will ensure that: (1) the ASPEN Communications Destination is configured for its local SAFETYNET mailbox; (2) the ASPEN report header is changed to reflect the Division mailing address; (3) the local SAFETYNET administrator ensures prompt inspection uploads and confirmations; and (4) receipt dates of certified inspections returned to the Division in accordance with 49 CFR 395.13(c)(2) and 396.9(d)(3) are entered in the local SAFETYNET**

In short, the steps to process inspections are as follows:

- The Inspector completes the inspection and immediately uploads it via SAFER to the Division SAFETYNET mailbox. If necessary, he/she should notify the Division SAFETYNET administrator to expect the inspections.
- The Division SAFETYNET administrator downloads the file to the SAFETYNET inbox, where it is “tagged” and processed. The activity log is viewed to verify that all inspections were imported without error. Any records with errors should be corrected in ASPEN and re-uploaded.
- The Division SAFETYNET administrator reviews the data for quality, optionally processes Carrier Search, and then uploads the inspections to MCMIS.
- Within the next business day, the Division SAFETYNET administrator will download a “confirmation file” to SAFETYNET where it will process automatically. The administrator can view the overall status of the inspections plus warning or error messages where applicable. Inspections with errors should be relayed to the responsible Inspector for editing in ASPEN and re-uploaded. The corrected record will update the existing record with the changes and will be re-uploaded within the next inspection upload.
- When the motor carrier returns its signed copy to the Division with the signature certifying repair, these inspections are marked in SAFETYNET with the receipt date and subsequently re-uploaded.

## 5.5 Stage 5-Post Inspection Intervention

### 5.5.1 Introduction

Once you have completed your inspection, and have entered the discovered violations into the Compliance Analysis & Performance Review Information (CAPRI)/ASPEN/HMPIP 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 Serious Violations (Acute, Critical, Severe Level I and II, Fundamental and Essential Safety Management (ESM)) violations are found. In fact, it is incumbent on you to use your best judgment in order to target enforcement actions to areas that have the greatest impact on safety.

### 5.5.2 Part 365 – Rules Governing Applications for Operating Authority (Mexico-Domiciled Carriers, Long-Haul Operations)

#### **Part 365 - Enforcement Procedures**

Once you have entered the violations discovered in ASPEN and have decided to initiate enforcement action for Part 365 violations, use the following guidelines.

#### ***Part 365 - Documentation***

At a minimum, obtain the following evidence during the roadside inspection to support Federal enforcement and immediately forward it to the FMCSA Division with jurisdiction over the carrier:

1. The Mexican motor carrier's Certificate of Registration
2. A copy of the motor carrier's Form MCS-90 and other insurance document issued by an authorized insurer specifying the effective date and the expiration date of the insurance coverage (49 CFR 387.303(b)(4)(iii))
3. Any transportation document which supports interstate commerce (i.e., bill of lading, pickup or delivery instructions, a delivery receipt, etc.)
4. The Roadside Inspection Report
5. A copy of the vehicle registration
6. The carrier's detail report from the L&I website at: <http://li-public.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>)--there will not be any information if the carrier is not registered-- and a declaration provided by the inspecting officer describing what was discovered at the roadside (i.e., the driver could not produce a copy of the Certificate of Registration).
7. A copy of the lease agreement, if applicable

### ***Part 365 - Enforcement Procedures***

Enforcement Action for Vehicles Operating With Invalid Operating Authority or Insufficient Insurance:

- If a U.S. or Canadian motor carrier is found to be operating in interstate commerce without valid operating authority, the appropriate citations should be entered in ASPEN and the vehicle will be placed OOS. The two new codes that inspectors can cite in ASPEN and SAFETYNET are 49 CFR 392.9a(a)(1) - Operating without registration and 49 CFR 392.9a(a)(2) - Operating beyond registration scope.

OOS status for a vehicle can only take place under the following conditions:

1. **Arrange For An Authorized Carrier To Deliver The Cargo**  
In order to correct the OOS violation, the carrier must offload any cargo and arrange for an authorized carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects needing correction. If the vehicle is empty and not under dispatch to pick up a load, then the carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load, the same procedure will be followed and the driver will be instructed to return to the terminal.
2. **Tow the Vehicle Back To The Carrier's Terminal**  
If Option 1 is not feasible, then the vehicle may be permitted to leave the OOS lot if the carrier arranges to have the vehicle and its load towed back to the carrier's terminal.

In addition to citing the carrier in ASPEN and placing the vehicle OOS, the following steps shall be taken at the roadside:

1. An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the FMCSA Division and the motor carrier's PPOB along with the inspection report.
2. A copy of the OOS Order and inspection report will be given to the driver.
3. The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed. Refer to flowchart [\*North American Standard Inspection Procedures for Operating Authority\*](#).

### 5.5.3 Part 368 – Applications for Certificates of Registration by Foreign Motor Carriers and Foreign Privates Motor Carriers (Mexico-Domiciled, Commercial Zone Operations)

#### Part 368 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in ASPEN software and decided to initiate enforcement action for 368 violations, use the following guidelines.

#### *Mexico-Domiciled Carrier Operating Without a Certificate of Registration Does Not Have Authority or is Operating Beyond the Scope of its Authority*

If a Mexico-domiciled motor carrier is found to be operating beyond the scope of its Certificate of Registration (authority) or without having registered with FMCSA, the appropriate citations in the ASPEN roadside inspection software will be used and the vehicle will be placed OOS. The motor carrier can only correct the OOS violation by not conducting interstate transportation in the United States (if it is not registered) or outside of the border commercial zone (if it has a Certificate of Registration).

In addition to citing the motor carrier with the ASPEN software and placing the vehicle OOS, the following steps shall be taken at the roadside:

1. An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the motor carrier's PPOB along with the inspection report,
2. A copy of the OOS Order and inspection report will be given to the driver, and
3. The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed.

In order to correct the OOS violation, the motor carrier must off-load any cargo and be encouraged to arrange for an authorized motor carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects that have to be corrected. If the vehicle is empty and not under dispatch to pick up a load, then the motor carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load in the United States beyond the border commercial zone, the same procedure will be followed and the driver will be instructed to return to Mexico or the border commercial zone (if the carrier has a Certificate of Registration).

Section 219(d) of MCSIA prohibits a Mexico-domiciled motor carrier from leasing a CMV to a motor carrier for transportation in the United States. The intent of Section 219(d) is to ensure that Mexican motor carriers and their equipment are restricted to the Southern border commercial zones consistent with the moratorium on granting authority to Mexican motor carriers to operate beyond the border commercial zones codified at 49 U.S.C. 13902(c). The leasing prohibition ensures they cannot avoid the restriction by leasing their vehicles and drivers to a motor carrier authorized to operate in the United States.

Lease agreements for Mexico-domiciled motor carriers' equipment leased to United States motor carriers are only valid within the border commercial zone. Therefore, the operation of Mexico-domiciled motor carrier equipment beyond the border commercial zone is the same as operating without a lease. A Mexico-domiciled motor carrier operating without registration or beyond the scope of its registration should be placed OOS as required by 49 U.S.C. 13902(e) as well as 49 CFR 392.9a and [FMCSA policy](#). Furthermore, monetary penalties in accordance with 49 U.S.C. 14901 may be imposed.

### 5.5.4 Part 383 – Commercial Driver's License (CDL) Standards

#### Part 383 - Enforcement Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for 383 violations, use the following guidelines.

#### *Part 383 – Documentation*

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

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

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

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

 **Note:** A CDLIS printout is acceptable for the Mexican LFC.

- Photograph or copy of current CDL or other photographs that support the violation.

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

***Part 383 - Enforcement Action Against Drivers***

The following violations warrant considering enforcement action against a driver:

- 383.21(a) - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.\*
- 383.23(a) - Operating a commercial motor vehicle without a valid commercial driver's license.\*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.
- 383.51(a)-SIN - Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance.\*
- 383.51(a)-SOUT - Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.\*
- 383.91 (a) - Operating a CMV with improper CDL group.\*

(\* ) denotes Red Flag Violation

**Part 383 – Placing a Driver OOS****Placing a Driver OOS for Violations of 383**

If the driver operates in the US:

- Without a CDL or **LFC** (not in possession or not having been issued one)
- Without a valid CDL or  **LFC**
- **Without a proper class () indicated on the license**
- Operating in violation of a restriction on the license
- **Note:** If the status of the CDL returns as suspended, revoked, invalid, or if it cannot be verified, the driver should be placed OOS. The driver should advise the motor carrier it is their responsibility to relieve him/her from driving duties.

The driver must then be placed OOS in accordance with the North American Uniform OOS Criteria or standard departmental policy followed by enforcement officers.

** 49 CFR 383 - MX CDL Guidance****Requirement to Check the Status of a Mexican LFC**

All CDL (or LFC) records should be checked via CDLIS. Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR 383, in the United States, must have a valid Mexican Licencia Federal issued by the Secretaria de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS) with the proper vehicle class, and without any restriction for operating in the United States.

**Calling the Local Secretaria de Comunicaciones y Transportes (SCT) Office to Verify a Mexican LFC**

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

The following chart can assist in reading a Mexican LFC.

**[MX DRIVER LICENSE New and Old](#)**

<b>Driver Holding a LFC with a Categoria</b>	<b>Equivalent to a Driver Holding a CDL Class Endorsement/Restrictions</b>
<b>A</b>	Any bus; roughly comparable to a US class B CDL with a P (passenger) endorsement.
<b>B</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.
<b>C</b>	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.
<b>D</b>	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.
<b>E</b>	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.

Driver Holding a LFC with a Categoria	Equivalent to a Driver Holding a CDL Class Endorsement/Restrictions
F	No comparable US CDL definition; authorizes holder to operate taxis from any airport or seaport in Mexico (because airports and seaports are federal and require a federal license, similar to driving a commercial vehicle on a federal road).

### 5.5.5 Part 385 – Safety Fitness Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for Part 385 violations, use the following guidelines .

#### *Part 385 - Documentation*

##### *Documents that Should be Gathered When Initiating Roadside Enforcement*

- CVSA decal for Mexico domiciled carriers
- Carriers Safety rating (via [www.safersys.org](http://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 MSDS.
2. Where a MSDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the MSDS, as well as its applicability to the particular product in question. A MSDS 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 MSDS.
2. **Establish that the HMSP-required hazardous material was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading and other such document may be used to establish this fact. In addition, photographs of the shipment that indicate that it was in commerce may also be useful. Amounts of the HM, or proof of meeting the definition of a Hazard Zone, is crucial in some instances.
3. **Establish that a violation of Part 385 occurred.** Documenting a violation of Part 385 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements that establish the facts of the case as outlined above. These photographs should clearly show any specification or other markings found on the package, and the amount of HM on the vehicle.

#### *Preparing the Exhibit Abstract*

- The exhibit abstract for each count must contain sufficient evidence to support the Government's allegation that a violation was committed. This means the exhibit should contain the elements described in [Documents Needed for an HMSP Enforcement Case](#).
- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- See [Appendix F](#) for examples of Exhibit Abstracts for Part 385.

#### *Preparing the Statement of Charges*

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR (the HMSP rule penalized under the hazardous material penalty provisions of the US Code). The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR. The statement of charges is found in the Remarks section of the Exhibit of Abstract. The statement of charges for a Part 385 violation should read as follows:

On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a CMV transporting «AMOUNT OF» «PROPER SHIPPING DESCRIPTION», a hazardous material requiring a Hazardous Materials Safety Permit, from «ORIGIN» to «DESTINATION». During this transportation the company did not comply with the requirements of 49 CFR 385 Subpart E. «DESCRIBE VIOLATION».

#### *Part 385 - Enforcement Actions Against Drivers*

##### *Taking Enforcement Against a Carrier Exercising Inadequate Corrective Action*

Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to FMCSA. 385.105 (b)

### **Time When Suspension and Revocation of a Mexico-Domiciled Carrier Registration Should be Initiated**

If a Mexico-domiciled carrier is assigned an "Unsatisfactory" safety rating following an investigation conducted under this subpart, or a SA conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the investigation or SA contains material error (385.111(a)).

Suspending the carrier's provisional or standard operating authority or provisional or permanent Certificate of Registration and requiring it to immediately cease all further operations in the United States 385.111 (c) (1); and notifying the carrier that its provisional or standard operating authority or provisional or permanent Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order (385.111 (c) (2)).

**Note: These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.**

## **5.5.6 Part 386 – Rules of Practice for Motor Carriers, Broker, Freight Forwarder, and Hazardous Materials (HM) Proceedings**

### **Part 386 - Enforcement Procedures**

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate an enforcement action for the Part 386 violations, use the following guidelines.

#### ***Part 386 - Documentation***

##### ***Documents that Should be Gathered When Initiating an Enforcement Action***

- Registration and cab card
- USDOT Number
- Proof of MCS 150 Registration
- Bills of Lading/Shipping Documents
- RODS
- Supporting Documents (toll, fuel, hotel, etc.)

#### ***Part 386 - Enforcement Against Drivers and Company***

##### ***For Failure to Pay Civil Penalties or Abide by Payment Plan (Operation in Interstate Commerce Prohibited)***

*General rule:* A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until FMCSA has received full payment of the penalty (386.83(a)(1)).

##### ***For Failure to Pay Civil Penalties or Abide by Payment Plan (Suspension or Revocation of Registration)***

*General rule:* The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency

order, will be suspended starting on the next (i.e., the 91st) day. The suspension continues until FMCSA has received full payment of the penalty (386.84(a)(1)).

**Note: These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.**

### Screenshot of an OOS Alert in QC

The screenshot shows the 'CARRIER SUMMARY' page for a carrier. At the top, there is a navigation bar with links for Driver, Vehicle, Carrier, and Help. Below this is a sub-navigation bar with links for Carrier Summary, Carrier Detail, Violation History, 55 Past Inspection(s), PRISM, and Summary Report. The main content area features a red alert banner: 'ALERT: Carrier is currently under a Federal OOS'. Below the banner is a table with OOS details:

OOS Date	State	Reason	Rescinded Date
11/21/2011		90 DAY FAILURE TO PAY FINE	
09/07/2011		90 DAY FAILURE TO PAY FINE	
05/31/2011		UNSATISFACTORY = UNFIT	

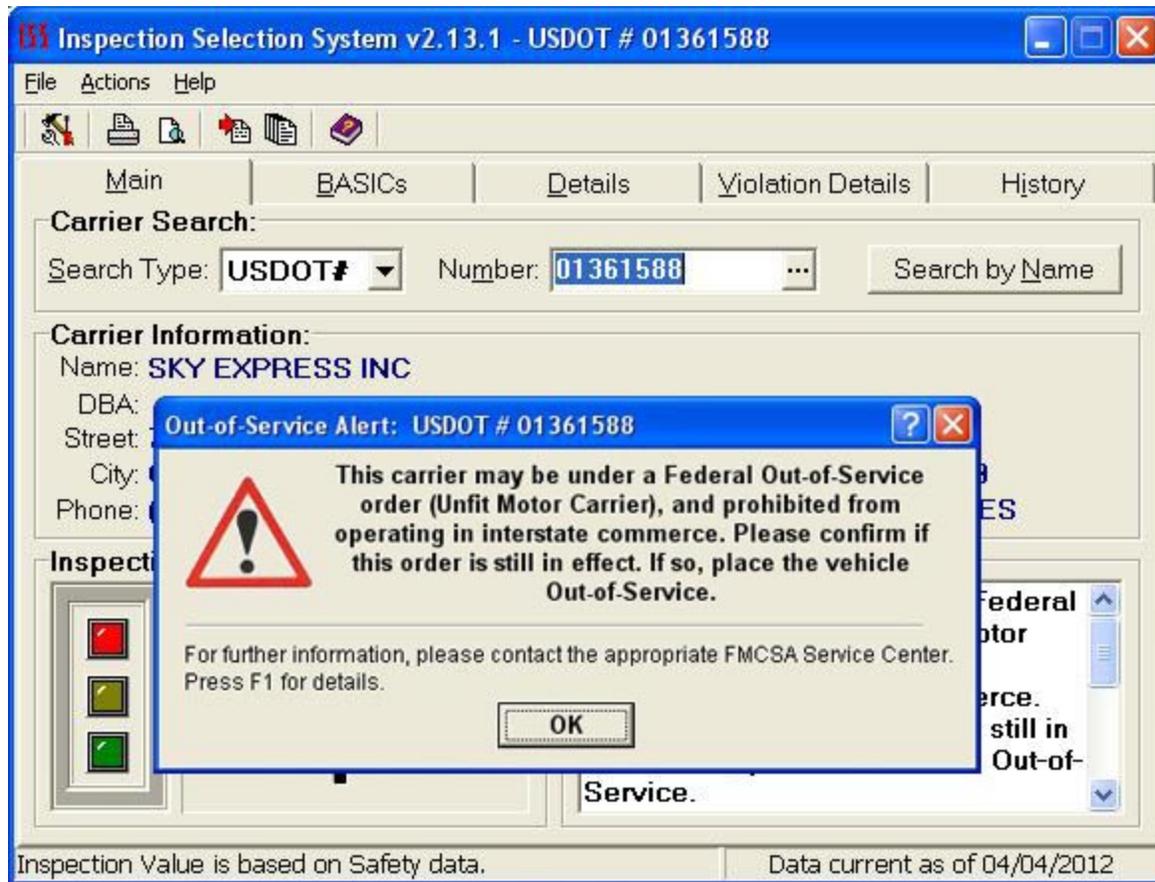
Below the table, there is a note: 'For further information, please contact the appropriate FMCSA Service Center. Click here to review a reference to the applicable section of 49 CFR'. The next section is 'Motor Carrier Identification & Safety Data' with a note: 'Please Note: You can now access L&I detail by clicking on the MC/MX number(s)'. This is followed by a table of carrier information:

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

Below the table, it states 'Inspection Value: 98 - INSPECT' and 'Inspection Value is based on Safety data.' There are links to visit the SAFER Website and click here for UCR information. At the bottom, there is a footer with contact information for the Federal Motor Carrier Safety Administration.

### Screenshot of an OOS Alert in ISS

The screenshot shows a blue-bordered dialog box titled 'Out-of-Service Alert: USDOT # 01361588'. On the left is a warning icon (a triangle with an exclamation mark). The main text reads: '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.' Below this, it says: 'For further information, please contact the appropriate FMCSA Service Center. Press F1 for details.' At the bottom center is an 'OK' button.



### 5.5.7 Part 387 – Minimum Levels of Financial Responsibility for Motor Carriers

#### Part 387 - Enforcement Procedures

Once you have entered all Part 387 violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 387 violations, use the following guidelines.

#### *Part 387 - Documentation*

##### *Documents that Should be Gathered to Initiate an Enforcement Action*

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

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



Remember that a CMV is defined differently regarding compliance with Part 387. The regulation states, “The rules in this part do not apply to a motor vehicle that has a gross vehicle weight rating

(GVWR) of less than 10,000 pounds.” Therefore, a vehicle with a GVWR of 10,000 pounds may be subject to Part 387, but not the general safety rules where a CMV is defined as 10,001 pounds or more.

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

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

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

#### **5.5.8 Part 390 – General Requirements**

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

#### ***Part 390 - Documentation***

##### ***Documents to Gather in Order to Initiate an Enforcement Action***

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

##### ***Some Examples of Documents That May Be Used to Prove Violations of Part 390***

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 390
- Driver’s RODS, and corresponding shipping/paper/bill of lading
- Vehicle registration showing GVWR, or other documentary evidenced, proving that the vehicle was subject to Part 390
- Copies of documents required by Part 390 that are falsified

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

#### ***Part 390 - Enforcement Action Against Drivers***

You should consider enforcement action against a driver for violating:

- 390.35 - Making or causing to make a fraudulent or intentional false statement on an application, certificate, report, or record, and from falsifying, reproducing, or altering any original supporting document

Related to the final rule published September 27, 2010, titled “Limiting the Use of Wireless Communication Devices” and regarding States with delayed adoption of the FMCSR, until their new regulations are adopted, such States may cite a driver for the appropriate violation citation as follows:

- 390.17 – Operating a commercial motor vehicle while texting
- 390.17 – Operating a commercial motor vehicle while using additional equipment and accessories that decrease the safety of operations

FMCSA and States that adopted the new regulation should refer to [Part 392](#).

### ***Procedures to Determine What CMV Should be Inspected***

First, you must ensure the motor vehicle being selected for inspection meets the definition of a commercial motor vehicle (49 CFR Section 390.5):

- GVWR 10,001 to 26,000 pounds non-CDL (in interstate commerce)
- GVWR 26,001 pounds (intra- or interstate commerce)
- Transporting passengers 16 or more including the driver (intra- or interstate commerce)
- Or transporting any placarded amount of Hazardous Materials

**🇲🇽 AMexico-domiciled carrier with a GVWR of under 10,000 pounds and hauling placardable hazardous materials needs insurance and registration inspection only.**

### ***Other Part 390 Requirement to Check During an Inspection***

The review of the motor carrier’s vehicles should include a determination of whether the vehicles are properly marked.

#### **Notes:**

- When citing a carrier for not having required biennial of MCS-150, cite 392.9a(b).
- When citing a carrier for not having MC authority, cite 392.9a(a).
- When citing a rental truck for not having proper marking or paperwork under a rental agreement, cite 390.12(e).
- When citing a carrier for knowingly producing fraudulent documents, cite 390.35.
- When citing a carrier for not submitting accurate information, cite 390.19(e).
- When citing a new entrant carrier for not having the required USDOT number and/or operating authority, cite 385.301.

## **5.5.9 Part 391 – Qualification of Drivers**

### **Part 391 - Enforcement Procedures**

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for part 391 violations, use the following guidelines.

#### ***Part 391 - Documentation***

#### ***Documents that Should be Gathered to Initiate an Enforcement Action***

- The driver is an employee (or controlled by the motor carrier).
- The CMV was operated in interstate commerce on a specific date.
- A violation of Part 391 occurred.

- Vehicle registration showing GVWR, or other documentary evidenced, proving that the driver was subject to Part 391.
- A Medical Examination Certificate.
- A Skills Performance Evaluation (SPE).

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

### ***Part 391 - Enforcement Against the Driver***

#### ***Consider Enforcement Action Against a Driver for the Following Violations***

- 391.11(b)(5) - Driving without a current valid motor vehicle operator's license or permit.
- 391.15(a)-SIN - Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance.
- 391.15(a)-SOUT - Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
- 391.15(a)-NSIN - Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance.
- 391.15(a)-NSOUT - Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance.
- 390.35/391.45 - Fraudulently or intentionally making a false entry on a required medical examiner's certificate.

#### ***If a Canadian Driver is Declared OOS for Part 391 Violations***

The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian CDL is proof of medical fitness to drive. Therefore, Canadian CMV drivers are no longer required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid CDL issued by a Canadian Province or Territory. However, Canadian drivers who are insulin-using diabetics, who have epilepsy, or who are hearing impaired as defined in §391.41(b)(11) are not qualified to drive CMVs in the United States. Furthermore, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers but who have been issued a waiver by one of the Canadian Provinces or Territories are not qualified to drive CMVs in the United States.

#### ***If a Driver is Declared OOS for Part 391 Violations***

You should ensure he or she does not operate a CMV until the driver may lawfully do so under the rules.

**Note: When an inspector has knowledge and/or evidence that a driver is/is not in possession of a valid medical certificate, and is not in possession of all required exemptions for the following conditions: vision, hearing, insulin-using diabetes, epilepsy, or any other condition which is likely to cause a loss of consciousness or any loss of ability to control a CMV 391.11(b)(4). Place Driver OOS.**

#### ***Part 391 - Enforcement for Non-English Speaking Driver***

If the inspector determines the driver 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) and placed OOS in accordance with CVSA OOS criteria.

### **5.5.10 Part 392 – Driving of Motor Vehicle**

#### **Part 392 - Enforcement Procedures**

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 392 violations, use the following guidelines .

### ***Part 392 - Documentation***

#### ***Evidence that Should be Obtained to Prove a Motor Carrier has Violated Part 392***

In order to prove a violation of Part 392.9a by a U.S. or Canadian motor carrier, FMCSA must show that transportation provide was:

- For-hire transportation
- Not a shipment of exempt commodities
- An interstate/international shipment

Shipping documents, such as bills of lading and freight bills, can be used to document the need for operating authority. Similar documentation can be used to prove a Mexico-domiciled motor carrier has operated in violation of Part 392.9a. In either case, the violation should be cited as §392.9a(a) - Operating without operating authority.

### ***Part 392 - Enforcement Action Against Drivers***

#### ***Circumstances Under Which Enforcement Action Can Be Considered Against a Driver***

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated
- 392.4(a) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle
- 392.9a – Operating a commercial motor vehicle without authority.
- 392.80(a) - Operating a CMV while texting
- 392.80(b) - Using a driver operating a CMV while texting
- 392.82 – Using a hand-held mobile device while driving a CMV

### **5.5.11 Part 393/396 – Parts, Accessories, Inspection, Repair & Maintenance**

#### **Part 392 - Enforcement Procedures**

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate enforcement action for 393/396 violations, use the following guidelines.

### ***Parts 393 & 396 - Documentation***

#### ***Documents to Gather in Order to Initiate an Enforcement Action***

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

***Specific Documents that Should be Used to Document these Violations***

Specific documentation may be needed to support some of the above referenced critical and acute regulation violations.

- 396.9(c)(2) - Copy of the original out-of-service order.
- 396.11(c) - Copy of DVIR indicating the defects or deficiencies listed by the driver and a statement from carrier official that the defect was not corrected.
- 396.17(g) - Copy of the periodic inspection report with defects identified; statement of carrier official that defects were not repaired.

***Documents that Can be Used to Support the Violation***

Examples of documents to support your discovered violations are listed below.

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

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation; therefore, you may use other documents to prove your violation. A statement from a motor carrier official, driver, or other person responsible for compliance with Part 396. See [Illustration E-2](#).

***Parts 393 & 396 - Enforcement Action Against Drivers******Considering an Enforcement Action Against a Driver***

The following violations warrant considering enforcement action against a driver:

- 396.9 - No driver shall operate any motor vehicle declared and marked “out-of-service” until all repairs required by the “Out-of-Service Notice” have been satisfactorily completed.
- 396.9(c)(2) - Operating an "out-of-service" vehicle.\*
- 396.11(a) - Each driver shall report, and every driver shall prepare a report in writing at the completion of each day’s work, on each vehicle operated in commerce (driver has 10 percent or greater violations for at least 30 days checked).

(\* ) denotes Red Flag Violation

***If I Find a CMV in "Out-of-Service" (OOS) Condition***

If a CMV is discovered in a condition likely to cause an accident or breakdown, you should:

- Prohibit the operation of the CMV.
- Specify the defect(s) or violation(s) that must be corrected before the vehicle is placed in operations as described on form MCS-64.
- Place the vehicle(s) OOS using Form MCS-64 (OOS Order).

***If I find a Mexican Carrier Out of Compliance with the Motor Vehicle Safety Standards***

No adverse action will be taken against vehicles operated by Mexico-domiciled motor carriers with labels certifying compliance with the CMVSS in effect at the time of manufacture. With only a few differences, the Canadian motor vehicle safety standards are identical to the U.S. manufacturing performance

standards (FMVSS), and FMCSA's operating regulations incorporate the FMVSS critical to continued safe operation.

However, whether a vehicle has a certification label, vehicles with violations of the FMCSR that are serious enough to meet the current OOS criteria are to be placed OOS. FMCSA will continue to impose civil penalties for violations of Part 393 of the FMCSR concerning parts and accessories necessary for safe operation, including regulations that cross-reference the FMVSS.

### **5.5.12 Part 395 – Hours-of-Service (HOS)**

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 395 violations, use the following guidelines .

#### ***Part 395 - Documentation***

##### ***Detecting False RODS***

To detect falsification of RODS, compare the entries on the records to verified information on other documents. Documents that include mileage, time, date and location information can be used to verify RODS entries. Some examples of documents that might be used are: bills of lading, shipping papers, toll receipts, fuel receipts, lodging receipts, weight slips, CAT scale receipts, manifests, U.S. Customs documents, etc. Discovery of these violations will be cited under 395.

##### ***A Carrier and/or Driver Should Not be Cited for Falsification and Exceeding One of the HOS Rules on the Same Day***

When you discover that a RODS contains a HOS violation and false entries on the same day, you would cite 395.8(e) - False records of duty status. If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e) - False records of duty status.

#### ***Part 395 - Enforcement Procedures Against the Driver***

##### ***Driver Violations Cited During Roadside Inspections Cannot Also be Cited in the Investigation***

As cited for the purposes of a rating- no, because it already affects the rating as outlined. It would be double punishment for the same violation; for the purpose of a civil penalty- yes, unless a fine was already assessed at the roadside.

#### ***Part 395 - Enforcement Action Against a Driver***

##### ***Time When Enforcement Action Should be Considered Against a Driver***

Enforcement action should be considered against drivers on the following violations when they have 10 percent or more violations recorded on the number of RODS reports checked for at least 30-day period.

- 395.3(a)(1) - Driving more than 11 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(a)(2) - Driving for any period after having been on duty 14 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.3(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.5(a)(1) - Driving more than 10 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(a)(2) - Driving for any period after having been on duty 15 hours following 8 consecutive hours off duty (passenger-carrying vehicles).

- 395.5(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.5(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.8(a)(1) - Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.
- 395.8(e) - Making of false reports in connection with such duty activities on the driver's record of duty status report.
- 395.8(i) - The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.
- 395.13(d) - No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this Part.

### **5.5.13 Part 397 – Transportation of hazardous materials; driving and parking rules**

#### ***Verifying Compliance with HM Driving and Parking Rules***

Part 397 is applicable to any transportation of hazardous material that requires the motor vehicle to be marked or placarded.

#### ***Sections Applicable to All HM Subject to Part 397***

- 397.7(b), Parking
- 397.11, Fires
- 397.15, Fueling
- 397.17, Tires

#### ***No Smoking within 25 feet***

397.13 is applicable to Class 1, Division 2.1, Class 3, Division 4.1, Division 4.2, Class 5, or an empty cargo tank still requiring marking or placarding that was transporting Division 2.1 or Class 3.

#### ***Sections Applicable to Division 1.1, 1.2, and 1.3 Explosives***

In addition to the sections listed above, the transportation of Division 1.1, 1.2, or 1.3 materials are subject to:

- 397.5, Attendance and Surveillance
- 397.7(a), Parking
- 397.19, Instructions and Documents
  - Written Route Plan
  - Copy of Part 397
  - Emergency instructions, including contact name and phone number
- Remember to check for a HMSP
- Check EX#s on PHMSA's web site

#### ***Verifying HM Routing***

- Check FMCSA's website for current routing restrictions by state
- Verify CMV is not being operated on a restricted route, 397.67
- Verify CMV is not being operated on a restricted route for RAM requiring placards, 397.101(b)

#### ***Shipments of HRCQ Radioactive Materials***

Highway Route Controlled Quantities (HRCQ) of Class 7 are subject to Section 397.101(d):

- Written Route Plan
- Emergency telephone numbers for each State to be entered
- Driver must have training certificate on person, valid for 2 years

### ***Enforcement Procedures for Part 397***

Once you have entered all Part 397 violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 397 violations, use the following guidelines. Check the current OOSC for out-of-service violations.

Take enforcement action when appropriate.

### ***Evidence Required to Successfully Prosecute a Violation of Part 397***

To successfully prosecute a violation of Part 397, establish the following facts:

- That the material in question is a hazardous material, requiring the motor vehicle to be marked or placarded, in accordance with title 49 CFR § 177.823
- That the hazardous material was transported in commerce
- That a violation of Part 397 occurred
- That knowledge or willfulness was established

### ***Look for the Following When Compiling Case on Part 397***

Ensure that the material in question is a hazardous material in a quantity requiring marking or placarding.

- In some cases a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available and in cases where no shipping paper was ever prepared, it may be necessary to obtain a MSDS.
- You must also be able to prove the quantity. A MSDS 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***

4. **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 MSDS.
5. **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.
6. **Establish that a violation of Part 397 occurred.** Documenting a violation of Part 397 generally requires a statement and/or photographs documenting the violation. Often the violations are found through a roadside inspection or personal observation; therefore, an inspection or observation

report may also be used to support the violation. Parking violations must prove that the driver was not conducting activities which are an operational necessity.

### ***Preparing the Exhibit Abstract***

The exhibit abstract for each count must contain sufficient evidence to support the government's allegation that a violation was committed. This means the exhibit should contain the elements described in [Documents needed for a Part 397 Enforcement Case](#).

- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- Refer to [Appendix F](#) for an example of an exhibit abstract for a violation of Part 397.

### ***Preparing the Statement of Charges***

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR.

The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR.

The statement of charges is found in the "Remarks" section of the Exhibit of Abstract. The statement of charges for a Part 397 violation should read as follows:

On or about «DATE», «CARRIER NAME» transported a marked or placarded amount of «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION» while «DESCRIBE THE VIOLATION».

## **5.5.14 Enforcement of Federal OOS during Roadside Inspection**

### ***Roadside Data Availability***

Enforcement personnel in the field, whether at fixed facilities or on patrol, have several means available to obtain operating authority and OOS Order information during a CMV inspection.

This information may be accessed in several ways depending upon the communications capability at the roadside of each jurisdiction. In order to obtain information regarding Federal OOS Order, inspectors are encouraged to utilize the following tools, in the order listed below, based upon the timeline of the OOS Order data provided by each:

- QC (real-time for OOS Order status); - **MOST TIMELY DATA**
- The international Justice and Public Safety Network, formerly known as the National Law Enforcement Telecommunication System, carrier Query (update Mondays through Thursday and Saturdays);
- Safer Website (update Mondays through Thursday and Saturdays); and
- Inspection Selection System (updated Monthly). - **LEAST TIMELY DATA**

### ***OOS Order Status Verification***

Verification of a United States Federal OOS Order against a motor carrier is a two-step process. First, the OOS Order must be discovered at the roadside through a query on the operating motor carrier's record. Second, once an OOS Order is identified, enforcement personnel must verify the status of the OOS Order using QC. **Exception: If QC cannot be used at the roadside, any OOS Order identified must be verified by contracting the appropriate FMCSA SC before placing the vehicle OOS.** The Commercial Vehicle Safety Alliance (CVSA) has added a specific item covering Federal OOS Order

issued under the ten sections of the Federal regulations listed below. This change appears in the April 1, 2009, edition of the North American Standard OOS. **Note:** Incorrect information (i.e., reference to 386.84(a)(1) cite for Failure to Pay Fine OOS Order-For-Hire Carrier) in the second row of the table (which has been removed below) will still appear in the most recent version of the CVSA OOS Criteria but should be disregarded by enforcement personnel.

Description	Section
Failure to Pay Fine	386.83(a)(1)
UNSAT/UNFIT – Placarded HM & Passenger Carriers	385.13(a)(1)
UNSAT/UNFIT – Property Carriers	385.13(a)(2)
New Entrant – Failure of Safety Audit	385.325(c)
New Entrant – Refusal of Audit/No Contact	385.337(b)
Imminent Hazard	386.72(b)(2)
MX carrier (inadequate corrective action)	385.105(b)
MX carrier UNSAT/UNFIT	385.111(a)
MX carriers (suspended operating authority for UNSAT rating of failed Safety Audit)	385.111(c)(1)
MX carriers (revoked operating authority)	385.111(c)(2)

The CVSA's change will provide enforcement personnel with the ability to place vehicles OOS that are discovered to be operation under the authority of a motor carrier that was issued an OOS Order until specific requirements in the Federal order are satisfied.

If a valid OOS Order is discovered and verified, enforcement personnel must place only the power unit OOS, and should indicate the appropriate FMCSA section that pertains to the OOS Order on the inspection report (and citation if issued). Enforcement personnel should follow their individual department policies and procedures per the laws of the State when placing a power unit OOS. The inspection report should include instructions to the carrier to contact FMCSA at the number in the OOS Order document they received previously.

The use of QC is the preferred method for obtaining after hours operating authority and OOS Order information. If an OOS Order is discovered but cannot be verified (i.e., SC is closed) at the time of inspection enforcement personnel should only decline to place a carrier OSS if absolutely necessary. If the carrier is not placed OOS, the enforcement official should make copies of pertinent paperwork (e.g., bills of lading, receipts, etc.), if possible, to demonstrate that the carrier was operating in interstate commerce at the time of the inspection. Evidence of violation of the OOS Order may include the FMCSA document prohibiting interstate operations and a copy or facsimile of the inspection or crash report indicating interstate activity. Enforcement personnel should forward the information as soon as possible to the appropriate FMCSA Division Office for follow-up to determine the carrier's actual operating status at the time of the inspection. If the FMCSA Division Office determines that the carrier was operating while a valid OOS Order was in effect, then an enforcement case may be initiated by the Division Office.

## 5.6 Illustration

### 5.6.1 Illustration 51 : Unsafe Operations Under § 396.7

Some violations of the Hazardous Materials Regulations meet the definition of unsafe operations under § 396.7. Under § 396.7, a motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle.

Further, the condition of the vehicle or its cargo is so inadequate that the continued operation in that condition is a violation of the FMCSR. This allows the FMCSA to place the vehicle OOS under its summary authority now codified in 49 U.S.C. 521(b)(5)(A).

The following outlines the violations that may be designated under § 396.7 as unsafe operations.

VIOLATION	VIOLATION DESCRIPTION
173.24(b)(1)	<p>Transporting hazardous materials in a cargo tank which has an identifiable release of hazardous materials to the environment.</p> <p>Transporting hazardous materials in a portable tank which has an identifiable release of hazardous materials to the environment.</p> <p>Transporting hazardous materials in a non-bulk packaging which has an identifiable release of hazardous materials to the environment.</p>
173.24(c)	Using a package not authorized for the material being transported.
173.24b(d)(2)	Offering for transportation a hazardous material in a bulk packaging which exceeds the maximum weight of lading marked on the specification plate.
173.33(a)	<p>Transporting hazardous materials in an unauthorized cargo tank.</p> <p>Offering or accepting for transportation a hazardous material in an unauthorized cargo tank motor vehicle.</p>
173.441(a)	Offering or transporting a package of radioactive material that exceeds allowable external radiation levels (non-exclusive use).
177.801	Accepting for transportation (or transporting) an explosive material not properly packaged.
177.834(g)	Failing to brace containers of specified hazardous materials to prevent relative motion between containers.
177.834(j)	<p>Transporting a hazardous material in a cargo tank while failing to have the manhole closures closed and secured (if HM is in the vehicle).</p> <p>Transporting a hazardous material in a cargo tank while failing to have all valves and other closures in the liquid discharge system closed and free of leaks.</p>
177.841(e)	Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in 177.841(e)(i) or (ii) is met.
178.337-13	Operating a cargo tank that is not securely attached to prevent relative motion between the cargo tank and the vehicle chassis when the vehicle is in operation.
178.338-13	Operating a cargo tank that is not securely attached to prevent relative motion between the cargo tank and the vehicle chassis when the vehicle is in operation.
178.345-6	Operating a cargo tank that is not securely attached to prevent relative motion between the cargo tank and the vehicle chassis when the vehicle is in operation.

### 5.6.2 Illustration 52 : HM Violation Notification



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

## HAZARDOUS MATERIALS VIOLATION NOTIFICATION

“This serves as a notice that you are transporting a hazardous material in violation with Title 49 CFR Parts 100-199, (Hazardous Materials Regulations), which prohibits operation of a commercial motor vehicle until the violation is removed. Therefore, continued transportation in violation of the Hazardous Materials Regulations will subject you to the maximum penalties of \$500,000 and/or five years in jail.”

Driver \_\_\_\_\_

Inspector \_\_\_\_\_

### 5.6.3 Illustration 53 : Border Inspector Alert



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

#### ***Border Inspector Alert***

It has come to our attention that there is at least one cargo tank manufacturer in Mexico that has manufactured cargo tanks to USDOT specifications that are no longer authorized for new manufacture. A cargo tank that does not have a valid appropriate MC or DOT specification is not authorized to operate in the United States.

#### ***What is a valid MC or DOT specification marking?***

The most common MC and DOT specification cargo tank markings are MC 306, MC 307, MC 312, MC 300, MC 331, DOT 406, DOT 407, and DOT 412. However, a MC 306, MC 307, and MC 312 tank may not be used if it has an original test date on the specification plate after August 31, 1995. Other valid cargo tank specifications and valid manufacture dates are listed in the table shown in 49 CFR 180.405 (c)(i) & (ii).

#### ***May a SCT cargo tank be used to transport HM in the U.S.?***

The answer is NO. Cargo tanks manufactured to the Mexican regulations display markings that appear similar to U.S. cargo tanks. The Mexican specifications usually will show a marking like SCT 307 for an example. If you discover a tank with the SCT markings, and no other marking indicating that it is a MC or DOT tank, it is not authorized to operate in the U.S. transporting HM requiring a DOT specification cargo tank.

#### ***How do I determine if the cargo tank is authorized for the material it is transporting?***

Column (8C) of the hazardous materials table [§ 172.101] lists the section in Part 173 where authorized bulk packages can be found. That section, usually §§ 173.240-173.244, will list the authorized specification cargo tanks. Please note that for materials with bulk packages authorized in §§ 173.240 or 173.241, non-DOT specification cargo tanks, include Mexican SCT specification tanks, are authorized.

***Action***

When cargo tanks are discovered in the U.S. transporting HM in tanks that are not authorized for the type HM being transported, the vehicle should be placed OOS for violation of 396.7 – Unsafe Operations Forbidden. If the cargo tank is marked MC 306, MC 307, or MC 312 with an original test date after August 31, 1995, please forward a copy of the inspection and the information from the vehicle inspection place (a photograph if possible) through the appropriate channels to the Hazardous Materials Division (MC-ECH).

# State Program Manual

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**Federal Motor Carrier Safety Administration  
(FMCSA) U.S. Department of Transportation**

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## 6.0 Manager Manual

### 6.1 State Programs Manual

#### 6.1.1 Section 1 – Introduction to the MCSAP Comprehensive Policy

##### 6.1.1.1 Purpose

The Federal Motor Carrier Safety Administration (FMCSA) Motor Carrier Safety Assistance Program (MCSAP) Comprehensive Policy serves as a consolidated information resource for program guidance and cost eligibility for the group of MCSAP grants, which includes:

- MCSAP Basic and Incentive grants
- New Entrant Safety Assurance Program grants (NE)
- High Priority grants (HP)
- Border Enforcement grants (BEG)

This document is designed to provide FMCSA personnel and grantees with detailed policy for the administration of all MCSAP grants. It includes information on program goals, cost eligibility, Maintenance of Effort (MOE), and other topics for which FMCSA often receives questions. FMCSA personnel and grantees should refer to this document to ensure uniform implementation of policies and procedures related to specific Agency grant programs.

The MCSAP Comprehensive Policy is divided into sections by specific FMCSA grant programs and national program elements. Finally, the Policy contains appendices including a listing of eligible costs and expenditures.

Users of this policy should continue to refer to the appropriate sections of the Electronic Field Operations Training Manual (eFOTM) for appropriate violation codes and to determine the appropriate enforcement action recommendation for violations found during an inspection, investigation, or audit.

It should be noted that some of the direction in this policy was established by regulations. As a result, it may not be changed without notice and comment rulemaking.

##### 6.1.1.2 Background

The MCSAP was created by Congress in the Surface Transportation Assistance Act of 1982 and continued in subsequent authorizations. The original purpose of MCSAP was to eliminate varied State regulatory efforts and establish a uniform and reciprocal system of laws and regulations based on the Federal Motor Carrier Safety Regulations (FMCSRs).

Section 32601 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) established the goal of MCSAP as ensuring that FMCSA, States, local government agencies, and other political jurisdictions work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient surface transportation system by:

- Making targeted investments to promote safe CMV transportation, including transportation of passengers and hazardous materials;
- Investing in activities likely to generate maximum reductions in the number and severity of commercial motor vehicle crashes and fatalities resulting from such crashes;
- Adopting and enforcing effective motor carrier, commercial motor vehicle, and driver safety regulations and practices consistent with Federal requirements; and
- Assessing and improving statewide performance by setting program goals and meeting performance standards, measures, and benchmarks.

The MCSAP provides the mechanism for FMCSA and States to work together to develop and implement comprehensive, nationwide, and State-specific performance-based programs to increase motor carrier, CMV and driver safety. The MCSAP currently reimburses States for roadside inspections, investigations

and compliance reviews, traffic enforcement, public education efforts, data collection improvements, and other CMV-related safety efforts.

For the Basic and Incentive grants, FMCSA works directly with the designated lead agency responsible for CMV safety in each State. The NE, HP and BEG grants are discretionary grants with differing grantees. As a result, many agencies and entities contribute to motor carrier and commercial vehicle safety.

### **6.1.1.3 Cancellation**

This document supersedes all previous FMCSA and Federal Highway Administration (FHWA) MCSAP-related policies. Specifically, any policy with a control number that begins with “SP” is cancelled and it has been incorporated into this document. This document will serve as the repository of all future MCSAP-related policy decisions, and will be republished on at least an annual basis to effectively serve that purpose. Interim policy statements will continue to be issued on an as needed basis, but will be integrated when the full document is republished.

### **6.1.1.4 Abbreviations**

<b>BASICs</b>	<b>Behavior Analysis and System Improvement Categories</b>
BEG	Border Enforcement Grants
CDL	Commercial Driver’s License
CDLIS	Commercial Driver’s License Information System
CDLPI	Commercial Driver’s License Program Improvement
CFDA	Catalog of Federal Domestic Assistance
CMV	Commercial Motor Vehicle
CVISN	Commercial Vehicle Information Systems and Networks
CVSA	Commercial Vehicle Safety Alliance
CVSP	Commercial Vehicle Safety Plan
eCVSP	Electronic Commercial Vehicle Safety Plan
eFOTM	Electronic Field Operations Training Manual
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSR	Federal Motor Carrier Safety Regulations
HM	Hazardous Material
HMR	Hazardous Material Regulations
HOS	Hours of Service
HP	High Priority
ISS	Inspection Selection System
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century Act
MCMIS	Motor Carrier Management Information System
MCSAP	Motor Carrier Safety Assistance Program

NAS	North American Standard
NHTSA	National Highway Traffic Safety Administration
NOFA	Notice of Funding Availability
NRCME	National Registry of Certified Medical Examiners
NE	New Entrant
PRISM	Performance and Registration Information Systems Management
PSP	Pre-employment Screening Program
RDR	Request for Data Review
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SDLA	State Driver Licensing Agency
SMS	Safety Measurement System
USDOT	U.S. Department of Transportation

## 6.1.2 Section 2 – MCSAP Grants - General

### 6.1.2.1 Purpose

MCSAP is a set of Federal grant programs that provide financial assistance to States, local governments, and other organizations to reduce the number and severity of crashes and hazardous materials incidents involving CMVs through consistent, uniform, and effective safety programs.

### 6.1.2.2 National Program Elements:

The national program elements include the following five activities:

- (1) Driver/vehicle inspections
- (2) Traffic enforcement
- (3) Compliance reviews and investigations
- (4) Public education and awareness
- (5) Data collection

### 6.1.2.3 Eligible Activities

The primary activities eligible for reimbursement are:

- a. The five national program elements listed above.
- b. Sanitary food transportation inspections performed under 49 U.S.C. § 5708.
- c. The following two activities, when accompanied by an appropriate North American Standard (NAS) inspection and inspection report:
  1. Enforcement of CMV size and weight limitations at locations other than fixed weight facilities; at specific locations such as steep grades or mountainous terrains where the weight of a CMV can significantly affect the safe operation of the vehicle; or at ports where intermodal shipping containers enter and leave the United States.

2. Detection of the unlawful presence of a controlled substance in a CMV or on the person of any occupant (including the operator) of the vehicle.
  - d. Documented enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs. This includes documented enforcement of such laws and regulations relating to non-CMV's when necessary to promote the safe operation of CMVs, if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2003, 2004, and 2005.

A State may not use more than 5% of its MCSAP Basic Program funds for enforcement activities relating to non-CMV's unless the FMCSA Administrator determines that a higher percentage will result in significant increases in CMV safety.

#### **6.1.2.4 Jurisdictions**

All States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands are eligible to receive MCSAP grants directly from the FMCSA. For purposes of this section, all references to "State" or "States" include these jurisdictions.

#### **6.1.2.5 Grant Schedule**

##### **6.1.2.5.1 Notices of Funding Availability (NOFA)**

Each year, FMCSA publishes Notices of Funding Availability for the MCSAP grants at the [www.grants.gov](http://www.grants.gov) website. These announcements explain the eligible grantees; provide application directions and due dates; and other relevant information about the grant program.

This information can be found on the website by selecting grants by agency or by searching for the following Catalog of Federal Domestic Assistance (CFDA) numbers:

Basic and Incentive – 20.218

NE – 20.218

HP – 20.218

BEG – 20.233

##### **6.1.2.5.2 Application Due Dates**

Complete applications must be submitted on or before the due date listed for the grant on the [www.grants.gov](http://www.grants.gov) site.

##### **6.1.2.5.3 Awards**

The schedule for awarding each grant varies based on the number of applicants, the quality of the applications, and the amount of time required to review the submissions. Information about grant awards for previous years is available at the FMCSA website at:

<http://www.fmcsa.dot.gov/mission/grants>

#### **6.1.2.6 Match**

For each grant program, FMCSA will reimburse up to a specific percentage, as indicated in the grant agreement, of the eligible costs indicated on the grant agreement and incurred in the execution and administration of an approved grant project.

In-kind contributions are acceptable in meeting the State's matching share if they represent eligible costs as established by 2 CFR part 200 or Agency policy.

The FMCSA Administrator waives the requirement for matching funds for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

#### *6.1.2.7 Funding Availability*

The funds obligated to a State will remain available for the fiscal year in which they were obligated and the next full fiscal year, unless otherwise specified in the Notice of Grant Award. If a grantee has funding available for the same purpose through two subsequent grants, it must expend the funds in the order in which they are obligated.

#### *6.1.2.8 Program Income*

As defined in 2 CFR § 200.80, program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307 paragraph (f). (See § 200.77 Period of performance.)

Program income includes but is not limited to:

- income from fees for services performed;
- the use or rental of real or personal property acquired under Federal awards;
- the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights;
- and principal and interest on loans made with Federal award funds.

Program income does not include (2 CFR § 1201.80):

- interest earned on advances of Federal funds
- rebates, credits, discounts and interest earned on any of them
- government revenues: Taxes, special assessments, levies, fines and other such revenues raised by a non-Federal entity
- proceeds from the sale of real property or equipment.

Interest earned on advances of Federal funds is not program income. See also 2 CFR § 200.407 Prior written approval (prior approval). See also 35 U.S.C. § 200-212 “Disposition of Rights in Educational Awards” (applies to inventions made under Federal awards.)

Title 2, section 200.307 of the Federal Regulations defines the required use of program income.

- (a) General. Non-Federal entities are encouraged to earn income to defray program costs where appropriate.
- (b) Cost of generating program income. If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.
- (c) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.
- (d) Property. Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of subpart D—Post Federal Award Requirements of this part, Property Standards §§ 200.311 Real property, 200.313 Equipment, and 200.314 Supplies, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

- (e) Use of program income. If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.
1. Deduction. Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.
  2. Addition. With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.
  3. Cost sharing or matching. With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.
- (f) Income after the period of performance. There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also §200.343 Closeout.
- (g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements” is applicable.

Seizures and forfeitures are not directly generated by the MCSAP grants because the direct purposes of the MCSAP grants award are the enforcement of the HMRs found in 49 CFR parts 107 (subparts F and G only), 171 – 173, 177, 178 and 180 and the FMCSRs found in 49 CFR parts 390-397. Program income does not include income generated “indirectly.” As a result, seizures and forfeitures, if they occur, are an indirect result of the enforcement of the regulations and are not considered program income.

In addition, 2 CFR § 200.307 states that Governmental revenues including taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. Revenues collected from citations for traffic enforcement fall under governmental revenues and are not included in the FMCSA Provisions and Assurances as program income. Therefore, they are not program income.

Currently, FMCSA is not aware of any specific examples of program income generated by its grant programs.

#### ***6.1.2.9 Maintenance of Effort***

MCSAP requires States to maintain certain levels of expenditures, in addition to any required State matching share. This requirement is known as Maintenance of Effort (MOE). For MCSAP Basic and Incentive grants, the State's MOE must be maintained at a level that is at least equal to the average of what the State's lead MCSAP agency (as defined in 49 CFR § 350.211) spent in Federal Fiscal years (FFY) 2004 and 2005. A State's Commercial Vehicle Safety Plan (CVSP) must reflect the amount of the MOE and the activities and expenditures that support it, as well as all other MCSAP-funded activities and expenditures. Expenditures of other State agencies, local agencies, or subgrantees (whether supported by MCSAP grant funds or not) are not to be included in the calculation.

Determination of a State's level of effort must not include the following three items:

- (1) Federal funds received for support of motor carrier and hazardous materials safety enforcement;
- (2) State matching funds; or
- (3) State funds used for federally sponsored demonstration or pilot CMV safety programs.

A change in the State Lead MCSAP agency does not negate the MOE requirement because the State funding for these efforts was also transitioned to the new State agency. The concept of "successor in interest" applies. Thus, no State may have a zero MOE simply because the State Lead MCSAP agency is different in a current year than it was in FFYs 2004/2005, and the successor agency must meet the MOE requirements established by the FFY 2004/2005 baseline. Those instances in which the State Lead MCSAP Agency changed between FFYs 2004 and 2005 are handled on a case-by-case basis.

Because non-CMV and CMV traffic enforcement activities without an inspection were not authorized until SAFETEA-LU (in late FY 2005), States are not to include these expenditures in calculating the MOE baseline. States may, however, include non-CMV traffic enforcement and other new efforts and initiatives they have implemented since FFYs 2004/2005 to meet the annual MOE obligation.

States must self-certify that the calculated FFY 2004/2005 MOE will be met annually. This self-certification is included in 49 CFR §§ 350.211(8) and 350.213(n). It is recommended that the State maintain documentation of how the FFY 2004/2005 average MOE was calculated in case the State is audited.

In the absence of records, a reasonable estimate, based upon available information should be submitted to FMCSA for review and approval.

If the lead State agency is a pass-through and had no MCSAP eligible expenditures above the amount received in Federal funding and the State match in 2004-2005, then the State's MOE would be zero.

States must also maintain documentation demonstrating that they actually expended the required amount on MCSAP-eligible activities for verification by FMCSA. The State must annually submit their substantiation document to FMCSA to support the actual expenditures during the last fiscal year.

MAP-21 provided that the FMCSA Administrator may waive or modify the MOE requirements for one fiscal year, if the Administrator determines that a waiver is equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a serious decline in the financial resources of the State lead MCSAP agency.

#### ***6.1.2.10 State Use of Unified Carrier Registration (UCR) Revenue for Motor Carrier Safety Assistance Program Activities***

SAFETEA-LU restricts participating States' use of revenues generated under UCR. These revenues

may only be used for motor carrier safety programs, motor carrier enforcement programs, or administration of the UCR fee system. However, 49 U.S.C. § 31103(a), as amended by section 4307 of SAFETEA-LU, authorizes the use of these revenues as matching funds. Therefore, States may use their UCR revenue to meet the required match for MCSAP grants, provided it is used for MCSAP-eligible safety activities.

Additionally, States are able to use UCR revenue towards meeting MOE requirements, if the expenses are otherwise eligible.

### **6.1.3 Section 3 Basic and Incentive Grants**

#### **6.1.3.1 Introduction**

The MCSAP Basic and Incentive grants are the formula grants provided annually to the State's lead agency. A lead agency is designated by the Governor as the State motor vehicle safety agency responsible for administering the Commercial Vehicle Safety Plan throughout the State.

#### **6.1.3.2 Eligibility Conditions for Basic Grants:**

Pursuant to 49 U.S.C. § 31102, each State must meet the following 26 conditions to be eligible for Basic funding:

- (a) Adopt and enforce State safety laws and regulations that are compatible with the FMCSRs (49 CFR parts 390–397) and the HMRs (49 CFR parts 107 (subparts F and G only), 171–173, 177, 178 and 180), except as may be determined by the Administrator to be inapplicable to a State enforcement program.
- (b) Implement performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of CMV safety programs.
- (c) Designate, in its State Certification, the lead State agency responsible for implementing the CVSP.
- (d) Ensure that only agencies having the legal authority, resources, and qualified personnel necessary to enforce the FMCSRs and HMRs or compatible State laws or regulations are assigned to perform functions in accordance with the approved CVSP.
- (e) Allocate adequate funds for the administration of the CVSP including the enforcement of the FMCSRs, HMRs, or compatible State laws or regulations.
- (f) Provide that the total expenditure of amounts of the lead State agency responsible for implementing the plan will be maintained at a level at least equal to the average level of that expenditure for fiscal years 2004 and 2005.
- (g) Provide legal authority for a right of entry and inspection adequate to carry out the CVSP.
- (h) Prepare and submit to the FMCSA, upon request, all reports required in connection with the CVSP or other conditions of the grant.
- (i) Adopt and use the reporting standards and forms required by the FMCSA to record work activities performed under the CVSP.
- (j) Require registrants of CMVs to declare, at the time of registration, their knowledge of applicable FMCSRs, HMRs, or compatible State laws or regulations.
- (k) Grant maximum reciprocity for inspections conducted under the North American Standard Inspection through the use of a nationally accepted system that allows ready identification of previously inspected CMVs.

- (l) Conduct CMV size and weight enforcement activities funded under this program only to the extent those activities do not diminish the effectiveness of other CMV safety enforcement programs.
- (m) Coordinate the CVSP, data collection and information systems, with State highway safety programs under title 23 United States Code (U.S.C.).
- (n) Ensure participation in SAFETYNET and other information systems by all appropriate jurisdictions receiving funding under this section.
- (o) Ensure information is exchanged with other States in a timely manner.
- (p) Emphasize and improve enforcement of State and local traffic laws and regulations related to CMV safety.
- (q) Promote activities in support of the national program elements listed in § 350.109, including the following three activities:
  - 1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of restrictions on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment.
  - 2) Activities aimed at providing an appropriate level of training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances.
  - 3) Interdiction activities affecting the transportation of controlled substances by CMV drivers and training on appropriate strategies for carrying out those interdiction activities.
- (r) Enforce requirements relating to the licensing of CMV drivers, including checking the status of commercial drivers' licenses (CDL).
- (s) Establish a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and ensure the State's participation in a national motor carrier safety data correction system prescribed by FMCSA.
- (t)
  - (1) Enforce registration (i.e., operating authority) requirements under 49 U.S.C. § 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR § 392.9a by prohibiting the operation of (i.e., placing out of service) any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.
  - (2) Enforce financial responsibility requirements under 49 U.S.C. §§ 13906, 31138, 31139, and 49 CFR part 387.
- (u) Adopt and maintain consistent, effective, and reasonable sanctions for violations of CMV, driver, and hazardous materials regulations.
- (v) Ensure that MCSAP agencies have policies that stipulate roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.
- (w) Include in the training manual, for the licensing examination to drive a CMV and the training manual for the licensing examination to drive a non-CMV, information on best practices for driving safely in the vicinity of non-CMVs and CMVs.
- (x) Conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.
- (y) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal,

border maintenance facility, destination, or other location where a motor carrier may make a planned stop.

- (z) Ensure transmittal to roadside inspectors the notice of each Federal exemption the State receives from FMCSA pursuant to 49 CFR part 381 subpart C, including the name of the person granted the exemption and any terms and conditions that apply to the exemption.

### ***6.1.3.3 Allocation of Formula Funding***

#### **6.1.3.3.1 Basic Grants**

Basic funds are allocated proportionally to the States using the following four, equally weighted (25%), factors.

- 1) 1997 Road miles (all highways) as defined by the FMCSA.
- 2) All vehicle miles traveled (VMT) as defined by the FMCSA.
- 3) Population—annual census estimates as issued by the U.S. Census Bureau.
- 4) Special fuel consumption (net after reciprocity adjustment) as defined by the FMCSA.

#### **6.1.3.3.2 Incentive Grants**

A State may qualify for Incentive Funds if it can demonstrate that its CMV safety program meets the requirements or has shown improvement in any or all of the following five categories:

- 1) Reduction of large truck-involved fatal crashes.
- 2) Reduction of large truck-involved fatal crash rate or maintenance of a large truck-involved fatal crash rate that is among the lowest 10% of such rates of MCSAP recipients.
- 3) Upload of CMV crash reports in accordance with current FMCSA policy guidelines.
- 4) Verification of CDLs during all roadside inspections.
- 5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

Incentive Funds are allocated based upon the five following safety and program performance factors:

- 1) Five shares will be awarded to States that reduce the number of large truck-involved fatal crashes for the most recent calendar year for which data are available when compared to the 10-year average number of large truck-involved fatal crashes ending with the preceding year. The 10-year average will be computed from the number of large truck-involved fatal crashes, as reported by the FARS, administered by the National Highway Traffic Safety Administration (NHTSA).
- 2) Four shares will be awarded to States that reduce the fatal-accident rate for the most recent calendar year for which data are available when compared to each State's average fatal accident rate for the preceding 10-year period. States with the lowest 10% of accident rates in the most recent calendar year for which data are available will be awarded three shares if the rate for the State is the same as its average accident rate for the preceding 10-year period.
- 3) Two shares will be awarded to States that upload CMV accident data within FMCSA policy guidelines.
- 4) Two shares will be awarded to States that certify their MCSAP inspection agencies have departmental policies that stipulate CDLs are verified, as part of the inspection process, through

Commercial Driver's License Information System (CDLIS), National Law Enforcement Tracking System (NLETS), or the State licensing authority.

- 5) Two shares will be awarded to States that upload CMV inspection reports within current FMCSA policy guidelines.

The total of all States' Incentive shares awarded will be divided into the dollar amount of Incentive Funds available, thereby establishing the value of one share. Each State's incentive allocation will then be determined by multiplying the State's percentage participation in the formula allocation of Basic Program Funds by the number of shares it received that year, multiplied by the dollar value of one share.

#### *6.1.3.4 Basic and Incentive Application Process*

The lead agency, designated by the Governor, must submit the State's CVSP to FMCSA on or before August 1 of each year.

This deadline may, for good cause, be extended by FMCSA for a period not to exceed 30 calendar days.

For a State to receive funding, the CVSP must be complete and include all required documents.

#### *6.1.3.5 CVSP and eCVSP*

In Fiscal Year 2015, FMCSA provided the States with the ability to complete an electronic version of the CVSP, called the eCVSP.

In the CVSP under the CMV Safety Program Objectives, FMCSA asks States to look at the following data: Crash Reduction, State Safety Data Quality, Passenger Carrier Enforcement, Enforcement of Federal Out-of-Service Orders (OOSO), and Hazardous Materials. Additionally, there is a section for the State to address any data identified objectives that the State has determined should be addressed with resources.

If the data analysis shows that the State does not need to direct dedicated resources to any of these areas, the eCVSP has a checkbox the State may use to indicate this. As an example, the checkbox for Passenger Carrier Enforcement reads "As evidenced by the data indicated in Past State Motorcoach/Passenger Fatality Reduction Goals, the State does not have a passenger transportation safety problem and will not establish a specific passenger transportation crash reduction goal in the current fiscal year. However, the State will continue traffic enforcement and to enforce the FMCSRs against passenger transportation CMVs in a manner consistent with its enforcement for all CMVs and other activities as described [in] the appropriate National Program Elements, i.e. Commercial Vehicle Enforcement Activities." It is important that the data supports this decision. Please note that these Safety Program Objectives in the NOFA and eCVSP may change from year to year.

The State's CVSP must reflect a performance-based program, and contain the following 18 items:

- (a) A general overview section that must include the following two items:
  - (1) A statement of the State agency goal or mission.
  - (2) A program summary of the effectiveness of the prior years' activities in reducing CMV crashes, injuries and fatalities, and improving driver and motor carrier safety performance. Data periods used must be consistent from year to year. This may be calendar year or fiscal year or any 12-month period of time for which the State's data is current. The summary must show trends supported by safety and program performance data collected over several years. It must identify safety or performance problems in the State and those problems must be addressed in the new or modified CVSP.
- (b) A brief narrative describing how the State program addresses the national program elements listed in § 350.109. The plan must address these elements even if there are no planned activities

in a program area. The rationale for the resource allocation decision must be explained. The narrative section must include a description of how the State supports the activities identified in § 350.201(q) and (t).

- (1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of restrictions on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment.
  - (2) Activities aimed at providing an appropriate level of training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances.
  - (3) Interdiction activities affecting the transportation of controlled substances by CMV drivers and training on appropriate strategies for carrying out those interdiction activities.
  - (4) Activities to enforce registration requirements under 49 U.S.C. § 13902 and 49 CFR part 365 and financial responsibility requirements under 49 U.S.C. §§ 13906, 31138 and 31139 and 49 CFR part 387.
- (c) A definitive problem statement for each objective, supported by data or other information. The CVSP must identify the source of the data, and who is responsible for its collection, maintenance, and analysis.
- (d) Performance objectives, stated in quantifiable terms, to be achieved through the State plan. Objectives must include a measurable reduction in highway crashes or hazardous materials incidents involving CMVs. The objective may also include documented improvements in other program areas (e.g., legislative or regulatory authority, enforcement results, or resource allocations).
- (e) Strategies to be employed to achieve performance objectives. Strategies may include education, enforcement, legislation, use of technology and improvements to safety infrastructure.
- (f) Specific activities intended to achieve the stated strategies and objectives. Planned activities must be eligible under this program as defined in §§ 350.309 and 350.311.
- (g) Specific quantifiable performance measures, as appropriate. These performance measures will be used to assist the State in monitoring the progress of its program and preparing an annual evaluation.
- (h) A description of the State's method for ongoing monitoring of the progress of its plan. This should include who will conduct the monitoring, the frequency with which it will be carried out, and how and to whom reports will be made.
- (i) An objective evaluation that discusses the progress towards individual objectives listed under the "Performance Objectives" section of the previous year's CVSP and identifies any safety or performance problems discovered. States will identify those problems as new objectives or make modifications to the existing objectives in the next CVSP.
- (j) A budget which supports the CVSP, describing the expenditures for allocable costs such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with §§ 350.311 and 350.309.
- (k) A budget summary form including planned expenditures for that fiscal year and projected number of activities in each national program element, except data collection.
- (l) The results of the annual review to determine the compatibility of State laws and regulations with the FMCSRs and HMRs.
- (m) A copy of any new law or regulation affecting CMV safety enforcement that was enacted by the State since the last CVSP was submitted.

- (n) Executed State Certification as outlined in § 350.211.
- (o) List of MCSAP contacts.
- (p) Annual Certification of Compatibility as outlined in § 350.331.

It should be noted that the State Training Plan is provided to FMCSA outside of the eCVSP process.

#### *6.1.3.6 Certification requirements*

The State's certification, as reflected in the CVSP, must be consistent with the following content:

I (name), (title), on behalf of the State (or Commonwealth) of (State), as requested by the Administrator as a condition of approval of a grant under the authority of 49 U.S.C. § 31102, as amended, do hereby certify as follows:

- 1) The State has adopted commercial motor carrier and highway hazardous materials safety rules and regulations that are compatible with the FMCSRs and the HMRs.
- 2) The State has designated (name of State CMV safety agency) as the lead agency to administer the CVSP for the grant sought and (names of agencies) to perform defined functions under the plan. These agencies have the legal authority, resources, and qualified personnel necessary to enforce the State's commercial motor carrier, driver, and highway hazardous materials safety laws or regulations.
- 3) The State will obligate the funds or resources necessary to provide a matching share to the Federal assistance provided in the grant to administer the plan submitted and to enforce the State's commercial motor carrier safety, driver, and hazardous materials laws or regulations in a manner consistent with the approved plan.
- 4) The laws of the State provide the State's enforcement officials right of entry and inspection sufficient to carry out the purposes of the CVSP, as approved, and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Standard Inspection procedure, through the use of a nationally accepted system allowing ready identification of previously inspected CMVs.
- 5) The State requires that all reports relating to the program be submitted to the appropriate State agency or agencies, and the State will make these reports available, in a timely manner, to the FMCSA on request.
- 6) The State has uniform reporting requirements and uses FMCSA designated forms for record keeping, inspection, and other enforcement activities.
- 7) The State has in effect a requirement that registrants of CMVs declare their knowledge of the applicable Federal or State CMV safety laws or regulations.
- 8) The State must maintain the average aggregate expenditure of the State lead agency responsible for implementing the CVSP, exclusive of Federal assistance and State matching funds, for CMV safety programs eligible for funding under the Basic program at a level at least equal to the average level of that expenditure for fiscal years 2004 and 2005. These expenditures must cover at least the following four program areas, as applicable:
  - a. Motor carrier safety programs in accordance with 49 CFR § 350.109.
  - b. Size and weight enforcement programs in accordance with 49 CFR § 350.309(c)(1).
  - c. Drug interdiction enforcement programs in accordance with 49 CFR § 350.309(c)(2).
  - d. Traffic safety programs in accordance with 49 CFR § 350.309(d).
- 9) The State will ensure that CMV size and weight enforcement activities funded with MCSAP funds will not diminish the effectiveness of other CMV safety enforcement programs.

- 10) The State will ensure that violation fines imposed and collected by the State are consistent, effective, and equitable.
- 11) The State will establish a program to provide FMCSA with accurate, complete, and timely reporting of motor carrier safety information that includes documenting the effects of the State's CMV safety programs; participate in a national motor carrier safety data correction program (DataQs); participate in SAFETYNET; and ensure information is exchanged in a timely manner with other States.
- 12) The State will ensure that the CVSP, data collection, and information systems are coordinated with the State highway safety program under title 23, U.S. Code. (The name of the Governor's highway safety representative (or other authorized State official through whom coordination was accomplished)).
- 13) The State has undertaken efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to CMV safety.
- 14) The State will ensure that MCSAP agencies have departmental policies stipulating that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.
- 15) The State will ensure that requirements relating to the licensing of CMV drivers are enforced, including checking the status of CDLs.
- 16) The State will ensure that MCSAP funded personnel, including subgrantees, meet the minimum Federal standards set forth in 49 CFR part 385, subpart C for training and experience of employees performing safety audits, compliance reviews, or driver/ vehicle roadside inspection.
- 17) The State will enforce operating authority requirements under 49 CFR § 392.9a by prohibiting the operation of any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.
- 18) The State will enforce the financial responsibility requirements under 49 CFR part 387 as applicable to CMVs subject to the provisions of 49 CFR § 392.9a.
- 19) The State will include, in the training manual for the licensing examination to drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for safe driving in the vicinity of noncommercial and commercial motor vehicles.
- 20) The State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.
- 21) The State will ensure that, except in the case of an imminent or obvious safety hazard, an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where motor carriers may make planned stops.
- 22) The State will transmit to its roadside inspectors the notice of each Federal exemption granted pursuant to 49 U.S.C. § 31315(b) as provided to the State by FMCSA, including the name of the person granted the exemption and any terms and conditions that apply to the exemption.

Date:

Signature:

### ***6.1.3.7 Schedule***

FMCSA will notify the State, in writing, within 30 days of receipt of the CVSP whether:

- (1) The plan is approved.
- (2) Approval of the plan is withheld because the CVSP does not meet the requirements of this part, or is not adequate to ensure effective enforcement of the FMCSRs and HMRs or compatible State laws and regulations.

If approval is withheld, the State will have 30 days from the date of the notice to modify and resubmit the plan.

Disapproval of a resubmitted plan is final.

Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

### ***6.1.3.8 Overtime Policy***

States may annually allocate a limited amount of program funds for expenditures associated with overtime, either incidental or planned, to conduct eligible MCSAP activities. The amount eligible for allocation toward overtime may not exceed 15% of the State's Federal Basic (excluding incentive funding) award amount without approval through the CVSP process. State matching funds are not included in the 15 % overtime calculation. The calculation of the total cost of overtime by a State under the provisions of this policy must use the total overtime wage for each employee for all overtime hours.

For example, if an employee who works under the MCSAP grant normally earns \$30 per hour and the overtime rate is 1.5 times his/her normal hourly rate, then the State must calculate the cost of overtime using the employee's overtime (i.e., premium) hourly rate of \$45.

If a State identifies a need to go beyond the 15% overtime limitation using Federal Basic funding, FMCSA will consider such requests in the CVSP approval process. However, States are required to provide adequate written justification to FMCSA in the annual CVSP. If a State identifies the need to modify the amount of overtime after the CVSP is approved by FMCSA, the State must submit a budget amendment request in accordance with the procedures outlined in the FMCSA Grants Management Manual. This approval must be received even if the modification does not exceed the 10% threshold for budget category modifications. The States may, at their discretion, allocate any amount of Incentive funding toward overtime activities in their CVSP.

## **6.1.4 Section 4 – New Entrant (NE) Grants**

### ***6.1.4.1 Introduction***

The purpose of the New Entrant Safety Audit program is to determine whether a new interstate motor carrier is fit to safely operate commercial vehicles. The NE grant program, authorized under 49 U.S.C. § 31144(g)(5), enables this effort by providing funding to eligible recipients for costs incurred conducting audits on these carriers.

### ***6.1.4.2 Eligible Recipients***

State and local governments are the only eligible recipients of New Entrant grants.

### ***6.1.4.3 Federal Share and Match***

No matching funds are required for New Entrant grants. The Federal government share is 100% of all approved and eligible costs.

#### **6.1.4.4 Allowable Expenses**

Allowable expenses under the NE program grant funding are those costs that are reasonable, necessary, and allocable to the delivery of the NE program. Only allowable costs related to NE Safety Audits (SAs) conducted on interstate NE motor carriers are eligible for reimbursement under this policy.

Allowable costs may include, but are not limited to, expenses associated with administering and supervising the NE program, scheduling carriers for Safety Audits, completing interstate motor carrier Safety Audits, fulfilling the data entry requirements of the Motor Carrier Management Information System (MCMIS), conducting investigations when required by program policy and Federal regulations, evaluating a motor carrier's NE safety management systems or corrective action plan, completing mandatory activities (including required training and travel to training) to maintain certification, and purchasing equipment and supplies necessary for program delivery.

For the purposes of this policy, grantee personnel are only considered full-time NE auditors if their salary is supported 100 % by the NE grant, and they are assigned full-time to delivering or managing the NE program.

The following cost categories are provided to serve as a guide of generally eligible costs as either a full or pro-rated share reimbursement under the NE program:

- (1) Personnel expenses, including training (including travel to training), salaries, and fringe benefits of NE auditors or NE program supervisor and management staff, that are allocable to the delivery and management of the NE program.
- (2) Expenses for equipment, supplies, and travel expenses (including per diem) allocable and necessary for program delivery and management of the NE program. This includes, but is not limited to vehicles, uniforms and civilian clothing (up to the maximum allowable by the State's official policy), communications equipment, special inspection equipment necessary for Safety Audit-related vehicle inspections (not including educational materials, or portable scales because these are already funded under the Basic program), vehicle maintenance, fuel, and oil.
- (3) Indirect expenses for facilities (except fixed scales) or services, used in delivery of the NE program or the housing of staff, equipment, or supplies supporting the management and administration of the NE program, to the extent these costs are measurable; and
- (4) Clerical and administrative expenses are allowable to the extent that they are necessary and allocable to the NE program. The administrative costs directly related to the delivery of the NE program (i.e., scheduling, responding to regulatory and procedural questions, completion of the Safety Audit and follow-up activity in direct response to a completed Safety Audit) are eligible activities for reimbursement under the NE grant.

If any expenses described above are incurred for any purpose other than the full-time management and delivery of the NE program, the costs must be charged only for actual time worked or pro-rated, in a manner consistent with the percentage of time performing duties directly related to delivery and management of the NE program.

##### **6.1.4.4.1 Cost Eligibility for Conducting Vehicle Inspections**

Subject to the general eligibility guidelines above, expenses for Level I and Level V vehicle inspections conducted in accordance with current NAS Inspection procedures are eligible for reimbursement under a NE grant:

- (1) If conducted by a part-time or full-time NE auditor on a NE carrier vehicle as part of a Safety Audit;
- (2) If conducted by a full-time NE auditor on a non-NE carrier vehicle only if the auditor is unable to

conduct the minimum of 32 annual inspections to maintain roadside inspection certification by conducting Safety Audits;

- (3) If conducted by a full-time NE auditor on a non-NE carrier vehicle only if the auditor is unable to conduct the minimum inspections for specialized certification (e.g., passenger vehicles, Hazardous Materials vehicles, etc.) by conducting Safety Audits. These inspections may be in addition to the 32 annual inspections for basic certification;
- (4) If conducted by a part-time NE auditor on a non-NE carrier vehicle only if the auditor is unable to conduct the minimum 32 annual inspections or specialized inspections to maintain roadside and specialized inspection certification by conducting Safety Audits. Part time auditors for MCSAP lead agencies should normally be able to obtain the necessary inspections to maintain certification under other grant programs.

Level I and V inspections conducted by a NE auditor on non-NE carrier vehicles in excess of the 32 annual inspections or the required number of specialized inspections necessary to maintain roadside inspection and specialized certification are not eligible for reimbursement under a NE grant. These inspections may be reimbursable by another FMCSA grant, if included in the grant's approved project plan.

Level II, III, IV, or VII inspections are not eligible for reimbursement under a NE grant. These inspections may be reimbursable by another FMCSA grant, if included in the grant's approved project plan.

#### **6.1.4.4.2 Cost Eligibility for Conducting Investigations**

Subject to the general eligibility guidelines above, expenses for Compliance Reviews or onsite comprehensive and focused investigations are eligible for reimbursement under a NE grant:

- (1) If conducted by part-time or full-time NE auditor only in lieu of a Safety Audit on a NE carrier that appears on the Agency's high risk or mandatory list;
- (2) If conducted by a NE auditor on a non-NE carrier only if the auditor is unable to conduct the minimum 6 annual CRs/Investigations to maintain certification. Non-NE investigations assigned to NE auditors for the purposes of maintaining certification should be made from FMCSA's high-risk or mandatory list address carriers that pose the greatest safety risk.

Second or subsequent carrier reviews conducted during the 18-month NE review period are not eligible for reimbursement. Reviews conducted by a full-time NE auditor on a non-NE carrier in excess of the six annual CRs necessary to maintain certification are not eligible for reimbursement under a NE grant. These reviews may be reimbursable by another FMCSA grant, if included in the grant's approved project plan.

#### **6.1.4.5 Cost Reimbursement Reviews**

Activities and expenses inconsistent with the purposes described in this policy are not eligible for reimbursement. In accordance with the FMCSA Grants Management Manual, the Division Administrator will review each request for reimbursement to ensure that:

- (1) the State's expenditures meet the basic cost eligibility requirements as outlined in this policy;
- (2) the activities and/or items and associated costs are in the State's approved NE grant and budget; and
- (3) the request for reimbursement meets all other applicable Federal regulations and policies.

## **6.1.5 Section 5 – High Priority (HP) Grant Program**

### **6.1.5.1 Introduction**

Pursuant to 49 U.S.C. § 31104(k), MCSAP HP funding is available for projects that are national in scope, increase public awareness and education, demonstrate new technologies, and reduce the number of CMV crashes.

### **6.1.5.2 Eligible Recipients**

Eligible recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

### **6.1.5.3 Federal Share and Match**

For public education grant activities, the Federal share will be 100%. For other HP grants, FMCSA will provide reimbursement for not more than 80% of all eligible costs, and recipients will be required to provide a 20% match. FMCSA may reserve HP funding exclusively for innovative traffic enforcement projects and high-visibility traffic enforcement program that promote safe driving behaviors among car and truck drivers.

### **6.1.5.4 Eligible Costs**

Eligible project related costs under High Priority are generally the same as for the MCSAP Basic and Incentive program. There are a few exceptions which are noted in the table on Appendix A. Costs must be directly related and necessary to HP project activities proposed in the application and, for State agencies supported by MCSAP grants, not general CMV enforcement equipment. For example: a State proposes to use portable bus ramps to assist in motorcoach enforcement at a destination, but these ramps cannot be transported in the regular duty vehicles of the enforcement personnel. Requesting funds for a truck or trailer for this purpose would generally be acceptable. However, requesting funds for a vehicle associated with traffic enforcement overtime activities for officers who, as a part of their regular duties must have a vehicle, would not be appropriate. For local enforcement agencies, the same principle applies: FMCSA will not support vehicles for officers who are already assigned vehicles as part of their regular duties unless there is a compelling need explained in the application.

## **6.1.6 Section 6 – Border Enforcement Grant (BEG) Program**

### **6.1.6.1 Introduction**

Pursuant to 49 U.S.C. § 31107, FMCSA's BEG Program is a Discretionary grant program which provides funds to entities and States in order to increase and enhance inspections of CMVs engaged in international commerce across United States land borders. The purpose of FMCSA's BEG Program is to ensure motor carriers operating CMVs entering the United States from a foreign country are in compliance with the commercial vehicle safety standards and regulations, financial responsibility regulations, and registration requirements of the United States, and to ensure drivers of those vehicles are qualified and properly licensed to operate the CMVs.

### **6.1.6.2 Eligible Recipients**

State governments or entities that share a land border with Canada or Mexico and any local government or entity in that State for carrying out border CMV safety programs and related enforcement activities and projects.

### **6.1.6.3 Federal Share and Match**

For grant activities, the Federal share will be 100%.

### **6.1.6.4 Eligible Costs**

Eligible project related costs under BEG are generally the same as for the MCSAP Basic and Incentive program. There are a few exceptions which are noted in the table on Appendix A. Costs must be directly related and necessary to BEG project activities proposed in the application and, for State agencies supported by MCSAP grants, not general CMV enforcement equipment. For example: a State proposes to use portable bus ramps to assist in motorcoach enforcement at international border crossings, but these ramps cannot be transported in the regular duty vehicles of the enforcement personnel. Requesting funds for a truck or trailer for this purpose would generally be acceptable. However, requesting funds for a vehicle associated with traffic enforcement overtime activities for officers who, as a part of their regular duties must have a vehicle, would not be appropriate. This does not preclude a State from requesting BEG funding for all costs associated with maintaining a fulltime border enforcement unit. Additionally, for non-state entities, the same principle applies: FMCSA will not support vehicles for officers who are already assigned vehicles as part of their regular duties unless there is a compelling need explained in the application.

## **6.1.7 Section 7 Driver and Vehicle Inspections**

### **6.1.7.1 Introduction**

The FMCSA believes that a robust inspection program contributes to the reduction in crashes by modifying carriers' and drivers' behaviors by stopping unsafe vehicles and drivers and by increasing awareness of potential FMCSA and/or State interventions.

A key component of success in the inspection program, conducted primarily by State and local enforcement partners, is how vehicles are identified for inspection. Conducting inspections at the roadside and fixed highway facilities based on visible defects or established inspection selection criteria achieves the goal of evaluating true on-the-road performance of carriers.

MCSAP partners should regularly evaluate their State's data to determine the best combination of driver and vehicle inspections to have the greatest impact on motor carriers and CMVs. Inspection and enforcement activities should be targeted based on traffic flow and crash data. FMCSA acknowledges that this may vary by season and locality.

### **6.1.7.2 North American Standard (NAS) Inspection Levels**

Ultimately, each State is responsible for determining the level of NAS inspection to be conducted. It is recognized that the percentage of Level I inspections conducted by a State will vary depending on the safety problem being addressed, type of inspection facilities, and other factors within the State.

FMCSA encourages each State to conduct at least 25% of its inspections as NAS Level I. This will help to maintain the effectiveness and reciprocity of the national program and encourage the application of the Commercial Vehicle Safety Alliance (CVSA) decals to allow other States to identify previously inspected CMVs.

### **6.1.7.3 Inspection Selection System (ISS)**

The Inspection Selection System (ISS) is the roadside safety screening tool supported by FMCSA for use by Federal and State roadside inspectors to identify high-risk commercial motor carriers and vehicles for inspection based on safety risk. ISS enables the safety screening of CMVs by querying the system using the motor carrier's USDOT number, Operating Authority (MC/MX) number, or carrier name.

After the roadside inspector enters a motor carrier identifier, ISS returns the carrier name and address, an inspection value from 1 to 100, and other indicators to help determine if an inspection should be conducted. The ISS inspection value is based, in part, on a carrier's Behavior Analysis and Safety Improvement Categories (BASICS) in the Agency's Safety Measurement System (SMS), if sufficient

safety data are available in MCMIS. Carriers with multiple deficient BASICs will receive the highest ISS scores, and, therefore, will receive an "Inspect" recommendation.

Also, if the carrier's record does not have enough information to determine its performance in each BASIC area, ISS may recommend an inspection to provide more data for future use by the BASIC algorithm.

ISS also specifically notes when the motor carrier is a New Entrant.

FMCSA's Query Central website, available through the FMCSA Portal (<https://portal.fmcsa.dot.gov>), uses the most current data and is the FMCSA-recommended method for obtaining ISS scores and other carrier data, such as status of operating authority and federal Out-of-Service Orders.

If Query Central is not accessible, a previously-downloaded copy of the ISS database may be used to make the inspection recommendation. However, the States that utilize a downloaded version of the ISS database should perform regular updates (at least every 30 days – see below).

#### *6.1.7.4 Accessing ISS when Query Central is Not Available*

The ISS software is available for download free of charge by authorized FMCSA and State enforcement personnel. Currently, users can access InfoSys directly at <http://infosys.fmcsa.dot.gov/> or through the FMCSA Portal at <https://portal.fmcsa.dot.gov/>.

Once logged into InfoSys, select the ISS link from the "Official Software" listing.

ISS information can also be distributed to State partners via a compact disc (CD). Requests for CDs may be submitted to the FMCSA Technical Support Team at [FMCTechSup@dot.gov](mailto:FMCTechSup@dot.gov).

FMCSA releases a monthly update that appends new information to the existing version of the ISS database. Users accessing ISS outside of Query Central must check for an updated Carrier Database on InfoSys at least every 30 days. Additionally, FMCSA releases a new version of the database quarterly that incorporates all of the monthly appendices.

For more information and/or assistance with the download of the ISS (or any FMCSA software application or log-in guidance), contact the FMCSA Technical Support Team Monday through Thursday from 8:00 a.m. to 8:00 p.m. and Fridays from 8:00 a.m. to 6:00 p.m. ET at:

Phone: (617) 494-3003  
Fax: (617) 494-3058  
E-mail: [FMCTechSup@dot.gov](mailto:FMCTechSup@dot.gov)

#### *6.1.7.5 Scheduled Inspections*

FMCSA recognizes that States use enforcement strategies that allow the States to schedule inspections and give the motor carriers advance notice. These inspections should be Level I or Level V inspections, to allow inspectors to meet certification requirements. However, FMCSA requests that the States monitor the use of scheduled inspections to ensure that a motor carrier is not inappropriately altering its SMS scores and safety history.

#### *6.1.7.6 Post-Crash Inspections*

Identifying safety violations, especially Out of Service (OOS) violations that may have contributed to a crash, is an important component of conducting post-crash inspections. State enforcement personnel use Aspen (or approved non-Aspen inspection software – see Section 7.11) to upload post-crash inspection information to MCMIS. It is also important to prevent unwarranted negative impacts on a motor carrier's

safety performance record and reduce the number of Requests for Data Reviews in FMCSA's data correction system (DataQs) by accurately indicating in an inspection report whether an indicated violation is pre-crash or post-crash. Post-crash violations do not count as a violation against the carrier in FMCSA's data systems. FMCSA's Aspen inspection software provides an optional field for the inspector to indicate, at the inspection level, that the inspection was conducted post-crash. When this optional field is checked, Aspen creates a column in the violation section. The inspector should indicate in this column whether each violation noted in the report occurred prior to or as a result of the crash.

#### ***6.1.7.7 Size and Weight Enforcement***

Size and weight enforcement is generally supported by grant programs from the Federal Highway Administration and is not the primary focus of MCSAP. However, the statutory authorization for MCSAP does allow size and weight enforcement as an eligible expense if three criteria are met. First, the size and weight activities must be conducted in conjunction with an appropriate inspection. Second, the size and weight activities must be conducted at locations other than fixed weight facilities, or at specific geographical locations (such as steep grades or mountainous terrains) where the weight of a commercial motor vehicle can significantly affect the safe operation of such vehicle, or at seaports where intermodal shipping containers enter and exit the United States (note: enforcement at seaports is not an eligible BEG activity; BEG activities must be conducted at land border crossings). Third, the size and weight enforcement activities are only eligible if they *will not diminish the effectiveness of the development and implementation of commercial motor vehicle safety programs.*

To support these activities, States may request to purchase portable scales. However, because FHWA's Title 23 grant funds are available for this purpose, FMCSA requires States to explore that funding source before requesting the use of MCSAP funds to purchase portable scales. To support the request for portable scales in a CVSP budget, the State must provide documentation that it tried to obtain the scales through a FHWA Title 23 project, that the portable scales will be used exclusively for MCSAP-eligible purposes, as described in this policy, and/or demonstrate that the cost of the scales are prorated according to the anticipated percentage of dedication to MCSAP activities.

Salaries and expenses for personnel who are certified to conduct CMV inspections and size and weight activities are eligible for reimbursement for both activities, provided that the activities are done in conjunction with CMV inspections. However, salaries and expenses for personnel who conduct only size and weight activities, regardless if at fixed weigh facilities or as part of a mobile or temporary inspection site, or in coordination with other personnel that are conducting CMV inspections, are never reimbursable under the MCSAP because statute requires that all size and weight activities be conducted in conjunction with an eligible CMV inspection.

Finally, when enforcing size and weight laws, for the inspections to be eligible for MCSAP reimbursement, officers and inspectors must adhere to the CVSA NAS Out-of-Service (OOS) criteria. It should be noted that the CVSA NAS OOS criteria do not include placing a vehicle OOS for a size/weight violation. FMCSA grantees cannot request reimbursement for an inspection inconsistent with this policy.

#### ***6.1.7.8 State-Conducted Inspections of Passenger Carrying CMVs***

This section establishes policy on State-conducted inspections of CMVs<sup>1</sup> and drivers transporting passengers and accomplishes the following:

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<sup>1</sup> 49 CFR § 390.5 defines Commercial Motor Vehicle as any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle— (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. § 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B,

- Affirms that State-conducted inspections of passenger CMVs and drivers at fixed locations (defined below) are eligible for reimbursement under MCSAP;
- Establishes FMCSA’s interpretation of the term “station” to include “weigh station”;
- Establishes that passenger CMV and driver inspections at alternate inspection locations are eligible for reimbursement under MCSAP when conducted because of an imminent or obvious safety hazard;
- Defines imminent or obvious safety hazard, which includes failure to display a USDOT number on a CMV transporting passengers in interstate commerce; and,
- Provides guidance on passenger carrying CMV enforcement activities that would be incompatible with MCSAP regulations.

Section 4106 of SAFETEA-LU established a prohibition against conducting inspections on passenger carrying CMVs at locations where passengers cannot be safely off-loaded from the vehicle unless an imminent or obvious safety hazard exists. The language, as codified in 49 U.S.C. § 31102(b)(2)(X), is as follows:

The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan . . . <sup>2</sup> (X), except in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.<sup>3</sup>

The prohibition in SAFETEA-LU applies to all levels of NAS inspections whether MCSAP funded or not if agency is participating in MCSAP and accepting FMCSA Basic MCSAP funding. MCSAP compatible States may conduct inspections on passenger carrying CMVs and drivers only if the activity is conducted at a station, highway rest area, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop that may provide reasonable accommodations for passengers. These planned stops may include carrier-designated pickup locations that are not at traditional bus depots or generally associated with passenger waiting (ex: curbside, shopping centers, etc.). Further, FMCSA interprets the word “station” in 49 U.S.C. § 31102(b)(2)(X) to include fixed “weigh stations”. A fixed “weigh station” is a type of “station”, and Congress did not limit the types of station where buses can be inspected. This does not include temporary “weigh stations” set up with portable scales at a non-permanent location. “Station” also should be read to have meaning different from the word “terminal”, which is separately stated.

The only exception to the prohibition on conducting inspections enroute is in the case of an imminent or obvious safety hazard.<sup>4</sup> Under this policy, the following would qualify as an imminent or obvious safety hazard:

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chapter I, subchapter C. Because FMCSA requires States to adopt 49 CFR § 390.5, it will use this definition for the purposes of this policy.

<sup>2</sup> 49 U.S.C. § 31102(b)(2).

<sup>3</sup> 49 U.S.C. § 31102(b)(2)(X). A “vehicle transporting passengers for a motor carrier of passengers,” is a CMV, as defined in 49 U.S.C. § 31101 and footnote 1.

<sup>4</sup> 49 U.S.C. § 31101, the definitions section for 49 U.S.C. §§ 31102-31104, does not define an imminent or obvious hazard.” Furthermore, 49 CFR part 350 does not define imminent or obvious hazard. However, the definition section for 49 CFR part 383 (Commercial Driver’s License Standards), defines an imminent hazard as “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 the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.” 49 CFR § 383.5. This Policy Guidance does not adopt the definition, but the defined “imminent or obvious safety hazards” in this Policy Guidance do not conflict with 49 CFR § 383.5.

- (1) A CMV transporting passengers emitting excessive smoke from the engine compartment, smoke from any other part of the vehicle or any other condition that would indicate a potential or present danger from fire.
- (2) Any observed violation of a CMV transporting passengers which would cause the vehicle to be placed OOS under the NAS Criteria including, but not limited to:
  - a. A flat tire;
  - b. An audible air leak;
  - c. Inoperative stop lamps (both must be inoperative);
  - d. Inoperative rear directional lamp (either);
  - e. Smoking from a wheel hub assembly;
  - f. Inoperative driver's side windshield wiper during inclement weather; or
  - g. Inoperative headlamps when required.
- (3) Operation of a CMV transporting passengers by a motor carrier under an FMCSA Order to Cease Operations or other OOS order.
- (4) A CMV transporting passengers speeding in such a manner that the totality of the circumstances would permit an individual to make a reasonable determination that the speeding is an imminent or obvious safety hazard.
- (5) Any other clear and articulable evidence that a CMV transporting passengers is being operated in an unsafe manner such that a danger exists to persons, property or the environment, such as a driver of a passenger carrying vehicle texting or using a hand-held mobile telephone while driving,
- (6) A CMV transporting passengers that is not marked with a USDOT number and that the officer believes is operating in interstate commerce in violation of 49 CFR § 392.9a or an applicable State statute or regulation.<sup>5</sup>

When conducting a traffic stop and/or an inspection of a passenger CMV based on unsafe operation or speeding, the officer must consider the reasonableness of an inspection based on the criteria established in this memorandum and additional factors including, but not limited to, weather, traffic congestion, terrain, surroundings, CMV passenger factors (age, health and/or disabilities, number, etc.), the severity of the speeding or other traffic violation, and the estimated timeliness of conducting the inspection.

If the officer deems it safe and appropriate to do so, the FMCSA recommends that the officer board the passenger CMV at the onset of the inspection to explain the purpose of the safety inspection and to emphasize that the inspection is being conducted to ensure that the passengers arrive safely at their destination.

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<sup>5</sup> The failure to mark a CMV transporting passengers with a USDOT number is “an imminent or obvious safety hazard” because the USDOT number serves as a motor carrier identifier which permits law enforcement to determine whether a CMV is being operated by a motor carrier that is operating without required operating authority, with revoked operating authority, or under an FMCSA Order to Cease Operations or other OOS order. 49 CFR § 392.9a provides that a CMV that is operated by a motor carrier that is required to have operating authority must not be operated without such operating authority or beyond the scope of the operating authority granted, and a CMV of such motor carrier shall be ordered out of service. 49 CFR § 392.9b provides that a commercial motor vehicle providing transportation in interstate commerce must not be operated without a USDOT Registration and an active USDOT number.

This policy does not apply to the inspections of empty passenger CMVs, which are not subject to the “planned stop” requirement established by SAFETEA-LU. Further, this policy does not prevent a State or local law enforcement agency from conducting non-inspection traffic enforcement activities involving passenger carrying CMVs.

If a State chooses to conduct intrastate or interstate passenger carrying CMV inspections in a manner inconsistent with SAFETEA-LU, these inspections could jeopardize the State’s eligibility to continue to receive MCSAP funding.

#### *6.1.7.9 Inspections of CMVs used for Agricultural Purposes*

49 CFR § 390.39 includes an exemption from the hours of service (HOS) regulations for certain CMV drivers engaged in the transportation of agricultural commodities and farm supplies. As a result, operators of CMVs meeting the definition of covered farm vehicle are not subject to most FMCSRs.

In addition, these motor carriers and vehicles are exempted from other regulations listed at 49 CFR § 390.39. As a result, motor carriers meeting the definition of covered farm vehicles should not be cited with non-compliance with these regulations.

To facilitate inspectors’ abilities to determine the operating status of a potential covered farm vehicle, inspections of these vehicles are MCSAP eligible expenses. However, except as noted immediately below, any violations cited under State law for a vehicle that is exempted from the FMCSRs must not be uploaded into FMCSA data systems.

If it is determined that a motor carrier, driver, farmer, or rancher claiming the exemption does not meet the conditions of the exemption, all violations of the FMCSRs that are discovered should be cited. An explanation detailing why the exemption does not apply should be included in the inspector’s notes as documentation and appropriate enforcement action should be taken.

Since FMCSA published amended FMCSRs related to the MAP-21 agricultural exemptions on March 13, 2013, States must adopt compatible regulations as soon as practicable but no later than March 13, 2016 to remain eligible for MCSAP funding.

#### *6.1.7.10 State Procurement of Third Party Inspection Software*

The FMCSA provides States with the Aspen software, at no cost, for use as an inspection record system. However, FMCSA is aware that many State partners choose to utilize other third party inspection record systems, rather than Aspen, for various reasons. States may develop their own systems for submission or procure software from third parties. FMCSA does not endorse any specific third party inspection record system.

The purpose of this guidance is to ensure that non-Aspen software used to record inspections of CMVs and paid for under MCSAP meets the data quality requirements established in technical guidance issued by the Office of Research and Information Technology by following the below procedure for procurement and user testing before implementing.

To procure third party inspection record systems, States must follow the procedure in Table 1 below. Expenses related to procurement, testing, deployment, and maintenance of a third party inspection record system are eligible for reimbursement under the MCSAP Basic and Incentive grant per 49 CFR § 350.109.

The State must enter into an agreement with the USDOT’s Volpe National Transportation Systems Center (Volpe) for reimbursement of the costs of testing SAFETYNET data connections and transaction sets with Volpe before the inspections may be uploaded. Expenses for testing a third party inspection record system with Volpe are eligible for cost reimbursement under MCSAP.

The FMCSA will not approve any new LAN-to-LAN connections. Any request to implement non-Aspen inspection software pursuant to this policy must specifically indicate how the State will maintain transmission of the information through its existing SAFETYNET process.

States are responsible for requiring their third party inspection record system provider to update the system whenever FMCSA updates Aspen. The FMCSA will provide specifications and information on system changes. States must ensure that all updates are completed within 90 days of the notice of updated system specifications.

The MCSAP Basic and Incentive grants may only reimburse the expenses directly related to replacing Aspen with a third party inspection record system. This includes connecting the third party inspection record system to SAFETYNET. States may procure an existing third party inspection record system from a vendor, and the costs of the procurement, testing, deployment, and maintenance of that system are eligible. However, the costs of developing a third party inspection record system (as opposed to procuring an existing software system) are not eligible.

The procurement of other third party systems or modules related to inspection selection, crash reporting, electronic screening, permitting and credentialing, or electronic citation issuance may be eligible under the Commercial Vehicle Information Systems and Networks (CVISN), the Performance and Registration Information Systems Management (PRISM), or Safety Data Improvement Program (SaDIP) grants. As a result, these are not MCSAP eligible expenses.

More specifically, integration into a State's broader commercial vehicle information system or connecting the third party inspection record system to other State systems of any module not directly for the purpose of uploading an inspection are not eligible expenses for reimbursement and shall not be considered towards a State's matching requirement under MCSAP or towards its maintenance of effort requirements established in 49 CFR part 350. Examples of other State systems (either connected directly or through a SAFETYNET connection) that are not eligible under the MCSAP Basic and Incentive grants may include, but are not limited to, a State's International Registration Plan (IRP) or International Fuel Tax Agreement (IFTA) system, a State's broader data collection and reporting system, or other systems related to trip permitting and credentialing, weigh-in-motion or highway inspection bypass systems (e-Screening).

The expenses related to the development, or integration and deployment, of a third party inspection record systems into a State's broader commercial vehicle information exchange system, including connections to systems that go beyond SAFETYNET, may be eligible for funding through the CVISN grant program. States must apply for funding under that grant opportunity.

The following states have already deployed third party inspection record systems and are exempt from this process: Florida, Iowa, Kansas, Kentucky, Maine, Maryland, New York, North Carolina, South Carolina, Texas, and Utah. Any modifications to these systems requiring testing must begin at step 5 of Table 1 below.

To be eligible for reimbursement of these expenses, States need to follow the process in the chart below to secure the necessary approvals from FMCSA.

<b>FMCSA Process Steps for 3<sup>rd</sup> Party Software Authorization</b>			
<b>Step</b>	<b>Description</b>	<b>Action/Output</b>	<b>Responsible Party</b>
1.	State agency contacts FMCSA's Division Office to request use of third-party software to create the T0018 transaction set.	Email of Memo from State agency contact to respective FMCSA Division Administrator.	State Agency Representative

2.	FMCSA Division Administrator notifies the FMCSA IT Development Division Chief of the State's request.	Email from FMCSA Division Administrator to FMCSA IT Development Division Chief.	FMCSA Division Administrator
3.	FMCSA IT Development Division Chief reviews and communicates approval, disapproval, or questions to FMCSA Division Administrator, the Commercial Vehicle Information Systems and Networks (CVISN) Technical Program Manager, and Volpe.	Email from FMCSA IT to FMCSA Division Administrator, CVISN Technical Program Manager and Volpe.	FMCSA IT Development Division Chief
4.	FMCSA Division Administrator notifies State agency of approval or rejection.	Email from Division Administrator.	FMCSA Division Administrator
5.	State agency contacts Volpe by email to obtain SAFETYNET account credentials and coordinate testing through the Technical Support Team e-mail: fmctechsup@dot.gov.	Email from State agency contact to Volpe.	State Agency Contact, Volpe
6.	State agency, third-party software provider and Volpe coordinate testing in compliance with Safety and Fitness Electronic Records (SAFER) Interface Certification Procedures (SICP).	Execute testing of the connection and any transaction sets per SICP document test results.	State Agency Contact, Volpe, Third-party Software Provider
7.	Volpe notifies the FMCSA IT Development Division Chief and CVISN Technical Program Manager of successful completion of the testing.	Email from Volpe to FMCSA IT Development Division Chief and CVISN Technical Program Manager.	Volpe
8.	Volpe authors letter of certification and sends it to the FMCSA CVISN Technical Program Manager for review and approval	Email from Volpe to FMCSA CVISN Technical Program Manager.	Volpe
9.	FMCSA CVISN Technical Program Manager issues letter of certification to State agency contact and copy FMCSA State Division Office, Service Center, and IT Development Division Chief.	Letter (Hard Copy, Electronic Copy) indicating certification for the State.	FMCSA CVISN Technical Program Manager
10.	State agency contact and third-party software provider coordinate and monitor production upload processes.	Monitor upload processes and resolve issues as required.	State Agency Contact, Third-party Software Provider, Volpe

## 6.1.8 Section 8 – Traffic Enforcement

### 6.1.8.1 Introduction

The FMCSA recognizes that changing driver behavior through comprehensive and highly visible traffic enforcement activities in high risk locations is a vital component of an overall effective State CMV safety program. Traffic enforcement activities are currently a requirement for participation in the MCSAP. Reimbursable costs for documented traffic enforcement activity include the following:

- Documented traffic enforcement on CMVs without an inspection.
- Documented traffic enforcement on non-CMV's without an inspection when necessary to promote the safe operation by and around CMVs (amount limited as described below).
- Documented traffic enforcement during strike force activities in high risk locations and/or corridors.

### 6.1.8.2 Coordination with Other DOT Agencies

FMCSA expects States to coordinate MCSAP traffic enforcement efforts with enforcement units utilizing other Federal grant funding for traffic enforcement, such as grant funds from the National Highway Traffic Safety Administration or FHWA. This coordination allows for the alignment of MCSAP activities within the State's Strategic Highway Safety Plan to ensure maximum effectiveness of enforcement strategies and to prevent duplicate billing or inappropriate expenditure of Federal funds.

### 6.1.8.3 Traffic Enforcement Violations

States should include documentation on a NAS inspection report and issue written citations or warnings for the following types of traffic violations:

SECTION	ASPEN CODE <sup>1</sup>	DESCRIPTION
392.2	392.2C	Failure to obey traffic control device.
392.2	392.2FC	Following too closely
392.2	392.2LC	Email Improper lane change.
392.2	392.2P	Improper passing.
392.2	392.2R	Reckless driving.
392.2	392.2S	Speeding
392.2	392.2-SLLS1	Speeding 1-5 miles per hour over the limit
392.2	392.2-SLLS2.	Speeding 6-10 miles per hour over the limit.
392.2	392.2-SLLS3.	Speeding 11-14 miles per hour over the limit
392.2	392.2-SLLS4	Speeding 15 or more miles per hour over the limit
392.2	392.2-SLLSWZ	Speeding work/construction zone
392.2	392.2T	Improper turn
392.2	392.2Y	Failure to yield right of way
392.2	392.3	Operating a CMV while ill or fatigued
392.2	392.2	Local laws (general)
392.4(a)	392.4A	Possession/use/under influence of drugs
392.5(a)	392.5A	Possession/use/under influence of alcohol
392.10(a)(1)	392.10A1	Failing to stop at railroad grade (RR) crossing - bus
392.10(a)(2)	392.10A2	Failing to stop at RR crossing - chlorine
392.10(a)(3)	392.10A3	Failing to stop at RR crossing - placard

392.10(a)(4)	392.10A4	Failing to stop at RR crossing - HM cargo tank
392.14	392.14	Failing to use caution for hazardous conditions
392.16	392.16	Failing to use seat belt while operating CMV
392.71(a)	392.71A	Using/equipping CMV with a radar detector
392.80(a)	392.80A	Prohibition against texting (driver)
392.82(a)(1)	392.82A1	Using a hand-held mobile telephone (driver)

<sup>1</sup> The Aspen codes shown above are included for purposes of clarity; an Aspen inspection report is NOT required for reimbursement.

#### **6.1.8.4 Traffic Enforcement Cost Eligibility**

The statutory language and FMCSA policy allowing MCSAP funding to be used for documented traffic enforcement against non-CMV's has several requirements:

1. The activity must be designed to promote the safe operation of CMV's;
2. The number of motor carrier safety activities (including roadside inspections, compliance reviews, safety audits, etc.) conducted by the State is maintained at a level at least equal to the average for Fiscal Year (FY) 2003 through FY 2005.
3. The State does not spend more than 5% of its MCSAP Basic funding amount for non-CMV traffic enforcement unless approved by the Secretary; and
4. Enforcement activities targeting CMV's and non-CMV's must be documented and the documentation provided to FMCSA upon request.

The statutory 5% limitation applies only to traffic enforcement on non-CMV's, and only to the MCSAP Basic funding amount received. For example, if a State receives a \$1,000,000 Basic grant (Federal share), the State could request reimbursement for no more than \$50,000 of the costs for traffic enforcement against non-CMV's.

States should report their non-inspection traffic enforcement activities to FMCSA in the quarterly progress report. The below questions and answers provide further information on the type of data that States should report. For the purposes of this section, "we" means FMCSA and "you", "me" "my", and "I" means State MCSAP Lead Agencies.

#### **Q1: Why is FMCSA initiating collection of non-inspection traffic enforcement data?**

A1: Traffic enforcement is one of the five MCSAP national program elements and a cornerstone of the national commercial vehicle enforcement program. To accurately describe commercial vehicle enforcement around the country, and better understand the safety and financial assistance program impacts, it is important that we have sufficient data for all activities that contribute to program goals. Non-inspection traffic enforcement is one component that is not accurately captured in any current data system or report. As a result, you must begin working towards the goal of including this information in your quarterly reports for your MCSAP-related grants, to include MCSAP Basic/Incentive, Border Enforcement, and High Priority grants.

#### **Q2: What specific information is FMCSA requiring?**

A2: You must include the following data elements for any activities conducted with FMCSA grant funds or as part of your State match:

- Number of non-inspection traffic enforcement stops/contacts with CMV's
- Number of citations issued during non-inspection traffic enforcement stops/contacts with a CMV

- When conducted as part of the State's MCSAP-related traffic enforcement activities, number of traffic enforcement stops/contacts with non-CMV's that were operating unsafely in the immediate vicinity of a CMV at the time of the violation.
- When conducted as part of the State's MCSAP-related traffic enforcement activities, number of citations issued during traffic enforcement stops/contacts on non-CMV's that were operating unsafely in the immediate vicinity of a CMV at the time of the violation.

Q3: What does "part of the State's MCSAP-related traffic enforcement activities" mean?

A3: This means activities during coordinated, grant-funded traffic enforcement initiatives. This could include strikeforces, blitzes, or other of normal, grant-funded operations during which the officer understands they are conducting traffic enforcement activities. This does not necessarily mean a traffic stop conducted by an officer during a time in which the officer's primary focus was not traffic enforcement (such as driving to a fixed inspection facility, returning home from work while still in an official vehicle, etc.). However, if you already have a mechanism to capture activity counts from these stops, please include them in your reporting.

Q4: When does FMCSA want me to start reporting this data? My State has no electronic means of collecting this information.

A4: We understand that some States may need to establish and implement a new, structured methodology for collecting this information, and we stand ready to work with you to do this. We are asking that you begin in the fourth quarter of FY 2014 to develop processes that will enable you to collect the data. The immediate goal is to start collecting some data through an interim process, even if it is not comprehensive, beginning in the first quarter of FY 2015. We will continue to work with you in the coming year to achieve the longer term goal of you having a system in place by the end of FY 2015 that can reliably collect this data beginning in FY 2016.

We will review requests to use MCSAP Basic/Incentive funding to develop the needed systems if submitted as part of a proposed CVSP. Again, this is an incremental improvement effort and we do not expect all States to have full capacity for this initiative immediately.

Q5: How should I report this data?

A5: You should report this information in the SF-PPR (Performance Progress Report) that is due no later than thirty days after the end of each Federal fiscal quarter. Specifically, you should use the following format in the narrative section of the report:

1. Non-inspection Traffic Enforcement (TE) stop/contact (CMV): [insert number]
2. Non-inspection TE citations issued (CMV): [insert number]
3. CMV-safety related TE stop/contact (non-CMV vicinity): [insert number]
4. CMV-safety related TE citation (non-CMV vicinity): [insert number]

Q6: How will FMCSA aggregate this data?

A6: When this information is included in your quarterly report, the FMCSA Division will upload the four data elements into a special form on the Analysis and Information website (in the Gotham section). This will allow us to combine the information into an aggregate report for national analysis and reporting.

Q7: My State has a 100% inspection policy. That is, if my MCSAP-funded personnel stop a CMV, our policy requires that he or she must conduct an inspection and upload the report. Must we still report this information?

A7: No, as long as the inspection includes a violation from the list in section 8.3 of this policy (list provided below is as of July 1, 2014). You must only report the total number of traffic enforcement contacts and citations that are not associated with an uploaded driver/vehicle inspection report indicating

traffic enforcement activity. Therefore, if you have a 100% inspection policy for CMV contacts, you need only report non-CMV traffic enforcement activities associated with your MCSAP-related traffic enforcement activities.

Q8: Neither my MCSAP grant funds nor my State match are used to directly support any Traffic Enforcement activities; must my State still report on non-inspection traffic enforcement?

A8: Not at this time. Currently, we are focusing on collecting data on non-inspection traffic enforcement activities that are directly funded by grant funds or as part of your State match. If you have the capacity to include this non-funded data in your quarterly reports, we will gladly accept it and it will contribute greatly to the goals of this initiative.

As our understanding of the true scope of non-inspection traffic enforcement around the country expands, and your capacity to collect and report this data grows, we may ask those States that conduct these activities as part of the MOE to begin including this data as part of the quarterly reports. This will allow us to further outline the scope of CMV-related traffic enforcement around the country and broaden the amount of data available for research, analysis, and reporting. However, any expansion of this effort will be preceded by our direct engagement with you to discuss the merits and risks of a broader data collection initiative.

### **6.1.9 Section 9 – Carrier Interventions and Investigations**

For information regarding cost eligibility, please refer to Appendix A of this document.

For information regarding policy and procedures for conducting Carrier Interventions and Investigations, please see the FMCSA Electronic Field Operations Training Manual (eFOTM), Investigator Manual , Compliance Manual.

### **6.1.10 Section 10 – Public Education and Outreach**

**Reserved**

### **6.1.11 Section 11 – Data Collection**

#### **6.1.11.1 Introduction**

FMCSA is committed to ensuring the integrity of State and federally-reported safety data in the Motor Carrier Management Information System (MCMIS). Pursuant to MCSAP grant conditions, States must collect and report accurate, complete, and timely motor carrier safety data and they must participate in DataQs, which is FMCSA’s prescribed national motor carrier safety data correction system.

#### **6.1.11.2 Data Quality**

FMCSA is responsible for regulating the safety of interstate truck and bus travel in the United States in partnership with States under the MCSAP. To fulfill this role, FMCSA uses data collected by States to monitor compliance of motor carrier companies, measure the condition of vehicle fleets, track the driving records of licensed operators, and record crashes involving commercial motor vehicles (CMVs) on public roadways. High-quality, accurate and timely data in each of these areas is crucial to the mission of improving the safety of CMVs.

#### **6.1.11.3 DataQs and Requests for Data Reviews (RDR)**

##### **6.1.11.3.1 Overview**

While FMCSA maintains State safety data in MCMIS and uses and disseminates the data contained therein, each State’s lead MCSAP agency is responsible for all CMV crash and inspection data generated by its agency and/or sub-agencies. The State MCSAP agency is responsible for reviewing and resolving all RDRs or disputes pertaining to the collection and reporting of State-reported safety data into MCMIS. The State submits data to the State SAFETYNET system, which uploads the data into MCMIS. The

DataQs system is the electronic means that motor carriers, commercial drivers, and others have at their disposal to request a review of the quality and correctness of the data maintained and disseminated by FMCSA

#### **6.1.11.3.2 Minimum Period of Consideration for Requests for Data Reviews**

Ensuring that inspection and crash records are accurate and complete is essential to the effectiveness of these programs and the reason that FMCSA established the DataQs record correction program. Currently, State policies vary on how long after an inspection or crash the State will consider an RDR on that event. Achieving consistency in the data correction process supports the Agency's continuing efforts to enhance data quality and ensure that MCMIS, SMS, and PSP remain reliable sources of information.

States must accept and conduct a good faith review of all inspection-related RDRs received within three years of the date of inspection and for all crash-related RDRs received within five years from the date of a crash when received by the individual listed as the driver on the inspection or crash report. States must accept and conduct a good faith review of all inspection-related and crash-related RDRs received within two years from the date of the event when received by a motor carrier or a member of the general public.

The minimum periods of consideration only apply to inspections and crashes occurring on or after April 1, 2014. Further, any RDR submitted after 2 years from the date of the inspection or crash must be from a DataQs account that has self-identified as a driver.

#### **6.1.11.4 Adjudicated Citations**

##### **6.1.11.4.1 Definitions**

For the purposes of this section, the following definitions apply:

*Adequate Documentation* includes scanned copies of certified documentation from the appropriate court or administrative tribunal or providing a direct web link to the adjudication results of an official court or agency Web site that presents adequate and verifiable documentation of the adjudication result.

*Adjudicated citation* means a citation that has been contested and resolved through a due process proceeding in a State, local, or administrative tribunal, regardless of how the action is resolved, whether by a judge, administrative tribunal or prosecutor or as part of a plea agreement or otherwise.

*Citation* is a notice issued by a law enforcement officer to a commercial motor vehicle operator charging a violation of State law or State-adopted Federal Motor Carrier Safety Regulations (FMCSRs). The recipient has the opportunity to challenge or contest the citation through a State-provided administrative or judicial due process system. A warning is not a citation and therefore, warnings issued to a commercial vehicle driver as a result of a roadside inspection are not subject to this process.

*Conviction* is defined at 49 CFR §§ 383.5 and 390.5 and means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

*Court Costs* are fees imposed by a court or administrative tribunal that are intended to cover the State's expenses of handling the case. Payment of an incidental expense uniformly imposed on all persons that appear before a particular court or tribunal regardless of case outcome should not be considered a court cost under FMCSA's regulatory definition of "Conviction." Examples of excluded, non-punitive court costs include but are not limited to scheduling fees, the cost of a certified copy of the court's docket or order, or attorney fees. Costs or fees imposed for a diversion program will constitute a court cost that qualifies as a conviction under the regulatory definition.

*Fine* is a sum of money imposed as a penalty for an offense. A court cost may be considered a fine when the amount charged exceeds the amount generally imposed for court costs and is akin to a penalty.

*Masking convictions* occurs when a State defers imposition of judgment, or allows an individual to enter into a diversion program that would prevent a Commercial Learner's Permit (CLP) or Commercial Driver's License (CDL) holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driving record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State, or where the diversion program prevented a conviction from being entered for a qualifying violation committed by a CDL holder.

*Unvacated* refers to an order or judgment that has not been canceled or rescinded.

#### **6.1.11.4.2 Background**

State law enforcement officials routinely conduct roadside inspections documenting violations of State laws or regulations that are compatible with the FMCSRs and HMRs (49 CFR § 350.105 defines "compatible or compatibility"). States enter the results of roadside inspections, including documented violations, into SAFETYNET, a data and communication system that facilitates the transfer of State inspection activities to FMCSA. The data are uploaded to MCMIS and then utilized by other FMCSA data systems such as the Pre-Employment Screening Program (PSP) (to release driver history information as authorized by law) and Safety Measurement System (SMS) (to prioritize enforcement activities).

DataQs is the Agency's national motor carrier safety data correction system that provides an electronic means for drivers, motor carriers, and members of the public to submit a RDR regarding crash and inspection data in FMCSA data systems. When an RDR is filed, the DataQs system automatically forwards the request to the appropriate Federal or State office for processing and resolution.

#### **6.1.11.4.3 Policy**

During a roadside inspection, the State and local enforcement officers may choose to issue a citation to the driver for a violation of State-adopted FMCSR or HMR, or equivalent State violation code. A citation that has been resolved through a State's administrative or judicial due process proceeding, regardless of outcome, is considered adjudicated.

FMCSA's DataQs system allows a user to submit an RDR requesting that the outcome of an adjudicated citation for a violation be included in the inspection record. SAFETYNET and MCMIS now allow State and Federal officials to record adjudication results for citations issued during roadside inspections in a new field created for this purpose.

For any violation documented in a roadside inspection occurring on or after August 23, 2014, the State agency responsible for administering the State's DataQs process (typically the MCSAP Lead Agency) must follow the procedures below when it receives an RDR related to an adjudicated citation. To implement this policy, the State must also ensure that its SAFETYNET system meets current FMCSA IT installation requirements, which includes important changes to SAFETYNET and MCMIS that accommodate this new functionality.

Additionally, when State or local law enforcement officers conducting roadside inspections issue a citation for a violation included on the inspection report, the officer must record the citation control number (i.e., citation or ticket number) in the citation field on the inspection report to ensure that DataQs analysts are able to match the correct violations.

Personnel assigned to review and take action on RDRs submitted through DataQs (DataQs analysts) must conduct a good faith review of any RDR that requests the incorporation of citation results in a driver-vehicle inspection report. Except in the instance of adding a citation number to an inspection record if not included at the time of inspection or correcting an error, DataQs analysts are not required to change the information or violations included in the original inspection report. Instead, DataQs analysts will append

additional information to the inspection report concerning the adjudication results related to a particular violation based on the citation adjudication.

The table below identifies how adjudicated violations will appear in FMCSA systems depending on the outcome.

<b>Result of Adjudicated Citation Associated with a Violation Uploaded to MCMIS</b>	<b>Safety Measurement System (SMS)</b>	<b>Pre-Employment Screening Program (PSP)</b>
Convicted of original charge	Violation not removed	Violation not removed
Dismissed with fine or punitive court costs	Violation not removed	Violation not removed
Dismissed without fine or punitive court costs	Remove violation	Remove violation
Not Guilty	Remove violation	Remove violation
Convicted of a lesser charge	Append inspection to indicate violation "Resulted in conviction of a different charge." Change severity weight to 1.	Append inspection to indicate violation "Resulted in conviction of a different charge."

#### 6.1.11.4.4 Procedures

The DataQs analyst will evaluate the RDR and, if it includes adequate documentation of the adjudicated citation result, must:

- Add the citation number (if missing from the inspection record) in SAFETYNET,
- Append the violation on the inspection record in SAFETYNET with the appropriate SAFETYNET code (see below) based on adjudication outcome, and

Communicate the results via DataQs to the requestor.

The following table outlines the adjudication outcome drop down selections that will be available in SAFETYNET for each violation and provides examples of how DataQs analyst must apply each. More details are offered in the scenarios that follow.

<b>Adjudication Outcome</b>	<b>Sample Scenarios</b>	<b>SAFETYNET Code</b>
Conviction of original charge	<ul style="list-style-type: none"> <li>• Citation for Speeding (15 or more over) and convicted of Speeding (15 or more over)</li> <li>• Citation for Driving under the Influence and convicted of Driving under the Influence</li> <li>• Citation for Log Not Current dismissed, but driver required to pay fine of \$240. (Still a "conviction" per 49 CFR §§ 383.5 and 390.5)</li> <li>• Citation included three separate violations, A, B, and C. Driver was convicted or paid a fine associated with violation B and therefore SAFETYNET code 1 should be entered for violation B. In this example, violations A and C were dismissed. SAFETYNET code 3 should</li> </ul>	1

	be entered for violations A and C.	
Conviction of different charge	<ul style="list-style-type: none"> <li>Citation for Careless Driving (15 or more MPH over speed limit) and convicted of different charge of Speeding (5 miles over) through a plea agreement</li> </ul>	2
Not guilty or Dismissed	<ul style="list-style-type: none"> <li>Found not guilty</li> <li>Dismissed by prosecutor (nolle prosequi)</li> <li>Dismissed by judge (e.g., officer failed to show)</li> <li>Citation included three separate violations X, Y and Z. Violations X and Y were dismissed therefore SAFETYNET code 3 should be entered for violations X and Y. In this example, the driver was convicted or paid a fine associated with violation Z, therefore SAFETYNET code 1 should be entered for violation Z</li> </ul>	3
N/A	<ul style="list-style-type: none"> <li>Default value for violations in SAFETYNET</li> <li>State has held matter in abeyance (e.g., continued the case or otherwise not resolved the charge, entered a plea but holds it for a year before citation is adjudicated)</li> </ul>	

The following are examples of adjudication outcomes for a violation that would be classified as “Convicted of Original Charge” based on the definition of conviction in FMCSR §§ 390.5 and 383.5:

- a) Payment of fine and/or punitive court costs in exchange for dismissal;
- b) Adjudication of guilt by a judicial officer or administrative tribunal; or
- c) Payment of the fine associated with a citation without appearing in court or acknowledging responsibility for the violation, or failure to appear and resulting forfeiture of bail or collateral.
- d) Entry into a diversion program that requires costs and results in dismissal of the original charge.

The following are examples of adjudication outcomes that would be classified as “Not Guilty or Dismissed”:

- a) Dismissal
  - 1) Original citation dismissed by a prosecutor (e.g., nolle prosequi); or
  - 2) Original citation dismissed by a judicial officer without a hearing (e.g., officer failed to show for hearing)
  - 3) Original citation stricken (e.g., dismissed with leave to refile or dismissed without prejudice)
- b) A finding of Not Guilty by a judicial officer or administrative tribunal.

The following are examples of adjudicated citation outcomes that would be classified as “Convicted of a Different Charge”

- a) Original charge on citation dismissed but defendant pleads guilty to a modified charge.
- b) Plea agreement in which the initial charges are dismissed in exchange for defendant’s guilty plea to a single different charge (defendant charged with log violations, failing to stop at a scale, and improper vehicle registration; and agrees to plead guilty to a new violation of “overweight civil infraction” upon dismissal of the original charges.). The different charge need not be related to

the initial violation(s) (e.g., Speeding violation dismissed in exchange for plea to disorderly conduct).

#### **6.1.11.4.5 Citations Held in Abeyance**

DataQs analysts must not modify the citation adjudication record in SAFETYNET for a citation that has been held in abeyance (without the payment of fines or court costs) until the requestor produces sufficient documentation confirming the final adjudication of the matter. A citation that is held in abeyance has not been fully adjudicated until the court or administrative tribunal takes some final action and the matter is closed.

#### **6.1.11.4.6 Multiple and Enhanced Violations on a Citation**

FMCSA recognizes that some States allow enforcement officers to list multiple violations on a single citation document, which results in multiple violations with the same citation number entered on the inspection report. The outcome for one charged violation on the citation does not necessarily mean that all violations on the same citation resulted in the same outcome. The DataQs analyst must carefully review the adjudication outcome for each violation charged in order to determine which violations are appended with an outcome, and must document the results accordingly in SAFETYNET.

In addition, FMCSA recognizes that in some cases the inspector may take into consideration two or more violations on the inspection report and add an “umbrella” violation such as operating an unsafe vehicle.

- ✓ IF a citation is only issued for the “umbrella” violation (not the underlying violations), and,
- ✓ the “umbrella” violation results in a not guilty or dismissal, or a conviction of a different charge, and,
- ✓ the documentation indicates which underlying violations caused the officer to cite the “umbrella” violation,
- THEN the analyst should append the “umbrella” violation and/or all associated violations in SAFETYNET.

IF there is no record of which underlying violations caused the “umbrella” violation, THEN the analyst should only append the umbrella violation in SAFETYNET.

#### **6.1.11.4.7 Erroneous Violations**

If a citation is dismissed because the associated violation was cited *erroneously* on the inspection report (e.g., incorrect USDOT number noted), then the violation should be removed from the motor carrier’s inspection file according to the existing DataQs Guidance Manual.

#### **6.1.11.4.8 Existing State Laws on the Removal of Violations due to Citation Results**

This policy establishes the minimum requirements for States in addressing citation adjudication in SAFETYNET. However, some States have laws requiring the complete removal of violations from an inspection report if an associated citation is adjudicated as “not guilty”. These States should continue to follow their State law and, if necessary, remove the violation from the inspection report. No State that removes a violation from an inspection report in accordance with its State laws will be in violation of this policy. However, the State must append the inspection report consistent with this policy for all other adjudication results.

#### **6.1.11.5 Prohibition on Masking**

The Agency views the practice of courts dismissing citations after a guilty plea has been entered or following payment of a fine or mandatory contribution to a State or local program or upon entry or completion of a diversion program, as a condition of dismissal, as “masking” of a commercial driver’s violation of State or local traffic control laws. Masking convictions allows commercial drivers to

accumulate multiple serious traffic safety violations without the driver's State of licensure or other States being aware of the driver's actual driving history, and it is for this safety reason that such practices are prohibited.

If a State MCSAP agency believes that masking has or is occurring during any State's due process proceeding, a representative of that Agency should contact the FMCSA Division Office and provide sufficient documentation to support its belief.

#### *6.1.11.6 Laptop Encryption Guidance for State and Local Users of FMCSA Data*

FMCSA must ensure that Agency data is protected on laptop computers used by our State and local enforcement partners. MCSAP grant recipients must be aware of these policy issues:

- The requirement for laptop encryption;
- Laptop encryption software is a grant-eligible expense (if a State lists the necessary acquisition expenses and personnel costs to achieve the requirements in an approved project plan and budget); and
- FMCSA requires that each MCSAP partner complete installation of Full Disk Encryption (FDE) on all laptop computers.

In today's computing environment, there are many threats to the confidentiality of information stored on end user devices, especially mobile devices. Mobile information technology (IT) devices such as laptop computers are used throughout government and industry and are capable of storing increasing amounts of information. Such devices are particularly vulnerable to theft because of their small size, high value, and/or the information they contain. Information thieves may attempt to surreptitiously copy the contents of computer drives and portable devices if those devices are not properly secured. The potential loss of such information is a significant concern.

For these reasons, FMCSA requires through its "Financial Assistance Agreement General Provisions and Assurances" that all laptops used in carrying out the State's Commercial Vehicle Safety Plan (CVSP) or other MCSAP funded project plans are encrypted to the same standards that FMCSA uses for its own laptops. The Agency has adopted the USDOT, National Institute of Standards and Technology, Office of Management and Budget (OMB), and other standards as guidelines to follow to mitigate the compromise of data resulting from loss or theft of any device that processes or stores FMCSA-related data. FMCSA further ensures that operating systems are maintained with appropriate vendor security patch updates and equipped with the latest anti-virus software to protect Personally Identifiable Information (PII)<sup>6</sup>.

Motor carrier and driver information used by MCSAP partners are examples of sensitive information that needs to be protected from unauthorized disclosure. PII is information which, on its own or matched with other data, would permit identification of that individual. Examples of PII include: name, home address, social security number, driver's license number or State-issued identification number, date and/or place of birth, mother's maiden name, financial, medical, or educational records, non-work telephone numbers, criminal or employment history, etc. PII, if disclosed to or altered by unauthorized individuals, could adversely affect the Agency's mission, personnel, or assets or expose an individual whose information is released to harm, such as identity theft.

FDE (or whole disk encryption) is achieved when software or hardware encrypts all data on that disk. This means that data on the operating system, including any temporary files, are protected to prevent the leakage of PII or other sensitive information/data by persons with malicious intent. Because FDE does not require user activation or intervention, it is the preferred method of laptop protection. FDE benefits also include:

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<sup>6</sup> Technical terms have been bolded to assist MCSAP partners with communicating recommended solutions with their respective IT departments.

- Almost all files, including temporary files, are encrypted. Encrypting these files is important, as they can reveal PII or other sensitive information/data.
- Support for Pre-Boot Authentication (PBA), which keeps anything from being read on the hard disk (operating system) until the user has confirmed he/she has the correct password or credential.
- Immediate data destruction renders the contained data useless if compromised; this commonly includes destruction of the encryption keys.

49 CFR § 350.311(b) establishes that equipment expenses, to the extent necessary and directly attributable to the State's MCSAP, are allowable. FMCSA deems laptop encryption expenses as necessary, reasonable, and allocable to execute the approved CVSP. Thus, costs associated with FDE, including travel or other personnel expenses necessary to deploy an FDE solution, are a grant-eligible expense. States seeking reimbursement for FDE costs must include these within their CVSP budgets.

MCSAP partners must coordinate with their own IT departments to ensure sufficient data protection methods are in place. If a MCSAP partner already employs an FDE solution, it must be comparable to the solutions established herein. States that do not have FDE-protected systems must implement a solution using the guidelines below.

Many vendors offer FDE solutions. However, MCSAP partners must choose a solution that meets the following guidelines:

- Using Existing Features. Any implemented solution must use widely acceptable operating system features and infrastructure (just as an example: a recent, supported version of Windows). It must also encrypt data in real-time and be transparent, requiring little or no end-user training.

**Access Control.** Any implemented solution must require users to successfully authenticate their identity before accessing the information that has been encrypted (Pre-Boot Protection) and include future Certificate Integration such as Public Key Infrastructure (PKI). The PKI uses digital certificates to authenticate the identity of organizations and individuals over a public system, such as the internet, to ensure the secure exchange of data. The solution implemented must offer secure hibernation and authenticate both users and machines prior to the system booting. The solution chosen by MCSAP partners must provide Pre-Boot Authentication (PBA) that guarantees a secure, tamper-proof environment external to the operating system as a trusted authentication layer. The PBA prevents anything being read from the hard disk such as the operating system until the user has confirmed he/she has the correct password or other credentials.

**Administrative Control.** The solution must offer easily centralized management for administration, deployment, upgrades, auditing, revocation and recovery, if feasible. This allows administrators to remotely enable and disable users and devices. Custom Authentication must also be in place that allows custom mechanisms to be implemented with third-party applications. MCSAP partners that provide funding to subgrantees are not required to maintain administrative control of subgrantee laptop computers. However, MCSAP partners must require that subgrantees utilize a solution in accordance with these guidelines if the subgrantee uses laptop computers to access FMCSA data.

**Encryption.** The solution must ensure that all cryptographic keys used in a storage encryption solution comply with Federal Information Processing Standards (FIPS) 140-2. Encryption features must include:

**Swap Space Encryption.** Swap Space (also called a "Pagefile" on Windows) is an area on a disk that temporarily holds a process memory image; this area must be encrypted.

**Whole Disk / File Encryption.** The whole physical disk or logical volume, the partition tables, master boot record, and available files must be encrypted.

Hard Drive Shredding. The FDE solution must eliminate the need for a mechanical hard drive shredder that physically destroys old hard drives. While some software programs called hard drive shredders overwrite data many times with meaningless code, the original data may still be recoverable by a determined expert. MCSAP partners must implement a solution that overwrites data a sufficient number of times to prevent data recovery.

The FMCSA will not endorse or require the use of any specific product. As an alternative to using an Enterprise product, State and local MCSAP partners can consider small business or personal product licenses that meet the standards established in this memorandum.

If you have technical questions regarding laptop encryption requirements, please contact FMCSA IT Security Staff within the FMCSA Office of Information Technology at (202) 366-3655 or via e-mail at [FMCSASecurity@dot.gov](mailto:FMCSASecurity@dot.gov).

## **6.1.12 Section 12 – National Management and Performance Review Program**

### **6.1.12.1 Background**

There are three general types of compliance requirements that States must follow to participate in MCSAP:

- (1) Regulatory compatibility with the FMCSRs and HMRs;
- (2) Following grant and financial assistance agreement requirements (2 CFR part 200; FMCSA Grants Management Manual and other grants management policies); and
- (3) FMCSA program and enforcement policies

FMCSA modifies the FMCSRs in accordance with Congressional direction through regulatory changes. These changes are generally implemented through a formal rulemaking process that includes a proposed rule, consideration of comments, and promulgation of a final rule. Per 49 CFR § 350.331, States have three years from the effective date of a Final Rule to make necessary changes to their laws, regulations, and/or standard operating procedures to remain compatible.

The Office of Management and Budget and the USDOT make changes to the regulations specific to the management of grant programs. When changes occur, FMCSA must implement them and ensure compliance by its grantees.

During a MCSAP Program Review, FMCSA will evaluate all of the following:

- (1) how a State is meeting the performance standards in its CVSP;
- (2) whether a State has adopted compatible FMCSRs and HMRs and is adhering to FMCSA regulations, policies and performance standards;
- (3) how a State plans, evaluates and monitors the CVSP; and
- (4) State financial processes, including adequate MOE and State matching funds requirements.

After an MCSAP Program Review is completed, FMCSA issues findings if a State is found to be non-compliant. States are then required to submit Corrective Action Plans (CAP) to FMCSA detailing the steps the States will undertake to address any findings.

The respective FMCSA DA, SPM, the State Programs Division, and other offices, as appropriate, work together to ensure that a State's CAP is properly developed and implemented on schedule.

### ***6.1.12.2 Report of Findings and Development of Corrective Action Plan (CAP)***

FMCSA, in conjunction with State representatives, is working on a new CAP process. Additional information will be provided upon completion. In the meantime, the FMCSA Division Offices will continue to work closely with the States to resolve open findings.

### ***6.1.12.3 Impacts of Incompatible State Laws***

Any findings related to items 1-4 below may immediately subject a State to a high-risk warning letter and expedited timeframes for completing required actions:

- (1) A State's failure to adopt laws and regulations that are compatible with the FMCSRs (broadly) and the HMRs (any deviation) (49 CFR § 350.211(1));
- (2) A State's failure to designate a lead agency to administer the CVSP and to enforce the State's commercial motor carrier, driver, and highway hazardous materials safety laws or regulations (49 CFR § 350.211(2));
- (3) A State's failure to provide authority to State enforcement officials' right of entry and inspection sufficient to carry out the CVSP (49 CFR § 350.211(4));
- (4) A State's failure to maintain appropriate levels of expenditure of State funds (49 CFR § 350.211(8)).

If deadlines agreed to in the CAP are missed, the DA will contact the State to discuss the delay or problem. The DA may either agree to a revised schedule or recommend to the State Programs Division that the State be considered a high risk.

If a determination is made that a State is non-compliant, the FMCSA Administrator will advise the Governor that deficiencies must be corrected within 120 days for the State to be compliant and not be subject to the withholding of MCSAP funds. This notice will also provide an explanation of what action(s) are required to achieve compliance.

## **APPENDIX A – Consolidated Cost Reimbursement Table**

If “Yes” is indicated in the table below, the expense is generally allowable as defined in the 2 CFR part 200 and, unless otherwise noted, is reimbursable if within the scope of an approved project plan or CVSP and associated budget. Any other special conditions are noted in the table. In all instances, a “Yes” indicator still requires that the costs of the item be allocable to the grant in question and prorated according to the amount of time used for that grant. For example, an air card that allows a trooper to check Query Central and report on the outcome of a roadside inspection is a reimbursable expense under MCSAP Basic, but only to the extent that the air card is being used for purposes of the grant. If this trooper is only conducting MCSAP-supported inspections during one-half of her work week and spends the rest of the time conducting impaired driving enforcement under a grant from another agency, the State must either prorate the costs of the air card accordingly or clearly demonstrate in its records that the connectivity provided by the air card serves no purpose other than that associated with the MCSAP-supported activities. Conversely, an inspector may use a brake chamber measuring tool only during one-half of her work week, it serves no purpose beyond that of inspecting trucks and cannot be allocated to another non-MCSAP activity. In this instance, it is eligible without proration.

All costs indicated in this table as allowable in 2 CFR part 200, and allocable to the grant programs, are still subject to a final “reasonable and necessary” evaluation by FMCSA. As an extreme example, while computers may be allowable and allocable, purchasing two backup computers for each employee in a grant program is neither a reasonable use of grant funds nor necessary for the success of the program or projects.

Although FMCSA strives to include as many costs as possible in this table, it is not a comprehensive list of all potential expenditures for these grant programs. The absence of a cost in this table does not reflect

on its eligibility. Please direct any recommendations for costs that FMCSA should include in this table to the appropriate FMCSA Division Office so that we may consider it in future versions.

The applicability of cost eligibility in this table is not retroactive. If a cost indicated in this table as being not eligible has been specifically approved in a previous grant award, the grantee may continue to incur that expenditure per the terms of that grant and for the life of that grant. However, because FMCSA reconsiders cost eligibility based on emerging safety trends and experience managing specific grants does not mean it will remain eligible in the future.

The following conditions apply to all eligible expenses identified in the cost eligibility table:

1. Eligibility of all costs is dependent upon the cost being a part of an approved project plan.
2. All costs must be prorated appropriately based up on percentage of time dedicated to the grant program.
3. If costs are included in an agency's Statewide Cost Allocation Plan (SWCAP) or approved Indirect Cost Rate agreement, they may not be claimed as a direct cost to the grant program.

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
Aerial Traffic Enforcement (e.g., airplane or helicopter fuel costs, usage costs, etc.)	Yes – If specifically authorized in grant agreement	Yes - If specifically authorized in grant agreement	No	Yes - If specifically authorized in grant agreement
Air cards for mobile internet connectivity	Yes	Yes	Yes	Yes, if specifically included in an approved project plan and budget
Alcoholic Beverages	No	No	No	No
Ammunition – standard issue and replacement (for age and/or if used for required firearms training to maintain certification as police officer)	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	No
Audio-Visual Presentation Equipment	Yes if part of outreach and education or internal training	Yes if part of approved project	Yes if used for audit activities such as group audits	Yes if specifically included in an approved project plan and budget
Audit Costs (Single Audit)	Yes only if Single Audit is required by Federal regulations	Yes only if Single Audit is required by Federal regulations	Yes only if Single Audit is required by Federal regulations	Yes only if Single Audit is required by Federal regulations
Alcohol Testing Devices	No	No	No	No

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
for Breath (non-portable evidentiary testing device)				
Alcohol Testing Devices for Breath (portable breath testing devices)	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	No	Yes if specifically included in an approved project plan and budget
Body Cameras (these are portable, electronic devices that record audio and video of activities of individual officers/inspectors)	Yes if part of an approved project plan	Yes if part of an approved project plan	No	No
Bus Ramps (Portable)	Yes	Yes	No	Yes if specifically included in an approved project plan and budget
Canine (original procurement and training of canines)	No	No	No	No
Canine (supplies for existing canines)	Yes if canine is assigned to a 100% MCSAP dedicated officer; otherwise prorated appropriately	No	No	No
Commercial Driver's License expenses such as medical examination, testing fee, truck rental for testing, etc.; when necessary to conduct activities under an approved grant project or program)	Yes	Yes	No	Yes
Communication Costs (internet connectivity, fax line directly related to project activity if not included in a grantee's indirect cost rates)	Yes	Yes	Yes	Yes
Computer (desktop)	Yes	Yes	Yes	Yes if specifically included in an approved project plan and budget
Compliance Investigations	Yes	No	Yes if conducted in lieu of an SA on NE	Yes if specifically included in an approved project

EXPENSE	BASIC AND INCENTIVE	BORDER ENFORCEMENT	NEW ENTRANT	HIGH PRIORITY
			carrier on high risk/mandatory list or to maintain CR certification (no more than 6 annually on non-NE carriers)	plan and budget
Computer (laptop)	Yes	Yes	Yes	Yes if specifically included in an approved project plan and budget
Computer (tablet)	Yes	Yes	Yes	Yes if specifically included in an approved project plan and budget
Conference Attendance (i.e., travel, registration, and time) related directly to enforcement activity training and standardization (e.g., CVSA, COHMED, DIAP, IACP, NAIC, etc.)	Yes if specifically included in an approved project plan and budget	Yes if specifically included in an approved project plan and budget	Yes if specifically included in an approved project plan and budget and if prorated appropriately	Yes For non-MCSAP-lead agencies ONLY if specifically included in an approved project plan and budget
Conference Attendance (i.e., travel, registration, and time) indirectly related to enforcement activities (e.g., AAMVA, IFTA, IRP, conferences hosted by private service providers, etc.)	No – may be allowable under other FMCSA grants	No – may be allowable under other FMCSA grants	No – may be allowable under other FMCSA grants	Yes – if approved as part of the program or project
Conference/Training Refreshments for grantee-hosted event (e.g., beverages such as coffee, tea, soft drinks, etc.; snacks)	No	No	No	No
Conference room fees for grantee-hosted training or outreach events	Yes	Yes if necessary for BEG-only activities	Yes only if necessary for SA related activities (e.g., group audits) or employee training	Yes As part of an approved application

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
Contractual costs for consultants, IT Staff, data analysis as part of an approved project	Yes	Yes	No	Yes
Crash Reconstruction Analysis for CMVs (training, equipment, software, etc.)	Yes	Yes	No	Yes- if specifically authorized in the grant agreement
CSA Investigations	Yes	No	Yes if conducted in lieu of an SA on NE carrier on high risk/mandatory list or to maintain CR certification (no more than 6 annually on non-NE carriers)	Yes if specifically included in an approved project plan and budget
CVIEW Operations and Maintenance	No	No	No	No
CVIEW Improvements	No	No	No	No
CVISN (architecture development and system design)	No	No	No	No
CVISN (Operations and Maintenance costs)	No	No	No	No
CVSA Decals (limited to total amount uploaded to MCMIS plus 20%)	Yes	Yes Based on the number of decals issued as part of inspections marked as "Border Enforcement" in Aspen	Yes Based on the number of decals issued as part of a safety audit	Yes if specifically included in an approved project plan and budget
CVSA Membership Fees/Dues	Yes	No	No	Yes For local agencies only if specifically included in an approved project plan and budget
Drug Interdiction (DIAP) Training (provided by FMCSA)	Yes	Yes	No	Yes if specifically included in an approved project plan and budget
Drug Interdiction Training (third party, private provider)	Yes Limited to 1% of approved total project cost	Yes Limited to 1% of approved total project cost (includes Federal	No	No

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
	(includes Federal and State Shares)	and State Shares)		
Drug Interdiction Activities that are the result of a CMV safety inspection and are the logical extension of an officer's responsibility (towing vehicles, unloading vehicles, storage of seized goods, etc)	Yes	Yes	No	Yes if specifically included in an approved project plan and budget
Electronic Credentials Administration (i.e. motor carrier credentials such as registration, insurance, etc.)	No	No	No	No
Encryption Software for Computers that connect to or contain data from FMCSA systems	Yes	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if specifically included in an approved project plan and budget
Enforcement/Inspection Tools/Equipment (e.g., chamber mates, creepers, etc.)	Yes	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes
E-Screening Annual Registration Fees (e.g., PrePass, NORPASS)	No	No	No	No
Facility Construction Costs (e.g., new inspection facilities)	No	No	No	No
Facility Improvement Costs (e.g., inspection pit covers, lighting, repaving parking lots, interior renovation, etc.)	Yes if specifically included in an approved project plan and budget	Yes if specifically noted and approved as part of approved project plan and budget at a fixed border facility	No	Yes if specifically included in an approved project plan and budget for agencies other than the MCSAP lead agency
Facility Security (cameras, alarm monitoring) for MCSAP Offices	Yes if 100% MCSAP dedicated facility and not part of a State's indirect cost rate.	Yes if 100% BEG dedicated facility and not part of a State's indirect cost rate.	No	No
Fuel (gasoline, diesel)	Yes	Yes	Yes	Yes
GPS Devices (installed as a standalone device)	Yes	Yes	Yes	Yes if specifically

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
specifically for officer tracking purposes)				included in an approved project plan and budget
Graphical Information Systems (GIS) technology used for crash and activity reporting and analysis	Yes If part of an approved GIS-based evaluation project	Yes Only if the State has a dedicated Border unit that operates independently of the main MCSAP unit and if part of an approved GIS-based evaluation project	No	Yes If part of an approved GIS-based evaluation project plan and budget
HazMat Emergency First Responder Equipment	Yes if needed to comply with OSHA standards for first responders and prorated based on percentage of MCSAP activities	Yes if needed to comply with OSHA standards for first responders and prorated based on percentage of BEG activities	No	No
HazMat Placard Readers (similar to a License Plate Reader)  *Eligible expense under other programs, including CVISN	Yes* if used away from fixed facilities (ex: bypass routes) for enforcement purposes, not generalized inspection screening/selection	Yes* if used away from weigh stations (ex: bypass routes) for enforcement purposes, not generalized inspection screening/selection	No	Yes* if used away from weigh stations (ex: bypass routes) for enforcement purposes, not generalized inspection screening/selection
HazMat Software (third party software that assists inspectors in identifying violations during HazMat inspections)	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	No	Yes if specifically included in an approved project plan and budget
In-car Video Equipment	Yes if required to be present in all organizational vehicles and prorated based on percentage of grant-related activities	Yes if required to be present in all organizational vehicles and prorated based on percentage of grant-related activities	Yes if required to be present in all organizational vehicles and prorated based on percentage of grant-related activities	No Unless specifically included in approved project plan and budget
Infrared Brake Inspection Devices (IRIS, etc.)	Yes handheld units not eligible	No	No	Yes if specifically included in an approved project plan and budget
Inspection Pit (new) Construction	No	No	No	No

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
Inspection Pit Covers	Yes if specifically included in an approved project plan and budget	Yes if specifically noted and approved as part of approved project at a fixed border facility	No	No
Inspections (scheduled in advance with a motor carrier or owner-operator)	Yes –if specifically planned and approved in the CVSP	Yes –if specifically planned and approved in the grant application	Yes – if part of a scheduled new entrant safety audit	Yes – if specifically planned and approved in the grant application
Inspections (State-mandated program)	No	No	No	No
Inspections (carrier or driver request at roadside)	Yes – only if a specific safety defect is alleged	Yes – only if a specific safety defect is alleged	No	Yes – only if a specific safety defect is alleged
Inspector Championships (state and national)	Yes	No	No	No
International Fuel Tax Association Fees/Dues	No	No	No	No
International Registration Plan Fees/Dues	No	No	No	No
Intrastate CRs	Yes if conducted in accordance with FMCSA's eFOTM procedures	No	No	Yes if specifically included in an approved project plan and budget and if conducted in accordance with current eFOTM procedures
IT Application Development (not related to CVIEW or eScreening devices/projects)	Yes if directly related to CMV safety enforcement and not otherwise excluded by policy	Yes Only if the State has a dedicated Border unit that operates independently of the main MCSAP unit and is not supported by a State's general IT expenses or covered by indirect cost rates	No	Yes if specifically included in an approved project plan and budget
IT Application Maintenance (e.g., licenses, upgrades, etc. not related to CVIEW or eScreening devices/projects)	Yes if not included in indirect cost rates or overhead and is appropriately prorated based on the percentage of contribution to CMV safety	Yes Only if the State has a dedicated Border unit that operates independently of the main MCSAP unit and is not supported by a State's general IT expenses or covered by indirect cost rates	Yes if directly related to SA's and 100% dedicated officer, otherwise prorated	No Unless specifically included in approved project plan and budget

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
IT Equipment (e.g., servers, etc. not related to CVIEW or eScreening devices/projects)	Yes if not included in indirect cost rates or overhead and is appropriately prorated based on the percentage of contribution to CMV safety	Yes Only if the State has a dedicated Border unit that operates independently of the main MCSAP unit and is not supported by a State's general IT expenses or covered by indirect cost rates	No	No Unless specifically included in approved project plan and budget
Janitorial Supplies/Services	Yes only direct costs if not included in indirect costs or part of the rental agreement, must be exclusive MCSAP facility or prorated accordingly	Yes only direct costs if not included in indirect costs or part of the rental agreement, must be exclusive BEG facility or prorated accordingly	No	No
Law Enforcement Officer Uniform components (e.g., boots, radios, handcuffs, uniforms, etc.)	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	No Unless specifically included in approved project plan and budget
License Plate Readers	No	No	No	No
New Entrant Safety Audit Program activities (Intrastate)	No	No	No	No
New Entrant Safety Audit Program activities (Interstate)	No	No	Yes	No
New Entrant Safety Audit Program education and outreach presentations and handout printing (when open to all carriers and focusing on the requirements to implement safety management practices; not just pass the audit)	No	No	Yes	No
Office Space (lease and rent costs)	Yes	Yes	Yes	No
Outreach and Education advertising and announcement materials (signs, banners, etc., used at safety events), excluding promotional items – subject to necessary and	Yes	Yes if part of an approved project	No Unless used as identification at group audit locations	Yes if part of an approved project

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
reasonableness determination) See also – <i>Promotional Items and Printing</i>				
Motor Oil (and other vehicle fluids)	Yes	Yes	Yes	Yes
Passports	Yes – if specifically noted and approved in the CVSP	Yes –if specifically noted and approved	No	No
Printing Paper	Yes	Yes	Yes	Yes
Performance-Based Brake Testers (PBBT)	Yes	Yes if used by a dedicated border enforcement unit	No	Yes if specifically included in an approved project plan and budget
Personnel (salaries)	Yes	Yes	Yes	Yes
Personnel (fringe benefits)	Yes	Yes	Yes	Yes
Personnel (overtime)	Basic – Yes (cannot exceed 15% of Basic program funding amount without prior approval) Incentive – Yes (no cap)	Yes	Yes	Yes
Phones (landline, wireless)	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if specifically included in an approved project plan and budget
Plaques or awards for employee recognition	No	No	No	No
Portable and Variable Messaging Signs Programmable message boards traditionally seen in construction zones; used as part of a CMV-focused outreach and education component or around non-fixed inspection locations and strikeforce areas of operation.	Yes Prorated based on percentage of use by grant-supported unit	Yes Prorated based on percentage of use by grant-supported unit	No	Yes if specifically included in an approved project plan and budget
Portable Scales	Yes with adequate justification in CVSP and consistent with other provisions in	Yes if used by a dedicated border enforcement unit	No	Yes if non-MCSAP Lead Agency and with strong supporting justification

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
	this policy			
Postage	Yes	Yes	Yes	Yes
Printer Ink	Yes	Yes	Yes	Yes if specifically included in an approved project plan and budget
Printers (portable, desktop, all-in-one devices)	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if specifically included in an approved project plan and budget
Printers (multi-function printers in common office areas)	Yes Prorated based on percentage of use by grant-supported unit	Yes Prorated based on percentage of use by grant-supported unit	Yes Prorated based on percentage of use by grant-supported unit	No
Printing (e.g., outreach and education materials)	Yes	Yes	Yes See <i>New Entrant Safety Audit Program education and outreach presentations and handout printing</i>	Yes
PRISM Program-related costs	No	No	No	No
Professional Association dues not specifically authorized in this policy	No	No	No	No
Professional Association meeting costs not specifically discussed elsewhere in this table (ex: lunch at a trucking association meeting)	Yes If eligible per State travel and ethics regulations	Yes If eligible per State travel and ethics regulations	Yes If eligible per State travel and ethics regulations	Yes If eligible per State travel and ethics regulations
Promotional Items (t-shirts, mugs, trinkets, giveaways, etc.)	No	No	No	No
Property Improvement Costs (e.g., addition of lights for night inspections)	Yes if specifically included in an approved project plan and budget	Yes if specifically noted and approved as part of approved project at a fixed border facility	No	Yes if specifically included in an approved project plan and budget

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
Recruitment of new employees when not included in a State's indirect cost rate	Yes	Yes	Yes	No
Regulation Books (grantee program staff)	Yes	Yes	Yes	Yes
Regulation Books (for public and industry handout)	No	No	No	No
Roadside Inspections	Yes	Yes	Yes Pursuant to section 4 of this policy	Yes if specifically included in an approved project plan and budget
Safety Audit and/or Compliance Review or CSA Enforcement Actions such as court and other administrative proceedings (other than pass/fail safety audit)	Yes	No	No	Yes if specifically included in an approved project plan and budget
Scanners (portable document)	Yes	Yes	Yes	No
Scanners (bar code readers)	No	No	No	No
Shipping Costs (FedEx, UPS, etc.)	Yes	Yes	Yes	Yes
Size & Weight Enforcement	Yes only at non-fixed locations, steep terrain, and at seaports in conjunction with an inspection	Yes only in conjunction with a BEG inspection	No	No Unless specifically included in approved project plan and budget
Skills Performance Evaluation	Yes for MCSAP lead agencies to perform SPEs on non-CDL drivers and on CDL drivers when the SDLA does not perform SPEs	No	No	No
Software (commercial off the shelf)	Yes if specifically included in an approved project plan and budget and prorated appropriately	Yes if specifically included in an approved project plan and budget and prorated appropriately	Yes if specifically included in an approved project plan and budget and prorated appropriately	Yes if specifically included in an approved project plan and budget

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
Speed Detection Devices (VASCAR, Lidar, Radar devices from )	Yes	Yes if used for enforcement on international traffic	No	Yes if specifically included in an approved project plan and budget
State required training (necessary to maintain police officer certification)	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	Yes if 100% dedicated officer; otherwise prorated	No
State-mandated vehicle inspection programs	No	No	No	No
Supplies (all tangible personal property other than "equipment" as defined in 49 CFR part 18)	Yes	Yes	Yes	Yes if specifically included in an approved project plan and budget
Targets (firearms qualification)	Yes	Yes	Yes	No
Terminal Inspections (at carrier's request with advanced notice)	No	No	No	No
Terminal Inspections (unannounced or part of strikeforces/special enforcement activities)	Yes	Yes	Yes	Yes
Tips (gratuities for meal and transportation services when travel related) in accordance with written state policy or federal travel regulation)	Yes	Yes	Yes	Yes
Tires	Yes	Yes	Yes	No
Toner	Yes	Yes	Yes	Yes if specifically included in an approved project plan and budget
Third Party Inspection Software	Yes See Section 2.5.1	Yes Only if the State has a dedicated Border unit that operates independently of the main MCSAP unit	No	No
Traffic Enforcement	Yes See Section 2.2	Yes As Part of an Approved BEG Plan	No	Yes if specifically included in an approved project plan and budget
Training of new	Yes	Yes	Yes	No

EXPENSE	BASIC AND INCENTIVE	BORDER ENFORCEMENT	NEW ENTRANT	HIGH PRIORITY
employees (academy, basic certification, etc.)	Only a) if the individual or 'slot' is identified as being for the MCSAP unit <b>prior</b> to hiring, and b) pro-rated appropriately for expected time allocation upon graduation	Only a) if the individual or 'slot' is identified as being for the Border unit <b>prior</b> to hiring, and b) must be 100% Border dedicated or be prorated	Only a) if the individual or 'slot' is identified as being for the New Entrant unit <b>prior</b> to hiring, and b) must be 100% New Entrant dedicated or be prorated	Unless specifically included in approved project plan and budget because specific skills the individual brings are necessary for a component of the project
Travel Expenses as part of an approved travel component of the project plan and consistent with either State travel policies or the Federal Travel Regulations (e.g., airfare on US flag carrier, baggage fees, fixed per diem amounts, lodging, meals, parking, public transportation, rental car, taxi, etc.)	Yes	Yes	Yes	Yes
Truck Wraps Large message decals applied to the trailer of a CMV, generally covering the entire body of the trailer with a specific message	No	No	No	No
Truck Driving Championships (travel and attendance costs)	Yes If the State is judging and providing an education or outreach component	No	No	No
Tuition for training (project related)	Yes	Yes	Yes	Yes if specifically included in an approved project plan and budget
Uniforms	Yes	Yes	Yes	No
Utility Costs (e.g., electric, gas, water, etc.)	Yes If not included in approved indirect cost rate	Yes If not included in approved indirect cost rate	Yes If not included in approved indirect cost rate	No
Vehicles (new)	Yes	Yes	Yes	Yes

<b>EXPENSE</b>	<b>BASIC AND INCENTIVE</b>	<b>BORDER ENFORCEMENT</b>	<b>NEW ENTRANT</b>	<b>HIGH PRIORITY</b>
				if non-MCSAP Lead Agency, or, for lead agencies, with strong supporting justification
Vehicle Depreciation Costs (only in lieu of vehicle usage costs)	Yes	Yes	Yes	Yes if non-MCSAP Lead Agency, or, for lead agencies, with strong supporting justification
Vehicle Fluids (e.g., oil, antifreeze, transmission fluid, etc.)	Yes	Yes	Yes	Yes
Vehicle Lease Costs (allowable only up to the cost of vehicle if it were to be purchased)	Yes	Yes	Yes	No
Vehicle Maintenance (e.g., routine oil changes, etc. if not part of the Indirect Cost Rate or included in the lease, purchase of the vehicle or vehicle usage rate.)	Yes	Yes	Yes	Yes
Vehicle Repair (collision)	No	No	No	No
Vehicle Repair (non-collision) if not part of the Indirect Cost Rate or included in the lease or purchase of the vehicle.	Yes	Yes	Yes	Yes
Vehicle Replacement (collision)	No	No	No	No
Vehicle Usage Cost (usage rate per mile only in lieu of vehicle depreciation costs)	Yes	Yes	Yes	Yes if non-MCSAP Lead Agency, or, for lead agencies, with strong supporting justification
Virtual Weigh Stations *Funds for this purpose are available through the CVISN program	No*	No*	No*	No*
Watering and Lawn Care (maintenance of facility) if not part of the lease or rental agreement	No	No	No	No
Weapons	Yes as required by department for all sworn personnel	Yes as required by department for all sworn personnel	Yes as required by department for all sworn	No

EXPENSE	BASIC AND INCENTIVE	BORDER ENFORCEMENT	NEW ENTRANT	HIGH PRIORITY
			personnel	
Weigh-in-Motion (WIM) Scales (fixed or portable)  *Funds for this purpose are available through the CVISN program	No*	No*	No*	No*
Workman's Compensation (see OMB Circular 2 CFR part 200 for guidance)	Yes	Yes	Yes	Yes

## APPENDIX B - Technical Guidance for compliance with FMCSA's Unified Registration System Final Rule

### Final Rule Information

**Federal Register Publication Date:** August 23, 2013 [[78 FR 52608](#)]

**Effective Dates:** October 23, 2015, except for 49 CFR §§ 390.19 & 392.9b which are effective November 1, 2013.

**State MCSAP Compliance Dates:** For 49 CFR § 392.9b, no later than November 1, 2016. For all other changes, no later than October 23, 2018.

**URS Final Rule Correction Publication Date:** October 23, 2013 (effective October 23, 2013). [[78 FR 63100](#)]

### FMCSR Parts Affected

[49 CFR parts 360, 365, 366, 368, 385, 387, 390, and 392.](#)

### Rule Summary

We have amended our regulations to require interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities under FMCSA jurisdiction to submit required registration and biennial update information to the Agency through a new online Unified Registration System (URS).

The implementation of this final rule will consolidate the following registration and information systems:

1. The U.S. Department of Transportation (USDOT) identification number system;
2. The 49 chapter 139 commercial registration (operating authority) system;
3. The 49 U.S.C. § 13906 financial responsibility information system; and,
4. The service of process agent designation system (49 U.S.C. §§ 503 and 13304).

We will use the USDOT Number as the sole unique identifier for motor carriers, brokers, and freight forwarders subject to our regulations. Implementation of URS will discontinue issuance of separate MC, MX, and FF Numbers to those entities who register with FMCSA. Although this final rule does not require motor carriers to remove the obsolete numbers from their vehicles, we do encourage carriers to omit these obsolete numbers when either purchasing new vehicles or repainting existing vehicles.

The URS final rule applies to every entity under FMCSA commercial and/or safety jurisdiction, except for Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones. We excluded Mexico-domiciled long-haul carriers in the final rule due to the current cross-border long-haul trucking pilot program.

### **Maintenance of MCSAP Compatibility**

To remain compatible with MCSAP requirements:

**§ 390.3** – you must adopt the changes we made to this section no later than October 23, 2018. Specifically:

1. We revised § 390.3, General applicability, to remove references to § 390.19.
2. In paragraph 390.3(g)(4), we replaced a reference to § 390.19(a)(1) with a reference to § 390.201.
3. We revised Paragraph 390.3(h), Intermodal equipment providers, to remove a reference to a December 2009 compliance date.
4. We added paragraphs 390.3(i) and 390.3(j) to reference the safety regulations that are applicable to brokers and freight forwarders required to register with FMCSA.
5. We added paragraph 390.3(k) to specify that the rules in 49 CFR part 390, subpart E, Unified Registration System, apply to each cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR § 107.502 and 49 U.S.C. § 5108.

You must make compatible changes to your State regulations to ensure that interstate motor carriers, freight forwarders, brokers, IEPs, HMSP applicants, and cargo tank facilities submit required registration and biennial update information to FMCSA.

**§ 390.5** – you must adopt the change we made to the definition of “Exempt Motor Carrier” no later than October 23, 2018. We changed the definition to mean “a person engaged in transportation exempt from economic regulation by the [FMCSA] under 49 U.S.C. chapter 135,” rather than under 49 U.S.C. § 13506, as specified in the previous regulation because not all the

statutory exemptions in chapter 135 are contained within section 13506. You must change your definition of “Exempt Motor Carrier” to be compatible with the definition of “Exempt Motor Carrier” in § 390.5.

**§ 390.19** – You are not required to adopt the revisions to § 390.19 because we have determined that they do not apply to a State’s enforcement program. This section addresses only the filing of motor carrier identification reports with FMCSA for certain Mexico-domiciled carriers requesting authority to provide property or passenger transportation in interstate commerce beyond the municipalities and commercial zones along the U.S.-Mexico international border. Because you are not responsible for registering Mexico-domiciled carriers operating in interstate commerce, there are no requirements that you have compatible regulations.

**§ 390.21 (b)(1)** – you must adopt the change made to this section no later than October 23, 2018. Specifically, we revised § 390.21(b)(1) to state that the marking information must display the legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the Form MCSA-1 or Form MCS-150 and submitted in accordance with § 390.201 or § 390.19, as appropriate. You must make changes to your State regulations that are compatible with the marking information changes in § 390.21(b)(1).

**§ 390.40(a)** – You must adopt the change made to this section no later than October 23, 2018. We revised § 390.40 to replace a reference to obsolete Form MCS-150C with a reference to Form MCSA-1. You must make changes to your regulations that are compatible with the change made to this section.

**Part 390, Subpart E** – You are not required to adopt this subpart to maintain MCSAP compatibility unless you are, or you intend to become, a PRISM State. We have determined that this subpart is not applicable to your State’s enforcement program. Part 390, subpart E, describes the processes and requirements for entities covered by URS to register directly with FMCSA and update registration information electronically every 24 months. These sections include specific requirements for completing the form MCSA-1, how to change the name of a carrier, and other administrative practices related directly to FMCSA’s management of the USDOT number process. Previously, States that participated in the Performance and Registration Information Systems Management (PRISM) program were required to check the status of the required biennial update each year during the vehicle registration process. However, the Agency recently changed its PRISM policy to no longer require PRISM States to verify biennial update information because entities subject to FMCSA’s jurisdiction will file biennial update information directly with FMCSA electronically via URS. Therefore, you do not have a role in the registration process or the filing of biennial updates under URS. Because these sections do not require you to interact with FMCSA and because the requirements only apply to carriers operating in interstate commerce, it is not necessary that you have compatible regulations. However, you will continue to have the option of issuing USDOT Numbers to intrastate motor carriers domiciled within your State if you participate in the PRISM Program. Although you are not required to adopt this subpart, you may find it helpful as a model for an intrastate registration system requirements/legislation in your State.

**§ 392.9(b)** – you must adopt the addition of this section no later than November 1, 2016. We added, effective November 1, 2013, a new § 392.9b, Prohibited transportation, to prohibit a motor carrier without a USDOT registration and an active DOT Number from operating a commercial motor vehicle in interstate transportation and to notify carriers violating this provision that they are subject to civil penalties in accordance with 49 U.S.C. § 521. Adoption of this regulation will allow your inspectors to cite interstate motor carriers at the roadside and prohibit them from operating with no USDOT registration or with an inactive DOT number. You must make a compatible change by adopting this new section into your regulations. You must also make changes to operational policies and training, as necessary, to ensure that officers/inspectors understand this provision and can use it appropriately at roadside.

You are not required to adopt, for MCSAP grant eligibility purposes, any changes to regulations made by this final rule in 49 CFR parts 360, 365, 366, 368, 385, and 387.

## **APPENDIX C – Updated Information for FMCSA’s Phased Implementation of the Unified Registration System Final Rule**

### **PURPOSE**

This memorandum provides guidance on the changes to the phased implementation of the Unified Registration System (URS).

### **BACKGROUND**

URS is an electronic on-line registration system that will streamline and simplify the Federal Motor Carrier Safety Administration’s (FMCSA) registration process. It will replace all of FMCSA’s existing registration databases with one system that will be the authoritative source of registration data for FMCSA staff, State licensing and enforcement personnel, and the motor carrier industry.

On October 21, 2015, the Agency extended effective and compliance dates for the implementation of the 2013 final rule [[80 FR 63695](#)] in order to allow FMCSA additional time to complete the information technology (IT) systems work required to fully implement that rule.

### **APPLICABILITY**

This policy applies to all the entities that FMCSA regulates, including freight and passenger motor carriers, brokers, freight forwarders, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants/holders, and cargo tank manufacturing, inspection, and repair facilities.

## **POLICY**

The URS will begin a phased launch on December 12, 2015. The phased approach allows more time for retiring old systems and developing new IT systems for the industry and state agencies.

### **Phase One – December 12, 2015 to September 29, 2016 – New Registration Applicants**

With the exception of new Non-North American and Mexico-domiciled Long Haul applicants, all new applicants will be required to use the MCSA-1 **online** form beginning on December 12, 2015. Applicants will be able to request a USDOT number and any required operating authorities through the online registration system.

If new applicants send paper forms via mail or fax, including intrastate carriers in States that require USDOT numbers, they will be returned. For carriers without Internet access, third party permitting services and trade associations may provide assistance to carriers who need help with online filings.

Once a first-time applicant applies for and receives their USDOT number and/or operating authority, they will use the MCS-150 or OP-1 forms to perform any updates or modifications to their registration information in the Motor Carrier Management Information System and the Licensing and Insurance System until Phase Two is implemented.

All existing entities with a USDOT number, Motor Carrier (MC) numbers, or Freight Forwarder (FF) numbers, or any combination thereof, will continue to use existing Agency forms (e.g., MCS-150, OP-1) and processes to complete biennial and other updates, seek additional registration authorities, make administrative filings, and other registration related transactions.

### **Phase Two – September 30, 2016**

On September 30, 2016, the FMCSA will launch the full URS. The only entities who will not use the online registration system as of this date will be Mexico-domiciled Long Haul carriers.

All new and existing entities must process new applications and updates to existing records using the new online system with the online MCSA-1 form. FMCSA will not accept paper forms or faxes.

USDOT numbers will be the sole identifier for all entities under FMCSA jurisdiction. FMCSA will discontinue issuing MC numbers and FF numbers when URS Phase Two launches. Prior to the launch of Phase Two, entities with only MC and FF numbers will be issued USDOT numbers. FMCSA is still determining exactly how this issuance and notification will be done. More information will be provided as we approach that date.

While historically, motor carriers did not pay to receive a USDOT number, effective in Phase Two, **new applicants must pay a \$300 registration fee** for each registration type **including safety registration** and operating authority registrations (e.g., property, passenger, broker, freight forwarder, etc.). Entities will still receive a USDOT number to identify themselves, but both URS and MAP-21 require a distinct safety registration before any person may operate commercial motor vehicles in interstate commerce. Entities will be required to pay \$300 for the processing of requests for safety registration, in addition to any fee incurred as a result of requesting each type of operating authority registration.

New exempt for-hire and private hazardous materials carriers must have insurance filed on their behalf by insurance carriers, just as non-exempt for-hire carriers, brokers, and freight-forwarders currently do, before registration may be granted.

New private and exempt for-hire carriers seeking registration must have on file a Designation of Service of Process Agent (Form BOC-3), before registration may be granted.

By December 31, 2016, existing exempt for-hire and private hazardous materials carriers must have evidence of financial responsibility filed on their behalf, and existing private carriers and exempt for-hire carriers must have on file a Designation of Service of Process Agent (Form BOC-3). Existing carriers may begin filing September 30, 2016, but must have filings in by December 31, 2016. Those not filing either their proof of financial responsibility or designating a service of process agent by December 31, 2016 may be subject to suspension of their registration.

### **IMPLEMENTATION DATE**

The effective date for implementation of Phase One is December 12, 2015. The effective date for implementation of Phase Two is September 30, 2016.

Additional information including training materials and other resources can be found at [www.fmcsa.dot.gov/urs](http://www.fmcsa.dot.gov/urs).

## **APPENDIX D - Technical Guidance for compliance with FMCSA's Medical Certification and National Registry of Certified Medical Examiners Final Rules**

### **Medical Certification Final Rule Information**

**Federal Register Publication Date:** December 1, 2008. [[73 FR 73096](#)]

**Effective Date:** January 30, 2009.

**State Compliance Date (CDL Changes):** January 30, 2012.

**State Compliance Date (MCSAP Changes):** N/A

**Commercial Driver License Holder Self-Certification Compliance Date:** January 30, 2014.

**Technical Amendments to Final Rule:** May 21, 2010 [[75 FR 28499](#)] and January 14, 2014 [[79 FR 2377](#)]

### **FMCSR Parts Affected**

[49 CFR parts 383, 384, 390, and 391](#).

### **National Registry Final Rule Information**

**Federal Register Publication Date:** April 20, 2012 [[77 FR 24104](#)]

**Effective Date:** May 21, 2012

**State Compliance Date:** May 21, 2015

### **FMCSR Parts Affected**

[49 CFR parts 350, 383, 390, and 391](#).

### **Rules Summary**

The Federal Motor Carrier Safety Regulations (FMCSRs) have been amended to require interstate commercial driver's license (CDL) holders subject to the physical qualification requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to provide a current original or copy of their medical examiner's certificates (MECs) to their State Driver Licensing Agency (SDLA). The SDLA must place certain data elements of the MEC on the driver's Commercial Driver's License Information System (CDLIS) motor vehicle record.

If there is no medical certification information on the driver's CDLIS motor vehicle record, an enforcement officer may accept a current MEC as proof of medical certification until January 30, 2015 during a roadside inspection or at the carrier's place of business during a New Entrant Safety Audit or investigation.

After January 30, 2015, a driver should carry on his person a copy of the current MEC that was submitted to the SDLA for up to 15 days after the date it was issued as proof of medical certification. This allows time for the SDLA to update the driver history record. Although interstate non-excepted CDL drivers will no longer need to carry a copy of the MEC, drivers must continue to carry any skill performance evaluation (SPE) certificate or medical variance document on their person while on duty pursuant to 49 CFR § 391.41(a)(1)(ii).

The MEC documentation requirements apply only to CDL drivers who are also required to obtain a MEC from a medical examiner indicating that they are physically qualified to operate a commercial motor vehicle (CMV) in interstate commerce (the rule identifies these drivers as “interstate non-excepted”). By January 30, 2014, CDL drivers must certify that they meet the qualification requirements contained in 49 CFR part 391 to operate in interstate commerce by submitting their self-certification form to the SDLA. After January 30, 2015, CDL drivers must submit an original or copy of their MEC to their SDLA as proof of medical certification.

In addition to the medical certification requirements, FMCSA established a National Registry for all medical examiners (MEs) who conduct physical examinations for interstate CMV drivers. In order to be listed on the National Registry, MEs must:

- Complete certain training concerning FMCSA’s physical qualification standards
- Pass a test to verify an understanding of those standards
- Maintain and demonstrate competence through periodic training and testing

Beginning May 21, 2014, interstate drivers must be certified as physically qualified by MEs on the National Registry. SDLAs and enforcement officers will only accept as valid those MECs issued by MEs listed on the National Registry. Existing certificates issued to CMV drivers remain valid after that date until the expiration date.

### **Maintenance of MCSAP Compatibility**

#### **Medical Certification**

Assuming your State is currently in compliance with its MCSAP grant agreement, you are not required to take any action to comply with the requirements of the medical certification final rule. The requirement for CDL drivers operating in non-excepted, interstate transportation to present a MEC to the SDLA is contained in part 383. States are not required to adopt part 383 as a condition of participation in MCSAP. Also, States are not required to place medical certification status information for intrastate CDL drivers on the CDLIS driver record, but may do so. If you do not place intrastate medical certification status information on the CDLIS driver record, the SDLA must continue to require intrastate CDL drivers subject to State medical certification requirements to carry either the original or a copy of the MEC (as required by your State) while on duty pursuant to 49 CFR § 391.41(a)(1)(i).

As a reminder, under current MCSAP compatibility requirements, a driver expected to operate entirely in intrastate commerce is subject to your State’s driver qualification requirements. This means that intrastate drivers must meet the intrastate driver qualification requirements adopted as a condition of MCSAP grant eligibility. State intrastate driver qualification requirements must be identical to or have the same effect as the federal regulations (i.e., parts 390 and 391) or fall within the established variances under 49 CFR § 350.341.

#### **National Registry**

To maintain MCSAP Basic and Incentive grant funding eligibility, States must adopt regulations that are compatible with the final National Registry regulations no later than May 21, 2015. See 77 FR at 24109-24110. Specifically, your State must adopt regulations that require all interstate and intrastate drivers that are subject to medical certification requirements to be examined by a ME on a registry of trained and certified MEs. Interstate drivers must use MEs from FMCSA’s National Registry. States are not required

to establish their own registry if they choose to require intrastate operators to use a ME on the FMCSA National Registry.

If your State has variances from certain physical qualification requirements in effect for drivers operating CMVs in intrastate commerce, the State is not required to establish a separate registry of MEs that are trained and qualified to apply the State standards (49 CFR § 350.341(h)(3)). However, the State must adopt regulations or requirements to ensure that intrastate drivers receiving a variance in your State:

1. Meet the physical qualification requirements in subpart E of 49 CFR part 391 for CMV operators except for the specific condition(s) for which the State grants an intrastate variance allowed for in § 350.341; and
2. Are examined by MEs from FMCSA's National Registry or the State's intrastate ME registry if it chooses to create one, that are knowledgeable of the standards established by the State for the variance.

In both instances described above, if the State chooses to establish a separate intrastate registry it may not use MCSAP grant funds for the purpose of establishing that registry.

#### Exception

The FMCSA will not add MEs from the jurisdictions listed below to the National Registry. The FMCSA has concluded that it would be a significant financial burden for these jurisdictions to establish their own registry compatible with the National Registry. Because neither option is available to these jurisdictions, pursuant to 49 CFR § 350.201(a), FMCSA waives the requirement that these jurisdictions require CMV drivers to be examined by an ME from FMCSA's National Registry or the jurisdiction's own ME registry. These jurisdictions must continue to impose medical qualification requirements compatible with 49 CFR parts 390 and 391.

The following jurisdictions are granted this exemption:

- American Samoa
- Commonwealth of Puerto Rico
- Commonwealth of Northern Mariana Islands
- Guam
- United States Virgin Islands

# Federal Program Manual

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**Federal Motor Carrier Safety Administration (FMCSA) U.S. Department of  
Transportation**



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## 6.2 Federal Programs Manual

### 6.2.1 Compliance Manual

#### 6.2.1.1 Division and Service Center Compliance Procedures

##### ***This Manual Covers the Following***

This manual outlines the responsibilities of the Divisions and the Service Centers (SC) in monitoring motor carrier performance and determining motor carrier safety posture and compliance with the Federal Motor Carrier Safety Regulations (FMCSR), Federal Motor Carrier Commercial Regulations (FMCCR), and Hazardous Material Regulations (HMR). The electronic Field Operations Training Manual (eFOTM) covers responsibilities of Safety Investigators (SI) in conjunction with the conduct of investigations and of compliance reviews (CR).

##### ***Division's Role in Ensuring Motor Carrier Compliance with the FMCSR, FMCCR, and HMR***

The Division is primarily responsible for monitoring the performance of motor carriers domiciled in the Division's respective State or territory while conducting activities that encourage improvement in a motor carrier's safety posture. Duties include but are not limited to:

- Investigating the safety fitness of motor carriers, operators, and shippers of hazardous materials (HM);
- Using Safety Measurement System (SMS) and other safety data [Performance and Registration Information Systems Management (PRISM) reports, HM/Passenger list, GOTHAM reports, MCMIS, etc.], to prioritize motor carriers for investigations or CRs;
- Assuring the quality of the investigations or CRs;
- Receiving, tracking, and investigating all complaints and taking appropriate action based on the validity of those complaints;
- Reviewing the motor carriers' corrective actions and making recommendations to the Field Administrator (FA) regarding 49 CFR Part 385.17 – Change to safety rating based upon corrective actions;
- Reviewing motor carriers' accidents for preventability when the safety rating is impacted;
- Determining appropriate actions to take with the motor carrier based on the results of an investigation or CR [e.g., Education and Technical Assistance, Notice of Violation (NOV), Notice of Claim (NOC), or referral to the Office of Inspector General (OIG) for criminal actions]; and
- Conducting crash investigations.

##### ***Role of the Service Center Enforcement Team (SCET) in Ensuring Motor Carrier Compliance with the FMCSR, FMCCR, and HMR***

The primary role of the SCET is to provide technical support to the Divisions for conducting compliance activities in accordance with Federal Motor Carrier Safety Administration (FMCSA) policy and procedures and issuing Out-of-Service (OOS) Orders for the FA. The SCET duties include but not limited to:

- Issuing orders for placing motor carriers OOS for Unsatisfactory safety ratings and for failure to pay the penalty assessed by the Notice of Default and Final Agency Order (NDFAO);
- Issuing orders for placing drivers OOS for failure to pay the penalty assessed by the NDFAO;
- Providing technical support on clarification of procedures provided in eFOTM, policies, and memoranda;
- Assisting with complex CRs and investigations;

- Coordinating interpretations of regulations, policies, and procedures between the Division and Headquarters (HQ);
- Coordinating and processing Public Interest Exclusion (PIE) investigations;
- Initiating and leading Peer Review Team of Division Office programs;
- Reviewing Division's recommendations regarding 49 CFR Part 385.17 – Change to safety rating based upon corrective actions; requesting and making final decision to grant or deny request; and
- Reviewing Division's recommendations regarding the issuance of a subpoena.
- Reviewing Division's recommendation regarding the issuance of an Imminent Hazard Order

#### ***Role of HQ in Ensuring Motor Carrier compliance with the FMCSR, FMCCR, and HMR***

The HQ office's primary role is to provide technical support to the SC for conducting compliance and enforcement activities in accordance with our policies and procedures. The HQ office duties include but are not limited to:

- Creating and interpreting regulations, policies, and procedures;
- Drafting and promulgating regulations;
- Issuing policy guidance and memoranda;
- Processing 49 CFR Part 385.15 – Administrative reviews; and
- Ensuring a consistent and uniform National Program.

#### ***6.2.1.1.1 FMCSA's Guidance to Achieving Performance Measures and Goals***

##### ***Division Administrator/State Director (DA/SD) or Designee Responsibilities in the Conduct of Investigations or CRs***

The DA/SD or designee is responsible for the conducting and coordination of compliance activities in support of the FMCSA mission. Duties include:

- Managing and coordinating resources in the conduct of compliance activities;
- Identifying and prioritizing compliance activities to meet the goals and objectives of the Division safety plans;
- Assigning Onsite Investigations to High-Risk carriers that should be conducted and completed within 90 days from the release of the prioritization lists. Deviations from the 90-day target date should be documented;
- Maintaining a list of all High-Risk motor carriers on which investigations were not conducted along with a brief explanation as to why the review was not done; and
- Ensuring FMCSA and State Motor Carrier Safety Assistance Program (MCSAP) personnel follow the most current policies and procedures.

#### ***Carrier Prioritization and Carrier Assignment***

The DA/SD or designee is responsible for making SI-specific carrier assignments. The FMCSA Portal provides the DA/SD or designee with access to the necessary information (e.g., SMS) to make carrier assignments. SMS classifies eligible motor carriers into Risk-Based Carrier Prioritization Lists (High-Risk, Moderate-Risk, Risk, and Monitor) within the FMCSA Portal (See Risk-Based Prioritization table). Within each category, motor carriers are ordered based on their measurement of risk. This sort order is further displayed on secondary level lists, within the Moderate-Risk, Risk, and Monitor Lists (See Secondary-Level Prioritization table). After the carriers identified as High-Risk are assigned, Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk. Division Offices are to use the tools provided in the assignment grid described in the *Manager Utilize Tools to Support the Assignment Process* section, and to consider the availability of resources and other Agency initiatives, in making and managing assignments.

Carriers on the Warning Letter lists will not be prioritized for intervention (i.e., investigation or Direct NOV) by the system, which means they will not appear on the DA/SD or Designee's monthly list of carriers to investigate, but they may still be candidates for intervention. This is because not all the reasons for intervention are incorporated in the prioritization algorithm. Interventions may be selected based on national program goals and related initiatives that may require the States to review and assign from the Warning Letter lists.

### ***Safety Measurement System (SMS) Assesses Carrier Performance***

For each BASIC, the SMS captures and displays the safety status of individual motor carriers on a monthly basis. BASICs subject to an intervention are indicated as having a status of Roadside-Identified and/or Serious Violations documented during previous investigations. SMS also identifies motor carriers that are eligible to receive warning letters based on SMS results. Each type of status is defined below.

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

**Roadside-Identified BASICs** – A carrier is subject to intervention based on SMS results. SMS evaluates the safety of individual motor carriers by considering on-road performance. This can be from roadside inspections as well as State-reported crashes that have occurred within the previous 24 months. Regardless of the source of data, a BASIC that is Roadside-Identified means that the BASIC measurement is at or above the threshold for intervention. (See table below.)

**Table: BASIC Thresholds (Percentiles)**

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

HM thresholds apply to motor carriers when the following conditions are met:

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

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

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

- If the carrier has no vehicle data at all in MCMIS and “passengers” is a cargo classification.
- The operation classification in MCMIS is private motor carrier of passengers. The motor carrier must also meet both of the following criteria:
  - Owns, term-leases, or trip-leases a 16+ passenger vehicle; and
  - Passenger vehicles represent 2% or more of the carrier’s total vehicles.

**Serious Violations** – A carrier is subject to intervention based on the discovery of Serious Violations found during a previous investigation. Serious Violations include violations of Acute, Critical, Fundamental, and Essential Safety Management (ESM) regulations cited in an investigation.<sup>1</sup> Serious Violations can be categorized as:

- Acute/Fundamental - Those violations where noncompliance is so severe that they require immediate corrective action by a motor carrier regardless of its overall safety posture (a one-time occurrence, e.g., failing to implement an alcohol and/or controlled substance testing program); or
- Critical/ESM - Those violations that relate directly to the motor carrier’s management and/or operational controls and are indicative of breakdowns in a motor carrier’s management controls (e.g., a pattern of violations such as false reports of records of duty status).

**Warning Letters** – SMS identifies eligible motor carriers for warning letters. The table below highlights whether motor carriers included as part of various compliance and enforcement programs will receive automated warning letters based on SMS results.

#### FMCSA Programs and Warning Letters

Carrier Type/Program	Receive Automated Warning Letters Based on SMS
New Entrant (NE)	No
Canada Domiciled	Yes
Mexico Domiciled - Grandfathered	Yes
Mexico Domiciled - Certificated	Yes
Mexico Domiciled - Provisional	No
Mexico Domiciled - Commercial Zone	No
Non-North American (NNA)	No
Passenger	Yes
HM Permit	Yes
HHG	Yes
Conditional Rated Carrier*	NA

\*The Conditional Carrier Program was officially discontinued in April 2010.

Warning letters are designed to make motor carriers aware of their company’s safety performance data, and to encourage corrective action, so that FMCSA and State investigative resources can be more effectively directed to higher risk motor carriers. Warning letters are based on roadside performance results collected during the previous 24 months.

Warning letters advise motor carriers of their identified roadside safety performance problems and the consequences of continued poor performance. They further provide a website link that allows the motor carrier to view its safety performance data. They do not require motor carriers to submit evidence of corrective action to FMCSA. However, if a motor carrier still has BASICS meeting or exceeding the Intervention Threshold, 6 months after receiving a warning letter, they may be prioritized for investigation based on risk criteria (As see explained in the *System Prioritizes Carriers Based on Risk* section below).

Warning letters will be generated when a motor carrier’s safety performance meets or exceeds the SMS Roadside-Identified Intervention Threshold, based on roadside performance data in one or more BASICS.

However, because of their poor overall performance, warning letters are not generated for motor carriers that are designated as High Risk or for motor carriers that have three or more BASICs at or above the Intervention Threshold. Those motor carriers are immediately prioritized for an Onsite Comprehensive or Onsite Focused Investigation.

FMCSA and State enforcement personnel are able to access an electronic version of all distributed warning letters through the FMCSA Portal. A sample warning letter can be found in Appendix I.

***System Prioritizes Carriers Based on Risk***

Based on BASIC percentiles, intervention history, and the status of Serious Violations, the FMCSA Portal prioritizes carriers for intervention into the following risk-based prioritization lists:

- High-Risk,
- Moderate-Risk,
- Risk,
- Warning Letter, and
- Monitor

**Risk-Based Carrier Prioritization Categories**

The FMCSA Portal prioritizes each carrier for intervention into the Risk-Based categories (as shown the Primary Lists table below). The carriers are order based on their measurement of risk (See Primary Lists below) to help the Manager determine appropriate assignments. This sort order is further displayed on secondary level lists (See Secondary Level Lists below e.g., the estimated risk of carriers designated Moderate-Risk 1 are greater than those on Moderate-Risk 2). Carriers identified as High-Risk will be automatically designated for immediate action should be assigned for an Onsite Investigation and prioritized first for investigation. After the carriers identified as High-Risk are assigned, Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk. Use the FMCSA Portal assignment grid to review carriers’ safety performance to assess their priority for intervention, utilize the tools provided in the assignment grid (*Manager Utilize Tools to Support the Assignment Process*), and consider the availability of resources and other Agency initiatives, in making and managing assignments.

**Criteria for Risk-Based Prioritization within Primary Lists**

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

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
<b>Risk</b>	1 or more BASICs at or above intervention threshold or with unresolved Acute or Critical Violation(s)	1. No intervention in last 12 months <i>AND</i> 2. No warning letter in last 6 months	Exclude Moderate-Risk
<b>Warning Letter</b>	1 or more BASICs at or above threshold	1. No intervention or warning letter in last 18 months <i>AND</i> 2. If there was a previous intervention, then no BASICs or unresolved Acute or Critical Violations in prior 12 months	Exclude High-Risk  <i>Note:</i> criteria for New Entrant warning letters are specified in a forthcoming separate policy
<b>Monitor</b>	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 <i>OR</i> 2. New entrant motor carrier that has had a Safety Audit or Investigation	Exclude the following carrier designations/types: 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

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

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

Primary List	Secondary List	SMS BASIC Performance
	<b>Monitor 3</b>	1 or more of the following BASICS at or above intervention threshold or with unresolved Acute or Critical violations: Driver Fitness, Controlled Substances/Alcohol, HM Compliance

The table below highlights whether the SMS evaluates motor carriers included as part of various compliance and enforcement programs and whether they are subject to being integrated into the Risk-Based Prioritization .

**FMCSA Programs and Prioritization Lists**

Carrier Type/Program	Evaluated by SMS	Subject to Risk-Based Prioritization Lists Rules
New Entrant (NE)	Yes	If High-Risk from SMS
Canada Domiciled	Yes	Yes
Mexico Domiciled - Grandfathered	Yes	Yes
Mexico Domiciled - Certificated	Yes	Yes
Mexico Domiciled - Provisional	Yes	Yes
Mexico Domiciled - Commercial Zone	Yes	Yes
Non-North American (NNA)	Yes	Yes
Passenger	Yes	Yes
HM Permit	Yes	Yes
Household Goods (HHG)	Yes	Yes
Conditional Rated Carrier*	NA	NA

\*The Conditional Carrier Program was officially discontinued in April 2010.

Overall BASICS requiring investigation may be based on SMS results and/or Serious Violations discovered during prior investigations.

SMS incorporates the discovery of Serious Violations in the following way:

- Use in carrier prioritization: When a carrier’s most recent investigation discovered a Serious Violation, the BASIC requires an investigation and the carrier is prioritized for an intervention. The carrier remains prioritized regardless of the age of the investigation and factors into the calculation of the Risk-Based Carrier Prioritization Lists. Investigations performed on carriers with Serious Violations should include the BASIC associated with the Serious Violation in the investigation scope.
- Display and use in BASIC assessment:
  - If the investigation associated with the discovery of the Serious Violation is less than 12 months old, the investigation and overall BASIC columns in SMS are indicated; this remains for 12 months unless a new investigation is performed and uploaded.
  - If the investigation associated with the discovery of the Serious Violation is greater than 12 months old, the investigation and overall BASIC columns in SMS are not indicated and they are viewable to enforcement users only.

Serious Violations are considered resolved when an investigation of the motor carrier is performed and there are no new Serious Violations discovered in the associated BASIC. At that point in time, the Serious Violation will cease to impact prioritization. However, if new Serious Violations are discovered, the investigation and overall BASIC columns are indicated, and a new, 12-month timeframe begins.

In addition, the Risk-Based Carrier Prioritization Lists the Portal will include motor carriers that support National Program Goals, such as passenger carriers and HHG motor carriers that are not based on the SMS BASICs requiring an investigation.

### *High-Risk Carriers*

FMCSA uses the SMS to identify high-risk motor carriers consistent with Section 4138 of the Safe, Accountable, Flexible, Efficient, Transportation, Equity Act: A Legacy for Users (SAFETEA-LU). Motor carriers identified as High-Risk will be subject to immediate action and should be assigned for an Onsite Investigation, which should be completed within 90 days from the release of the prioritization list. Division Offices should work across state borders, as needed, to address these High-Risk carriers.

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

Criteria	High-Risk – Passenger Carrier	High-Risk – Non-Passenger Carrier
<b>SMS BASIC Performance</b> <ul style="list-style-type: none"> <li>Two or more of the following BASICs at or above the 90<sup>th</sup> percentile: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance.</li> </ul>	Occurs in any one month	Occurs in two consecutive months
<b>Time Since Last Onsite Investigation</b>	12 months since last onsite comprehensive investigation	18 months since last onsite focused or comprehensive investigation
<b>Target Date</b>	90 Days	90 Days

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

### **Timeframes for Conducting Investigations on High-Risk Carriers**

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

### *Moderate-Risk and Risk Carriers*

After the carriers identified as High-Risk are assigned, Division Offices are to use the tools provided in the assignment grid described in the *Manager Utilize Tools to Support Assignment Process* section and to consider the availability of resources and other Agency initiatives, in making and managing assignments. Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk. Carriers are placed in the Moderate-Risk or Risk categories based on the criteria below:

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
<b>Moderate-</b>	2 or more of the following BASICs	1. No intervention in last 12	Exclude the following:

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

**Monitor**

The Division Offices should check the Monitor list for carriers whose measured safety risk has increased post intervention, which can be tracked using the reset tool. Division Offices are to use the tools provided in the assignment grid described in the *Manager Utilize Tools to Support Assignment Process* section and to consider the availability of resources and other Agency initiatives, in making and managing assignments. Carriers are placed in the Monitor category based on the criteria below:

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
<b>Monitor</b>	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 <i>OR</i> 2. New entrant motor carrier that has had a Safety Audit or Investigation	Exclude the following carrier designations/types: 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

**Manager Utilize Tools to Support the Assignment Process**

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

These include:

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

**Example**

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

Carrier A in Moderate-Risk has three BASICs above the intervention thresholds (Unsafe Driving 69%, Crash Indicator 72%, and Hours-of-Service (HOS) Compliance 67%). The Trending Tool indicates that

performance in each of these BASICs is improving over a period of time due to good inspection performance.

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

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

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

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

#### **FAQs: Relating to Carrier Prioritization**

##### **Q1: Which carriers take priority: those on Program Office lists or new risk-based prioritization lists?**

A1: Carriers designated as High-Risk are the Agency's #1 investigative priority. Divisions are expected to work across State borders within their Service Center regions to address these carriers as quickly as possible.

After High-Risk, Divisions should determine which carriers to address next based on carrier safety performance data and available resources. This may include addressing carriers on risk-based or Program Office lists. There are four new online data analysis tools to assist the field in making prioritization decisions.

##### **Q1: What are the definitions of Passenger Carrier Supplemental #1 and #2?**

A1: Passenger Carrier Supplemental List #1 contains unauthorized for-hire passenger carriers that have operational activity. Data screening is conducted to ensure that motor carriers on the list are primarily in the business of transporting people. Carriers meeting this definition are placed into Investigate 1 regardless of the time since the last intervention. A passenger carrier on this list has all of the following characteristics:

- Owns or term-leases at least one passenger-carrying commercial motor vehicle, or has ‘passengers’ designated as a cargo,
- Has ‘inactive’ or no authority in the Licensing and Insurance (L&I) system,
- Has inadequate or no insurance on file, AND
- Has one or more interstate inspection or accident in the previous 12 months (inspection or accident occurring after L&I system status became inactive; date of accident or inspection has no significance if there is no authority).

Passenger Carrier Supplemental List #2 contains passenger carriers that are primarily in the business of transporting people, and that meet one of the following conditions:

- Have an over median percentile within the passenger carrier population within a BASIC,
- Have been operating more than two years without a safety rating, OR
- Have been operating with a safety rating that is more than 5 years old.

The time since the last intervention is considered and therefore Passenger Carrier Supplemental List #2 carriers may appear in Investigate 1, 2, or 3.

### **Q2: How do you identify NE motor carriers requiring investigation?**

A2: New Entrant carriers that have been designated as High-Risk and have not received a safety audit require an Onsite Comprehensive Investigation

Note: When assigning an investigation to a carrier in the New Entrant monitoring program, ensure that there are no pending Safety-Audit-related actions. If there is a pending Safety-Audit-related action, forgo assigning the carrier for an investigation until the completion of the pending Safety-Audit-related action; for example, review letter history for the carrier in the Motor Carrier Management Information System (MCMIS) to ensure that there are no pending Expedited Actions.

### **Intrastate Motor Carriers**

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

### ***Determine Intervention Type for Carriers***

The process of assigning carriers to SIs for an Intervention is done in conjunction with determining the appropriate Intervention Type. There are three choices listed for assignment type, each of which is described below:

**Onsite Focused Investigation** – It takes place at the carrier's place of business. It enables FMCSA and its State Partners to focus on the demonstrated safety problem. It involves reviewing records, interviewing personnel, analyzing practices, and identifying corrective actions.

**Onsite Comprehensive Investigation** – It also takes place at the carrier's place of business. It is employed when the carrier exhibits broad and complex safety problems, or in response to national program goals. During an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated.

**Direct NOV** – This is an enforcement mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the Agency's satisfaction, formal enforcement action may be taken if sufficient evidence is available to support violation(s) or in instances where it does not exist the appropriate onsite investigation can be assigned. A Direct NOV is not a prerequisite to the issuance of an NOC.

### ***When to Assign an Investigation***

An investigation may be assigned for any one of the following reasons:

- Measured on-road safety performance issues in relevant Behavior Analysis and Safety Improvement Categories (BASICS);
- Serious Violations cited during a previous investigation; and
- Existing mandates, policies, and national program goals.

The DA/SD or Designee should review the monthly list of carriers starting with High-Risk, followed by Moderate-Risk, Risk, and Monitor. A carrier identified as High-Risk should be assigned first for an Onsite Investigation which should be conducted and completed within 90 days from the release of the prioritization list. Division Offices are to use the tools provided in the assignment grid described in the *Manager Utilize Tools to Support Assignment Process* section and to consider the availability of resources and other Agency initiatives, in making and managing assignments (i.e., Moderate-Risk, Risk, and Monitor). Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk.

### ***Determine the Investigation Type***

Prior to assigning and performing an Onsite Comprehensive or Onsite Focused Investigation, it is necessary to first determine the scope of an investigation. The scope of an investigation is defined by the **number of, and specific, BASICS that require an investigation**. BASICS requiring an investigation are based on Roadside-Identified BASICS, BASICS associated with Serious Violations, and BASICS associated with a complaint.

Next, the DA/SD or Designee should decide on the correct investigation type (Onsite Comprehensive or Onsite Focused). The DA/SD or Designee should select Onsite Comprehensive or Onsite Focused Investigation through the application of investigation selection rules. For the Onsite Comprehensive Investigation selection rules, see [when is an Onsite Comprehensive Investigation Required?](#) For the Onsite Focused Investigation selection rules, see the [When Is an Onsite Focused Investigation Recommended?](#)

For guidance on when to assign a Direct NOV, see [when to assign a Direct NOV](#). For guidance on when to assign an investigation for potential reincarnated/Chameleon and Affiliated Motor Carriers, see [Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers](#).

### ***Addressing Complaints and Associated BASICS***

When investigating motor carriers based on a confirmed, non-frivolous complaint, the scope of the investigation must include the BASIC(s) associated with the complaint. For example, a complaint alleging an Hours of Service (HOS) violation should include an investigation of the HOS Compliance BASIC. If the motor carrier receiving the complaint also has Roadside-Identified BASICS or Serious Violations, those should be counted as BASICS requiring an investigation.

**Note:** If the motor carrier had recently received an investigation of the Roadside-Identified BASICS within the last 12 months and the Division receives a subsequent complaint, the Division does not have to “reinvestigate” the Roadside-Identified BASICS, unless inspection history, since the last investigation, indicates an issue. The investigation scope should focus on BASICS associated with the complaint and any Serious Violations from the most recent investigation.

For additional guidance on handling complaints, see [Complaints](#).

### ***When is an Onsite Comprehensive Investigation Required?***

An Onsite Comprehensive Investigation is **required** when any of the following conditions are met:

- Motor carriers having four or more BASICs requiring an investigation<sup>2</sup>
- Motor carriers in the NE monitoring program that become High-Risk and have not received a SA.
  - Note: When assigning an investigation to a carrier in the NE monitoring program, ensure that there are no pending Safety-Audit-related actions. If there is a pending Safety-Audit-related action, forgo assigning the carrier for an investigation until the completion of the pending Safety-Audit-related action.
- Example: Review letter history for the carrier in MCMIS to ensure that there are no pending Expedited Actions.
- Passenger carriers that have not received an Onsite Comprehensive 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 an Onsite Comprehensive Investigation results in a Conditional or Satisfactory rating, then the review should be uploaded as a non-ratable review type;
- If an Onsite Comprehensive Investigation results in an unsatisfactory rating, then the review should be uploaded as a ratable review.
- HM-Safety-Permitted motor carriers that do not have a Satisfactory Safety Fitness Rating.
- Motor carriers with an Unsatisfactory Safety Fitness Rating issued prior to 2001.

#### ***When is an Onsite Focused Investigation Recommended?***

An Onsite Focused Investigation is **recommended** when a motor carrier has three BASICs requiring an investigation.

In **all other cases**, an Onsite Focused Investigation should be performed except in those cases when:

- A Direct NOV is appropriate;
- A carrier meets or exceeds the Intervention Threshold in the Crash Indicator BASIC only. These motor carriers may receive an Onsite Focused or Onsite Comprehensive Investigation. The DA/SD or Designee should refer to the Significant Crash/Incident Memorandum of April 29, 2008 for guidelines that can be used in making this determination.

#### **FAQs: Relating to Investigation Scope**

##### **Discovering [Serious Violations](#) Outside of BASICs Requiring an Investigation**

Q1: What should the SI do if he or she finds Serious Violations outside of the investigation scope?

A1: If the SI discovers occurrences of Serious Violations outside of the investigation scope, it is necessary to expand the number checked in accordance with policies on minimum record sampling. Expanding the number checked does not represent an expansion into full BASIC record sampling. Record sampling should be limited to only the specific Serious Violation discovered.

**Example:** A motor carrier has 20 vehicles subject to the FMCSR and you are conducting an Onsite Focused Investigation on the HOS Compliance BASIC, but you subsequently discover two occurrences of 396.11(a) violations, a Vehicle Maintenance-related Serious Violation. The SI should not ignore these violations, but instead document them in CAPRI. Based on record sampling, you need to sample seven vehicles for 30 days for a total of 210 Driver Vehicle Inspection Reports (DVIRs). Expanding the number checked does not represent expansion in scope to a full Vehicle Maintenance BASIC investigation. The SI should only sample DVIRs in this example.

#### ***When to Assign a Direct NOV***

The system recommends a carrier for an NOV directly, without requiring an investigation, for carriers that match either of the following conditions:

- The carrier is Roadside-Identified in the Driver Fitness BASIC only. However, an NOV should only be issued for Driver Fitness violations that are immediately correctible and readily verifiable, such as driving without valid medical certificates or proper CDLs. If the carrier has any drivers with Red Flag Violations, these violations should be included in the Direct NOV, and do not require further investigation. Issuing an NOV does not preclude FMCSA from issuing an NOC. An NOC may be issued for the violations cited in the NOV. FMCSA may consider whether adequate evidence of corrective action was submitted in response to the NOV, in deciding whether to issue an NOC.

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

### ***Make Assignments***

The DA/SD or Designee 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. These steps are presented sequentially in the effort, for ease of guidance. When making an assignment, the DA/SD or Designee should:

- Consider the SI's existing workload as well as location and travel requirements.
- Make assignments through the FMCSA Portal based on the investigation selection rules (described in [Determine Intervention Type for Carriers](#)). Within the Portal's Make Assignment component, the DA/SD or Designee will use the Search for Companies functionality to select one or more Prioritization Lists of assignment type "Review." This will produce a list of motor carriers from which to make an assignment. Based on a review of BASICs summary data provided in the Portal and detailed BASICs information available through SMS, the DA/SD or Designee will select one or more motor carriers for assignment.
- Annotate the assignment with additional information that the DA/SD or Designee wishes to communicate to the SI, including whether a Controlled Substances/Alcohol Supplemental Review is required (as described below) and/or whether Red Flag Violations have been identified at the time of assignment.

Consider setting 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. The Portal will require a due date for High Risk carriers. ***Assign a Controlled Substances/Alcohol Supplemental Review***

In some instances, a Controlled Substances/Alcohol Supplemental Review will be performed as part of an Onsite Focused Investigation. The DA/SD or Designee will assign a Controlled Substances/Alcohol Supplemental Review when ANY one of the following three criteria is met:

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

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

### ***Assign Hazardous Materials (HM) Supplemental Review***

In some instances, an HM Supplemental Review will be performed as a part of an Onsite Focused Investigation. The DA/SD or Designee will assign an HM Supplemental Review if the motor carrier meets the following criteria:

- The HM Compliance BASIC will not be investigated as part of an Onsite Comprehensive Investigation or an Onsite Focused Investigation;
- The motor carrier transports HM; and
- The motor carrier has not had an investigation that examined HM compliance (as determined by reviewing Part C of the investigation) within the last 24 months.
- The HM Supplemental Review and HM Compliance BASIC investigation are very similar; however, there are some key differences. In particular, during an HM Supplemental Review, the sampling requirements are different and the investigator will not be examining the following areas:
  - Marking, labeling, and placarding requirements
  - Cylinder, IBC, and Cargo Tank requirements (beyond cargo tank testing and inspection records noted below)
  - State and local routing requirements
  - HM Driving and Parking regulations

### ***Assign a Direct NOV***

Direct NOV's may be assigned through the Portal in the same way that an Onsite Comprehensive or Onsite Focused Investigation is assigned. To make the assignment, DAs/SDs or Designees will select "Direct NOV" from the Review Type dropdown selection, enter the SI code, reason for assignment, and any comments, and either accept the defaulted due date or enter a new one.

### ***Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers***

This section applies to the investigation of a motor carrier that is suspected of reincarnation to avoid a FMCSA Out of Service (OOS) Order or revocation of operating authority registration resulting from: a final unsatisfactory safety rating, an order to cease operations for failure to pay a civil penalty, an imminent hazard OOS order, or any of the New Entrant Program OOS conditions (failed Safety Audit, failure to submit to a Safety Audit, failure to provide approved Corrective Action Plan (CAP) as a result of expedited actions.) If FMCSA suspects that a motor carrier reincarnated to avoid a negative safety performance history, and the motor carrier has not been subjected to an OOS order or revocation of its operating authority, Safety Auditors/Investigators must consult with the Division Administrator (DA), and the DA must in turn consult with the Service Center Enforcement Team (SCET) regarding whether to initiate an investigation that may lead to linking the carrier records. The type of negative performance history a motor carrier may attempt to avoid includes, but is not limited to, Conditional safety ratings, OOS rates resulting in denial of a hazardous material safety permit, or enhanced civil penalties, violations that would subject the carrier to a Safety Audit (SA) or compliance review/investigation, or Safety Measurement System (SMS) data. Prioritization of resources should focus on motor carriers that are suspected of reincarnation to avoid a FMCSA OOS Order.

Reincarnated motor carriers can be detected in a variety of ways including FMCSA's vetting program, the New Applicant Screening (NAS) tool, compliance reviews, safety audits, crash and Hazardous Materials incident investigations, roadside inspections, and other complaints, interventions, reviews, and fitness determinations.

Questions within the Safety Audit are designed to elicit information that may identify a motor carrier that is a reincarnation or affiliate of a previous entity.

Affirmative answers to any one or all of these questions are information that should cause the safety auditor/investigator to suspect reincarnation/affiliation. In that event, the safety auditor/investigator should consult with the DA (or his/her designee), and the DA, after consultation with the SCET, may choose to stop the SA and initiate a non-ratable review. Scheduling a non-ratable review prevents the possibility that a suspected reincarnated carrier could potentially pass a New Entrant Safety Audit.

As soon as practicable, the DA should notify the SCET and appropriate Field Attorney upon discovery of information that requires a chameleon/affiliate investigation. The DA may choose to have the investigator contact the SCET directly. The SCET and Field Attorney can provide advice and guidance on the applicable law and evidence to collect.

The DA should forward to the SCET and appropriate Field Attorney the investigator's summary, key analysis factors, document checklist and associated evidence. When Field Counsel in coordination with the DA and the SCET agree that further action is warranted, the next step is for counsel to prepare an out-of-service order, as appropriate, and consolidation of record order under § 386.73.

This section does not supersede existing policies related to charging FMCSR violations but rather supplements the tools available to FMCSA. For example, issuing an OOSO/record consolidation order does not necessarily preclude issuing a NOC charging safety, commercial, or hazardous materials violations that may have been discovered during the course of the investigation/compliance review.

### ***Reasons for Changing the Intervention Type***

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

- When there is reason to believe that the carrier is not subject to the FMCSR or any segment thereof.
- 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 an investigation that were present at the time of the initial contact. If the number or type of BASICS requiring an investigation changes in this time period, the SI should discuss with the DA/SD or Designee whether there is an impact on the investigation type based on the application of the business rules on investigation type selection.
  - If a motor carrier is assigned an Onsite Focused Investigation based on the "Other" category in the Intervention Threshold table and it is subsequently discovered that the motor carrier should be subject to the lower Intervention Thresholds (passenger carrier or HM percentiles), thus possibly changing the assignment type to Onsite Comprehensive Investigation based on the lower thresholds, then discuss with the DA/SD or Designee whether to change the investigation assignment.
  - If after contacting the carrier the Roadside-Identified BASIC is no longer Roadside-Identified, that BASIC should continue to be investigated.
  - If the assigned intervention is a NOV (not requiring an investigation), then you may request a modification to the Intervention Type if, for example, the violations to be cited on an NOV are not both immediately correctable and readily verifiable.

### ***Handling the Motor Carrier Response to the Direct NOV***

The Direct NOV includes the specific terms FMCSA has determined are appropriate for motor carrier compliance. The DA/SD or Designee determines if the motor carrier's response adequately addresses the identified compliance deficiencies.

- If the motor carrier's response is adequate, a written response should be provided to the motor carrier to close out the action and then included in the motor carrier file. The NOV is then closed in EMIS.
- If the motor carrier response is inadequate or fails to meet the terms of abatement in the NOV, then this would warrant escalation. If sufficient evidence does not exist for an NOC, then an Onsite Focused Investigation should be assigned (or Onsite Comprehensive Investigation in the case of Passenger Carriers with no safety rating or not investigated within 12 months).
  - If the NOV is converted to an NOC, then the assignment should be updated in the Portal and conversion from NOV to NOC should take place in CASERITE.
  - If the NOV is converted to an Onsite Focused or Onsite Comprehensive Investigation, then the assignment should be updated in the Portal and the investigation performed and uploaded. If an NOC is warranted, the conversion from NOV to NOC should take place in CASERITE.

***The Motor Carrier Should Be Told the Following if Questioning the Necessity of an Investigation or CR Based Upon Improved BASIC Percentiles***

Motor carriers should be informed that the BASIC percentiles are simply one of many factors considered in selecting motor carriers for an investigation or CR.

***Tools Available to Assist the DA/SD or Designee in Prioritizing Motor Carriers for Investigations or CRs***

An investigation or CR can be conducted on any motor carrier or operation for which FMCSA has jurisdiction. A DA/SD or designee must determine which motor carriers present the highest risk to the public based on the respective safety data, the Division's safety plan, and the Agency's mission and goals.

***FMCSA's Compliance Program Priorities***

**Note:** These are not in priority order.

- 49 CFR 385.17 - Change to safety rating based upon corrective actions
- 49 CFR 386.12 - Complaint
- High-Risk Carriers
- HM Permit Prioritization List
- Unsatisfactory Rated HM/Passenger Carriers
- HM Prioritization List
- Passenger Carrier Prioritization List
- Significant Crash/Incident
- GOTHAM HHG Performance Goal

***How the Division Should Handle a 49 CFR Part 385.17 Request for Upgrade Based on Corrective Actions***

Data analyses have continuously demonstrated that CRs conducted within 12 months of a prior review disclose a comparatively low rate of critical and acute violations. 49 CFR Part 385.17 enables the DA/SD or designee to better use his/her limited resources by effectively directing his/her focus on high risk motor carriers. Therefore, the FAs are strongly encouraged to use their discretion to administratively upgrade the motor carrier's safety fitness rating based upon evidence of corrective action submitted by the motor carrier under 49 CFR Part 385.17. Additional guidance on [Safety Rating Implications for Onsite Focused Investigations](#) can be found below.

For more information, see [Safety Ratings Petitions fewer than 49 CFR Part 385.15 and 49 CFR Part 385.17](#).

### ***Responsibility for Ensuring that All Serious Non-Frivolous Complaints is Properly Investigated***

The Assistant Administrator (AA) is primarily responsible for ensuring that all non-frivolous complaints are investigated in accordance with the requirements in 49 CFR Part 386.12. For additional information on ensuring that all non-frivolous complaints are properly investigated, see [Addressing Complaints and the Associated BASICS](#).

### ***Role that State MCSAP Partners are expected to Play in the HM Safety Permits (HMSP) Program***

The DA/SD or designee has been asked to encourage his/her State MCSAP partners to adopt the new HMSP regulations into State law. The DA/SD or designee is encouraged to allow any effort in regard to the HMSP program to be accepted as part of their Commercial Vehicle Safety Plans (CVSP).

### ***Role of the Division Office in the HMSP Program***

FMCSA Division staff should become knowledgeable about the HMSP program and assist the Hazardous Material Division, Washington, DC with its implementation. Compliance with the HMSP program requires a cooperative and coordinated effort from the Enforcement and Compliance Division.

### ***Where the DA/SD or Designee can obtain a List of HMSP Pending Applications, Temporary Permits, Permanent Permits, and Denied Applications***

The DA/SD or designee can obtain a list of pending applications, temporary permits, permanent permits, and denied applications from MCMIS: <http://mcmis.fmcsa.dot.gov> or (<http://portal.fmcsa.dot.gov>), by selecting Subsystem, Monitoring, Statistics, View HM Safety Permit Statistics.

### ***Conducting Investigations on Motor Carriers Currently in MCMIS with an Unsatisfactory Safety Rating***

- An Onsite Comprehensive Investigation is required on ALL motor carriers with an unsatisfactory safety rating issued prior to 2001 (and has not been issued an OOS Order). This is a mission critical activity and the completion of these reviews will be monitored closely.
- Motor carriers issued an unsatisfactory safety rating after 2001 should be handled in accordance with policy regarding OOS Carriers with Activity.

### ***DA/SD or Designee Can Obtain a List of Unsatisfactory Rated Motor Carriers for His/her Respective Division***

The DA/SD or designee can obtain a list of unsatisfactory rated motor carriers for his/her respective Division from the Portal (<https://portal.fmcsa.dot.gov>). The Conditional rated motor carrier list from GOTHAM also includes unsatisfactory rated motor carriers.

### ***DA/SD or Designee Can Obtain a List of HM Motor Carriers for His/her Respective Division***

The DA/SD or designee can obtain a list of HM motor carriers for his/her respective Division from the Portal (<https://portal.fmcsa.dot.gov>). HM Carrier list is also available in GOTHAM, under "Carrier Registration."

### ***DA/SD or Designee Can Obtain List for Follow-up and Monitoring of Motor Carriers with Rejected Operating Authority***

Each DA/SD or designee can obtain this report from FMCSA's Portal at <https://portal.fmcsa.dot.gov> by selecting "Inappropriate Activity" under the Carrier Registration section of GOTHAM. This report identifies motor carriers that have interstate activity, or have been in a crash, after their application for operating authority has been rejected.

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<sup>1</sup> The calculation of a carrier's Safety Fitness Rating is currently based on violations of the Acute and Critical regulations cited in the investigation.

<sup>2</sup> Insurance/Other Indicator do impact the prioritization of a motor carrier, but it **should not** be counted when determining the number of BASICs requiring an investigation when deciding whether an Onsite Focused or Onsite Comprehensive Investigation is appropriate. Also, if the Insurance/Other Indicator are the only reason why a motor carrier has been prioritized for an intervention, then an NOV should be considered. An NOV would only be appropriate if there were no evidence that the violation had been corrected. Example: If the Serious Violation was related to no authority and the L&I database shows the carrier currently has authority, then a Direct NOV would not be appropriate.

### *6.2.1.1.2 Procedures for Uploading*

#### *Procedures for Uploading the Investigation or CR to MCMIS*

The DA/SD or his/her designee will ensure that the SI uploads each investigation or CR, within the timelines, as follows. If the proposed rating is Unsatisfactory, the SI should upload the investigation or CR to MCMIS within **seven** calendar days after the closeout session. All other reviews should be uploaded to MCMIS within 10 calendar days after the closeout of the investigation or CR. **If the investigation or CR is not uploaded within 30 days, it will not be rated** per 49 CFR Part 385.11(a).

Once the **SI** uploads the completed investigation or CR to MCMIS, the DA/SD or designee will review the completed investigation or CR report to ensure that the report is consistent with Agency policies and procedures as written in the Investigator Manual of the effort. If the hard copy of the investigation or CR report is unavailable, personnel can access an electronic version through MCMIS at:

<http://mcmis.fmcsa.dot.gov> or (<https://portal.fmcsa.dot.gov>) by selecting Subsystem, Monitoring, Upload/Authorize, View Uploaded SAs/Reviews (or from within the Authorize SA/Review selection).

From within MCMIS, the DA/SD or designee will use the Monitoring subsystem, Upload/Authorize header, Authorize SA/Review selection to view all currently uploaded investigation or CR reports (Select Type "Review"). The Reviews Needing Authorization page will display all non-edit rejected investigation or CR reports completed on motor carriers domiciled within the Division or territory.

The DA/SD or Designee reviews the Final Investigation Report to ensure that it meets Agency quality standards, including:

- Was the intervention performed as assigned? If not, was the reason for the switch documented? Did the SI get the DA/SD's or Designee's approval? Was the switch justified?
- Were the BASICs investigated based on data at the time of initiation vs. assignment?
- Did the SI make appropriate decisions about follow-on interventions (NOC, NOV) for both carriers and drivers? Were the related interventions appropriately recorded?
- Did the SI investigate all drivers with Red Flag Violations and document the investigation results?
- If required, did the SI conduct a Controlled Substances and Alcohol Supplemental review and document the investigation results?
- Did the SI upload appropriate documents?
- Do the Process Breakdowns selected seem appropriate given the explanation in the investigative report?
- Does the description of the Process Breakdown justify why the process is broken?
- Are the Recommended Remedies customized to the carrier?
- Is the Investigation Report concise, free of opinion and limited to fact?
- Was the Investigation Report spellchecked?

- If violations were discovered in BASICS that were not Roadside-Identified and enforcement was taken, were Process Breakdowns documented?
- Do violations in BASICS that were not Roadside-Identified seem reasonable given the path of the investigation?

If the answer to any of these questions is “no,” then the DA/SD or Designee should discuss them with the SI and have him or her correct the issue as appropriate.

When the DA/SD or Designee assigns an Onsite Focused Investigation, the following table provides an overview of all applicable parts and subparts that the SI should have examined depending on which BASIC is being investigated.

**Note: The Crash Indicator BASIC is not listed in the table since the scope of these investigations may vary depending on the specific circumstances.**

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

**Onsite Investigation – Focused**

	Driver Fitness	Controlled Substances/Alcohol	Vehicle Maintenance	HOS Compliance	HM Compliance	Unsafe Driving
<b>Safety</b>						
40 – Drug & Alcohol Testing		●				
380 – Special Training	●			⊗ .503(b), .505, .513		●
382 – Drug & Alcohol Testing		●				
383 – Commercial Driver’s License (CDL)	●	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR
390 – FMCSR General	⊗ .3, .15, .23, .25	⊗ .15	⊗ .3, .15, .21, .23, .25	⊗ .3, .15, .23, .25		⊗ .3, .15, .23, .25
391 – Driver Qualifications	●	⊗ .23(d-m), .41-.45	⊗ .13	⊗ .21, .41, .43		⊗ As appropriate
392 – Driving of Motor Vehicles	⊗ .3, .9a(a)	⊗ .9a(a)	⊗ .2, .9, .62, .9a(a)	⊗ .3, .6, .9a(a)	⊗ .2	●
393 – Vehicle Parts and Accessories			●			

395 – Hours of Service (HOS)				●		
396 – Vehicle Maintenance			●			

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

**Onsite Investigation – Focused**

	Driver Fitness	Controlled Substances/Alcohol	Vehicle Maintenance	HOS Compliance	HM Compliance	Unsafe Driving
<b>Hazardous Materials</b>						
107 – HM Program Procedures (Registration)					⊗ .101 - .405 .501 - .504 .601 - .620	
171 – HM General					⊗ .1, .2, .15, .16	
172 – HM Table/Communication	⊗ .704				⊗ .200 – .205 .300 – .338 .400 – .450 .500 – .560 .600 – .606 .700 – .704 .800 – .822	
173 – Shipper Requirements					●	
177 – Carriage by Highway	⊗ .816				●	⊗ .810, .816, .823
178 – Package Specifications					●	
180 – Package Quality and Maintenance					⊗ As applicable	
385 – Safety Fitness Procedures					.401-.423	

397 – HM Driving and Parking					⊗ As applicable	⊗ .2, .3, .5, .19, .67
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● Full review of part

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

**Onsite Investigation – Focused**

	Driver Fitness	Controlled Substances/Alcohol	Vehicle Maintenance	HOS Compliance	HM Compliance	Unsafe Driving
<b>Other</b>						
325 – Noise Emission						
387 – Financial Responsibility	⊗ As applicable	⊗ As applicable	⊗ As applicable	⊗ As applicable	⊗ As applicable	⊗ As applicable
398 – Transporting Migrant Workers	⊗ .3		⊗ .4	⊗ .6		⊗ .3, .4
399 – Employee Health and Safety						

The DA/SD or designee will select the appropriate designation under the Action drop-down box:

- Approve: When the investigation or CR report has been completed, in accordance with established policy, or
- Disapprove: When the investigation or CR report contains errors and/or inconsistencies with established policy. When an investigation or CR is not approved, the DA/SD or designee must inform the SI of the errors and/or inconsistencies, and ensure the SI makes the corrections and re-uploads the corrected report to MCMIS.

Once an action has been selected, the DA/SD or designee will select Update to complete the upload to MCMIS process.

***Procedures for Uploading Federal Inspections to MCMIS***

***Division’s Responsibilities with Regard to Uploading Federally-Conducted Commercial Vehicle and Driver Inspections to MCMIS***

Prior to February 13, 2006, Computing Technologies processed Federally-conducted inspections. After that date, the responsibility to ensure Federally-conducted commercial vehicle and driver inspections are uploaded to MCMIS was delegated to each DA/SD or designee and SC Director. Each DA/SD or

designee and SC Director is accountable for the accuracy, timeliness, and quality of the inspections performed by his/her staff.

Each Division will ensure that:

- From within ASPEN--by selecting Tools, Manager Configuration, Communications, Destination--the SAFER State Mailbox field is configured for his/her local SAFETYNET mailbox;
- From within the ASPEN software Manager Configuration utility, under Printed Report, the ASPEN Report Header is changed to reflect the Division office mailing address; and
- The local SAFETYNET administrator ensures prompt inspection uploads and confirmations.

### ***Steps a Division Must Take to Process Federally-Conducted Commercial Motor Vehicle (CMV) and Driver Inspections***

The steps to process inspections are as follows:

- The inspector completes the inspection and immediately uploads the inspection via SAFER to the Division SAFETYNET Mailbox. If necessary, the inspector should notify the Division SAFETYNET administrator that the inspections have been uploaded.
- The Division SAFETYNET administrator downloads the inspection file to the SAFETYNET inbox. The downloaded file is then “tagged” and processed by the SAFETYNET administrator. An activity log will be generated which must be reviewed to verify that all the inspections were processed (imported) without error. Any records with errors should be reported to the inspector who completed the inspection so that the errors can be corrected in ASPEN and re-uploaded.
- The Division SAFETYNET administrator should review the inspection data for quality and optionally process the Carrier Search. Once Division review is complete, the inspections must be uploaded to MCMIS through SAFETYNET communications function.
- The next business day after upload, the Division SAFETYNET administrator will download a “confirmation file” to SAFETYNET where it will be processed automatically. The administrator can view the overall status of the inspections in addition to any warning or error messages where applicable. Any records with errors should be reported to the inspector who completed the inspection so that the errors can be corrected in ASPEN and re-uploaded into SAFETYNET. The corrected record will update the existing record and be re-uploaded with the next inspection upload.

### ***Divisions Can Contact the Following Concerning Technical and/or Policy-Related Issues Regarding the Upload and Certification Process***

Technical support questions regarding the inspection upload and certification process should be directed to the Technical Support Hotline at (617) 494-3003.

#### ***6.2.1.1.3 Terminal, Branch, or Division Reviews***

##### ***Procedures for Conducting a Terminal, Branch, or Division Review***

Use the following procedures when conducting a Terminal, Branch, or Division Review:

- A SI should not conduct an investigation at a location other than the motor carrier’s or shipper’s principal place of business (PPOB) without approval of the DA/SD or designee whose State or territory contains that PPOB and the DA/SD or designee whose State or territory contains the location where the investigation will be conducted.

- For investigations completed at locations other than the motor carrier's or shipper's PPOB, the SI should complete the address tab and identification tab of Part A of the laptop CAPRI software, as if the investigation were conducted at the motor carrier's or shipper's PPOB. The SI must base all other entered information on the specific terminal operation (e.g., number of drivers, equipment, etc.) The SI must base records selection on the number of drivers and vehicles operating out of that terminal. Investigations that are performed on a portion (terminal, branch, etc.) of a motor carrier's or shipper's operation should be uploaded to MCMIS.

When performing a Terminal Review, before citing the motor carrier or shipper for any record keeping violations, the SI must ensure that records are not maintained elsewhere.

***If the Terminal Review is Not Conducted at the Motor Carrier's or Shipper's PPOB***

When a terminal review is conducted at a location, other than the motor carrier's or shipper's PPOB, the DA/SD or designee must so notify the Division whose jurisdiction includes the motor carrier's or shipper's PPOB. Upon completion of the terminal review, the report will be uploaded to the Electronic Document Management System (EDMS) and notification will be provided to the appropriate Division.

***6.2.1.1.4 Shipper Terminal Reviews***

***Definition of a HM Shipper Terminal Review***

The HM shipper terminal review is an in-depth review of the shipper facility's compliance with the applicable HMR.

***If the HM Shipper's PPOB is in Another State or Country***

You should notify the DA/SD or designee of the State responsible for the shipper's PPOB when a shipper terminal review will be conducted on a shipper's terminal located in another State.

***General Guidelines for Conducting a HM Shipper Terminal Review***

Following are the general guidelines for conducting HM shipper terminal reviews:

- The DA/SD or designee will follow the policies in the Investigator Manual of the effort, as those policies apply to a shipper terminal review and
- The DA/SD or designee should choose shippers for review based on known violations of acute/critical regulations found during motor carrier, shipper, or facility reviews, prior compliance/enforcement history, complaints, roadside inspections, or HM incidents.

***When a Shipper is Also a Motor Carrier, Motor Carrier Operations Should be reviewed under the Following Circumstances***

When a shipper is also a motor carrier, a review of the motor carrier operations will not be conducted unless:

- There are indications of substantial noncompliance with the FMCSR or HMR;
- The motor carrier has a rating factor less than Satisfactory; and
- The motor carrier has not been reviewed in the past 12 months or has never been reviewed.

***If the Shipper Review (SR) is Not Conducted at the Shipper's PPOB***

Generally, the SI should conduct a SR at the location from which hazardous materials are being shipped. When this is a location other than the shipper's PPOB, the DA/SD or designee must so notify the Division whose jurisdiction includes the shipper's PPOB.

### ***Completing Part A of the SR Report When the SR is conducted at a Location Other than the Shipper's PPOB***

For a SR completed at a location other than the shipper's PPOB, the SI must:

- Complete the address tab and identification tab of Part A of the SR report as if the SR were conducted at the shipper's PPOB;
- Check "terminal" in the address tab under location of review and all other entered information must be based on the specific terminal operation (e.g., hazardous materials shipped); and
- Include the terminal location in the Part C comments to the SR report.

### ***Steps in Initiating an Enforcement Action against a HM Shipper***

The following steps should be taken when initiating an enforcement action against a HM shipper:

- The investigating Division will issue an enforcement case number;
- The investigating Division will prepare the case and will issue the NOC;
- The SC that normally processes that Division's enforcement cases will process the case; and
- Upon issuance of the NOC, and at the conclusion of enforcement action, the investigating Division will notify the DA/SD or designee of the Division whose State or territory contains the shipper's PPOB.

#### ***6.2.1.1.5 Special Topic: Motor Carriers of Passengers***

### ***Appropriate Handling of a Passenger Carrier that has Operating Authority/Licensing Noncompliance***

When it is discovered that a NE passenger carrier has operated before receiving required passenger operating authority, a non-ratable CR or non-ratable on-site investigation should be conducted instead of a SA, and appropriate enforcement action taken. This policy applies only to a passenger carrier that has never previously had operating authority.

#### ***6.2.1.1.6 Government Shipments of Hazardous Materials***

### ***Process to follow if a Government Entity is involved in a SR***

There may be situations where a governmental agency shipper contracts with a commercial motor carrier to transport goods, particularly, hazardous materials. In these cases, the governmental agency is subject to the HMR. If a SI discovers any violations of the HMR during a SR involving a governmental agency, the Division should handle communications informally whenever possible. If informal communications do not achieve compliance with the regulations, the DA/SD or designee will use the letter in [\*Illustration HM-1\*](#) to notify the agency involved.

### ***Division Should Send the Letter to the Following***

The Division should send the letter, via certified mail, to the governmental employee or employees responsible for the shipment and the agency's headquarters (e.g., head of the agency).

### ***Requirements of the Letter and the Role of the Division***

The letter requires the agency to submit a “plan for corrective action” to the Division that conducted the investigation within 30 days of the receipt of the letter. The DA/SD or designee will review the plan to determine if it is sufficient to prevent future violations.

- If the DA/SD or designee finds the “plan for corrective action” to be sufficient to prevent future violations, the Division should communicate this to the government agency in an appropriate format.
- If the DA/SD or designee finds the “plan for corrective action” to be insufficient to prevent future violations, the Division should work with the government agency formally or informally to make appropriate revisions to the plan.
- If the government agency does not respond, or the DA/SD or designee finds the response inadequate after making reasonable attempts to work with the government agency to address the problems in a timely manner, the Division should forward information about ongoing violations to the OIG for the Department of Transportation. FMCSA personnel will assist the OIG as needed.

#### **6.2.1.1.6.1 Illustration HM-1: Agency Notification Letter**

##### **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

John Doe, Director of Transportation  
XYZ Government Agency  
12345 Anywhere Lane  
Washington, D.C. 12345  
Subject: Violation of 49 C.F.R. \*.\*  
Mr. Doe    Agency Notification Letter

The Federal Motor Carrier Safety Administration has conducted an investigation into your agency's compliance with the Federal Hazardous Materials Regulations. Our investigation has discovered that your agency failed to properly classify, describe, package, and label a shipment of hazardous materials (*insert description of HM*) submitted to (*insert name of the carrier*) for transportation, on or about (*insert date(s)*), destined for (*insert location*).

Your Agency is in violation of 49 C.F.R. § (or §§) (*insert section number(s)*), in that you offered hazardous materials for transportation in commerce that was not properly classified, described, packaged, marked, labeled, and in condition for shipment (*insert specifics on shipment(s)*).

As a Federal Agency, the (insert agency name) is subject to and must abide by the Hazardous Material (HM) statutes (49 U.S.C. 5101 *et seq.*), and the regulations promulgated there under (49 C.F.R. Parts 100-185). Congress specifically excluded the United States Postal Service, as well as a department, agency, or instrumentality of the Government from all civil and criminal penalties under the HM Act. As the agency responsible for the enforcement of the hazardous material regulations within the transportation industry upon public highways, the Federal Motor Carrier Safety Administration is charged by Congress to assure a safe and efficient transportation system. To improve safety upon the nation’s highways the FMCSA has an elaborate compliance and enforcement program to bring about compliance by the private industry sector. The FMCSA also regulates HM transportation made on behalf of, and by, all governmental agencies. Consequently, this letter serves as notification of the discovered violations and is a demand for corrective action on the part of your agency.

To assist your agency in improving compliance, please submit a detailed report to my attention within 30 days of receipt of this letter. Your letter must outline the methods and procedures your agency is taking to correct the violations discovered during our investigation. My staff will review your reply letter and make recommendations, if necessary, to improve your agency's compliance with the HM regulations.

If further information is needed or if you wish to schedule an interview, please call (*insert name*) at (*insert telephone number*). If we do not hear from you within 30 days from receipt of this letter, the violation information will be forwarded to the Office of Inspector General for the Department of Transportation for further action. Thank you for your understanding in this matter.

Sincerely

(Insert Name)

State Director

cc: *The employee(s) responsible for the shipment*

#### **6.2.1.1.7 Complaints**

##### ***Definition of a Complaint***

A complaint is a written allegation of a violation of a regulation or law from any person, individual, organization, or government entity.

##### ***When Complaints are Investigated***

The DA/SD or designee is responsible for ensuring timely investigation of non-frivolous written complaints alleging any substantial violation of the FMCSR, FMCCR, HMR, in accordance with the procedures set forth in 49 U.S.C. 31143 and 49 CFR Part 386.12.

##### ***Definition of a Congressional Request***

A Congressional request is a jurisdictional complaint or a written request to perform an investigation on a particular motor carrier that originated from a member of Congress. It includes a jurisdictional complaint that originated from an individual or organization and was forwarded by a Congressional member to FMCSA.

##### ***Definition of a Jurisdictional Complaint***

A jurisdictional complaint is a written allegation of a violation of a regulation or law administered by FMCSA.

##### ***Definition of a Non-Jurisdictional Complaint***

A non-jurisdictional complaint is a written allegation of a violation of a regulation or law administered by another Federal, State, or local government agency.

***Definition of an Anonymous Complaint***

An anonymous complaint is a written allegation of a violation of a regulation or law administered by FMCSA which fails to contain the identity and signature of the complainant.

***If a Written Complaint Lacks the Name, Signature, Address, and Telephone Number of the Complainant***

A complaint that does not contain the complainant's identity is an anonymous complaint.

You may investigate anonymous complaints alleging substantial violations that are timely, non-frivolous, and jurisdictional. You should make reasonable attempts to obtain the identity and signature of the complainant as required by 49 CFR 386.12. Under such circumstances, remind the complainant of the protections provided under the law and our policy not to disclose his/her identity. See [Drivers are protected under the Whistleblowers Act](#) below.

Information received from an anonymous complainant does not meet the regulatory requirements of 49 CFR 386.12 (since it may not contain a signature, name, address, telephone number, etc.). If all required information cannot be obtained, the DA/SD or designee should review available information (SMS BASIC percentiles, accidents, safety rating) and determine if assignment for investigation is appropriate. An anonymous complaint should not be assigned as "Reason for Review – Complaint". An assignment for investigation may be made under other FMCSA program priorities: SMS, etc.

***Definition of a Non-Frivolous Complaint***

A non-frivolous complaint is a written allegation of a violation of a regulation or law administered by FMCSA and contains sufficient detailed descriptive information of events (e.g., names of involved individuals, specific circumstances, etc.) to create a reasonable suspicion that such violation occurred or is occurring. Consider any allegation of a non-frivolous complaint as reliable, pending further investigation.

***Definition of a Timely Complaint***

A timely complaint is a written allegation of a violation of a regulation or law which is occurring or has occurred within 60 calendar days before the date when FMCSA received the complaint. In the case of a complaint that was forwarded by a member of Congress, FMCSA uses the date of receipt by the Congressional member to determine timeliness.

***Types of Violations Generally are Investigated from a Complaint***

Substantial violations generally are investigated. These are defined as any violation of an acute or critical regulation as listed in 49 CFR Part 385, Appendix B.

Complaints alleging non-substantial violations generally are not investigated. In any event, a copy of the complaint must be placed in the motor carrier's file (EDMS) for future reference.

***A Complaint of a Substantial Violation Must Contain this Information***

At a minimum, a complaint of a substantial violation of the FMCSR and HMR must contain all elements required by 49 CFR Part 386.12.

### ***A Complaint Must be signed by the Complainant***

Each complaint must be signed by the complainant and must contain the following information as required by 49 CFR Part 386.12(a):

- The name, address, and telephone number of the person who files it;
- The name and address of the alleged violator and, with respect to each alleged violator, the specific provisions of the regulations that the complainant believes were violated; and
- A concise but complete statement of the facts relied upon to substantiate each allegation, including the date of each alleged violation.

### ***Guidance for handling Non Frivolous complaints of Safety and HM***

#### **Determining if a Complaint Should be Investigated**

The DA/SC should determine if the violation meets the definition of a substantial violation in 49 CFR 386.12(a) which is one which could reasonably lead to, or has resulted in, serious personal injury or death. A substantial violation also includes violation of a critical or acute regulation, a compliance, safety, accountability (CSA) serious violation, or an out-of-service violation.

#### **General Procedures**

1. Document receipt of the complaint using the Electronic Document Management System (EDMS). Include the manner in which the complaint was received, date of receipt, and identification, if known, of the complainant.
2. Determine if the complaint is non-frivolous. A non-frivolous complaint, including those that are anonymous<sup>1</sup>, should contain the elements listed below.
  - a. The name, address, telephone number, and signature of the complainant;
  - b. An allegation of a substantial violation of the FMCSRs or HMRs, as defined in this policy;
  - c. An allegation of a substantial violation that occurred within the previous 60 calendar days;
  - d. Adequate information to clearly identify the alleged violator, such as the name, address, or USDOT number;
  - e. Sufficient information to identify the specific regulation(s) that the complainant believes were violated; and
  - f. A concise statement of the facts to substantiate each allegation, including the dates of each alleged violation.
3. If the complaint is determined to be frivolous, the DA/SD has two options: (1) contact the complainant to obtain the missing information or; (2) close the complaint and designate it as frivolous. The decision of whether or not to contact the complainant should be based on knowledge of the company's operations, complaint history, and any other information available regarding the safety posture of the company, including the available data in Safety Measurement System (SMS), Driver Safety Measurement System (DSMS), MCMIS, EDMS, and other related systems.

### **Investigating the Complaint**

1. Once the complaint is determined to be non-frivolous, the DA/SD will investigate the complaint using one of the following methods and will document the investigative method to be used in the complaint file.
2. Monitor the company. The DA/SD may decide to monitor the company's safety performance history over a period of time before determining how to process the complaint. The DA/SD will determine the duration of the monitoring period. The duration should be based on the nature of the complaint and need for additional data, and should not exceed six months.
3. Interview company personnel to ascertain if the alleged violations occurred or are continuing to occur. Without revealing the identity of the complainant or discussing information that might lead to identification of the complainant, the DA/SD or designee should discuss the area that is the focus of the complainant's allegations with company personnel. The DA/SD will determine if it is necessary to elevate the complaint investigation to another level (e.g., conduct a complaint-specific investigation).
4. Issue a Notice of Violation (NOV) or a Direct NOV, if appropriate. The DA/SD or designee should follow the appropriate procedures currently in place for NOVs and Direct NOVs. The NOV policy can be found in the Investigator Manual, Enforcement Manual, and the Direct NOV procedures are contained within the CSA Phase 1 and 2 Implementation Package. If the violations alleged in the complaint are widespread, or if correction of the violations is not easily verifiable, an NOV or Direct NOV is not the appropriate method to use for investigating the complaint.
5. Conduct a complaint-specific investigation. A complaint-specific investigation is an investigation that focuses only on the part(s) of the regulations that are alleged in the complaint. These investigations may result in enforcement action, if the allegations are validated. The complaint-specific investigation should only be used if there are no "Alerts" in any of the Behavioral Analysis Safety Improvement Categories (BASICS). If it is feasible, a complaint-specific investigation can be conducted on- or off-site. In addition, the DA/SD should ensure the elements of "CAIR" (Commercial Driver's License Information System, Authority, Insurance, and Red Flag Drivers) are checked during a complaint-specific investigation.
6. Conduct a focused investigation. The Division Office should conduct a focused review when the company is the subject of a complaint and has one, two, or three BASICS with "Alerts." The investigation should also cover the issues specific to the complaint. This investigation could result in enforcement actions.
7. Conduct a comprehensive investigation. A comprehensive investigation may be conducted, including investigation of the allegations in the complaint. These investigations will result in safety ratings and may lead to an enforcement action. The DA/SD should select this option, only if the data in the motor carrier's or driver's SMS profile supports a comprehensive investigation (e.g., four or more BASICS require an investigation). If the data in SMS supports the initiation of a comprehensive investigation, the DA/SD must ensure that the elements of the complaint are also reviewed during the investigation. If the data does not support a comprehensive investigation, the DA/SD should opt to issue an NOV, initiate a complaint specific investigation, or initiate a focused investigation.

### ***Commercial/Economic Complaints Should be Tracked Nationally in this Manner***

Commercial/economic complaints can be viewed on FMCSA's website (<http://nccdb.fmcsa.dot.gov>) or via the Portal (<https://portal.fmcsa.dot.gov>). DA/SD or designee will need to obtain a User ID and PIN # from the National Consumer Complaint Database (NCCDB) Coordinator, Office of Communications, Washington, DC.

### ***Handling Multiple Complaints against the Same Entity***

Handle multiple complaints filed against the same entity as a single action when feasible.

### ***The Various Types of Complaints and How They Are Handled***

**Oral Allegations:** Oral allegations of violations will generally not be investigated. You should encourage complainants who make allegations of violations by telephone to submit written complaints. You should provide these individuals with the appropriate address of FMCSA in the State where the motor carrier is domiciled and the specific information necessary to process the statement as a timely, non-frivolous complaint of substantial violation. You should advise these individuals that they will not receive immunity from prosecution if they are party to a violation.

**Anonymous Complaints:** A complaint that does not contain the complainant's identity is an anonymous complaint. The Division should investigate anonymous complaints alleging substantial violations that are timely, non-frivolous, and jurisdictional. The Division should make all reasonable attempts to obtain the identity and signature of the complainant by informing the complainant of FMCSA's policy not to disclose his/her identity.

**Telephone Hotline Complaints:** Any person can report a safety, HM, and commercial violation by calling 1-888-DOT-SAFT (1-888-368-7238). Reports originating from the hotline are forwarded to the appropriate DA/SD or designee for handling. Handle these reports in the same manner as a written complaint in accordance with the guidance, policies, and procedures in this manual.

**Email Complaints:** Any person can report a safety violation by email. Handle reports originating from email in the same manner as a written complaint in accordance with the guidance, policies, and procedures in this manual.

**Hotline Website Complaints:** Any person can report a safety violation at FMCSA's website <http://nccdb.fmcsa.dot.gov>. Link to website) Reports originating from the website are forwarded to the appropriate DA/SD or designee for handling. Handle these reports in the same manner as a written complaint in accordance with the guidance, policies, and procedures in this manual.

**Congressional Member Requests:** If a SC, Division, or other field office receives an investigation request or jurisdictional complaint directly from a member of Congress, the investigating office must submit a copy of the request to the Office of Executive Secretary, Washington, DC for official recording and tracking.

The Division must conduct an investigation in response to an investigation request or jurisdictional complaint originating from a member of Congress as soon as practicable but no later than 90 calendar days after the date a FMCSA office received the request.

When a SC, Division, or other field office receives an investigation request or jurisdictional complaint directly from a member of Congress or when HQ forwards such a complaint, the investigating office must submit a draft written response (addressed to the Congressional member) within 14 calendar days after completion of the investigation to the Office of Executive Secretary, Washington, DC. Refer to the appropriate letter ([Illustration 11](#) and [Illustration 12](#)) when drafting your response. The Office of Policy, Plans, and Regulation will send the final written response to the Congressional member in coordination with the Office of Enforcement and Compliance, Washington, DC.

**Congressional Member-forwarded Complaints:** If a SC, Division, or other field office receives a CR request or jurisdictional complaint from FMCSA HQ, it must do the following:

When a member of Congress forwards FMCSA a complaint, it generally must meet the criteria for a jurisdictional non-frivolous complaint to be investigated. If these criteria are met, handle this type of complaint by executing the general complaint handling procedures. A complaint of this type alleging a non-substantial violation may be investigated if there is a strong supporting reason and available resources. If a complaint of this type is handled by conducting an investigation, the investigation must be initiated within 90 calendar days after the date a FMCSA office received the complaint;

If a complaint of this type is forwarded from HQ to a Division or other field office for handling, the field office must submit a draft written response to the Office of Executive Secretary, Washington, DC. (addressed to the Congressional member) within 14 calendar days after completion of the investigation. Refer to the appropriate letter (*Illustration 11* and *Illustration 12*) when drafting your response. The Office of Policy, Plans, and Regulation will send the final written response to the Congressional member in coordination with the Office of Enforcement and Compliance, Washington, DC.

The DA/SD or designee must respond to the party who submitted the complaint to the Congressional member whether he/she initiates a complaint investigation or not

**OIG-forwarded Complaints:** A complaint sent to the OIG and forwarded to FMCSA generally meets the criteria for a jurisdictional non-frivolous complaint to be investigated. If these criteria are met, handle a complaint of this type by executing the general complaint handling procedures. The Division may investigate a complaint of this type that alleges non-substantial violations if there is a strong supporting reason and available resources. If a complaint of this type is handled by conducting an investigation, initiate the investigation within 90 calendar days after the date a FMCSA office received the complaint.

**Equipment Complaints:** When handling complaints alleging the operation of unsafe equipment, the Division may request assistance from the MCSAP State agency in the State where the vehicles are located. This type of complaint may be investigated solely by FMCSA or the MCSAP State agency or jointly by FMCSA and the MCSAP State agency.

**Motorists' Complaints:** Most motorist complaints allege unsafe driving. An investigation is generally not performed in response to a motorist complaint because this type of complaint usually addresses an isolated instance.

The DA/SD or designee has discretion for administrative handling of a motorist complaint. At a minimum, place a copy of the motorist complaint in the motor carrier's file for future reference. The Division may handle a motorist complaint by providing the complainant with the address and telephone number of the motor carrier (the entity alleged to be in violation) and recommending the complainant contact the motor carrier to resolve the matter. The Division may also handle a motorist complaint by informing the motor carrier by letter or telephone call of the general allegations of the motorist complaint requesting the motor carrier address the matter or referring the motorist complaint to the appropriate local law enforcement agency.

**Service Agent Complaints:** A complaint may allege any violation by motor carriers or Service Agents, which include collection sites (controlled substances or alcohol), Consortium/Third-party Administrators, Medical Review Officers, Substance Abuse Professionals, and Laboratory.

### ***Initiating a Public Interest Exclusion (PIE) Proceeding***

At the request of the DA/SD or designee to the FMCSA Drug and Alcohol Program Manager (DAPM), a Drug and Alcohol Technical Advisory Group (TAG) member may be assigned to assist in or conduct the investigation. Service agent reviews frequently result from complaints filed with the Agency.

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

If during the investigation violations are discovered identifying serious noncompliance by a service agent, the following procedures for a PIE, in accordance with Part 40 Subpart R, will apply:

- The investigator should document serious service agent Part 40 violations.
- Based upon Service Center policy, the Division Office or Service Center should issue a Notice of Corrective Action (NOCA) to the service agent.
  - If the service agent takes adequate corrective action within 60 days, PIE procedures will cease.
  - If the service agent does not take adequate corrective action within 60 days, the Service Center recommends initiation of PIE procedures and forwards all documentation and a narrative description of the investigation and the violations discovered to the DAPM in the FMCSA Office of Enforcement and Compliance.
- Once the DAPM receives and reviews the NOCA package, s/he may begin Notice of Proposed Exclusion (NOPE) proceedings.
- The DAPM will send a copy of the NOPE and PIE recommendation to the Office of Drug and Alcohol Policy and Compliance (ODAPC) in the Office of the Secretary and originating Service Center.
- The ODAPC Director (or his designee) will determine if the problems are corrected and the PIE is issued. ODAPC also determines parties included and the PIE's duration.
- Divisions may be asked to assist in the investigation of a service agent's compliance with the PIE issued by ODAPC. The PIE prohibits the service agent from participating in U.S. DOT drug and alcohol testing in accordance with the terms and duration of the PIE.

### ***Responding to Complaints against Intermodal Equipment Providers (IEPs)***

FMCSA will ensure that complaints that are filed timely, determined to be non-frivolous, jurisdictional, and allege a substantial violation of the regulations are investigated. At a minimum, as set forth in 49 CFR 386.12, complaints received must contain the following elements, as listed below:

- An allegation of a substantial violation of the FMCSR;
- The violation must have occurred within the previous 60 days;
- The name and address of the alleged violator;
- The specific regulations that the complainant believes were violated; and
- A concise statement of the facts to substantiate each allegation, including the date of each alleged violation.

FMCSA will conduct off-site investigations of complaints filed against IEPs using the NOV process. When a complaint is filed against an IEP, the DA/SD or designee will determine whether the complaint is frivolous or non-frivolous. After a determination is made, the appropriate response letter must be prepared and mailed to the complainant.

If the complaint is determined to be non-frivolous, the DA/SD or designee should make reasonable attempts to discuss the complaint with the complainant, in order to gather additional information and facilitate completion of the investigation.

The DA/SD or designee will then request evidence/documentation from the IEP for each violation alleged in the complaint. When the IEP responds to the request for evidence/documentation, the DA/SD or designee will review the evidence/documentation for sufficiency. If the IEP's response is sufficient, the DA/SD or designee will issue a response to the IEP detailing the outcome of the evidence/documentation review. If the IEP's response is not sufficient, the DA/SD or designee has the discretion to request additional evidence/documentation from the IEP or issue a NOV. IEPs that do not respond to the request for evidence/documentation may be issued a NOV.

Once the NOV is issued and the response is received, the DA/SD or designee should determine if the response is sufficient. If the response is sufficient, the DA/SD or designee should notify the IEP of his/her determination. Responses to a NOV that are not sufficient or not received may subject the IEP to a NOC.

Once the investigation into the complaint is complete, the DA/SD or designee should inform the complainant of how the complaint was addressed and upload all appropriate correspondence related to the complaint in the EDMS.

[Click here for a flowchart outlining the complaint process for IEPs.](#)

## **Safety Performance History of New Driver Complaints**

### ***Processing Complaints for Failure to Respond to Requests for Information Regarding Safety Performance of New Drivers***

Only jurisdictional, non-frivolous complaints that are occurring or have occurred within the preceding 60 days will be processed. The Division in which the non-responding motor carrier is domiciled will process such complaints.

### ***Time When FMCSA Will Intervene on Behalf of a Complainant***

FMCSA will intervene after a complainant has made two attempts on different days to investigate a driver's background. Complainants who have made only one attempt will be advised to make another attempt. You may advise the complainant to make another attempt by using any form of communication (e.g., letter, fax, email) you deem appropriate.

### ***How Complaints will be processed***

If a prospective motor carrier has submitted a written complaint and has made at least two attempts on different days to investigate a driver's background and the previous employer has failed to submit the information, the Division will contact the non-responding motor carrier using one of the following options:

- Option One  
The Division may send a [letter](#) to the non-responding motor carrier and notify it of its responsibilities. The [informational brochure](#) (Safety Performance History of New Drivers) should be enclosed with the letter.
- Option Two  
The Division may call the non-responding motor carrier to explain the rule and inform the motor carrier of its responsibility to respond to the requesting motor carrier and that noncompliance with

the rule may result in penalties. The brochure should be faxed to the motor carrier at the conclusion of the call.

Another [letter](#) will be sent to the complainant to acknowledge receipt of the complaint and to inform the complainant of our actions.

### ***How the Division Will Track Complaints for Failure to Respond to Requests for Information Regarding Safety Performance of New Drivers***

The Division will document the method used to contact the non-responding motor carrier in the complaint register. In order to accommodate the unique situations that may occur in your Division, it may become necessary to modify the sample letters.

The Division will log complaints into its complaint register in order to track and identify non-responding motor carriers. Notwithstanding the fact that a motor carrier may be subject to an investigation (and, if appropriate, civil penalties) at any time, an investigation will be performed and enforcement action (if appropriate) initiated against any non-responding motor carrier against which the Agency has received five or more complaints.

**Americans with Disabilities Act (ADA) – Passenger Carrier Complaints:** Complaints that allege a violation of the ADA or its implementing regulations by a motor carrier of passengers should be forwarded to the Commercial Passenger Carrier Safety Division (MC-ECP) within the Office of Enforcement and Compliance (Headquarters – Washington, DC) for appropriate handling.

### ***General Procedures for Handling Safety and/or HM Complaints***

To make a better informed decision whether a complaint is non-frivolous, make all reasonable attempts to discuss the complaint with the complainant. Contact the complainant by fax, phone, or email, etc. Discussion with the complainant often will provide information that will facilitate an efficient investigation.

When a complainant alleges violations of the HMR by a Federal or other government agency, the DA/SD or designee should follow the normal complaint procedures in this manual.

Handle any timely, non-frivolous, and jurisdictional complaints alleging a substantial violation by conducting an investigation, as soon as practicable, but no later than 90 calendar days after receipt of the complaint.

If a complaint (jurisdictional, non-frivolous complaints and all Congressional requests) is received about a motor carrier that had an investigation in the previous 12 months, handle the complaint according to the following guidance based on the particular situation:

- If the type of violation alleged in the complaint was discovered during the recent investigation, and no enforcement action was taken, the DA/SD or designee may either assign another investigation or make a note for future reference in the Agency's motor carrier file. In any case, the DA/SD or designee must inform the complainant by telephone, email, or in writing (see [Complaint Letter Examples](#)) how the complaint was handled.
- If the type of violation alleged in the complaint was not investigated during the most recent Onsite Focused Investigation (i.e., the violation was not a part of the BASIC being investigated) the DA/SD or designee should assign another investigation focusing on BASICs associated with the complaint and any Serious Violations from the most recent investigation. The Division does not have to "re-investigate" the Roadside-Identified BASICs, unless inspection history, since the last investigation indicates an issue. The investigation scope should focus on BASICs associated

with the complaint and any Serious Violations from the most recent investigation. If the type of violation alleged in the complaint was not discovered during the recent investigation, conduct an investigation, as soon as practicable, but no later than 90 calendar days after receipt of the complaint.

### ***Drivers are protected under the Whistleblowers Act***

A motor carrier is prohibited from discriminating against a driver (e.g., termination of employment, demotion, undesirable reassignment, removal of seniority, elimination of personal use leave, etc.) who refused to operate an unsafe CMV, violate a safety law or regulation, or drive under conditions that may cause serious bodily injury. It is also illegal for a motor carrier to discriminate against a driver who files a complaint with us or testifies in a proceeding before the Agency. The DA/SD or designee should advise a driver who alleges he/she is a victim of such discrimination to file a complaint with the regional office of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), reference 29 CFR Part 1978.

### ***FMCSA or State MCSAP Personnel Must Do the Following to Protect the Identity of the Complainant***

FMCSA or State MCSAP personnel must treat the identity and occupation of the complainant and any communication between the complainant and himself/herself with strict confidentiality. Under no circumstances must a FMCSA or State MCSAP employee reveal the name or occupation of the complainant unless the Secretary of Transportation or the Secretary's designee authorizes it. The Secretary of Transportation or designee can release this information only under specific circumstances outlined in 49 U.S.C. § 31143(b) and 49 CFR Part 386.12(c). Any release of information must be coordinated through the appropriate Assistant Chief Counsel or the Office of the Chief Counsel. State MCSAP personnel who perform complaint investigations also must follow these policies. Should written correspondence be sent to a motor carrier, the DA/SD or designee must ensure that the information provided does not enable a motor carrier to identify the complainant. When the motor carrier has a small number of employees, personnel must take extreme care to protect the confidentiality of a complaining employee or former employee.

### ***Disclosing the Identity of the Complainant and When to Do So***

Section 212(b) of the Motor Carrier Safety Act of 1984, now codified at 49 U.S.C. 31143(b) reads: "Notwithstanding section 552 of title 5, the Secretary may disclose the identity of a complainant only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary will take every practical means within the Secretary's authority to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure."

### ***The Motor Carrier Should be told the Following When Conducting an Investigation as a Result of a Complaint***

During discussions with motor carrier officials, personnel performing complaint investigations may explain that a reason for the investigation was the receipt of a non-frivolous complaint. Personnel must withhold this reason when its disclosure would enable the motor carrier to identify the complainant.

### ***Precautionary Advice the DA/SD or Designee Should Provide to the Investigator Conducting an Investigation as a Result of a Complaint***

The DA/SD or designee should advise the investigator that during a complaint investigation the investigator should conceal the identity of the complainant and any targeted area of the investigation by

requesting a broad sample of documents related to multiple drivers and vehicles, which would enable an investigation of the alleged examples and types of violations.

### ***Actions that should be taken if a Complaint Investigation is Not Initiated***

If a complaint investigation is not initiated, respond to the complainant using a letter similar to [Illustration 6](#). File the written complaint and the response letter in the motor carrier's file (EDMS).

### ***Actions that should be taken if a Complaint Investigation is initiated***

The Division will respond initially to the complainant using a letter similar to [Illustration 7](#). Upon completing the investigation, advise the complainant of the results of the investigation by using a letter similar to [Illustrations 8](#), [Illustration 9](#), or [Illustration 10](#). File the complaint and all letters to the complainant in the motor carrier's file (EDMS).

### ***Procedures for Handling Commercial Complaints***

**Oral Complaints:** Except for allegations of unregistered, uninsured, or underinsured motor carrier operations and HHG hostage freight complaints, handle oral allegations of commercial regulatory violations on the telephone by notifying the complainant that FMCSA does not provide informal dispute resolution. Advise complainants, however, they may record their complaints in the National Consumer Complaint Database by contacting 1-888-368-7238. Encourage complainants with information regarding an unregistered, uninsured, or underinsured motor carrier operation to send a written complaint to the Division Office where the motor carrier is domiciled. Refer HHG hostage freight complaints received by telephone to the Safety Violation and Commercial Complaint Hotline at 1-888-DOT-SAFT (1-888-368-7238).

**Written Complaints:** Refer written HHG hostage freight complaints to the Office of Enforcement and Compliance, Commercial Enforcement Division, Washington, DC. The Division where the motor carrier is domiciled will handle written complaints. If a written complaint is received by a Division in a State where the motor carrier is not domiciled, the receiving Division must forward the complaint to the appropriate Division.

Handle written complaints of violations not related to registration or insurance filing by informing the complainant in writing or by telephone that FMCSA does not provide informal dispute resolution. Do not send out an informational packet if a telephone conversation with the complainant satisfactorily closes the complaint. If the Division sends out an informational packet (*Your Rights and Responsibilities When You Move*), use the appropriate cover letter. The Division may use a cover letter similar to the example in [Illustration 14](#) in response to complaints received by telephone. In the case of a written complaint, send the complainant a cover letter similar to the example in [Illustration 15](#). Additionally, send a copy of the cover letter and complaint to the motor carrier. If the complainant works for the motor carrier, protect the complainant's identity; do not send a copy of the complaint.

Handle written complaints that contain specific information (any dates of operation, transported commodity, origin, and destination) about a motor carrier operating without operating authority and/or filing insurance as follows:

- Verify whether the motor carrier is unregistered and/or has not filed insurance by checking the licensing and insurance (L&I) information system that is maintained by the Volpe National Transportation Systems Center.

- If [L&I](#) shows inactive or no operating authority or no insurance filing for the motor carrier, send a warning letter to the motor carrier. The Division may use a letter similar to the example in [Illustration 13](#) for this purpose.

After 30 working days from the motor carrier's receipt of the warning letter, check [L&I](#) again to verify the motor carrier has operating authority and/or filed insurance. If [L&I](#) shows inactive or no operating authority or no insurance filing for the motor carrier, contact the IT Operations Division (MC-RIO) or the Commercial Enforcement Division (MC-ECC), respectively, in HQ for verification. It takes approximately 30 working days to enter the receipt of an application or insurance filing into the database.

Upon verification that an application or insurance filing has not been received from the motor carrier, verify the motor carrier is still operating in interstate commerce then obtain the necessary documentation for enforcement action and submit an enforcement report. A visit to the motor carrier's office may be necessary to obtain the documentation.

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<sup>1</sup> The DA/SD should adhere to the guidance in the effort when responding to anonymous complaints.

#### 6.2.1.1.7.1 Complaint Letter Examples

##### ***LANGUAGE FOR LETTERS***

THE LETTERS BELOW MAY BE MODIFIED AS APPROPRIATE.

##### **Response letter to complainant upon submittal of a no frivolous complaint which will be investigated**

###### **FIGURE 1**

Thank you for your (date) letter concerning the regulatory noncompliance of (name of motor carrier).

The Federal Motor Carrier Safety Administration is concerned about violations of the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations by motor carriers and their employees. We will investigate your allegations. It may be necessary to contact you for additional information during this investigation.

We will inform you of our investigation's findings. Your interest in highway safety is appreciated.

***Response to complainant when an investigation will not be conducted***

###### **FIGURE 2**

This document is in response to your (date) letter regarding (name of motor carrier). After careful review, we have decided not to conduct an investigation.

##### **THE RESPONSE SHOULD INCORPORATE ONE OR MORE OF THE FOLLOWING EXPLANATIONS:**

- (1) From the information that you have provided, we are unable to determine whether a violation of this agency's regulations is occurring. Generally, a specific example of a substantial violation needs to be provided, including the date, location, and other pertinent information.
- (2) You allege a violation occurred on (insert date). It is the policy of this agency to only investigate complaints alleging violations that have occurred within the previous 60 days.
- (3) As a result of a recent compliance review or investigation of (name of motor carrier) conducted on (date), (**NOTE: MUST BE WITHIN 60 DAYS OF RECEIPT OF THE COMPLAINT**)

we believe the noncompliance referred to in your letter (is not present), (was discovered and is being addressed appropriately).

- (4) Your allegations do not fall within the jurisdiction of the Federal Motor Carrier Safety Administration. You may want to contact the (give name and address of jurisdictional agency).
- (5) Your allegation involving the operation of defective equipment by (name and address of motor carrier) has been referred to the (give name and address of State MCSAP Agency where vehicle(s) are domiciled) for investigation. The Federal Motor Carrier Safety Administration, through its Motor Carrier Safety Assistance Program, provides funding to the States for the purpose of performing vehicle inspections to ensure the safe operation of commercial vehicles on our nation's highways.
- (6) **IN THE CASE OF VEHICLE DEFECT ALLEGATIONS THAT ARE NOT OUT-OF-SERVICE DEFECTS**

Your allegations are not substantial violations of this agency's vehicle safety standards. Proper maintenance of a motor carrier's equipment is important. Certain items have been identified as critical to the operational safety of a vehicle. The absence or inoperativeness of such items is considered to be imminently hazardous.

With the dramatic increase in the number of vehicle inspections performed by the States as a result of the Motor Carrier Safety Assistance Program, the likelihood of the vehicles operated by (name of motor carrier) being examined at a roadside inspection site has increased substantially. The numerous roadside vehicle inspections conducted by the States help to ensure motor carriers properly maintain their equipment and unsafe vehicles are removed from operation.

#### **CONCLUSION TO LETTER IF APPROPRIATE**

If you can provide additional information which you think we should consider, please respond to the above address. Thank you for your interest in highway safety.

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#### **Response to complainant at conclusion of an investigation which results in enforcement**

##### **FIGURE 3**

This document is in follow-up to my (date) letter sent to you as a result of information you supplied concerning (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. An enforcement action, in which civil penalties will be assessed against the carrier, is currently being prepared to address the carrier's noncompliance.

If you find that these violations continue or other violations occur, please advise us.

Thank you for your interest in highway safety.

#### **Response to complainant when the allegations are not substantiated**

##### **FIGURE 4**

This document is in follow-up to my (date) letter sent to you as a result of information you supplied about (name of motor carrier).

The matter has received careful attention; however, our investigation failed to disclose violations of the type referred to in your letter.

Please advise us if we can be of further assistance.

**Response to complainant when the allegations are substantiated, but enforcement action is not being taken****FIGURE 5**

This document is in follow-up to my (date) letter to you as a result of information you supplied about (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. The nature of these violations, however, did not warrant enforcement action.

If we can provide further assistance, please contact our office.

---

**Letter to Congressional member after completion of a compliance review or investigation in response to a Congressional request****FIGURE 6**

This document is in response to your (date) letter which (requested a compliance review or investigation be conducted on (name of motor carrier)), (alleged regulatory violations by (name of motor carrier)).

**THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:****USE PARAGRAPH (1) OR (2) WHEN A REQUEST FOR A COMPLIANCE REVIEW OR INVESTIGATION WAS MADE WITHOUT ALLEGATIONS OF SUBSTANTIAL VIOLATIONS**

- (1) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Regulatory violations were discovered, but their nature did not warrant enforcement action. If you would like further information about the compliance review, please call our Division Office at (telephone number).
- (2) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Instances of noncompliance were discovered and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).

**USE PARAGRAPH (3), (4), OR (5) WHEN SUBSTANTIAL VIOLATIONS ARE ALLEGED**

- (3) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Your allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in your letter. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).
  - (4) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).
  - (5) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered, and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).
-

**Letter to Congressional member who forwarded a complaint****FIGURE 7**

This is a response to your (date) letter which forwarded a complaint to us that alleged illegal activity by (name of motor carrier).

**THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:**

- (1) The forwarded complaint alleges the violation of a regulation or law which is outside the jurisdiction of the Federal Motor Carrier Safety Administration. We, therefore, cannot respond to the complaint, but we have forwarded the complaint to the (appropriate government agency). If we can provide further assistance, please call my office at (telephone number).
- (2) We have concluded that the complainant's allegations are not reliable based on (the findings of a recent compliance review or an investigation conducted on the company), (our discussion with the complainant). An investigation, therefore, is not warranted at this time. The complainant will be advised of our conclusion. If you would like further information, please call my office at (telephone number).
- (3) We have concluded that the severity of the alleged violations does not warrant an investigation. The complaint was placed in our file on the company for future reference. We would be interested in reviewing additional information from the complainant about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).
- (4) We have concluded that an investigation of the alleged violations is not warranted based on the untimely nature of the allegations. It is the policy of this agency to only investigate complaints alleging violations that have occurred within the prior 60 days. We would be interested in reviewing more recent information about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).
- (5) We have contacted the complainant and concluded that the allegations appear to be reliable. FMCSA strives to utilize its limited resources in the most effective manner to advance highway safety. The agency, therefore, checks the safety performance of any motor carrier that is the subject of a complaint to FMCSA. In keeping with our focus on performance measures, particularly accident rates, we believe onsite compliance reviews are not needed if the carrier does not possess an unsatisfactory accident rate and there is no indication of poor performance. We have no information which shows the safety performance of (name of motor carrier) to be a problem at the present time. Furthermore, we have notified the carrier about the general allegations of the complaint and requested a written response. We will inform the complainant about our handling of the complaint. If we can provide further assistance, please call my office at (telephone number).
- (6) A compliance review or an investigation on (name of motor carrier) was completed in response to the forwarded complaint and its allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in the complaint. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.
- (7) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.
- (8) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered, and an enforcement

action is currently being prepared. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.

#### 6.2.1.1.7.2 Complaint Letter 1



U.S. Department of Transportation

#### Federal Motor Carrier Safety Administration

[DATE]

[NON-RESPONDING CARRIER OFFICIAL'S NAME]

[NON-RESPONDING CARRIER'S NAME]

[NON-RESPONDING CARRIER'S ADDRESS]

[NON-RESPONDING CARRIER'S CITY, STATE, AND ZIP]

Dear Mr. or Ms. [CARRIER OFFICIAL'S NAME]:

On [DATE], we received information alleging [NON-RESPONDING CARRIER'S NAME] failed to respond to request for the safety performance history of a new driver.

The Federal Motor Carrier Safety Administration is concerned about violations of our regulations by motor carriers and their employees. We are asking that you give the request for the safety performance history of the new driver your full attention. Under Section 391.23(g), previous employers must:

Respond to each request for the safety performance history of new drivers within 30 days after the request is received;

- Take all necessary precautions to ensure the records are accurate;
- Provide specific contact information in case a driver wants to correct or rebut the data;
- Keep records of the request and the responses for one year; and
- Provide information for accidents that occurred after April 29, 2003.

Failure to comply with this regulation may subject you to a compliance review or an investigation and civil penalties. Enclosed is an informative brochure to help you understand what is required or you may consult your Federal Motor Carrier Safety Regulations. Should you have any questions regarding this requirement, please feel free to contact [NAME] at [PHONE NUMBER] or via email at [EMAIL ADDRESS].

Sincerely yours,

[NAME]

Division Administrator or State Director

Enclosure

**6.2.1.1.7.3 Complaint Letter 2**

U.S. Department  
of Transportation

[DIVISION OFFICE]  
[DIVISION'S ADDRESS]

**Federal Motor Carrier**

[DIVISION'S CITY, STATE, AND ZIP]

**Safety Administration**

[DATE]

[COMPLAINANT'S NAME]  
[CARRIER'S NAME]  
[CARRIER'S ADDRESS]  
[CARRIER'S CITY, STATE, AND ZIP]

Dear Mr. or Ms. [COMPLAINANT'S NAME]

Thank you for your [DATE] letter concerning [CARRIER'S NAME ('s)] failure to respond to your request for the safety performance history of a new driver.

The Federal Motor Carrier Safety Administration is concerned about violations of our regulations by motor carriers and their employees. Our office will contact the motor carrier to ensure it understands what is required of a previous employer and to request your safety performance history inquiry is given its full attention.

We appreciate motor carriers like you who report carriers who do not comply with our safety regulations. It may become necessary to contact you for additional information. We will keep you informed of the findings and we appreciate your interest in highway safety.

Sincerely yours

[NAME]

Division Administrator or State Director

### 6.2.1.1.7.4 Safety Performance History of New Drivers Brochure

**IMPORTANT FMCSA WEB SITES**

1. The Federal Motor Carrier Safety Administration official Web site is <http://www.fmcsa.dot.gov>.
2. Information about Federal safety regulations and interpretations can be found at <http://fmcsa.dot.gov/rulesregs>.
3. Information on the transportation of Hazardous Materials can be found at <http://hazmat.dot.gov>.
4. Carrier profiles, safety rating, inspection, and accident summary can be found at <http://www.safersys.org>.
5. Registration, insurance, and fines can be paid at <http://diy.dot.gov>.
6. Statistics, analysis, and research regarding the truck and bus industry can be found at <http://ai.volpe.dot.gov>.
7. Change of name and address can be done at <http://diy.dot.gov>.
8. The "Share the Road Safely" Program can be found at <http://sharetheroadsafely.org>.
9. CMV Safety Belt Partnership can be found at <http://www.fmcsa.dot.gov/safetybelt>.
10. Information about a motor carrier, broker, or freight forwarder's application, insurance, and process agent can be found at <http://fnwa.li.volpe.dot.gov>.

**CONTACT INFORMATION**

Federal Motor Carrier Safety Administration  
 [DIVISION OFFICE]  
 [DIVISION OFFICE ADDRESS]  
 [DIVISION OFFICE CITY, STATE, ZIP]

[STATE MCSAP AGENCY]  
 [STATE DIVISION]  
 [STATE OFFICE ADDRESS]  
 [STATE OFFICE CITY, STATE, ZIP]

**TO OBTAIN REGULATIONS, FORMS, AND MANUALS**

Superintendent of Documents  
 U.S. Government Printing Office  
 Washington, DC 20402  
 202-512-1800

JJ Keller and Associates, Inc.  
 3003 West Breezewood Lane  
 P. O. Box 368  
 Neenah, WI 54957  
 877-564-2333

LabelMaster  
 5724 North Pulaski Road  
 Chicago, IL 60646  
 800-621-5808

ArtCrest, Inc.  
 2003 Louisiana Street  
 Little Rock, AR 72206  
 501-374-6427

This brochure is only intended to provide general regulatory information. It is not intended to be a substitute for the Federal Motor Carrier Safety Regulations.

**SAFETY PERFORMANCE HISTORY OF NEW DRIVERS**



**AN OVERVIEW**



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

**SAFETY PERFORMANCE HISTORY OF NEW DRIVERS**

**INTRODUCTION**

The Federal Motor Carrier Safety Administration established the minimum driver safety performance history data that new or prospective employers are required to seek for applicants under consideration for employment as a commercial motor vehicle (CMV) driver.

The action enables prospective motor carrier employers to obtain and use more complete driver safety performance information in the hiring process. By using this information, employers will be able to better assess the potential safety risks of prospective new driver-employees.

**WHO IS SUBJECT TO THESE REQUIREMENTS?**

The rule applies to all motor carrier employers regulated by the Federal Motor Carrier Safety Regulations whose employees apply to operate a commercial motor vehicle for a motor carrier in interstate commerce.

**WHICH LAWS REQUIRED THE RULES?**

The Hazardous Materials Transportation Authorization Act of 1994 required, at a minimum, hiring motor carriers to investigate a driver's accident record and alcohol and controlled substances history. The Transportation Equity Act for the 21<sup>st</sup> Century protected motor carriers who either used or supplied driver safety performance history.

**WHAT IS THE PURPOSE OF THESE REQUIREMENTS?**

The purpose of these requirements is to enable prospective motor carriers to make sound hiring decisions of drivers to improve CMV safety on our Nation's highways.

Motor carriers who perform safety performance history investigations of drivers and use that information in the hiring process will inevitably place the safest possible drivers behind the wheel of their vehicles.

**WHAT ARE THE REQUIREMENTS FOR NEW OR PROSPECTIVE MOTOR CARRIERS?**

New or prospective motor carriers are required to investigate and consider, at a minimum, a driver's:

- Employment verification information;
- Accident record; and
- Drug and alcohol history.

This information must be requested from all employers the driver worked for within the previous three years before hire.

New or prospective motor carriers will be required to complete the safety performance history investigation of new drivers within 30 days of hiring the new employee, or the employer must document a good faith effort to obtain the information.

Additionally, each motor carrier must maintain records relating to the investigation into the safety performance history of a new or prospective driver in a driver investigation history file.

**WHAT ARE THE REQUIREMENTS FOR PREVIOUS EMPLOYERS?**

Previous employers are required to respond to each request from a new or prospective employer within 30 days after the request is received.

In addition, previous employers must ensure the information submitted to the new or prospective employer is accurate.

**WHAT ARE THE RIGHTS OF DRIVERS IN THIS PROCESS?**

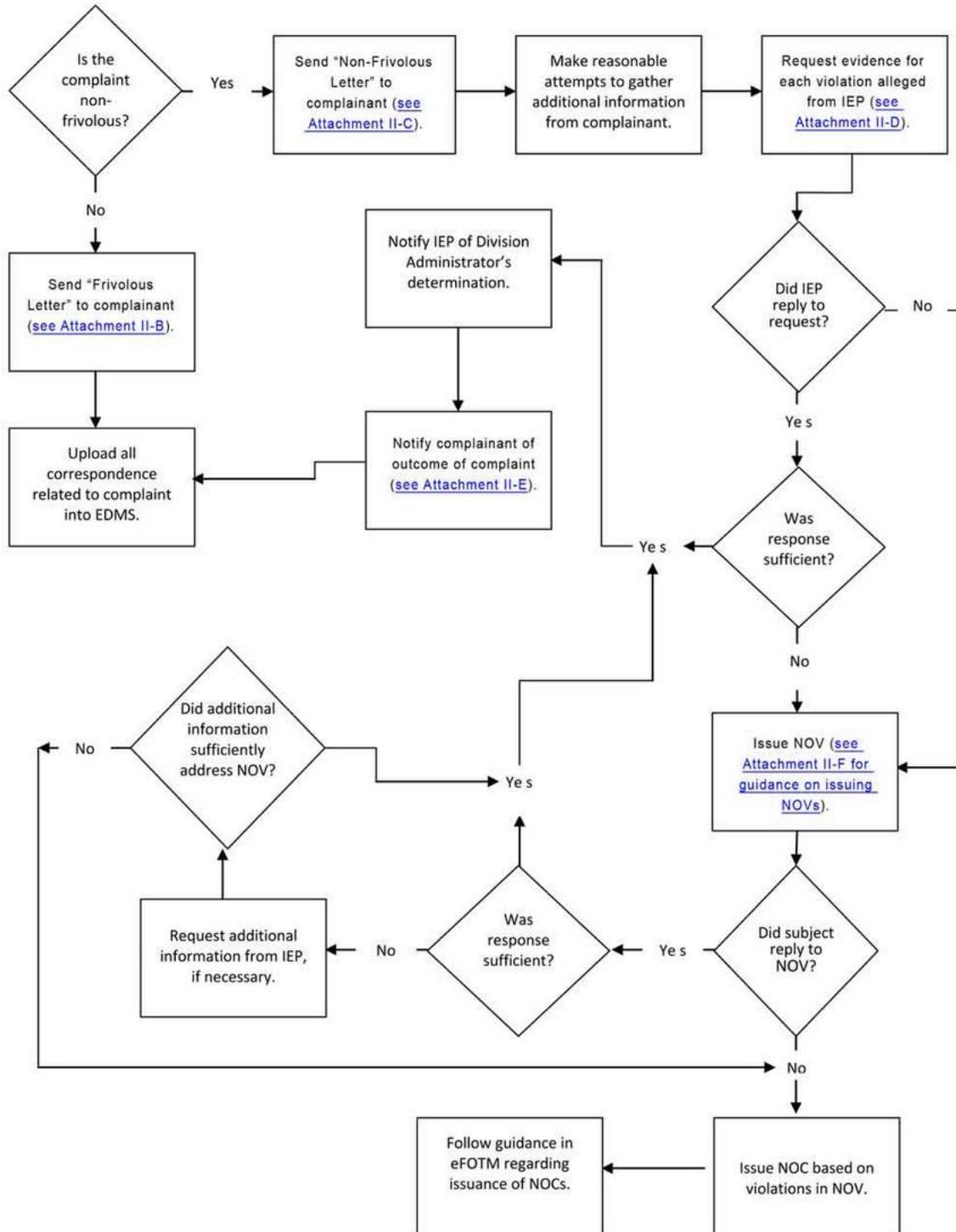
Drivers have the right to review, have errors in the information submitted by the previous employer corrected, and rebut statements to the alleged erroneous information.

**WHERE CAN A MOTOR CARRIER FIND MORE INFORMATION?**

Contained within this brochure is a list of important contact information and Web sites that will assist the motor carrier in complying with this requirement.

[Safety Performance History of New Drivers brochure \(PDF\)](#)

**6.2.1.1.7.5 Responding To Complaints Filed Against IEPs Flowchart**



*Description of flowchart*

**6.2.1.1.8 Freedom of Information (FOIA)**

The Freedom of Information Act (5 U.S.C. 552) [FOIA] establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the U.S. Government are available to

the public. FOIA sets standards for determining when Government records must be made available and which records may be withheld. FOIA also gives requesters specific legal rights and provides administrative and judicial remedies when access to records or portions of records is denied. Most importantly, the FOIA statute requires Federal agencies to provide access to, and disclosure of, information pertaining to the Government's business to the fullest extent possible.

***Division Should Handle FOIA Requests in Following Manner***

FOIA requests need to be forwarded to the FMCSA FOIA Team via the following methods:

- Mail  
Federal Motor Carrier Safety Administration  
Attn: FOIA Team (MC-MMI)  
1200 New Jersey Avenue, SE.  
Washington, DC 20590
- FOIA SC  
Phone: (202) 366-2960
- Fax: (202) 385-2335  
Attn: FOIA Team
- Email [foia@fmcsa.dot.gov](mailto:foia@fmcsa.dot.gov)

If the request is made via telephone, please direct the requester to the FOIA SC number, listed above, or to the FMCSA FOIA website at [www.fmcsa.dot.gov/foia/foia.htm](http://www.fmcsa.dot.gov/foia/foia.htm). **Under no circumstances should the Division provide information that needs to undergo FOIA review.**

***Types of Records Available through FOIA***

1. Records on specific motor carriers or specific motor carrier files including:
  - Enforcement Reports;
  - Compliance Reviews or Investigations;
  - Roadside Driver/Vehicle Inspection Reports;
  - State Accident Reports; and
  - General Correspondence.

**Note:** The requirement for the Motor Carrier Accident Report (MCS 50-T or 50-B) was eliminated effective March 3, 1993.

2. Copies of Agency final orders, which may include negotiated Settlement Agreements, Notices of Claim (to which a motor carrier has replied or failed to reply), and OOS Orders.
3. Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Agency; Administrative Rulings FMCSA adopts, issued by an Administrative Law Judge (ALJ) in the adjudication of motor carrier enforcement cases; and decisions of the CSO.

**Note:** In accordance with the Agency's records management procedures, the required maintenance for motor carriers' files is six years.

***6.2.1.1.9 Determining the Preventability of Crashes***

The FMCSA will continue to consider crash preventability when the rating of a motor carrier's crash factor is less than satisfactory. The motor carrier must present compelling evidence that the recordable crash rate is not a fair means of evaluating its crash factor, because its drivers were involved in crashes

that were non-preventable. Preventability will be determined according to the standard set forth in Part 385, Appendix B. It is important to note that preventability is a different, much higher, standard than fault. The much higher standard of preventability for a professional driver includes the expectation that he or she anticipated the possibility of the crash and adjusted his or her driving or behavior to avoid the crash.

The DAs/SD should consult the preventability guidance found on FMCSA's website at <http://www.fmcsa.dot.gov/safety-security/eta/index.htm>. This guidance was developed to assist in determining the preventability of a crash. However, it is not a replacement for the inherent investigative and analytical skills of a DA/SD. Each crash must be judged individually. The background surrounding the crash must be thoroughly evaluated, and decisions made based on the available facts.

Police and insurance company crash reports should be used as a guide. However, some reports may not indicate when a driver became aware of a dangerous roadway situation or how much time the driver had to react to the situation and take effective evasive action. **If there is any uncertainty as to whether the driver could have avoided the crash, it should be considered a preventable crash.** Oftentimes, who "caused" the crash, and whether the crash could have been avoided, are two separate issues.

## PROCEDURES

### *Determining the Preventability of Crashes*

1. If a motor carrier has an "unsatisfactory" recordable crash rating on an investigation, or its recordable crash rating reveals it has inadequate basic safety management controls during a SA, the safety investigator (SI) or Safety Auditor must inform the motor carrier that, if it believes any of the crashes affecting its crash rating were non-preventable, it may provide the evidence to the DAs/SD for review and possible removal of the crash from the rating.
2. The SI or safety auditor must provide the sample form for the carrier official's statement and sample form for the driver's statement and inform the motor carrier that it may use the documents to gather the information and forward the evidence to the appropriate DA/SD.
3. After the crash documentation is received in the Division, the DA/SD must analyze the facts surrounding the crash, and make a determination whether to support or oppose the motor carrier's claim that the crash was non-preventable.
4. If the DAs/SD determines a crash was non preventable, the DA/SD, SI, safety auditor, and/or motor carrier must adhere to the following.
  - a. Prior to close-out: If the DA/SD determines the crash was non-preventable before the investigation or SA is closed out, the SI or safety auditor will make the necessary changes to the crash rate in the Compliance Analysis and Performance Rating Information (CAPRI) system or SENTRI. The SI or safety auditor must explain the facts surrounding the change in the crash rate in the comments section of Part C on the investigation or SA report.
  - b. After close-out but before approval in MCMIS: If the DA/SD determines the crash was non-preventable after the investigation or SA is closed out, but before the investigation or SA is approved in MCMIS, the SI or safety auditor will make the necessary changes to the crash rate in CAPRI/SENTRI. A revised investigation or SA report must be submitted to the motor carrier, along with the determination letter. The SI or safety auditor must explain the facts surrounding the change in the crash rate, in the comments section of Part C on the investigation or SA report.
  - c. After approval in MCMIS but before final rating effective date: If the DA/SD determines the crash was non-preventable after the investigation or SA has been approved in MCMIS, but before the final rating is effective, the SI or safety auditor will consult with the DA/SD to determine whether to delete or modify the investigation or SA. The investigation or SA should be deleted or modified in accordance with policy. The revised investigation or SA

report must be submitted to the motor carrier, along with the determination letter. The SI or safety auditor must explain the facts surrounding the change in the crash rate, in the comments section of Part C on the investigation or SA report.

- d. After final rating effective date: If the DA/SD determines the crash was non-preventable after the rating of the investigation, or results of the SA become effective, the motor carrier will be required to pursue an administrative review as set forth in section 385.15 or 385.327.
5. After the DA/SD determines whether the crash was preventable, he or she must inform the motor carrier of the decision. The communication must be in written form and may be communicated via electronic mail, fax, mail, etc. The DA/SD should use the Agreement or Disagreement letter to communicate his or her decision to the motor carrier.
6. Upload relevant correspondence concerning the preventability of a crash determination into the Electronic Document Management System (EDMS).

#### ***6.2.1.1.10 Procedures for Unsatisfactory Rated Motor Carriers***

##### ***Division Must Do the Following When it completes an Investigation that Results in a Proposed Unsatisfactory Safety Rating***

The SI should upload the investigation to MCMIS within seven calendar days. Once the investigation is uploaded, the investigation report must be scanned into EDMS and the Division should then notify the appropriate SC of the proposed unsatisfactory safety rating. At a minimum, the notification must contain the name of the motor carrier, USDOT number, and date of investigation.

49 CFR Part 385.11 states that FMCSA will issue written notification of the proposed rating no more than 30 days after the review. If an investigation with a proposed unsatisfactory rating (or any rating downgrade) is not uploaded in time to issue the official rating within 30 days of the review, the motor carrier will not be rated. In these instances, the review will still be uploaded. However, it will be entered into MCMIS as a no ratable review. While the motor carrier will not be rated, the review findings will reside in MCMIS and will be considered by SMS for appropriate follow-up.

##### ***The Proposed Rating Becomes the Rating of Record for HM Placardable and Passenger Motor Carriers at this Time***

The safety rating is effective the 46th day after service on placardable HM and passenger motor carriers. The “day of service” is considered the day on which HQ generated the notice of proposed safety rating letter (i.e., the date printed on the letter).

**Note:** A motor carrier is deemed to be a placardable HM motor carrier if the motor carrier has transported any placardable HM in interstate commerce within the previous 12 months.

##### ***The Proposed Rating Becomes the Rating of Record for Non-HM Placardable and Non-Passenger Motor Carriers at this Time***

The rating is effective on the 61st day after service on non-HM placardable and non-passenger motor carriers.

##### ***Safety Rating Implications for Onsite Focused Investigations***

An investigation should not be initiated, nor the scope of an investigation expanded, for the purpose of providing a motor carrier the requested opportunity to obtain a satisfactory safety rating. Unrated motor carriers that request FMCSA investigative resources, for the purpose of obtaining a Satisfactory safety rating, should be advised that FMCSA resources cannot be influenced by external demands, and that FMCSA concentrates investigative and enforcement resources on motor carriers with known safety performance and compliance problems to best ensure safety to the motoring public. Motor carriers with existing adverse safety ratings from prior compliance reviews, that request FMCSA investigative

resources to perform an Onsite Comprehensive Investigation, or to expand the scope of an Onsite Focused Investigation for safety rating upgrade purposes, should be advised to follow the corrective action upgrade process in 49 CFR section 385.17. A 385.17 request cannot ultimately result in a satisfactory safety rating, if FMCSA has not previously performed an investigation that includes the review of all required CFR Parts.

Onsite Focused Investigations cannot result in the issuance of satisfactory safety ratings. Onsite Focused Investigations can, however, result in the issuance of proposed Conditional or Unsatisfactory safety ratings based upon investigation of as few as one regulatory Part.

The current safety rating regulations (49 CFR Part 385) are applicable to Onsite Focused Investigations. The safety rating regulations in Part 385 set forth six rating factors:

- Factor 1: General (Parts 387 and 390)
- Factor 2: Driver (Parts 382, 383, and 391)
- Factor 3: Operational (Parts 392 and 395)
- Factor 4: Vehicle (Parts 393 and 396)
- Factor 5: Hazardous Materials (Parts 397, 171, 177, and 180)
- Factor 6: Accident Factor (Recordable Rate)

Individual “factor ratings” are calculated based on the number of Acute and/or Critical violations discovered during an Onsite Focused Investigation where:

- Critical (equal to or >10%) or Acute violations = 1 point
- Critical (equal to or >10%) violations in Hours of Service = 2 points
- Individual Factors with 0 points are rated Satisfactory
- Individual Factors with 1 point are rated Conditional
- Individual Factors with 2 points are rated Unsatisfactory.

A motor carrier’s overall proposed safety rating resulting from an Onsite Focused Investigation is based on the number of factors rated Unsatisfactory or Conditional, as outlined in the table below. An overall Satisfactory rating requires a rating in all six factors, thus Onsite Focused Investigations cannot result in the issuance of a new satisfactory rating. An overall Unsatisfactory or Conditional rating does not require a rating in all six factors.

<b>Rating Factors</b>		
<b>INDIVIDUAL FACTORS UNSAT</b>	<b>INDIVIDUAL FACTORS CONDITIONAL</b>	<b>OVERALL CARRIER SAFETY RATING</b>
0	2 OR FEWER	SAT
0	MORE THAN 2	CONDITIONAL
1	2 OR FEWER	CONDITIONAL
1	MORE THAN 2	UNSAT
2 OR MORE	0 OR MORE	UNSAT

The following scenarios are intended to illustrate how the existing safety rating regulations intersect with Onsite Focused Investigations:

**Scenario 1**

- A Motor carrier is Roadside-Identified in the HOS Compliance and Driver Fitness BASICS.
- Factors related to fatigue and driver fitness are evaluated.
- A rating of Conditional or Unsatisfactory would be issued based on Acute and/or Critical violations found during the investigation.
- If sufficient violations for a Conditional or Unsatisfactory rating were not found, then the review would be non-rated and the motor carrier would retain the rating issued prior to the Onsite Focused Investigation.

**Scenario 2**

- A Motor carrier is Roadside-Identified in the Driver Fitness and HM Compliance BASICS.
- During the Onsite Focused Investigation it is found that the motor carrier requires an HM safety permit.
- If the motor carrier is currently unrated, the investigation would be changed to an Onsite Comprehensive Investigation, so that it may result in the satisfactory rating required to hold a permit.
  - If the motor carrier is currently rated Satisfactory, the Onsite Focused Investigation would proceed.
  - If sufficient Acute and/or Critical violations were found, the motor carrier's rating would be changed from Satisfactory to Conditional or Unsatisfactory.
- If sufficient Acute and/or Critical violations were not found, the motor carrier would retain the satisfactory rating that it already had and this Onsite Focused Investigation would be non-rated.

***Procedures Relating to Follow-Up Investigations on Motor Carriers Rated Unsatisfactory***

If a motor carrier receives a proposed Unsatisfactory rating and a follow-up investigation is conducted during the 45/60 day improvement period, investigators must ensure that the review is designated as a "follow-up review to a 45/60-day proposed/final unsatisfactory safety rating" in Part A, Misc. Tab of CAPRI. This designation will ensure that the motor carrier's 45/60-day "clock" does not restart in MCMIS in the event the follow-up investigation shows no improvement in the motor carrier's rating.

**Note:** The Agency encourages the DA/SD or designees to use the procedures for the upgrade of safety ratings of 45/60 Unsat motor carriers as outlined in [Illustration 5](#).

An improvement to a proposed unsatisfactory rating resulting from a follow-up investigation is not effective until MCMIS generates an official rating letter. Generally, investigations will be rated the same day they are uploaded to MCMIS. Once the investigation is completed, the Division should then notify the appropriate SC of the proposed upgraded safety rating. At a minimum, the notification must contain the name of the motor carrier, USDOT number, date of investigation, and the new proposed rating.

Make every effort to ensure that any investigation, conducted as a follow-up to a proposed unsatisfactory rating, is uploaded before the motor carrier's 45/60 day improvement period expires.

Fax or electronically send a scanned copy of the CR to the IT Operations Division in HQ at (202) 366-3477, only when the motor carrier's 45/60-day "clock" will expire before the investigation can be uploaded, or if the investigation cannot be electronically uploaded. In those instances, contact at least one member of the IT Operations Division. In addition, to prevent the OOS Order from going into effect, the Enforcement Team should also be notified.

***Procedures for Issuing OOS Orders on Motor Carriers Rated Unsatisfactory***

The Unsat = Unfit OOS Order is entitled [Order to Cease All Interstate Transportation](#). A SCET should serve this order within two weeks of the effective date of the OOS Order. The SCET may serve this order by personal delivery using governmental or commercial entities, U.S. mail, commercial mail delivery, or

facsimile, upon prior written consent of the parties. Written consent for facsimile service must specify the facsimile number where service will be accepted. When the SCET makes service by facsimile, it also must serve a copy by any other method permitted by this section. Facsimile service occurs when transmission is complete.

On the same day, or next business day if the order is effective on a weekend or holiday, the Unsat = Unfit OOS Order is effective, the appropriate SCET must inactivate the motor carrier in MCMIS with a “UNF” designation.

#### ***Procedures for Monitoring Compliance with OOS Orders on Motor Carriers Rated Unsatisfactory***

A Division should conduct onsite verification to determine compliance with the OOS Order within 10 days of the effective date of the order. The Division may summarize the verification findings in an inter-office memorandum format provided the motor carrier has ceased transportation. If onsite verification is not feasible, the Division will document and place in the motor carrier file any method used to verify the motor carrier is not operating in commerce. The Division must implement procedures to monitor motor carrier activity to maintain oversight of motor carriers that may violate the OOS Order.

Monitoring of Unsatisfactory Rated Motor Carriers – The Division office may obtain a list of motor carriers that are identified as operating after an Unsat OOS Order was effective. This list is available to the Divisions and SCETs through MCMIS, the Portal, and also GOTHAM. All Agency Division Offices and SC should make use of these reports to facilitate their monitoring efforts.

If the Division determines that the motor carrier has violated an OOS Order, the Division should initiate enforcement action. The Division should consult with the SCET to consider seeking a U.S. District Court ordered injunction for repetitive violators of an OOS Order.

#### ***6.2.1.1.11 Safety Rating Petitions Under 49 CFR Part 385.15 and 49 CFR Part 385.17***

##### ***Possible Outcomes of an Investigation***

Each investigation can result in assigning a safety fitness rating, issuing a NOC for discovered violations, or both. Upon receiving a proposed Conditional or Unsatisfactory rating (49 CFR Part 385.11(c)) or a final safety rating (49 CFR Part 385.11(b)), a motor carrier may request either that FMCSA conduct an administrative review in accordance with 49 CFR Part 385.15 if the motor carrier believes the Agency has committed an error assigning its proposed safety rating or request an upgrade under 49 CFR Part 385.17 based on corrective action taken by the motor carrier. When an investigation results in issuing a motor carrier a proposed Conditional or Unsatisfactory safety rating, the SC should provide the motor carrier with information for making the 49 CFR Part 385.17 request based on [Illustration 4](#).

FMCSA may issue one of three ratings: Satisfactory, Conditional, or Unsatisfactory. Both Satisfactory and Conditional ratings that are improvements upon a prior rating take effect immediately upon issuance from HQ (see 49 CFR Part 385.11(b)). A Conditional or Unsatisfactory rating that would be a downgrade from a currently held rating is effective on day 46/61 after a proposed rating is issued. A proposed unsatisfactory safety fitness rating has specific consequences for any motor carrier that receives such a rating.

##### ***Steps that a Motor Carrier can take if it receives a Proposed or Final Unsatisfactory Safety Rating***

A motor carrier that receives a proposed or final unsatisfactory safety rating may request an administrative review under 49 CFR Part 385.15, request a rating change less than 49 CFR Part 385.17, or request a follow-up investigation within the required 46/61-day timeframe.

##### ***Steps that a Motor Carrier must take when it receives an Unsatisfactory Safety Rating***

When FMCSA issues a proposed unsatisfactory safety rating to a HM or passenger motor carrier, the motor carrier has 45 days to improve the rating to Conditional or Satisfactory or it must cease operating in

commerce on Day 46. For all other motor carriers issued an unsatisfactory safety rating, unless the motor carrier improves within 60 days, it must cease operating in commerce on Day 61.

A motor carrier that does not request a safety rating upgrade, or ignores the procedures outlined in Section 385.17, will have its safety rating designation made final when the appropriate timeframe expires.

**Corrective Action Upgrade Implications (385.17) for Onsite Focused Investigation**

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

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

- If an Onsite Focused Investigation results in a proposed Conditional or Unsatisfactory safety rating of a motor carrier with an existing safety rating from a prior Onsite Investigation or CR, the SI will advise the motor carrier that any subsequent corrective action upgrade request filed per 385.17 must address all violations from both the current Onsite Focused investigation AND the previous investigation, as well as the vehicle OOS rate and/or crash rate from each investigation, if either affected the safety rating.
- A carrier may not receive a Satisfactory safety rating, if FMCSA has not, at some point in time, examined all safety standards and factors specified in 49 CFR 385.5 and 385.7.

Given the unique policy and procedural issues, Division Offices should contact and work closely with Service Centers in handling 385.17 requests from carriers resulting from an Onsite Focused Investigation.

The table below further delineates FMCSA policy related to safety ratings and corrective action upgrade requests following Onsite Focused Investigations. The dates in the table represent the following:

Date 1 = Original safety rating date

Date 2 = Most recent Onsite Focused Investigation date

Date 3 = 385.17 upgrade request decision date

<sup>3</sup>Date 2+ = Date 2 + (45 or 60 days)

**Safety Ratings and Corrective Action Upgrade Request**

Original Safety Rating	Recent Investigation	Onsite Focused Investigation Rating	Upgrade Request	Decision	Action	Public Display	
Date 1	Date 2		Date 3			Rating	Date
SAT	Onsite Focused Investigation	COND	385.17	Grant	Upgrade	SAT	Date 3
			385.17	Deny	Denial	COND	Date 2+
		UNSAT	385.17	Grant	Upgrade	COND	Date 3
			385.17	Deny	Denial	UNSAT	Date 2+
	NON-RATED Review	<b>No basis for filing</b>					

<b>COND</b>	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	<b>Follow regular 385.17 for requesting upgrade to original rating</b>				
<b>UNRATED</b>	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	<b>No basis for filing</b>				
<b>UNSAT</b>	Issued prior to 2001, Intervention Selection is Onsite Comprehensive Investigation						
	Issued post-2001, then flagged as OOS with activity and issue an NOC						

***A Division Does Not Have to Conduct a Follow-Up Investigation to Determine the Safety Posture of the Motor Carrier***

The FMCSA discourages the practice of conducting follow-up investigations as a means to upgrade a motor carrier’s safety rating. If a motor carrier requests that its proposed or unsatisfactory safety rating be upgraded, it should submit a written request, in accordance with Section 385.17. The request will be reviewed by the Field Administrator (FA) or designee, and a determination will be made as to whether the corrective action taken warrants an upgrade. If the FA or designee believes further information is necessary, he or she should consult with the DA/SD, or designee to determine whether a follow-up investigation should be performed.

A FA should request from the DA any additional relevant information and opinion before making a decision under the FA’s authority, outlined in 49 CFR Part 385.17. This review will frequently preclude the need for a follow-up investigation, and will allow a FA to make a timely and informed decision under its authority, outlined in 49 CFR Part 385.17. A review of the motor carrier may be necessary to verify that the motor carrier took and maintained corrective action. This review need not rise to the level of an investigation.

***Upgrade Request Procedures Specific to Passenger Carrier Operations***

Supplemental guidance for the handling of upgrade requests for passenger carriers was provided in two policy memos dated June 26, 2013 ([MC-ECE-2013-0005](#)) and March 6, 2014 ([MC-ECE-2014-0004](#)). [MC-ECE-2013-0005](#) added the following additional procedures to be included in the upgrade request process of any proposed or final unsatisfactory rating of a passenger carrier. [MC-ECE-2014-0004](#) modified one component of the additional procedures required by [MC-ECE-2013-0005](#) and is explained within the following procedures.

- Consideration should be given to limiting the scope of a carrier’s operation to ensure safety and compliance before the carrier resumes full operations. The limitations may include, but are not limited to operation type; routes, equipment and drivers; and allowing intrastate operations only.

- Prior to approving an upgrade in response to a §385.17 petition, the Division Office must conduct a Pre-operational Assessment to verify that the passenger motor carrier implemented the corrective actions outlined in its safety management plan. The Pre-operational Assessment Worksheet and additional details about the process may be found in the policy [MC-ECE-2014-0004](#). The worksheet should be used as a guide for documenting in Part C of the non-ratable review done as a follow-up in the §385.17 process as described in [MC-ECE-2013-0005](#). For carriers that are currently inactive, the Division Office must reactivate the carrier to the status they held prior to their inactivation before uploading the non-ratable review.
- When the basis for the OOS order is related to vehicle maintenance and/or vehicle condition, vehicle inspections should be conducted as a condition to upgrade.
- An additional investigation should be conducted within 60 days after the safety rating is upgraded and operating authority is restored to verify the carrier's implementation of its safety management plan and corrective actions. This time period may be extended by the FA if additional time is needed to gather operational data. (The purpose of this non-ratable review to be conducted using the investigation software for upload is to verify that the motor carrier has actually implemented the changes necessary for compliance.)

Passenger carriers that have had their Operating Authority revoked due to having received a final unsatisfactory rating will not be allowed to reinstate their authority. They must apply for new authority and, if such authority is granted they will be given a new MC number.

See [MC-ECE-2013-0005](#) and [MC-ECE-2014-0004](#) for additional information.

#### ***Procedures that can be followed if a Motor Carrier's Accident Rate was a Primary Determinant of the Safety Rating***

During an investigation, a SI determines a motor carrier's recordable accident rate. However, 49 CFR Part 385, Appendix B, states that FMCSA ". . . will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor." The DA/SD or designee may review the preventability of all accidents listed in Factor 6 on the investigation before uploading. If the DA/SD or designee determines that the accident was non-preventable, the accident may be removed from the investigation before uploading.

During an investigation, if the motor carrier makes it known to the SI that some of the accidents included in its overall accident rate were not preventable, the SI should tell the motor carrier to contact the DA/SD or designee. The motor carrier will have seven calendar days to provide the necessary documentation to the DA/SD or designee for review. Documentation must be limited to official police accident reports and official insurance accident investigation reports. If the motor carrier indicates that it will be challenging accidents as not preventable, the SI must not upload the investigation until close of business on the 7th day. If the investigation is completed and ready for upload before the motor carrier provides the necessary documentation or indicates that it may challenge some accidents on its investigation, the SI may upload the investigation. If during this review the DA/SD or designee determines that any accident was not preventable, the SI must remove the accident from the calculation of the motor carrier's accident rate. If an accident is removed and the proposed rating changes as a result, the DA/SD or designee will generate a new investigation report and send it by certified mail to the motor carrier. If the DA/SD or designee is unable to determine whether the accident was preventable, or if in the DA/SD's or designee's judgment the accident was preventable, the accident rate will remain unchanged on the investigation.

In making a determination whether an accident was preventable, the DA/SD or designee should be mindful that the motor carrier must present "compelling evidence" on the issue of preventability. Police and insurance company accident reports often fall short of this standard. These reports may fail to indicate when the driver became aware of a dangerous roadway situation or how much time the driver had to react to the situation by taking effective evasive action. If there is any uncertainty in a report, as to whether the driver could have avoided the accident, the DA/SD or designee must consider an accident as preventable.

The DA/SD or designee must remember that who “caused” the accident and whether the driver could have avoided the accident are separate issues.

***The AA May Consider an Accident as Non-Preventable Under the Following Circumstances***

In determining whether an accident is preventable, the AA may consider whether another vehicle ran a red light and crashed into a CMV, whether the CMV was rear-ended by another vehicle, or whether the CMV was stopped in traffic or legally parked and was struck by another vehicle.

When the accident rate on an investigation report is changed as a result of the DA/SD’s or designee’s determination that an accident was non-preventable, the SI will correct the rate and ensure that the investigation report is sent via certified mail to the motor carrier. In the comments Section of Part C of the investigation report, the SI must make a note explaining the facts concerning the change in the accident rate.

The DA/SD or designee must review any accident in question before the SI uploads the investigation. The DA/SD or designee may not change the accident rate once the investigation has been uploaded. After an investigation has been uploaded, the motor carrier may request an administrative review consistent with 49 CFR Part 385.15.

***Find the Agency’s Decisions Regarding 49 CFR Part 385.15 Motor Carrier Appeals Here***

The Agency’s decisions regarding 49 CFR Part 385.15 motor carrier appeals are available on FMCSA’s website at <http://www.fmcsa.dot.gov/about/offices/cc/adjudications/adjudications.aspx>.

***If a Motor Carrier Disagrees with How a Review Was Conducted, and the Subsequent Proposed Safety Rating, it can Appeal the Safety Rating***

A motor carrier may appeal a proposed safety rating per 49 CFR Part 385.11(c) or a final safety rating per 49 CFR 385.11(b) in a petition filed under 49 CFR Part 385.15, if it believes that the rating was issued in error and factual and procedural issues are in dispute. The carrier should appeal as soon as possible. For proposed unsatisfactory ratings, the motor carrier should appeal within 15 days of the issuance of the proposed safety rating to allow FMCSA to issue a final decision before the OOS prohibitions take effect. All appeals must be made within 90 days from the date of issuance.

If a motor carrier is appealing the denial of a request for a change in a rating under 49 CFR Part 385.17, it must file the appeal within 90 days of the date of the denial stating why the decision was in error. Petitions under 49 CFR Part 385.15 must be filed with the FMCSA AA. A member of the AA’s staff (or an attorney from the Chief Counsel’s Office) may contact the DA/SD or designee and appropriate SC Enforcement Program Manager advising them of the appeal and requesting the immediate forwarding of all documentation used to assign the motor carrier its proposed rating. This documentation includes, but is not limited to, a complete copy of the investigation report, legible copies of evidence, investigator notes, a motor carrier profile, and SMS information.

Ex parte communication between the AA’s counsel and the DA/SD or designee and/or SCET regarding the appeal is prohibited except to request the documentation supporting the rating.

Under 49 CFR Part 385.15, FMCSA must issue a final decision based solely upon the information submitted by the motor carrier and the DA/SD or designee. FMCSA may ask the parties to appear before the AA for a conference to discuss the safety rating and documents submitted. If the motor carrier fails to attend the conference, FMCSA may dismiss the petition.

***Issuing a Decision Regarding 49 CFR Part 385.15 Petition Requests***

FMCSA must issue a decision within 30 days of receipt of a petition for review from a HM or passenger motor carrier and within 45 days of receipt of a petition from a non-HM or non-passenger motor carrier. The decision must be in writing and must outline the basis for the grant or denial of relief. The motor

carrier may appeal FMCSA's final decision, within 60 days after its entry, to the court of appeals where venue lies (28 U.S.C. 2344).

### ***The Following Must Occur When a Safety Rating is Appealed under 49 CFR Part 385.15***

Initially, a member of the AA's staff (or an attorney from the Chief Counsel's Office) will contact the DA/SD or designee advising him or her of the appeal. The DA/SD or designee will forward the Chief Counsel's Office, Washington, DC all documentation used to assign the motor carrier its proposed rating (including, but not limited to, a complete copy of the investigation report, legible copies of evidence, investigator notes, a motor carrier profile, SMS information, and any other information pertinent to the case).

The DA/SD or designee or its counsel may submit a detailed explanation of the process used to assign the proposed rating and may make legal arguments for the assignment of such a rating. These arguments may address the points of contention made by the appealing motor carrier in its petition. If such arguments are made, the motor carrier must receive a copy of the reply and an opportunity to respond to the Agency's argument. After consultation with counsel, the DA/SD or designee is responsible for serving this document on the motor carrier. Any attempt to make such arguments to the AA by bypassing the motor carrier is an improper ex parte communication which can result in granting the motor carrier's petition.

### ***A Safety Rating Can be Upgraded Based on Corrective Actions Taken by the Motor Carrier***

A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request an upgrade to its safety fitness determination at any time. It is the responsibility of FMCSA to thoroughly review the request and determine whether to grant, deny, or extend the time for determination within the timeframes set forth in 49 CFR Section 385.17. However, a request made after an unsatisfactory rating becomes final does not suspend the prohibition on operating in commerce. By regulation, a request must be made in writing to the FA for the FMCSA SC in which the motor carrier maintains its PPOB. That written document must describe the corrective action undertaken and must include other documentation that may be relied upon as a basis for the requested change to the proposed or final rating. The FA will make a final determination based upon the documentation submitted and may consider any additional investigation deemed necessary.

The FA should not take steps to upgrade a safety rating based on corrective action if a thorough review, the safety rating upgrade request, and the Safety Management Plan do not support it.

### ***Procedures for Upgrading a Carrier with a Conditional Safety Rating***

Section 385.17 sets specific time limits to upgrade unsatisfactory rated carriers; however, there is no similar schedule to upgrade conditional rated carriers.

Conditional rated motor carriers are not placed OOS, and therefore, FMCSA will allow sufficient time (e.g., 90 days, 120 days) to monitor the corrective action a motor carrier claims to have taken. FMCSA recommends the DA allow a minimum of 90 days to thoroughly review and monitor the safety rating upgrade request and Safety Management Plan of conditional rated motor carriers with critical hours of service (HOS), driver qualification (DQ), or vehicle maintenance violations, and/or crash data. For example, the DA may require the motor carrier to submit two months of logs for numerous drivers; verify the motor carrier's procedures for ensuring the accuracy of drivers' records of duty status (RODS); compare the supporting documents with the RODS; evaluate the carrier's system for monitoring and controlling HOS and verifying the accuracy of RODS.

### ***General Procedures for Upgrading a Safety Rating Based on Corrective Action***

The general procedures for upgrading a safety rating based on corrective action follows.

1. If an investigation of a motor carrier results in a proposed "conditional" or "unsatisfactory" safety rating, the SI must provide the motor carrier with a copy of the [How to Request an Upgrade of](#)

[Your Safety Rating Determination Based on Corrective Action](#) document. Motor carriers should be informed that FMCSA will no longer accept requests for follow-up investigations in order to obtain an upgraded safety rating. All requests for safety rating upgrades must be requested in writing and based on Section 385.17.

2. A motor carrier will have the option to request an upgrade to a proposed or final safety rating based upon corrective action taken. These requests must be made in writing and may be made at any time. The request must describe the corrective action taken and include documentation of the corrective action in support of the requested change to the proposed or final safety rating. However, a request made after an unsatisfactory rating becomes final does not suspend the prohibition of operating in interstate and intrastate commerce.
3. The FA will review the request. If the FA requests the DA/SD to evaluate the facts presented by the motor carrier and analyze the current safety performance of the motor carrier, the DA/SD must ([click here for guidance on reviewing requests for safety rating upgrades](#)):
  - a. Review the documentation supporting the motor carrier's corrective action within 15 days; and
  - b. Submit an evaluation and analysis of the facts presented by the motor carrier and the current safety performance data of the motor carrier to the FA (see sample memoranda [reviewing](#) and [extending](#) a safety rating upgrade request).
4. The Division Office may consider performance indicators from internal sources, such as Safer, MCMIS, A&I, SMS, Query Central (QC), etc., to supplement the motor carrier's submission when developing their opinion. Caution should be used when recommending upgrades on motor carriers with OOS rates exceeding national averages.
  - a. The FA will then make one of three decisions. The FA may:
  - b. Grant the request in whole or part, and provide written notification to the motor carrier (see [sample letter granting request](#));
  - c. Deny the request and notify the motor carrier in writing of this decision (see [sample letter denying request](#)); or
  - d. Extend the time in order to make a final determination [see 7/18/12 memo: [Revised Guidance on Changes to Safety Ratings Based upon Corrective Actions \(Section 385.17\)](#)].

The FA must perform his or her review of safety rating upgrades for motor carriers with a proposed or final "unsatisfactory" safety rating within 30 days of a motor carrier's request for motor carriers transporting passengers in a CMV or placardable quantities of hazardous materials, or within 45 days of a motor carrier's request for all other motor carriers. The FA may only grant a 10-day extension to the period before the proposed safety rating becomes final, if the FA determines the motor carrier is making a good faith effort (e.g., hiring a Safety Director, employing technology, reorganizing its operation, establishing monitoring programs for HOS, vehicle maintenance) to improve its safety status and requests, and receives approval from the AA Field Operations.

A final determination will be made based upon the documentation submitted, and may be based upon any additional investigation deemed necessary.

If the motor carrier's safety rating is upgraded from "unsatisfactory" to any other rating, the designation of "UNFIT" will be removed from MCMIS and the Agency will continue to monitor the motor carrier's operational safety performance.

If a motor carrier is denied an upgrade by the FA under Section 385.17, it may appeal that decision under Section 385.15 to the Chief Safety Officer (CSO) within 90 days of the denial of the request. If the designation became final, it will remain in effect during the period of administrative review unless stayed by the reviewing official.

5. The FA will make all extension or upgrade designations in the MCMIS system and scan all related paperwork into the motor carrier's file in EDMS. An email of the final disposition should be transmitted back to the Division so PRISM and State MCSAP notification can be made in case of an "UNFIT" designation.
6. The FA must follow the procedures outlined in Section 385.17 with regard to timeframes, notifications, and extensions.

***The FA Must Complete the Reviews of Petitions Received Under 49 CFR Part 385.17 within this Time***

The FA must complete a review of a HM or passenger motor carrier's request to change an unsatisfactory rating within 30 days after receipt of the request. The FA must complete a review of a request from an unsatisfactory rated non-HM or non-passenger motor carrier within 45 days after receipt of the request.

***Procedures to Follow if FA is Unable to Review and Make a Final Decision within the required 30-Day Timeframe***

If the request is made by a HM or passenger motor carrier within the 45-day grace period before a proposed Unsatisfactory rating becomes final and the FA determines that the motor carrier is making a good faith effort to correct the violations cited during the investigation that resulted in a proposed unsatisfactory rating and requests and receives approval from the AA for Field Operations, an FA may extend the 45 or 60-day period before the rating becomes final for up to 10 days. If the FA decides to extend the 45-day proposed rating period, he/she must inform the motor carrier and modify the effective date in MCMIS.

To expedite the process of reviewing the requests for upgrade, the motor carrier should be advised to address the request to the FA of the supporting SC and mail a complete copy to the DA/SD or designee of the Division of domicile. At closeout, the motor carrier also should be provided with the procedures for making a 49 CFR Part 385.17 request. Once the DA/SD or designee reviews the motor carrier's corrective actions and documentation, he/she makes a recommendation for denial or approval of upgrade to the FA.

In response to a 49 CFR Part 385.17 request, the FA may deny the request and notify the motor carrier in writing of this decision or grant the request, in whole or part, provide written notification to the motor carrier, and change the rating in MCMIS.

If the FA denies relief to a motor carrier under 49 CFR Part 385.17, the motor carrier may appeal that decision under 49 CFR Part 385.15 to the AA within 90 days of the denial of the request. If the proposed safety rating became final, the final rating will remain in effect during the period of administrative review unless stayed by the reviewing official.

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<sup>3</sup> If the rating upgrade request is denied, the rating date that will appear for public display is the date when the Focused Investigation rating was given (Date 2) plus 45 or 60 days depending on type of motor carrier.

***6.2.1.1.12 Follow-Up Monitoring of Carriers that Operate While OOS and/or Without/Beyond the Scope of Their Operating Authority***

***Procedures for identifying and initiating enforcement against carriers that operate while OOS and/or without/beyond the scope of their operating authority***

The DA, or designee, has the responsibility for identifying and initiating enforcement against motor carriers that operate while OOS and/or without/beyond the scope of their operating authority.

The most common reasons that motor carriers are issued OOS orders are listed below:

OOS orders that apply to *interstate and intrastate* commerce:

- Being declared an imminent hazard (49 U.S.C. 5102(5); 49 CFR 386.72(b));
- Receiving a final unsatisfactory safety rating (49 U.S.C. 31144(c); 49 CFR 385.13(d));

OOS orders that apply to *interstate* commerce:

- Failing to pay civil penalties (49 U.S.C. 521(b)(8); 49 U.S.C. 13905(d); 49 CFR 386.83-84));
- Failing a new entrant safety audit (49 CFR 385.325);
- Failing to submit to a new entrant safety audit (49 CFR 385.337); and
- Failing to respond to a new entrant expedited action notification (49 CFR 385.308).

Operating authority is required for those carriers operating as for-hire, in *interstate commerce*.

***Enforcing OOS and Operating Authority Violations Based on Available Data***

Each month, the DA must review the “Carriers under Registration/OOS Sanctions with Interstate Activity” report provided by MC-F and the MCMIS report titled, “Activity in MCMIS of Companies Lacking Operating Authority in L&I” (located in the “Other” tab of the “Reports” subsection for his or her State. These reports identify those motor carriers that had inspections or a crash while being OOS or without operating authority.

The DA should initiate an enforcement case if there is sufficient evidence to document that the motor carrier operated or is operating while OOS or without operating authority. If the evidence meets the criteria below, the DA does not need to initiate an investigation in order to take enforcement. If the elements below cannot be proven, the DA may attempt to gather additional evidence from the carrier or use other enforcement tools (e.g., Notice of Violation, Order to Show Cause).

- a. The evidence must demonstrate that:
  - The motor carrier was OOS at the time of the activity;
  - The motor carrier operated a commercial motor vehicle in commerce at the time of the activity the type of commerce, inter- or intrastate is based on the violation as described above;
  - The motor carrier performed transportation in a “for hire” capacity (for operating authority enforcement);
  - The motor carrier performed non-exempt transportation (i.e., the commodity was not among those listed in 49 U.S.C. 13506(a)(6) or 49 CFR 372.115, and the transportation was not otherwise exempt under 49 U.S.C. 135 (for operating authority enforcement); and
- b. Sources of such evidence can include:
  - The Driver Vehicle Examination Report, completed with all relevant information;
  - Police Accident Report with Attachments (Supplemental Commercial Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report); and
  - Motor carrier statements

In addition, the DA should consult with the appropriate Service Center Enforcement Team (SCET) and consider seeking a U.S. District Court injunction against a motor carrier that operates while being OOS due to an imminent hazard or an unsatisfactory safety rating. After the DA and Service Center decides to seek an injunction, the Office of Chief Counsel should be contacted so the requisite approval from the Office of the Secretary and the Department of Justice can be obtained.

***Enforcing Operating Authority Violations Based on Operating Authority Report***

Each month, the DA should review the MCMIS report titled, “Activity in MCMIS of Companies Lacking Operating Authority in L&I” (located in the “Other” tab of the “Reports” subsection) for its State.

Each DA should initiate an enforcement case for operating without authority. Further investigation is not required if there is sufficient evidence to document the violation.

- a. The evidence must demonstrate that:
  - The motor carrier performed transportation in a “for hire” capacity;

- The motor carrier performed non-exempt transportation (i.e., the commodity was not among those listed in 49 USC § 13506(a)(6) or 49 CFR § 372.115, and the transportation was not otherwise exempt under 49 USC Chapter 135;
- The transportation was in interstate commerce.
- b. Sources of such evidence can include:
  - The Driver Vehicle Examination Report; and/or
  - Police Accident Report with Attachments (Supplemental Commercial Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report); and
  - Motor carrier statements.

The table below summarizes the guidance above.

**Reasons Carrier is prohibited from Interstate and/or Intrastate Operations and Actions to Take**

Reason	Action
<ul style="list-style-type: none"> <li>• Being declared an imminent hazard</li> <li>• Receiving a final unsatisfactory safety rating</li> <li>• Failing to pay civil penalties</li> <li>• Failing a NE SA; or failing to submit to a NE SA</li> </ul>	<ul style="list-style-type: none"> <li>• NOC will be issued</li> <li>Evidence may include the FMCSA document prohibiting interstate operations and a copy or facsimile of the inspection or crash report</li> <li>• indicating interstate activity</li> </ul>
<p>Operating authority revoked by the L&amp;I division for reason not related to one of the OOS Order types above; for example: based upon lack of insurance filing</p>	<ul style="list-style-type: none"> <li>• NOC will be issued as resources permit;</li> <li>• The evidence must demonstrate that:                             <ol style="list-style-type: none"> <li>(1) the motor carrier performed transportation in a “for hire” capacity;</li> <li>(2) the motor carrier transported a non-exempt commodity [i.e., the commodity was not among those listed in 49 U.S.C. § 13506(a)(6) or 49 CFR 387.301(b), and the transportation was not otherwise exempt under 49 U.S.C. Chapter 135]; and</li> <li>(3) that the transportation was in interstate commerce. Sources of such evidence can include the FMCSA Revocation Decision and confirmation of interstate activity such as the Driver Vehicle Examination Report and/or the Police Accident Report with attachments (Supplemental Commercial Vehicle Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report).</li> </ol> </li> </ul>

***PRISM***

The DA should coordinate with their State vehicle registration department in States participating in **the Performance and Registration Information Systems Management (PRISM) Program** to invoke International Registration Plan (IRP) license plate or other PRISM sanctions. Full PRISM States have the authority to deny or suspend vehicle registrations and take actions against motor carriers that are under a Federal OOS Order. This also includes denying vehicle registration to reincarnated or suspected reincarnated motor carriers. Additionally, some PRISM States that are not fully implemented pull plates and impound vehicles.

- a. In cases where the motor carrier was issued an OOS Order for being an imminent hazard or rated unsatisfactory, DAs are encouraged to:
  - o Request that the State vehicle registration department impound the vehicle(s), pull plates, deny or suspend registration; or
  - o Request that the State vehicle registration department send a letter to the motor carrier demanding expedited return of the license plates.
- b. For those DAs that are in non-PRISM States or PRISM States that do not impound vehicle(s), pull plates, deny or suspend registration, etc., he or she is encouraged to seek license plate sanctions also. This can be done by working with the State’s vehicle registration department and asking them to suspend the registration of the motor carrier. DAs should be prepared to provide the department with all required documentation (e.g., inspection reports, OOS Orders)

**Click here for an example of the letter that is sent to the motor carrier by State vehicle registration departments in PRISM States. DAs should encourage those non-PRISM States to use the same letter.**

The table below sets forth general PRISM guidance on IRP license plate sanctions, based on the reason the carrier is prohibited from interstate operations.

**General PRISM Guidance on IRP License Plate Sanctions**

OOS Reason	Plate Registration System Set Up to Deny Plate Renewal or Account Activity?	Issue Suspension Notice?	Physically Retrieve Plates?
<b>Final Unsatisfactory (UNSAT) Rating</b>	Yes	Yes	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
<b>Failure to Pay Civil Penalties</b>	Yes	When evidence exists that carrier is operating in violation of the order	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
<b>Failing A NE Audit</b>	Yes	Yes	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
<b>Failing to Submit to a NE Audit</b>	Yes	When evidence exists that carrier is operating in violation of the order	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
<b>Imminent Hazard</b>	Yes	Yes	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered

### 6.2.1.1.13 Special Topic: VUU Table Protocol

We have designated certain fields to be required fields whenever a violation is entered into the VUU Table. Though other data may be captured in other fields, these required fields must always be completed. These required fields have been identified because they each play an important role in at least one of our proprietary software applications. These fields and their requirements are:

1. Primary Violation
2. Short Description of the Violation
3. Long Description of the Violation
4. Abatement Clause
5. Effective Date\*
6. Rescind Date\*
7. VCAT for All Safety and HM Violations (list of acronyms attached)\*\*

\*If you do not have either the effective date or the rescind date, use these default dates:

Effective date = 01/01/1901

Rescind date = 12/31/2999

\*\*VCAT for HHG and commercial violations are programmed somewhat differently. For all commercial violations (non-HHG), the VCAT is CR; for HHG violations, the VCAT is CRF. A listing of new VCAT designations is included with the attached list. These will be used for all new violations in these categories which are entered in the future. **Do not attempt to go back and enter these VCAT designations into existing violation fields that are currently in VUU which may not already have these entries.**

**Note:** In addition to the primary violation, if there is an appropriate secondary violation, it should also be captured in VUU.

Due to VKEY issues, never delete a violation. Should you find that an error was made and the violation has already been entered and accepted into VUU, rescind the violation by entering the current date in the rescind field. Then enter a new violation with the correct data showing an effective date for the following day and a rescind date for the new violation of 12/31/2999.

In addition to these required fields, it is highly encouraged that the Guidance/Example field also be completed for each new violation entry. This field captures the information which is displayed in Case Rite and gives general instructions to the SI regarding basic evidentiary requirements for this specific violation.

#### Meanings for the Violation Categories

Category	Meaning
GARB	Arbitration HHG - HHG
GHTN	110% Rule - HHG
GLAD	Loss and Damages - HHG
GNRO	Other Non-Recordkeeping
GRKA	Recordkeeping - HHG
GSDL	Service Delay - HHG
GTFR	Tariff - HHG
GWHT	Weight - HHG
GUTR	Unauthorized Transportation - HHG
GOLD	Hostage Load - HHG

GBCA	Brokering HHG w/o Carrier Agreement - HHG
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM
NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR
NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR
O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL- Notices/Orders
ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUHM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
EDRK	Recordkeeping - Employee
EFTC	False to Conceal - Employee
ENRA	Non-Recordkeeping - Employee
E383	CDL Part 383 - Employee
EONC	OOS Other than OOS CDL (1) & (2) - Employee (was OOS Non-CDL)
EOCA	OOS CDL (1) - Employee
EOCB	OOS CDL (2) - Employee
EDOA	Denial of Access - Employee
EHMI	HM Violation - Employee (was HM Incident)
EHTR	HM Training - Employee
NRCC	Operating Authority - Safety (Commercial Non-HHG)

*Meanings for UFA Violation Categories that Can Be Entered in VUU's VCAT Field*

<b>Category</b>	<b>Meaning</b>
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM
NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR
NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR

O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL - Notices/Orders
ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUEM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
NRCC	Operating Authority - Safety (Commercial Non- HHG)

#### ***6.2.1.1.14 Special Topic: Initiating a Public Interest Exclusion (PIE) Proceeding***

At the request of the DA/SD or designee to the FMCSA DAPM, a Drug and Alcohol Technical Advisory Group (TAG) member may be assigned to assist in or conduct the investigation. Service agent reviews frequently result from complaints filed with the Agency.

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

If during the investigation violations are discovered identifying serious noncompliance by a service agent, the following procedures for a PIE, in accordance with Part 40 Subpart R, will apply:

- The investigator should document serious service agent Part 40 violations.
- Based upon Service Center policy, the Division Office or Service Center should issue a Notice of Corrective Action (NOCA) to the service agent.
  - If the service agent takes adequate corrective action within 60 days, PIE procedures will cease.
  - If the service agent does not take adequate corrective action within 60 days, the Service Center recommends initiation of PIE procedures and forwards all documentation and a narrative description of the investigation and the violations discovered to the DAPM in the FMCSA Office of Enforcement and Compliance.
- Once the DAPM receives and reviews the NOCA package, s/he may begin Notice of Proposed Exclusion (NOPE) proceedings.
- The DAPM will send a copy of the NOPE and PIE recommendation to the Office of Drug and Alcohol Policy and Compliance (ODAPC) in the Office of the Secretary and originating Service Center.
- The ODAPC Director (or his designee) will determine if the problems are corrected and the PIE is issued. ODAPC also determines parties included and the PIE's duration.
- Divisions may be asked to assist in the investigation of a service agent's compliance with the PIE issued by ODAPC. The PIE prohibits the service agent from participating in U.S. DOT drug and alcohol testing in accordance with the terms and duration of the PIE.

6.2.1.1.15 Illustrations

6.2.1.1.15.1 Illustration 1: Denial of Request for A Safety Rating Pursuant to 49 CFR § 385.17

U.S. DEPARTMENT OF TRANSPORTATION  
 FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
 XXXXXXXX SERVICE CENTER  
 Street, Suite  
 City, State Zip Code  
 (XXX) XXX-XXXX Tel  
 (XXX) XXX-XXXX Fax  
 Reply to:  
 MC-EF?-SV

DATE

MOTOR CARRIER’S NAME

AND ADDRESS

Re: Denial of Request for A Safety Rating Change Pursuant to 49 CFR § 385.17

Dear :

This is in response to your request of [DATE] to upgrade the safety rating of [MOTOR CARRIER’S NAME].

I have considered your request and determined that the safety rating should not be upgraded for the following reasons.

[STATE HERE WHY REQUEST WAS DENIED AND WHAT ADDITIONAL INFORMATION/DOCUMENTS WOULD BE NEEDED FOR RECONSIDERATION]

You may petition, within 90 days of this denial, for an administrative review pursuant to 49 CFR § 385.15 (see 49 CFR § 385.17(j)). If you choose to do so, your petition must be submitted in writing to the CSO, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Room W60-304, Washington, DC 20590. A copy of 49 CFR §§ 385.15 and 385.17 is enclosed.

If you have any questions, please contact Enforcement [TITLE] [NAME] at [TELEPHONE NUMBER].

Sincerely,

[NAME]

Field Administrator

Enclosures

cc: Division Administrator/State Director [NAME]

**6.2.1.1.15.2 Illustration 2: Grant of Request for A Safety Rating Change Pursuant to 49 CFR § 385.17**

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
XXXXXXXX SERVICE CENTER  
Street, Suite  
City, State Zip Code  
(XXX) XXX-XXXX Tel  
(XXX) XXX-XXXX Fax

Reply to:  
MC-EF?-SV

DATE

CARRIER’S NAME

AND ADDRESS

**Re: Grant of Request for A Safety Rating Change Pursuant to 49 CFR § 385.17**

Dear:

This will respond to your request of [DATE] to upgrade the safety rating of [CARRIER’S NAME] based on corrective actions taken by the carrier.

I have reviewed your request and determined that the safety rating be changed to [NEW RATING]. By facsimile transmission of this letter to the IT Operations Division, FMCSA is requesting that it immediately upgrade [CARRIER’S NAME] safety rating to [RATING].

If you have any questions, please contact Enforcement [TITLE] [NAME] at [TELEPHONE NUMBER].

Sincerely,  
[NAME]

Field Administrator

cc: IT Operations Division

State Director [NAME]

**6.2.1.1.15.3 Illustration 3: Request for A Safety Rating Change Pursuant to 49 CFR § 385.17**

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
XXXXXXXX SERVICE CENTER  
Street, Suite  
City, State Zip Code  
(XXX) XXX-XXXX Tel  
(XXX) XXX-XXXX Fax

Reply to:  
MC-EF?-SV

DATE

CARRIER’S NAME

AND ADDRESS

**Re: Request for A Safety Rating Change Pursuant to 49 CFR § 385.17**

Dear:

This will acknowledge receipt of your correspondence, dated [DATE], requesting that the proposed safety rating of Unsatisfactory for [CARRIER'S NAME] be upgraded based on corrective actions taken by the carrier.

FMCSA has reviewed the information provided and, in consultation with Division Administrator [NAME], concludes that [CARRIER'S NAME] has exhibited "a good faith effort to improve its safety status." However, there is insufficient information at this time to grant the request of an upgrade in the safety rating. Therefore, FMCSA is allowing [CARRIER'S NAME] to continue to operate in interstate commerce under a proposed Unsatisfactory rating for an additional [NUMBER but no more than 60] days. This extends the effective date of the proposed unsatisfactory rating to [DATE]. Prior to this date, FMCSA will conduct a follow-up compliance review and make a final determination on the request for a safety rating change. You will be notified in writing of that determination.

If you have any questions, please contact Enforcement [TITLE] [NAME] at [TELEPHONE NUMBER].

Sincerely,

[NAME]

Field Administrator

cc: IT Operations Division

Division Administrator [NAME]

#### 6.2.1.1.15.4 Illustration 4: Motor Carrier Request for Rating Change Based On Corrective Action (49 CFR Part 385.17)



#### Motor Carrier Request for Rating Change Based On Corrective Action (49 CFR Part 385.17)

The Federal Motor Carrier Safety Administration (FMCSA), <ENTER THE SERVICE CENTER NAME>, has adopted the following procedures when a motor carrier submits a written request for a change in its safety rating as defined in 49 CFR Part 385.17. The regulations require that the motor carrier submit its request to the Field Administrator of the Federal Motor Carrier Safety Administration Service Center in which the motor carrier maintains its principal place of business. The motor carrier's request must include a written description of corrective actions taken, documentation of these corrective actions, and show that its operations meet the safety standards and factors specified in 49 CFR Part 385.9.

FMCSA <ENTER THE SERVICE CENTER NAME> will require a description of corrective action taken; *here in after referred to as the Motor Carrier's Safety Management Plan (SMP)*. ***Two copies*** of the SMP will be prepared. The SMPs will be addressed to the Field Administrator but submitted to the Division Administrator for review: <FA Name>, **Field Administrator, Federal Motor Carrier Safety Administration, <ENTER SC ADDRESS>**, and <DA Name>, **Division Administrator, Federal Motor Carrier Safety Administration, <ENTER DIVISION ADDRESS>**, and must clearly indicate that it is a request for change in rating under 49 CFR Part 385.17. The SMP must include but it is not limited to the following.

1. The SMP will address each violation on the most recent Onsite Investigation that was an ***Acute and/or Critical violation*** and ***Factor Six of the investigation when the rating for Factor Six is Unsatisfactory***.
2. The SMP must identify why the violation(s) cited as acute and/or critical were permitted to occur.

3. The SMP must discuss the actions taken to correct the deficiency or deficiencies that allowed the Acute and /or Critical violation(s) to occur. ***Documentation of this corrective action must be submitted with this request. For example, documentation may include items such as new policies and procedures, training programs and sign-in list, or copies of missing drug/alcohol tests. NOTE: When a carrier is cited for a Critical violation of 49 CFR Part 395, documentation showing hours of service checks and false log checks and the results should be included in the request for the most recent 90-day period.***
4. Actions taken to ensure these Acute and/or Critical violations do not reoccur in the future.
5. If Factor Six (Crashes) is rated Unsatisfactory, an accident countermeasure program must be included as part of its SMP. The Plan must include but is not limited to defensive driving training and an accident countermeasure program.
6. If the SMP includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, and etc., a schedule of when that activity will commence and when it will be completed must be included.
7. Any additional documentation that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents.
8. The SMP **must** include a written statement certifying that it will operate in compliance with the Federal Motor Carrier Safety Regulations, the Hazardous Material Regulations, and its SMP and the motor carrier's operation currently meets the safety standard and factors specified in 49 CFR 385.5 (*revised 11-06-97*). The statement must be signed by a corporate officer and, in the case of proprietorship, by **all** proprietors.

## **Part 385 - Safety Fitness Procedures**

### **§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.**

- (a) Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from FMCSA on the Internet at <http://www.safersys.org>, or by telephone at (800) 832-5660.
  - a(1). Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after the date of the FMCSA's notice of proposed "unsatisfactory" rating.
  - a(2). All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of the FMCSA notice of proposed "unsatisfactory" rating. If FMCSA determines the motor carrier is making a good faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.
- (b) A Federal agency must not use a motor carrier that holds an "unsatisfactory" rating to transport passengers in a CMV or to transport hazardous materials in quantities requiring placarding.
- (c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an "unsatisfactory" rating which became effective on or after January 22, 2001.
- (d) Penalties. If a proposed "unsatisfactory" safety rating becomes final, FMCSA will issue an order placing its interstate operations out-of-service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in 49 U.S.C. 521(b).

- a. [56 FR 40806, Aug. 16, 1991; 62 FR 60042-60043, November 6, 1997; 65 FR 50934-50935, Aug. 22, 2000]

**§ 385.15 Administrative review.**

- (a) A motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed I safety rating in accordance with § 385.15(c) or its final safety rating in accordance with § 385.11(b).
- (b) The motor carrier's request must explain the error it believes FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.
- (c) The motor carrier must submit its request in writing to the CSO, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington DC 20590.
- c(1). If a motor carrier has received a notice of a proposed "unsatisfactory" safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow FMCSA to issue a written decision before the prohibitions outlined in § 385.13(a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent FMCSA from issuing a final decision before such prohibitions take effect.
- c(2). A motor carrier must make a request for an administrative review within 90 days of the date of the proposed safety rating issued under § 385.11(c) or a final safety rating issued under § 385.11(b), or within 90 days after denial of a request for a change in rating under § 385.17(i).
- (d) The FMCSA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FMCSA may dismiss its request for review.
- (e) The FMCSA will notify the motor carrier in writing of its decision following the administrative review. The FMCSA will complete its review:
- e(1). Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" safety rating.
- e(2). Within 45 days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" safety rating.
- (f) The decision constitutes final agency action.
- (g) Any motor carrier may request a rating change under the provisions of § 385.17.[56 FR 40806, Aug. 16, 1991; 62 FR 60043, Nov. 6, 1997; 65 FR 50935, Aug. 22, 2000]

**§ 385.17 Change to safety rating based upon corrective actions.**

- (a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.
- (b) A motor carrier must make this request in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Service Centers are listed in § 390.27 of this chapter.
- (c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FMCSA to consider.
- (d) The FMCSA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.
- (e) The FMCSA will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" safety rating in the following time periods after the motor carrier's request:

- e(1). Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.
- e(2). Within 45 days for all other motor carriers.
- (f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and the FMCSA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes final may be extended for up to 10 days at the discretion of the FMCSA.
- (g) **The FMCSA may allow a motor carrier with a proposed rating of "unsatisfactory" (except those transporting passengers in CMVs or placardable quantities of hazardous materials) to continue to operate in interstate commerce for up to 60 days beyond the 60 days specified in the proposed rating, if the FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of the proposed "unsatisfactory" rating.**
- (h) If the FMCSA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.
- (i) If the FMCSA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing.
- (j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of § 385.15. The motor carrier must make the request within 90 days of the denial of the request for a rating change. If the proposed rating has become final, it will remain in effect during the period of any administrative review.

[56 FR 40806, Aug. 16, 1991; 62 FR 60043, November 6, 1997; 65 FR 50935, Aug. 22, 2000]

#### **6.2.1.1.15.5 Illustration 5: Petition for Change in Safety Rating (49 CFR Part 385.17)**

### MEMORANDUM

U.S. Department of Transportation

**Federal Motor Carrier**

**Safety Administration**

Subject: Priority 45/60 Day UNSAT/UNFIT

Date:

(If Applicable)

Petition for Change in Safety Rating (49 CFR Part 385.17)

<Enter Carrier Name & USDOT #>

From:

Reply Attn.:

To: <NAME OF EPC>

Enforcement Program Coordinator

<SERVICE CENTER & CITY/STATE>

Upon completion of a review of the above subject's petition for change in safety rating, the following information is being submitted. **Note: if the carrier properly sent a copy of the SMP to the MSC, you only have to electronically send this memo. Double-check via email or phone call.**

1. Date of compliance review that resulted in current rating: - - (Copy attached)
2. Date of petition for change in rating: - - (Copy attached with documentation)
3. State Director's opinion regarding the motor carrier's petition for change in safety rating:
4. Date and types of open complaints on file regarding the motor carrier's compliance with the FMCSR and HMR:
5. Current SMS BASIC Percentiles:
6. BASICs requiring an Investigation:
7. Current SMS Category (Monitor, High Risk, etc.) :
8. Safe Stat Category:
9. Copy of profile attached (optional): Yes No
10. Any additional information regarding the motor carrier's safety performance (NOTE: With the exception of 45/60-day carriers, all critical violations of 49 CFR Part 395 should include the most recent 30 days' worth of hours of service and false log check summaries as part of the SMP).
11. For 60-day UNSAT/UNFIT carriers, does the information submitted, though not enough for a recommended upgrade, warrant an extension of time? Yes No.

Attachment(s)

**6.2.1.1.15.6 Illustration 6: Response to complainant when an investigation will not be conducted**  
**Response to complainant when an investigation will not be conducted**

This document is in response to your (date) letter regarding (name of motor carrier). After careful review, FMCSA has decided not to conduct an investigation.

**THE RESPONSE SHOULD INCORPORATE ONE OR MORE OF THE FOLLOWING EXPLANATIONS:**

- (1) From the information that you have provided, FMCSA is unable to determine whether a violation of this Agency's regulations is occurring. Generally, a specific example of a substantial violation needs to be provided, including the date, location, and other pertinent information.
- (2) You allege a violation occurred on (insert date). It is the policy of this Agency to only investigate complaints alleging violations that have occurred within the previous 60 days.
- (3) As a result of a recent compliance review of (name of motor carrier) conducted on (date) **(NOTE: MUST BE WITHIN 60 DAYS OF RECEIPT OF THE COMPLAINT)**, FMCSA believes the noncompliance referred to in your letter (is not present) (was discovered and is being addressed appropriately).
- (4) Your allegations do not fall within the jurisdiction of the Federal Motor Carrier Safety Administration. You may want to contact the (give name and address of jurisdictional agency).
- (5) Your allegation involving the operation of defective equipment by (name and address of motor carrier) has been referred to the (give name and address of State MCSAP Agency where vehicle(s) are domiciled) for investigation. The Federal Motor Carrier Safety Administration,

through its Motor Carrier Safety Assistance Program, provides funding to the States for the purpose of performing vehicle inspections to ensure the safe operation of commercial vehicles on our nation's highways.

**(6) IN THE CASE OF VEHICLE DEFECT ALLEGATIONS THAT ARE NOT OUT-OF-SERVICE DEFECTS**

Your allegations are not substantial violations of this Agency's vehicle safety standards. Proper maintenance of a motor carrier's equipment is important. Certain items have been identified as critical to the operational safety of a vehicle. The absence or inoperativeness of such items is considered to be imminently hazardous.

With the dramatic increase in the number of vehicle inspections performed by the States as a result of the Motor Carrier Safety Assistance Program, the likelihood of the vehicles operated by (name of motor carrier) being examined at a roadside inspection site has increased substantially. The numerous roadside vehicle inspections conducted by the States help to ensure motor carriers properly maintain their equipment and unsafe vehicles are removed from operation.

**CONCLUSION TO LETTER, IF APPROPRIATE:**

If you can provide additional information which you think FMCSA should consider, please respond to the above address. Thank you for your interest in highway safety.

**6.2.1.1.15.7 Illustration 7: Response Letter to Complainant upon Submittal of a Non-Frivolous Complaint Which will be investigated**

Thank you for your (date) letter concerning the regulatory noncompliance of (name of motor carrier).

The Federal Motor Carrier Safety Administration (FMCSA) is concerned about violations of the Federal Motor Carrier Safety Regulations (FMCSR) and Hazardous Materials (HM) Regulations by motor carriers and their employees. We will investigate your allegations. It may be necessary to contact you for additional information during this investigation.

We will inform you of our investigation's findings. Your interest in highway safety is appreciated.

**6.2.1.1.15.8 Illustration 8: Response to Complainant at Conclusion of an Investigation Which Results in Enforcement**

This document is in follow-up to my (date) letter sent to you as a result of information you supplied concerning (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. An enforcement action, in which civil penalties will be assessed against the carrier, is currently being prepared to address the carrier's noncompliance.

If you find that these violations continue or other violations occur, please advise us.

Thank you for your interest in highway safety.

**6.2.1.1.15.9 Illustration 9: Response to Complainant When Allegations are Not Substantiated**

This document is in follow-up to my (date) letter sent to you as a result of information you supplied about (name of motor carrier).

The matter has received careful attention. However, our investigation failed to disclose violations of the type referred to in your letter.

Please advise us if we can be of further assistance.

**6.2.1.1.15.10 Illustration 10: Response to Complainant When Allegations are Substantiated but Enforcement Action Not Taken**

This document is in follow-up to my (date) letter to you as a result of information you supplied about (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. The nature of these violations, however, did not warrant enforcement action.

If we can provide further assistance, please contact our office.

**6.2.1.1.15.11 Illustration 11: Letter to Congressional Member after Completion of Compliance Review or an Investigation in Response to Congressional Request**

This document is in response to your (date) letter which (requested a compliance review or an investigation be conducted on (name of motor carrier)) or [alleged regulatory violations by (name of motor carrier)].

**THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:****USE PARAGRAPH (1) OR (2) WHEN A REQUEST FOR AN INVESTIGATION WAS MADE WITHOUT ALLEGATIONS OF SUBSTANTIAL VIOLATIONS**

- (1) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Regulatory violations were discovered, but their nature did not warrant enforcement action. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).
- (2) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Instances of noncompliance were discovered and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).

**USE PARAGRAPH (3), (4), OR (5) WHEN SUBSTANTIAL VIOLATIONS ARE ALLEGED**

- (3) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Your allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in your letter. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).
- (4) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).
- (5) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).

**6.2.1.1.15.12 Illustration 12: Letter to Congressional Member Who Forwarded a Complaint**

This is a response to your (date) letter which forwarded a complaint to us that alleged illegal activity by (name of motor carrier).

**THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:**

- (1) The forwarded complaint alleges the violation of a regulation or law which is outside the jurisdiction of the Federal Motor Carrier Safety Administration (FMCSA). We, therefore, cannot respond to the complaint but we have forwarded the complaint to the (appropriate government agency). If we can provide further assistance, please call my office at (telephone number).
- (2) We have concluded that the complainant's allegations are not reliable based on (the findings of a recent compliance review conducted on the company) or (our discussion with the complainant). An investigation, therefore, is not warranted at this time. The complainant will be advised of our conclusion. If you would like further information, please call my office at (telephone number).
- (3) We have concluded that the severity of the alleged violations does not warrant an investigation. The complaint was placed in our file on the company for future reference. We would be interested in reviewing additional information from the complainant about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).
- (4) We have concluded that an investigation of the alleged violations is not warranted based on the untimely nature of the allegations. It is the policy of this Agency to only investigate complaints alleging violations that have occurred within the prior 60 days. We would be interested in reviewing more recent information about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).
- (5) We have contacted the complainant and concluded that the allegations appear to be reliable. FMCSA strives to utilize its limited resources in the most effective manner to advance highway safety. The Agency, therefore, checks the safety performance of any motor carrier that is the subject of a complaint to FMCSA. In keeping with our focus on performance measures, particularly accident rates, we believe onsite compliance reviews are not needed if the carrier does not possess an unsatisfactory accident rate and there is no indication of poor performance. We have no information which shows the safety performance of (name of motor carrier) to be a problem at the present time. Furthermore, we have notified the carrier about the general allegations of the complaint and requested a written response. We will inform the complainant about our handling of the complaint. If we can provide further assistance, please call my office at (telephone number).
- (6) A compliance review or an investigation on (name of motor carrier) was completed in response to the forwarded complaint. Its allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in the complaint. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.
- (7) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.
- (8) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered and an enforcement action is currently being prepared. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.

#### **6.2.1.1.15.13 Illustration 13: Warning Letter to Motor Carrier for Failing to Register or File Insurance**

##### **THE LETTER BELOW MAY BE MODIFIED AS APPROPRIATE.**

This office has received information that (legal name of motor carrier) provided or arranged for the transportation of (commodity/passengers) in interstate or foreign commerce for compensation without having obtained authority from the Federal Motor Carrier Safety Administration (FMCSA).

Title 49, United States Code, Section 13901 provides that:

A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.

Title 49, United States Code, Section 13906 provides that a motor carrier, broker, and freight forwarder must file with the Secretary of the U.S. Department of Transportation a bond, insurance policy, or other type of security and that a registration remains in effect only as long as the registrant continues to satisfy the security requirements.

Our records show that (legal name of motor carrier) does not hold a registration certificate from this Agency to perform regulated interstate transportation and does not have proof of a bond, insurance policy, or other type of security on file with FMCSA. As a result, these transportation activities violate the statutory requirements. Failure to comply with the registration and insurance requirements could subject your company to substantial civil penalties as well as court orders to compel compliance with applicable Federal law (Title 49, United States Code, Sections 14702 and 14901).

You must cease all regulated interstate operations immediately and you may not resume them until you obtain the appropriate authority and file the necessary evidence of insurance with FMCSA. This letter is a warning against continued violation of the registration and insurance requirements.

Enclosed are the necessary forms to apply for appropriate authority, together with instructions. Please acknowledge receipt of this letter in writing within 20 days of the date of this letter. Your response should include a statement of your understanding of the matters referred to and should contain a specific statement as to corrective action being taken.

#### **6.2.1.1.15.14 Illustration 14: Cover Letter to Informational Packet in Response to a Compliant Received by Telephone**

This is in response to your recent communication with this office. The Federal Motor Carrier Safety Administration attempts to assist individuals. It does not provide informal dispute resolution. As a result, individuals are in a better position to protect their interests by pursuing private legal action or third party arbitration. In order to be helpful, enclosed is information covering the issues presented in your complaint.

Under Section 14704 of Title 49, U.S. Code, a person is authorized to pursue private legal action to enforce an order of the Secretary of Transportation or the Surface Transportation Board and to recover damages caused by a carrier or broker operating in violation of Federal law. It authorizes private legal action to enjoin equipment leasing and equipment loading/unloading violations. It allows HHG shippers to bring either a civil action in Federal court or an administrative complaint before the U.S. Surface Transportation Board to recover tariff overcharges.

Under Section 14707 of Title 49, U.S. Code, a person injured by an unregistered and/or uninsured carrier or broker is authorized to file a civil action to enforce the registration and insurance provisions. That statute also provides for the recovery of attorney fees and court costs.

Every carrier and broker is required to have an agent for service of process in each state in which operations are conducted. A process agent is a carrier's or broker's representative upon whom court papers may be served in any proceeding brought against a carrier or broker. If you choose to bring a civil action, you may contact our office at 202-358-7000 for the name and address of the agent for service of process in your state for the subject carrier or broker.

Your complaint has been registered for statistical purposes and will be used to evaluate a future need to investigate the operations of the carrier or broker. Thank you for your information.

### **6.2.1.1.15.15 Illustration 15: Cover Letter to Informational Packet in Response to Written Complaint**

This is in response to your recent communication with this office. Although the Federal Motor Carrier Safety Administration attempts to assist individuals, it does not provide informal dispute resolution. As a result, individuals are in a better position to protect their interests by pursuing private legal action or third party arbitration. In order to be helpful, enclosed is information covering the issues presented in your complaint. By copy of this letter, we are also requesting that the carrier/broker who is the subject of your communication respond directly to you about your concerns.

Under Section 14704 of Title 49, U.S. Code, a person is authorized to pursue private legal action to enforce an order of the Secretary of Transportation or the Surface Transportation Board and to recover damages caused by a carrier or broker operating in violation of Federal law. It authorizes private legal action to enjoin violations of statutes governing equipment leasing and the loading/unloading of equipment (lumper violations). It makes a carrier liable to a person for rates and charges in excess of those contained in a tariff. It establishes procedures for pursuing these remedies.

Under Section 14707 of Title 49, U.S. Code, a person injured by an unregistered and/or uninsured carrier or broker is authorized to file a civil action to enforce the registration and insurance provisions. That statute also provides for the recovery of attorney fees and court costs.

Every carrier and broker is required to have an agent for service of process in each state in which operations are conducted. A process agent is a carrier's or broker's representative upon whom court papers may be served in any proceeding brought against a carrier or broker. If you choose to bring a civil action, you may contact our office at 202-358-7000 for the name and address of the agent for service of process in your state for the subject carrier or broker.

Your complaint has been registered for statistical purposes and will be used to evaluate a future need to investigate the operations of the carrier or broker. Thank you for your information.

### **6.2.1.1.15.16 Illustration 16: Order to Cease All Interstate Transportation**

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**IN THE MATTER OF:  
ABC TRUCKING COMPANY, INC.  
17037 PINE ISLAND AVENUE  
PHILADELPHIA, PA 19001**

#### **OUT- OF- SERVICE ORDER**

***EFFECTIVE DATE: March 10, 20XX, 12:01AM***

#### **ORDER TO CEASE ALL INTERSTATE TRANSPORTATION**

ABC Trucking Company, Inc. (ABC) of Philadelphia, Pennsylvania, was issued a proposed UNSATISFACTORY safety rating on January 23, 1999. ABC was notified to take certain affirmative actions within [CHOOSE 45 OR 60] days from the effective date of that proposed rating to improve its safety rating to Conditional or Satisfactory. ABC was further advised that it would be ordered to cease any and all transportation unless ABC's safety rating was improved to Conditional or Satisfactory.

**WHEREAS**, ABC Trucking Company, Inc. has failed to take the necessary steps required to improve its Safety rating to Conditional or Satisfactory within the required [CHOOSE 45 OR 60] days.

THEREFORE, ***IT IS ORDERED*** THAT ABC TRUCKING COMPANY, INC. OF 17037 PINE ISLAND AVENUE, PHILADELPHIA, PENNSYLVANIA, WILL CEASE ALL INTERSTATE TRANSPORTATION ON THE EFFECTIVE DATE AND TIME OF THIS ORDER UNTIL SUCH TIME AS THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION DETERMINES YOUR COMPANY IS FIT. IN ADDITION, EACH AND EVERY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES GOVERNMENT IS PROHIBITED FROM USING ABC FOR ANY INTERSTATE TRANSPORTATION (49 U.S.C. § 31144).

ABC's continued operation in interstate commerce after the effective date and time of this ORDER will be considered a serious safety violation and will result in penalties of not more than \$10,000 for each separate violation and may result in criminal prosecution leading to imprisonment for up to one (1) year or a fine of up to \$25,000 or both and other actions as deemed necessary by the United States Department of Justice. (49 U.S.C. § 521(b)).

Conduct your actions accordingly,

John Paul Jones, Field Administrator  
Federal Motor Carrier Safety Administration  
Eastern Service Center  
802 Cromwell Park Drive  
Suite N  
Glen Burnie, MD 21061

[Signature date]

**6.2.1.1.15.17 Illustration 17: Certified Mail - Return Receipt Requested**

John Doe, Director of Transportation

XYZ Government Agency

12345 Anywhere Lane

Washington, DC 12345

Subject: Violation of 49 CFR \*.\*

Mr. Doe:

Agency Notification Letter

The Federal Motor Carrier Safety Administration (FMCSA) has conducted an investigation into your Agency's compliance with the Federal Hazardous Materials Regulations. Our investigation has discovered that your agency failed to properly classify, describe, package, and label a shipment of hazardous materials (*insert description of HM*) submitted to (*insert name of the carrier*) for transportation on or about (*insert date(s)*), destined for (*insert location*).

Your agency is in violation of 49 CFR § (or §§) (*insert section number(s)*) in that you offered hazardous materials for transportation in commerce that was not properly classified, described, packaged, marked, labeled, and in condition for shipment (*insert specifics on shipment(s)*).

As a Federal agency, the (insert agency name) is subject to and must abide by the hazardous material (HM) statutes (49 U.S.C. 5101 et seq.), and the regulations promulgated there under (49 CFR Parts 100-185). Congress specifically excluded the United States Postal Service as well as a department, agency, or instrumentality of the Government from all civil and criminal penalties under the HM act. As the Agency

responsible for the enforcement of the HM regulations within the transportation industry upon public highways, FMCSA is charged by Congress to assure a safe and efficient transportation system. To improve safety upon the Nation's highways, FMCSA has an elaborate compliance and enforcement program to bring about compliance by the private industry sector. FMCSA also regulates HM transportation made on behalf of and by all governmental agencies. Consequently, this letter serves as notification of the discovered violations and is a demand for corrective action on the part of your agency.

To assist your agency in improving compliance, please submit a detailed report to my attention within 30 days of receipt of this letter. Your letter must outline the methods and procedures your agency is taking to correct the violations discovered during our investigation. My staff will review your reply letter and make recommendations, if necessary, to improve your agency's compliance with the HM regulations.

If further information is needed or if you wish to schedule an interview, please call (*insert name*) at (*insert telephone number*). If we do not hear from you within 30 days from receipt of this letter, the violation information will be forwarded to the Office of Inspector General for the Department of Transportation for further action. Thank you for your understanding in this matter.

Sincerely,

(Insert Name)  
State Director

cc: The employee(s) responsible for the shipment

#### **6.2.1.1.15.18 Illustration 18: Ex Parte Communications**

**Ex parte communications** are any communication between a party and the government body holding a proceeding or contemplating government action that is made outside the presence of other interested parties to the proceeding. Under FMCSA's procedures for Section 385.15 appeals, "a party" is both the appealing carrier and the Division Administrator/State Director, his staff, a member of the decision-maker's staff, or other interested FMCSA employees. Such communications include: one-sided informal telephone calls, e-mails, meetings where the carrier does not attend, and written arguments directed to the decision-maker or his staff. This includes interoffice memoranda.

The CSO, as a final Agency decision-maker, essentially takes the place of a United States District Court Judge with the full power to affirm or deny all motions. All final decisions, like those of a District Court, are appealable to a U. S. Court of Appeals. That Court will review the CSO's decision to ascertain whether it was rendered in accordance with law, whether or not the decision was arbitrary and capricious, and whether it was an impartial decision. The Court of Appeals may determine that an ex parte communication, or the mere look of an improper communication, prejudiced the decision maker. Thus, the Court could conclude that the final Agency decision was not impartial. In this situation, the Agency decision would be overturned and the carrier would be granted its requested relief. More importantly, the CSO's future decisions would be greeted by the Court with suspicion. There is an exception to the rule on ex parte communications, as outlined above: questions concerning procedure to be followed or the timing of a decision (status reports) are not prohibited.

The CSO will issue his/her formal written decision after reviewing all necessary documentation, arguments of the carrier and the Division Administrator/State Director, and consultation and approval of legal counsel. The decision may uphold the Agency action in its entirety, grant the relief requested by the carrier, or grant some alternate form of relief. Carriers have been granted relief from the proposed rating because of improper document samples, the use of violations in the safety rating process when the

Agency lacked jurisdiction, the imposition of strict liability, improper ex parte communication, and the citing of violations that no longer exist or no longer are classified as acute or critical by regulation.

#### **6.2.1.1.15.19 Illustration 19: Improper Sampling Techniques**

The Agency has most often granted relief to motor carriers because of improper *records selection techniques* used during the review. Generally, the errors have occurred because the Agency investigator failed to follow the minimum sample, as outlined in the Compliance Manual, or failed to explain in the investigation report or attached follow-up reports why he/she was unable to do so [Note: On November 20, 2000, the decision-maker changed from the Director, Office of Enforcement and Compliance to the CSO, for all reviews completed on or after November 20, 2000.]

The Compliance Manual outlines, in various tables, the minimum number of documents, files, drivers, or vehicles an investigator must look at during the onsite review. The manual allows for an exception, particularly in the area of log verification: The number of records of duty status (RODS) checked for falsification will be the number of RODS verified, with supporting documentation. The investigators must adhere to the minimum number of documents outlined within the tables, or they may review less than the minimum number, for good cause shown. Such a deviation must be fully outlined in the investigative report. Failing to do so means that the exception to the general rule cannot be relied upon. No court would uphold a finding that allows a deviation from the manual without a proper explanation. These investigative errors can lead to the total granting of the carrier's petition for an upgrade in the safety rating, may lead to a partial upgrade, or may be harmless. The relief granted depends upon the facts of each case. Partial relief is generally granted where the carrier has other violations that would still require the assignment of a less than Satisfactory rating.

**See** *Rediehs Transportation Company*, No. 96-431218 (Final Order January 10, 1997)(Granting partial relief and changing a proposed Unsatisfactory rating to a Conditional because the sampling methodology used was inconsistent with the requirements established in the FOTM. The sample was of 42 drivers and 106 RODS, when the FOTM required a review of 17 drivers and 510 records. The report was silent as to why the review exceeded the number of drivers reviewed and fell short of the total required records); *Buchan Trucking, LLC.*, No. 98-04-153854 (Final Order June 1998)(Striking the rating assigned to the "driver" portion of the rating table and upgrading the carrier's rating to Satisfactory because the investigator only looked at 52 RODS, failing to explain within his report why the required 210 RODS were not reviewed. Additionally, noting that the 10 percent level for Critical violations might not have been met if the correct sample was taken); *Professional Transportation Services, Inc.*, No. 99-05-393273 (Final Order July 6, 1999)(Granting carrier relief because the investigator failed to review the required 210 RODS without explaining why only 62 RODS were reviewed. The Director concluded that the 13 violations discovered out of the required 210 RODS resulted in a 6.2 percent violation rate, not a 10 percent rate); *Trek Transportation, Inc.*, No. 99-02-587225 (Final Order April 15, 1999)(Upgrading carrier's rating within the "driver" category because investigator failed to explain why the FOTM's required 300 RODS were not reviewed. Investigator reviewed 46 RODS and discovered 23 violations. The violation rate is less than 10 percent when the 23 violations are compared to the 300 RODS required to be reviewed. The carrier's overall rating did not change because of other properly cited violations); *Quaker Transport, Inc.*, No. 98-07-619559 (Final Order September 2, 1998)(Upgraded carrier's rating where investigator failed to explain the deviation from the sample outlined within the FOTM. The effort required a review of 330 RODS. The investigator only reviewed 55 RODS and discovered 20 violations); *Eastern Express, Inc.*, No. 98-06-162408 (Final Order September 15, 1998)(Where the FOTM required the investigator to review 17 drivers and 510 RODS and the review only focused on eight drivers and 44 records with eight violations discovered, the rating will be upgraded because the investigator failed to explain why the sample was not properly taken); *D. M. Manufacturing Co.*, No. 98-09-243571 (Final Order September 21, 1998)(An improper sample without explanation will result in an upgrade in the carrier's safety rating); and *Gorrell Lumber, Inc. (dba. Jensen Sales Company)*,

No. 98-08-438960 (Final Order November 3, 1998)(Investigator failed to follow the eFOTM sampling requirement where he reviewed one driver and two RODS and was required to review five drivers and 150 RODS).

**But see** *GBT Transportation, Inc.*, No. 98-03-338204 (Final Order June 6, 1998)(Harmless error where investigator failed to follow sampling requirements, when the investigative report explains the circumstances for the failure to meet sampling targets. Here the carrier could only produce records for six drivers out of the seven required and 134 records); *Arctic Express, Inc.*, No. 98-05-193073 (Final Order June 10, 1998)(Harmless error even when the investigation fails to explain the deviation from the sampling requirements because the carrier still would have had a violation rate in excess of 10 percent when the total violations discovered are compared to the total records that should have been reviewed); *Thomas Trucking, Inc.*, No. 98-04-256504 (Final Order June 10, 1998)(Where an investigator reasonably explains why the sample could not be reached, the rating will be upheld. Investigator notes: “the motor carrier did not provide many documentation (sic) during the investigation other than fuel receipts,” “Simmons (company official) stated they throw away the ComData reports for company drivers after they have been checked,” and “I was not able to check many logs for company drivers because they do not maintain this report on company drivers”); *Four Star Transport, Inc.*, No. 98-10-246333 (Final Order November 20, 1998) (Sampling error not fatal when you insert the minimum number of driver records that should have been reviewed in accordance with the manual and retain the number of violations found and that number continues to exceed 10 percent threshold for Critical violations); and *M.E.T. Trucking, Inc.*, No. 99-05-376678 (Final Order July 9, 1999)(Sampling error not fatal where the 10 percent threshold for Critical violations is still met when you compare violations discovered against proper sample. Director cautioned that FMCSA investigators are expected, and DAs/SDs should instruct each investigator, to fully comply with the FOTM, unless such compliance is impossible).

## NON-JURISDICTIONAL VIOLATIONS

The Agency has granted relief to a motor carrier whose safety rating was affected by use of **non-jurisdictional** violations [wholly intrastate hours of service (HOS)]. *PTG Logistics, LLC*, No. 99-02-611601 (Final Order April 15, 1999).

## STRICT LIABILITY VERSUS KNEW OR SHOULD HAVE KNOWN

Generally, the discussion of **strict liability** would arise in an enforcement action where the Agency is imposing penalties for violations the carrier might claim it could not detect or control. Nonetheless, on occasion the issue of strict liability has arisen within the context of a safety rating appeal. One particular incident occurred in a review where the investigator stated he only used and examined unopened trip envelopes during his entire investigation. Consequently, the carrier claimed that it had no opportunity to review the documents submitted by its drivers for accuracy, and was subsequently was precluded from taking the necessary disciplinary action to assure future compliance. While the decision avoided discussing this issue directly, the rating was overturned on other issues. It might be worthwhile reviewing the law in this area.

FMCSA holds motor carriers responsible for the accuracy of drivers’ logs with regulatory standards, interpreted and supported by judicial and administrative decisions. If an employee-driver committed a violation, the Agency has rightly held the motor carrier liable when the carrier **knew or should have known** of the violations and failed to penalize the driver or otherwise ensure the violations would not be repeated. To date, the Agency has not imposed strict liability in its adjudication and investigators must prove that a carrier knew or should have known that its drivers were violating the Federal Motor Carrier Safety Regulations (FMCSR).

Under the hazardous material regulations (HMR), FMCSA can assess a fine against a person that knowingly violates 49 U.S.C. Chapter 51, a regulation prescribed or order issued under that chapter. A person acts knowingly when: (A) the person has actual knowledge of the facts giving rise to the violation

or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. This language is nothing more than the same “knew” (actual knowledge) or “should have known” (reasonable care) standard [see 49 U.S.C. §5123(a)(1)].

Consequently, the use of unopened trip envelopes, as the basis for determining violations, will not be upheld by Agency decision-makers. They knew or should have known standard was the standard used by the FHWA in In the Matter of Arctic Express Foods Distribution, Inc., No. R5-92-138 (Final Order June 16, 1994): “When information sufficient to detect violations is in the carrier’s files and the carrier had the means to detect those violations by comparison with other records, the carrier is considered to have knowledge, even if there is no proof that any one person made any comparison or had access to all the records needed for comparison.” Similarly, the motor carrier was deemed to have knowledge of a regulatory violation where the “means exist” to detect the violation (In the Matter of M. Van Vliet and Sons, Inc., Docket # FHWA-97-2533 (Final Order April 16, 1997)). Additionally, the DC Circuit held that it was “undisputed” that a motor carrier “should have known” of a violation of the FMCSR when the record contained substantial evidence that a similar violation had previously occurred [Used Equipment Sales, Inc. v. Department of Transportation, 54 F.3d 862, 866 (D.C. Cir. 1995)]. More recently, the DC Circuit considered the carrier’s liability for false logs and discussed FMCSA interpretation of its regulations concluding that: “[T]he standard of liability thus seems to be one for negligence in allowing or failing to detect drivers’ submissions of false documents.” Truckers United for Safety v. Federal Highway Administration, 139 F.3d 934, 937-938, note 1 (D.C. Cir. 1998).

### **REGULATORY ERRORS OR CHANGES**

The United States Court of Appeals for the District of Columbia Circuit struck down the FMCSA’s method of assigning safety ratings in the MST Express case See MUST Express and Truckers United For Safety v. Department of Transportation, Federal Highway Administration, 108 F. 3d 401 (D.C. Cir. 1997). The Court concluded that the procedures for assigning safety ratings were adopted contrary to law because the Safety Rating Fitness Methodology (SRFM) used at the time that MST Express received a rating had not been adopted pursuant to notice and comment rule making. As a consequence, FMCSA proceeded with the required notice and comment rule making and issued a final rule on November 6, 1997 re-establishing a rating system. See 62 Fed. Reg. 60035 (November 6, 1997). A subsequent legal challenge was rejected and the validity of this new rule was upheld. See American Trucking Associations, Inc. et al. v. Federal Highway Administration, 166 F. 3d 374 (D.C. Cir. 1999).

The 1997 rule making officially established for the first time a list of Acute and Critical violations which directly affect a motor carrier’s safety rating. That list is now codified in Appendix B to Part 385, Part VII. It is this list, and only this list, that FMCSA may use to assign a safety rating. From time to time, FMCSA issues new regulations changing or adding to the other regulatory requirements of the FMCSR PHMSA adds to the HMR. DAs/SDs must check each citation on the investigation or CR and assure that the citation and violation is correct, that the actual violation cited corresponds with the proper regulatory section, and that the anticipated rating was issued correctly.

### **RATING UPGRADES FOR NON-PREVENTABLE ACCIDENTS**

The following are samples of Agency cases in which a carrier’s rating was based upon evidence that one or more accidents of the carrier was not preventable: *Sorensen Transportation Company, Inc.*, No. 99-04-058332 (Final Order May 6, 1999); *O. Stephens Trucking Company, Inc.*, No. 99-03-021808 (Final Order May 6, 1999); *First Choice Trucking & Repair, Inc.*, No. 99-03-646836 (Final Order April 15, 1999); and *H & M Specialized Carrier, Inc.*, No. 98-11-540202 (Final Order December 10, 1998).

## 6.2.2 Enforcement Manual

### 6.2.2.1 Division and Service Center Enforcement Procedures

#### 6.2.2.1.1 Topics Covered by this Manual

This manual delineates the respective roles of the Divisions and the Service Centers in enforcement case preparation and processing. Responsibilities of Safety Investigators (SIs) in conjunction with the conduct of investigations and enforcement are covered in the SIs' Manual.

#### 6.2.2.1.2 The Division's Role in the Enforcement Process

The Division Administrator (DA) or designee has the responsibility to:

- Ensure that the appropriate enforcement action is initiated and submitted by the Safety Investigator (SI);
- Ensure the enforcement report is signed by the investigator;
- Determine if the motor carrier's response to a Notice of Violation (NOV) adequately addresses identified safety compliance issues. (Please see the Manager Manual, Compliance Manual, [Handling the Motor Carrier Response to the Direct NOV](#) NOV for additional guidance on converting NOVs to investigations, if the response is inadequate.)
- Assure the quality of the enforcement case;
- Recommend the disposition and penalty assessment to be issued;
- Ensure the NOC and NOV are signed and mailed return receipt requested to the claimant; and
- Upload the NOC, NOV, and Enforcement Case Report to the Enforcement Management Information System (EMIS).

As needed, the DA or designee may consult with the Service Center Enforcement Team (SCET) to determine the best enforcement action to take. For certain types of enforcement actions, concurrence of the SCET is required, such as Section 222 cases assessing maximum civil penalties, imminent hazard proceedings, and criminal enforcement proceedings.

#### 6.2.2.1.3 SCET's Role in the Enforcement Process

The SCET processes and prosecutes enforcement cases. In addition, the SCET:

- Consults with Division personnel to determine appropriate enforcement action;
- Provides assistance with investigations and enforcement activities;
- Provides technical assistance to the Divisions;
- Processes civil penalty assessment payments;
- Negotiates and settles enforcement cases;
- Prepares orders and agreements relating to the disposition of enforcement cases; and
- Maintains the EMIS.
  - Separation of Duties in the Civil Penalty Collection Process

The Service Center Director (SCD) of each Service Center (SC) will assign a person (can be more than one person) who will handle incoming mail. This person (Enforcement Clerk, Transportation Assistant, or other designee) will process incoming mail, and when civil penalty payments (checks) are received, this person will make copies of civil penalty check payments, and hand original checks, as well as copies of the checks to the SCD or his/her designee. The SCD or his/her designee will assign an employee to enter the civil penalty payment (checks) into EMIS. The person who enters the payments into EMIS will reconcile the checks received with copies of checks and the Record of Cash Receipts report generated from EMIS. The person who handles incoming mail will always be different (or separate) from the person who enters the payments into EMIS.

### 6.2.2.2 Enforcement Proceedings

#### 6.2.2.2.1 Explanation of Enforcement Proceedings

In order to ensure that carriers operate safely, the Federal Motor Carrier Safety Administration (FMCSA) investigates and initiates enforcement proceedings for violations of the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Motor Carrier Commercial Regulations (FMCCR), and Hazardous Materials Regulations (HMR). FMCSA uses the following enforcement tools to induce compliance:

- Investigates the safety fitness of motor carriers/operators/shippers of hazardous materials (HM);
- Places carriers/drivers OOS for unsatisfactory safety fitness performance;
- Assesses civil penalties;
  - Assess maximum civil penalties for patterns of repeat violations;
  - Order carriers/drivers to cease operating in interstate commerce and suspend operating authority (if applicable) for non-payment of civil penalties; and
  - Enter into Settlement Agreements for disposition of civil penalty enforcement proceedings;
- Investigates complaints;
- Issues Notice of Investigations (NOI) and Compliance Orders;
- Pursues criminal penalties;
- Coordinates and participates in enforcement activities with federal, state, and local personnel;
- Issues Injunctions;
- Prohibits operations due to imminent hazards; and
- Issues subpoenas to aid with enforcement activities.

### 6.2.2.3 Types Of Enforcement Actions

#### 6.2.2.3.1 Assessing Civil Penalties

FMCSA assesses civil penalties for violations of the FMCSR, FMCCR, and HMR. A civil penalty enforcement action can be initiated by the issuance of a NOC. See 49 C.F.R. § 386.11(b). Such action is taken when a review of a carrier's operation indicates significant noncompliance with the FMCSR, FMCCR and/or HMR. Generally, significant noncompliance with the FMCSR and HMR contemplates Serious Violations (e.g., Acute, Critical, Fundamental, and Essential Safety Management). Acute and critical regulations are listed in Appendix B of 49 C.F.R. Part 385.

#### 6.2.2.3.2 Assessing Maximum Civil Penalties

When a person is found to have committed a pattern of violations an acute and/or critical regulation, then the maximum civil penalty for each violation will be assessed. See 49 U.S.C. 521, Note Minimum and Maximum Assessments.

#### 6.2.2.3.3 Prohibit a Motor Carrier or Operator from Operating in Interstate

A company or driver that fails to pay a FMCSA civil penalty (or negotiated installment payment) within 90 days of the date specified for payment will be barred from operating in interstate commerce and have its FMCSA registration suspended (if applicable) on the 91st day and may not resume operating until the original civil penalty amount is paid in full. See 49 C.F.R. §§ 386.83, 386.84.

#### 6.2.2.3.4 Issuing a Settlement Agreement

A settlement agreement is a negotiated agreement between FMCSA and the subject of an enforcement proceeding. Generally, it concludes the proceeding. Because of the contractual nature of the agreement, it can commit the motor carrier to do more than is required by law. See 49 CFR § 386.22 Settlement Agreements.

When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an agreement, a settlement agreement will be drawn and signed by the respondent and the Field Administrator (FA) or his/her designee.

#### ***6.2.2.3.5 Pursuing Criminal Penalties***

In those instances where knowing and willful violations can be proven, enforcement may proceed criminally. All cases proceeding in the criminal context must be handled by FMCSA counsel in cooperation with the appropriate United States Attorney's Office. Criminal prosecution may also involve the assistance of the United States Department of Transportation (USDOT) Office of the Inspector General (OIG), the FBI, the United States Postal Service, the Department of Agriculture, or United States Customs Service (USCS). See [49 U.S.C. § 521](#).

#### ***6.2.2.3.6 Coordinating Investigations and/or Enforcement Activities with Other Agencies***

Joint investigations and/or enforcement activities may be conducted by the Division with other federal, state, or local agencies. The DA or designee should coordinate these investigations, if appropriate.

#### ***6.2.2.3.7 Seeking Injunctive Relief***

FMCSA can pursue an injunction after the Division, the SCET, and the appropriate United States Attorney's Office have consulted and agreed to this action. Violations of a final order such as an out-of-service (OOS) Order or an order to cease operations are examples of matters that can be enforced by seeking injunctive relief. See [49 C.F.R. § 386.71](#).

#### ***6.2.2.3.8 Issuing an Operation OOS Order***

When FMCSA determines the carrier, driver, or vehicle constitutes an "imminent hazard" and concludes that the continued operation in violation of the regulations would likely result in serious injury or death if not discontinued immediately. This OOS Order can only impose restrictions to the extent necessary to abate the imminent hazard. See 49 C.F.R. § 386.72.

#### ***6.2.2.3.9 Issuing Subpoenas in Aid of Enforcement***

It may be necessary to issue a subpoena when a carrier fails to comply voluntarily with a request to conduct an investigation, to examine records, or to inspect equipment. See 49 U.S.C. § 502.

### **6.2.2.4 Civil Penalty Enforcement Proceedings**

#### ***6.2.2.4.1 Procedures to Assess Civil Penalty***

At the conclusion of the investigation, the investigator, in conjunction with the DA or designee, may determine that the assessment of a civil penalty is an appropriate enforcement action. A civil penalty enforcement proceeding is initiated by the preparation of an enforcement case report that is the basis for the issuance of a NOC.

Such action is taken when a review of a carrier's operation indicates significant noncompliance with the FMCSR, FMCCR or HMR. Generally, significant noncompliance with the FMCSR and HMR contemplates "acute" and/or "critical" violations. Acute and critical violations are listed in [Appendix B of 49 C.F.R. Part 385](#).

#### ***6.2.2.4.2 Division's Role in Assuring the Quality of the Civil Penalty Enforcement Proceeding***

An enforcement case report, prepared by a SI or Inspector, will be submitted to the Division office they are assigned to or the Division office designated by their supervisor. The DA or designee is responsible for assuring the quality of the enforcement case report. The quality of the enforcement case report should be determined by evaluating the following:

- Timeliness;

- Proper preparation of the report;
- Submission of required evidence;
- Accuracy of each violation cited;
- Appropriate penalty assessment;
- Identification of deficiencies; and
- Recommendation regarding disposition and the level of assessment or the actual penalty amount, including SBREFA considerations. See [Illustration E-1: The Small Business Regulatory Enforcement Fairness Act of 1996 \(SBREFA\)](#).

The DA or designee will consider any corrective actions taken by respondent prior to the issuance of the NOC in determining the appropriate penalty assessment.



**Upon receipt of an enforcement case report, the DA or designee will review the report promptly. The evidence contained within the report must support the violation described. If the report is incomplete because of insufficient evidence or is inconsistent with policies and/or procedures, it will be returned to the SI for corrective action. After the review, the reviewer will approve the transmittal of the report to the appropriate SCET designee. The Division will retain the documents supporting the Exhibit Abstracts, unless requested by counsel or SCET.**

When these reports are transmitted and reviewed electronically they should remain under the direct oversight of the DA or designee to ensure that all necessary reviews are properly conducted.

#### **6.2.2.4.3 Definition of NOC and its Components**

The NOC is the official charging document used by FMCSA to initiate a civil penalty enforcement proceeding for violations of the FMCSR, FMCCR, or HMR. The requirements for the NOC are contained in 49 C.F.R. § 386.11. The NOC must be electronically generated by the Case Rite software program. Case Rite uses information gathered by the SI during an investigation and imported, in part, from the CAPRI and UFA software programs.



**Any change in the language of the NOC, except for necessary modifications in cases against drivers, other carrier employees, and joint and several liability, shippers or cargo tank facilities, must have the concurrence of the SCET. The SCET will consult with a SC attorney on the legality of any change or modification to the language.**

The NOC informs the subject that it has violated the regulations, states the amount of the penalty assessed, provides a summary of the violations, a statement of charges, and information regarding the subject's rights and obligations to respond to the NOC.

#### **6.2.2.4.4 IT System Used to Generate the NOC**

Case Rite electronically generates much of the content of the NOC based upon the information obtained during the investigation and transferred from CAPRI and UFA.

This information includes:

- Name and address of respondent;
- The NOC must be prepared on SC letterhead and indicate a telephone and fax number for the SCET;
- Foundation for the claim [violations discovered during an investigation or a roadside inspection at a specified location on a certain date(s)];
- Statement of the provisions of the law alleged to have been violated;
- Amount being claimed for each violation and the maximum amount authorized to be claimed under the statute;
- Steps necessary to abate the violations (optional);

- Legal authority for FMCSA to issue the NOC;
- Directions for responding to the NOC;
- Statement of Charges (must be clear and complete description sufficient to notify the Respondent of the charges against it), and
- Certificate of Service.

#### ***6.2.2.4.5 Circumstances Under Which the DA Has Authority to Sign and Issue a NOC***

The DA has the authority to all NOCs. For NOCs that are initiated outside of UFA, the DA must consult with the Service Center Director to get concurrence on the proposed penalty.

#### ***6.2.2.4.6 Issuance of the NOC***

NOCs should be issued within 30 calendar days of the date of the completion of the investigation.

#### ***6.2.2.4.7 Service Procedures for the NOC***

Regardless of who signs the NOC, the NOC will be prepared on SC letterhead and mailed to the respondent in an envelope which shows the SCET as the sender, i.e., the information should be in the upper left-hand corner of the envelope. This will allow return of the NOC correspondence to the SCET, if it is not delivered to the respondent, and the SCET will be able to track the status of the NOC in the docket.

The original NOC will be sent via certified mail return receipt requested to the respondent. A copy of 49 C.F.R. Part 386 will be included with the original NOC mailed to the respondent. Copies of the NOC will be mailed to every person on the Service List. Service ([\*Illustration E-3: Notice of Claim Service\*](#)) is complete upon mailing.

The NOC is sent to the respondent by certified mail with return receipt requested. The Division office should provide the “receipt for certified mail” to the SCET when the case is forwarded to the SC, and have the “return receipt” (green card for domestic mail or pink card for international mail) addressed so that it is returned to the SCET. Proof of delivery will be filed in the enforcement case file at the SC.

#### ***6.2.2.4.8 Documents that must be sent to the SCET if the DA signs the NOC***

As soon as the NOC is mailed to the respondent, the DA or designee should upload, to the Electronic Data Management System (EDMS), copies of the following:

- Investigation Report;
- Signed NOC;
- Enforcement Report Cover Sheet; and
- UFA Report.



**The DA or designee should upload the enforcement case report into EMIS via Case Rite.**

#### ***6.2.2.4.9 Documents that must be sent by the Division to the SCET if the FA Signs the NOC***

As soon as the enforcement case is prepared, the Division must send the entire case file to the SCET for review, including copies of the investigation report, the enforcement report cover sheet, the NOC, exhibits and exhibit abstracts, and the UFA Report.



**After the NOC is mailed to the respondent by the SCET, the SCET must upload the enforcement case report into EMIS via Case Rite.**

#### ***6.2.2.4.10 Procedures to Follow if the SCET Discovers Errors or Omissions in a NOC Issued by the Division***

If the SCET discovers errors or omissions in a NOC that would require an amendment of the NOC, the SCET will notify the DA of those errors or omissions. If an amended NOC is required, the SCET will issue and the FA will sign the amended NOC. The SCET will serve any amended NOC.

#### ***6.2.2.4.11 Actions to be taken by the SCET Once the NOC is mailed***

Once the NOC has been mailed to the respondent, the SCET takes all necessary actions to process the civil penalty enforcement case.

#### ***6.2.2.4.12 Options the Respondent has Upon Receipt of the NOC***

Upon receipt of the NOC the respondent has the following options:

- Pay in full;
- Negotiate settlement;
- Request a hearing;
- File notification of intent to submit evidence;
- Request reduction in penalty based on inability to pay; and/or
- Submit evidence of corrective action for fine reduction.

**Note: FMCSA announced the suspension of its informal hearing procedures because it is re-evaluating the appropriateness and effectiveness of the procedure authorized under the Agency's Rules of Practice. Although proceedings where an informal hearing has already been requested will continue to be processed under the Rules of Practice, the Agency will not entertain any new requests for informal hearings pending its re-evaluation of the procedure.**

#### ***6.2.2.4.13 Time the Respondent has to reply to the NOC***

A respondent must file a written reply to the NOC within 30 days of service. Refer to 49 C.F.R. § 386.14 for additional information relating to the computation of time for filing a reply to the NOC.

#### ***6.2.2.4.14 Procedures Respondent Can Use to Pay the Entire Civil Penalty***

If the respondent wants to pay the entire civil penalty, it must send a certified check, cashier's check, or money order to the processing SC. If a company or personal check is received by FMCSA, it should be returned to the sender accompanied by a letter explaining why the check is being returned. Respondent can also pay via a wire transfer. The SCET will work closely with Federal Aviation Administration (FAA) Finance to arrange a wire transfer.

The respondent can also pay online by going to the *Online Fine Payment* section on the SAFER website at <http://safer.fmcsa.dot.gov>. The payment is automatically posted in EMIS.



**Before issuing any notices or orders related to non-payment of a FMCSA penalty, the SCET must ensure that payment has not been received online.**



**If a subject submits an insufficient payment (i.e., less than the full penalty amount) without first negotiating resolution of case, it should be returned, unless settlement agreement can be negotiated and signed within 10 business days. SCET will not accept partial payments which indicate that they are "payment in full" or language effect.**

In the case of online payments, the subject's credit card account must be credited. In order to credit the subject's credit card account, a written request must be sent electronically to the online site administrator, and the entire amount of the payment must be credited. The SCET must contact the subject and let them know that the online site administrator will be contacting them to refund their payment on their credit

card. The SCET will then need to forward the carrier's phone number and contact name to the online site, along with the written request for the refund.

#### *6.2.2.4.15 Procedures to Follow if Respondent Requests a Hearing in Reply to the NOC*



If the respondent files a timely written response to the NOC requesting a hearing, the SCET may contact the respondent to negotiate a settlement. If there is a question as to the sufficiency of the reply, the SCET will consult with the SC attorneys for guidance on further action. The SCET may not determine that a default has occurred, due to the insufficiency of a reply, unless it has consulted and obtained concurrence from the SCET. If negotiations do not result in a settlement of the NOC after a timely written reply has been filed, the SCET will request copies of the evidence from the Division and have them forwarded to the SC attorneys for further handling.



If the file is forwarded to the SC attorneys, the SCET will make a notation of the assigned attorney in EMIS.

**Note: FMCSA announced the suspension of its informal hearing procedures because it is re-evaluating the appropriateness and effectiveness of the procedure authorized under the Agency's Rules of Practice. Although proceedings where an informal hearing has already been requested will continue to be processed under the Rules of Practice, the Agency will not entertain any new requests for informal hearings pending its re-evaluation of the procedure.**

#### *6.2.2.4.16 Procedures to Follow if the Respondent Files a Notice of Intent to Submit Evidence in Reply to the NOC*



**If the respondent files a notice of intent to submit evidence, the SCET will IMMEDIATELY notify the SC attorneys of the filing and will request copies of the evidence from the Division. The SCET may negotiate with the carrier, but should ensure that all negotiations are concluded in sufficient time to permit the SC attorneys to file a timely submission of evidence. Pursuant to 49 C.F.R. § 386.16(a), FMCSA's evidence must be served no later than 60 days following the service of the respondent's reply; therefore, it is crucial that the SC attorneys be made aware of all replies containing a notice of intent to submit evidence as soon as possible.**



If the file is forwarded to the SC attorneys, the SCET will make a notation of the assigned attorney in EMIS.

#### *6.2.2.4.17 Time When FMCSA Can Issue a Settlement Agreement*

A settlement agreement is a negotiated agreement between the FMCSA and the subject of an enforcement proceeding. Generally, it concludes the proceeding. Because of the contractual nature of the agreement, it can commit the motor carrier to do more than is required by law. See 49 CFR § 386.22 Settlement Agreements.

When negotiations produce an agreement, as to the amount or terms of payment of a civil penalty, or the terms and conditions of an agreement, a settlement agreement will be drawn and signed by the respondent and the FA or his/her designee.

#### *6.2.2.4.18 Conducting Settlement Negotiations*

If the respondent wants to negotiate a reduction in the civil penalty or a payment plan, it can do so by contacting the SCET by telephone, or by sending a letter asking to negotiate or reduce the civil penalty. If the SCET receives notification that the respondent wants to negotiate a reduction in the civil penalty or a payment plan, the SCET will contact the respondent. If the respondent has not filed a written reply to the NOC, but wishes to negotiate a settlement, the SCET should ensure that the respondent is made aware that the negotiation process does not eliminate the need to file a timely written reply to the NOC.



**The objective is to settle the claim in a way that is satisfactory to both FMCSA and respondent. Negotiations may be face-to-face, by telephone, with fax or mail used to exchange documents.**

During the negotiation process when UFA is used, the assessed fine is presumed to be accurate and appropriate for the violations contained in the NOC. However, in certain circumstances, payment plans, reduction in the civil penalty, or other resolution of the NOC designed to achieve improvement in the respondent's safety posture may be appropriate. Examples include:

- Technology investment and/or personnel investment beyond previous financial expenditures, including a submission of a well-defined written plan of action with specific time lines; consideration may be given for reduction of the civil penalty.
- Settlement agreement that identifies the significant areas of noncompliance noted in the NOC that mandates strong measures for eliminating the areas discovered in noncompliance. Part of this settlement agreement should incorporate the well-defined written plan of action, terms of compliance, and consequences of noncompliance.
- Respondent claims that it is unable to pay the civil penalty assessed or that payment of the civil penalty would cause undue hardship. The evidence should be in the form of the last two years of federal and state income tax returns, an accountant's profit and loss statements, or other documents evidencing respondent's claims. The amount of reduction will be based on the SCET's review of the tax returns and profit and loss.
- Corrective actions submitted by respondent indicating its efforts to achieve compliance, e.g., management changes in RODS verification process.

#### ***6.2.2.4.19 Procedures for Issuing Advanced Technology Settlement Agreements***

The FMCSA may consider settlement agreements incorporating technology systems in any civil penalty case where implementation of a technology would redress the violations cited in the NOC and improve regulatory compliance and safe operation. Two areas of the FMCSR that are particularly conducive to enhancing compliance with safety regulations, by the motor carrier's integration of technology into its operations, are 49 CFR Parts 390 (post-accident) and 395 (HOS).

The FA has discretion to suspend the civil penalty asserted in an NOC on any conditions redressing the violations cited in the NOC, including the implementation of intelligent technologies. In determining the amount of the civil penalty to be suspended in the settlement agreement, the FA should consider the cost of implementation of the technology, the prospects for improved compliance, the motor carrier's history of prior compliance, the motor carrier's performance history, and any other matters the FA deems relevant. The FA may consider, but is not limited to dollar for dollar suspensions (i.e., for every dollar the motor carrier invests in the agreed technology system, the FA could suspend the motor carrier's civil penalty by the same dollar amount). The FA has discretion to not suspend any of the civil penalties (0 percent) or to suspend any amount of the civil penalty up to 80 percent. This broad discretion ensures that settlement agreements incorporating technology system investments are available to any motor carrier, in appropriate circumstances, without regard to the motor carrier's size or the amount of the assessed civil penalty.

The settlement agreement will specify the technology system to be acquired and installed by the motor carrier. The settlement agreement will also specify the timeframes in which the motor carrier must acquire and complete installation of the agreed technology, and will include provisions for the motor carrier to submit documentation

#### *6.2.2.4.20 Policy for Reducing Penalty Amounts*

When reducing penalties, Service Centers to adhere to the following recommendations.

- Service Centers are encouraged to settle penalties whenever possible.
- Service Centers may reduce a penalty up to 20 percent if:
  - The carrier submits a written plan to ensure deficiencies will not recur and
  - The carrier submits evidence of corrective actions taken. Service Centers may need to consult with the Division to confirm corrective actions submitted are adequate.
- Service Centers may reduce a penalty more than 20 percent only after consultation with the Division Office and with the approval of the SCD or Enforcement Program Manager.

Note: If part of a penalty is suspended or redirected to finance safety measures as part of a Settlement Agreement, that is not considered to be a reduction.

#### *6.2.2.4.21 Type of Document to Prepare if Case is Resolved*

If you reach a resolution of the case during settlement negotiations, a document should be prepared which memorializes the agreement. The agreement must be signed by the respondent and FA before it's effective. A settlement agreement must contain the items required by 49 C.F.R. § 386.16(c) as amended from time to time.

A settlement agreement must contain the items required by 49 C.F.R. § 386.23 as amended from time to time. Any agreement may also include any term or condition which the FA deems appropriate. The agreement should state that delinquency will be subject to 49 C.F.R. Part 102 - Standards for the Administrative Collection of Claims.

Once fully executed, the settlement agreement becomes a final order of FMCSA.

#### *6.2.2.4.22 Procedures for Signing and Documenting the Settlement Agreement*

If a settlement is reached, a settlement agreement is sent to the respondent, directing when and where the penalty will be paid. A cover letter should accompany the agreement. The cover letter should advise respondent that it must sign and return the document within ten (10) days or such other period of time as the SCET deems appropriate. A follow up letter or contact shall be made to the respondent if the agreement is not received within the specified time period.

Once the signed settlement agreement is received from respondent, the FA will sign the agreement. The original document shall be retained in the case file. Copies of the agreement shall be sent to every person on the service list of the NOC.

 **The SCET is responsible for entering into EMIS the date of the settlement agreement and its terms. The date of the settlement agreement to be entered into EMIS will be the date that the FA signs the agreement.**

#### *6.2.2.4.23 Procedures to Follow if Respondent Does Not Return Settlement Agreement within Required Time Period*

If the respondent does not return the settlement agreement within the time period specified, the SCET will take the following actions, as appropriate:

- If the time for filing a reply to the NOC has expired and respondent has not replied, the SCET will issue a Notice of Default and Final Agency Order (NDFAO); or



**If respondent has filed a timely reply to the NOC, then the file will be forwarded to the SC attorneys for further handling.**

#### *6.2.2.4 24 Illustration E-1: The Small Business Regulatory Enforcement Fairness Act of 1996*

Also to be considered in the assessment of penalties is the SBREFA. The SBREFA allows an agency policy or program set up to regulate the activities of a small entity to include at least the following conditions or exclusions:

- (1) requiring the small entity to correct the violation within a reasonable correction period;
- (2) requiring the small entity to participate in a compliance assistance or audit program operated or supported by the agency or a State;
- (3) excluding from this policy a small entity that has been subject to multiple enforcement actions by the agency;
- (4) excluding violations involving willful or criminal conduct;
- (5) excluding violations that pose serious health, safety or environmental threats; and
- (6) Excluding violations where the entity is making a good faith effort to comply with the law.

The use of the term “willful” does not authorize the reclassification of all FMCSA regulatory violations into the exclusion category, thus allowing the agency to ignore the SBREFA requirements. In fact, the term “willful” has a specific legal definition. An act or omission is “willfully” done if

- (1) it is done voluntarily and intentionally and
- (2) with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. A good investigation will answer these questions and allow for a more informed determination as to whether a specific violation is subject to or exempt from SBREFA requirements.

Great care must be exercised by the Division when deciding if a violation is “willful” under the law. If a determination is made not to reduce a penalty, or to ultimately issue the NOC against a small business because of a willful violation, the Division should document the full reasons for such action in the enforcement penalty assessment worksheet. SC counsel should be consulted if the Division is unclear on what violations are “willful”. When considering whether the small business took corrective action in a “reasonable period of time”, it should be noted that a “reasonable period of time” may vary, depending on circumstances.

The Small Business Administration (SBA) has defined a trucking company as a “small business” if its gross revenue is \$25.5 million or less. A complete list of Standard Industrial Classification codes and size standards by number of employees or millions of dollars can be found in the Small Business Administration regulations at 13 CFR 121.601. The list is available on-line at <http://www.sba.gov/regulations/siccodes/>. These codes and size standards are also available in the current version of the “Standard Industrial Classification Manual”, Office of Management and Budget (OMB), Executive Office of the President. The SBA uses this OMB guide in defining industries for size standards. Care must be exercised when reading the specific charts and tables because some figures refer to money totals and others refer to number of employees. The key to what the figure in the size chart references is whether there is a dollar sign in the first group number in the Major Group Description; if not, the table is referencing number of employees.

Currently, Major Group 42, Motor Freight Transportation and Warehousing, defines a trucking operation as a “small business” if its “annual receipts” are \$25.5 million or less. Major Group 41, Local and Suburban Transit and Interurban Highway Passenger Transportation, defines a bus operation as a “small

business” if its “annual receipts” are \$5 million or less. An exception for Group 42 exists for “Garbage and Refuse, Collecting and Transporting, Without Disposal” at \$6 million and “Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation” at \$5 million.

Finally, a determination must be made as to the industry a company is “primarily engaged” and doing business in. The answer to this question determines what “Major Group” a company falls under for classification as a “small business”.

The DA/State Director has the initial and primary responsibility for implementing the provisions of SBREFA. Section 232 of SBREFA allows for the award of fees and other expenses related to defending against an excessive demand by the United States when the final judgment obtained is substantially less than the original demand. As a consequence, the NOC is the “demand” that will be balanced against the final judgment for SBREFA purposes. The Enforcement Team’s responsibility is secondary and would be based on information that was not available to the DA/State Director or on information that may have been inadvertently overlooked at the Division level.

Because the DA/State Director is responsible for determining the total fine considering the “nine factors of assessment considerations” and the five factors under the SBREFA, the Divisions should document consideration of these factors in the form of a penalty assessment worksheet and submit it with the case file to the Enforcement Team for consideration during the settlement phase. Divisions should re-read the agency case law dealing with the statutory factors. Particular attention should be given to two specific case decisions: In the Matter of the Exide Corporation, FHWA No. PA-93-001-561 (Final Order, November 2, 1994), and In the Matter of House of Raeford Farms, Inc., (Order of Chief Administrative Law Judge John Mathias; Order on Motion for Summary Judgment and Motion to Strike, March 10, 1995).

#### ***6.2.2.4.25 Illustration E-2: Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) Assessment Policy***

A NOC should document violations of regulations, in as many areas as are reasonably necessary to impose an appropriate level of penalty, based upon the circumstances of the case. When a person is found to have committed a pattern of violations per Section 222 of a critical or an acute regulation, then the maximum civil penalty for each violation will be assessed. A “pattern” of violations will be defined as:

- Three cases within the past six years;
- The three cases will consist of two cases which have been closed, followed by the discovery of new violations of the same Part (e.g., 49 CFR Part 395);
- The 6 year period will be from the end of the most recent CR or investigation; and
- When cases are appealed, the time needed to process the appeal should not be included as part of the 6 year period; OR
- The discovery of two or more critical or acute violations in each of three or more different regulatory parts (i.e., a minimum of six acute and or critical violations). Thus, a “pattern of violations” does not require previous enforcement, and can be found even during a first-time Section 222-eligible investigation; OR
- When an acute violation is discovered during a Section 222-eligible investigation within six years of one previously closed case containing a violation of a critical or acute regulation in the same Part.

#### ***Applicable Penalties***

The amount of the penalty will be dependent on the type of violation committed, but it will always be at the maximum level. When assessing penalties under these procedures, the nine mandatory statutory factors under 49 U.S.C. § 521(b)(2)(D) will not be considered. This applies to HM penalties under 49 CFR 100 to 185. If a case contains violations not subject to these guidelines, then those violations will be assessed according to this section. For example:

Carrier ABC Trucking is cited for violations of 49 CFR Part 395 and 49 CFR Part 382. The carrier has had two prior cases in the last six years (since the closeout date of the current investigation) for violations in 49 CFR Part 395, but only one prior case for violations of 49 CFR Part 382. The investigator must use the UFA for calculating the fine amount for the violation of 49 CFR Part 382, but the statutory maximum must be used for violations of 49 CFR Part 395.

### ***Establishing a “Pattern of Violations”***

Enforcement actions generated by a roadside inspection will not count toward establishing a “pattern of violations.” Also, enforcement actions resulting from HM package inspections will not count either if the inspection was conducted independent of a CR, terminal review or shipper review. The “pattern of violations” will be based on cases generated as a result of an investigation, terminal review, or any other reviews conducted at the motor carrier or shipper’s place of business.

### ***Documenting Violations***

The number of violations to be documented on an enforcement report under these guidelines is every violation that is severe enough, and has sufficient documentation to warrant an enforcement action. For example:

Carrier ABC Trucking has two prior closed cases issued within the last six years (from the date of the current investigation) for violations in 49 CFR Part 395. Forty violations of 49 CFR 395.3(a)(1) are discovered. The investigator would use UFA. UFA will determine the number of counts to take based on the extent of the violation.

## **6.2.2.5 Notice on Default and Final Agency Order (NDFAO) and Collection Procedures**

### ***6.2.2.5.1 Definition of a Notice of Default and Final Agency Order (NDFAO)***

Notice of Default and Final Agency Order (NDFAO) means the final action by FMCSA issued pursuant to Part 386. Any one of the following may constitute an NDFAO:

- Fully executed settlement agreements which become the NDFAO pursuant to 49 CFR § 386.22;
- Decisions of the ALJ, which become the NDFAO pursuant to § 386.61;
- Binding arbitration awards;
- Final agency order issued by the appropriate FA for default judgments (failure to reply to the NOC) under § 386.14; or
- Final agency order issued by the AA.

### ***6.2.2.5.2 NOC Becomes the NDFAO***

If the respondent does not file a reply to the NOC within 30 days, the NOC becomes the NDFAO, effective five days following service of the NDFAO, and the assessed penalty is due and payable immediately.

The SCET will promptly issue and mail (by certified mail, with return receipt requested) to the respondent a NDFAO. The NDFAO will be signed by the FA or designee.



**The SCET is responsible for entering into EMIS the date the NDFAO is mailed.**

### ***6.2.2.5.3 Associate Administrator (AA) Issues an NDFAO***

The AA issues a final agency order in instances where the respondent has submitted a reply to the NOC and the matter has been submitted to the AA for a decision. A final order issued by the AA will specify the date for payment, if any.

 **The SCET is responsible for entering into EMIS the date of the NDFAO and when payments are due.**

#### *6.2.2.5.4 Settlement Agreement Becomes an NDFAO*

Once the settlement agreement is fully executed, it becomes an NDFAO, and specifies the date for payment.

 **The SCET is responsible for entering into EMIS the date of the NDFAO.**

#### *6.2.2.5.5 Respondent Fails to Pay After Being Required To Do so by an NDFAO*

A respondent that fails to pay the full outstanding balance of its original civil penalty within 90 days after the date of the missed installment payment or the date specified for payment in the final agency order will be prohibited from operating in interstate commerce and, if applicable, will have its FMCSA registration suspended pursuant to 49 C.F.R. §§ 386.83 and 386.84.

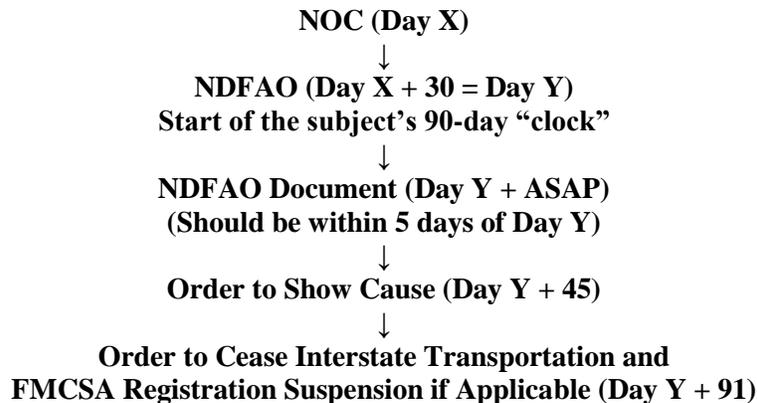


**Before issuing any notices or orders related to non-payment, an SCET must ensure that payment has not been received by checking [pay.gov](http://pay.gov) online and any other available sources.**

All notices and orders relating to the failure to make a payment when due will be signed by the FA or designee.

#### *6.2.2.5.6 Timeline of Actions in the Civil Penalty Collection Process*

The progression presented below is intended to illustrate a general timeline of actions and orders that would take place from a NOC to the point that a subject would be prohibited from operating in interstate commerce and, if applicable, have its FMCSA registration suspended or revoked.



The progression above assumes that the subject did not respond in the required manner to the NOC or the Order to Show Cause and is intended for illustrative purposes only. The start of the subject's 90-day period in which full payment must be made to avoid sanctions (i.e. Day "Y") can also be established by:

- The date specified for payment in a Settlement Agreement;
- The date of a missed installment payment established in a Settlement Agreement; or
- The date specified for payment in an AA Final Order.

##### **6.2.2.5.6.1 Step 1: Issue Missed Payment Letter**

**NOTE: THIS IS APPLICABLE ONLY TO SETTLEMENT.**

If a respondent fails to make a payment within five (5) days of the payment due date, submits an insufficient payment (i.e., less than the negotiated payment), or fails to comply with the terms or conditions of a settlement agreement, then the SCET will issue a missed payment letter to the respondent.

The missed payment letter will be sent by certified mail return receipt requested or by fax. The missed payment letter will inform respondent that the settlement agreement is void, any reductions in payments or penalties held in abeyance are reinstated and the entire penalty (less any payments received) is due and payable immediately.

If an insufficient payment is received, the SCET will retain the payment and will send a missed payment letter as set forth above. Additionally, the missed payment letter will notify respondent that the payment is not sufficient and acceptance of the payment does not constitute satisfaction of respondent's payment obligation. Acceptance of insufficient payments indicating "full payment" or "satisfaction," or words to that effect, could constitute a waiver of the FMCSA's right to receive full payment. If any such words appear on the payment, consult with the SC attorneys regarding appropriate action to take.



**The SCET is responsible for entering into EMIS information regarding the missed payment and reinstatement of penalties.**

#### **6.2.2.5.6.2 Step 2: Issue Show Cause Order**

##### ***Time When Show Cause Order is issued***

If the SCET has not received payment within 45 days after the date specified for payment by the final agency order, the date of a missed installment payment or the date the respondent fails to comply with any other term or condition of a settlement agreement, it will issue a Show Cause Order.

EMIS will alert the SCET to issue the Show Cause Order.



**Before issuing any notices or orders related to non-payment an SCET must ensure that payment has not been received by checking [pay.gov](http://pay.gov) online and any other available sources.**

##### ***Delivering Show Cause Order***

The Show Cause Order must be delivered by certified mail return receipt requested or commercial express service.



**If the respondent's principal place of business (PPOB) is in a foreign country, the notice will be delivered to the respondent and the respondent's designated process agent.**

##### ***Show Cause Order Must Contain the Following***

The Show Cause Order will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in a prohibition of operating in interstate commerce and, if applicable, suspension of the subject's FMCSA registration.

The Show Cause Order notifies the respondent that it must show cause why it should not be prohibited from operating in interstate commerce, and, if applicable, why it should not have its registration suspended, on the 91st day after the date specified for payment.



**The SCET is responsible for entering into EMIS the date the Show Cause Order is mailed to the respondent.**

##### ***Respondent Must Submit the Following in Response to Show Cause Order***

The prohibition and suspension, if applicable, can only be avoided by submitting to the AA the:

- Evidence that the subject has paid the entire amount due; or
- Evidence that the subject has filed for bankruptcy.

Although the regulations refer only to the filing of Chapter 11 bankruptcy, the FMCSA will consider bankruptcies in which a person is a debtor under any chapter of the Bankruptcy Code. Subjects in bankruptcy must also supply:

- The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed;
- The bankruptcy case number;
- The court in which the bankruptcy proceeding was filed; and
- Any other information requested by the agency to determine a debtor's bankruptcy status.



**Serious sanctions apply to any agency that proceeds with certain aspects of enforcement of a case after a motor carrier has filed for bankruptcy. Therefore, it is important to consult with your SC attorney for guidance. Do not issue any documents once it becomes apparent that a carrier or individual has filed for bankruptcy, unless specifically advised to do so by counsel. If a respondent submits information in response to the Show Cause, the SCET will immediately consult with its SC attorneys to determine whether the response is sufficient to avoid the prohibition and suspension.**

The SCET will also notify the Division of any response it receives in response to a Show Cause Order.



**The SCET is responsible for entering into EMIS the information regarding the respondent's response.**

#### **6.2.2.5.6.3 Step 3: Issue and Serve the Order to Cease Operations (OCO) Interstate Transportation and/or Suspension of Registration**

##### ***Time When the OCO is issued***

If respondent does not pay the civil penalty or submit evidence of bankruptcy filing after issuance of the Show Cause Order, the SCET will issue and serve an OCO of Interstate Transportation and/or Registration Suspension (registration suspension only applicable to respondents with operating authority). The SCET is responsible for preparing the appropriate OCO given the nature of respondent's operations.



**Before issuing any notices or orders related to non-payment, the SCET must ensure that payment has not been received by checking [pay.gov](http://pay.gov) online and any other available sources.**

The OCO is issued only if:

- Respondent has failed to pay its civil penalty;
- Respondent has not submitted evidence that it has paid the entire amount due or that it is subject to bankruptcy proceedings as directed in the Show Cause Order; and
- No stay has been granted by the AA or any judge having jurisdiction over the proceedings.

##### ***The OCO Must Contain the Following***

The identity:

- Name and address of respondent;
- Case number which gave rise to the issuance of the OCO; and
- DOT number and MC/MX number if applicable.

Notify respondent that:

- It will be prohibited from operating in interstate commerce and its registration will be suspended (if applicable) on the 91st day after the date specified for payment in the final order or the date of the missed payment or breach of agreement or order.

Contain:

- A certificate of service.

#### Prohibit Operation and Suspend Registration:

- No earlier than 91 days after the date specified for payment. While EMIS normally calculates when the OCO should be effective, it is the SCET's responsibility to verify that the OCO date is correct.

The OCO may contain such other information the FA deems appropriate

#### ***Delivering the OCO***

OCOs may be served by any United States Postal Service mail service with a return receipt requested. See [Illustration 3: Notice of Claim Service](#). Although this permits Express Mail or Certified Mail, Express Mail is preferred in order to ensure prompt service. Additionally, when United States Postal Service is used to serve an OCO, the Order should be mailed at least five (5) business days before the effective date of the Order.

If the OCO is hand delivered, it should be delivered to the respondent at least three (3) business days before the effective date in the OCO. This ensures that respondent will have sufficient time prior to the effective date of the OCO to get its commercial motor vehicles to a safe and secure location prior to the prohibition on operations in interstate commerce.

The person effecting delivery is responsible for completing the Certificate of Service. The SCET is responsible for delivering copies of the OCO to all parties on the Certificate of Service.

#### **6.2.2.5.6.4 Step 4: Notification**

**Note: The Division is responsible for notifying the appropriate state partners.**



**Once the OCO has been issued, the SCET is responsible for notifying Licensing and Insurance (L&I), and making the Motor Carrier Management Information System (MCMIS) and EMIS entries.**

#### ***If Respondent Files a Petition for Reconsideration of the NDFAO or Files an Appeal While OCO Proceedings are pending***

If a respondent files a timely petition for reconsideration of an NDFAO, it does not stay the effect of the final agency order unless the AA issues a stay of the proceedings. Thus, the filing of a petition for reconsideration will not necessarily stay the issuance or effect an OCO unless a stay is requested and the request for a stay is granted. Similarly, the filing of an appeal with appellate court will not stay the proceedings unless a stay has been requested and granted by the court. The SCET will immediately notify the SC attorneys upon receipt of a petition for reconsideration or appeal so that a determination can be made as to the effect of the proceedings on the OCO proceedings.



**The SCET will enter into EMIS the Petition for Reconsideration or Appeal.**

#### ***Division Does the Following to ensure that Carrier or Driver Does Not Operate after the OCO is Effective***

The Division notifies State enforcement personnel on the day that any OCO of interstate transportation goes into effect.



**State enforcement personnel may contact the toll-free number for the DOT Safety Hotline (1-888-DOT-SAFT) to obtain real-time verification that a Federal Order prohibiting interstate transportation is still in effect when conducting roadside enforcement activities. State enforcement personnel may also obtain real time information via QC.**

**Note:** This procedure underscores the importance of ensuring that a subject's operational status is correctly reflected in MCMIS.

The Division must have procedures in place to monitor whether a carrier is operating in violation of an OCO. This may include, but is not limited to:

- Onsite verification conducted within 10 days of the effective date of the order;
- Monitor automated MCMIS activity reports;
- State roadside inspection activities; and/or
- Other methods of determining interstate transportation.

#### ***Division Does the Following When a Carrier is Found Operating after an OCO is Effective***

The Division should document the violations of the Order and work with the SCET to initiate proceedings for an immediate court-ordered injunction. In such situations, an injunction is a Court Order from a judge ordering the carrier to comply with the Imminent Hazard OOS Order until such time as the hazard is abated.

#### ***Penalty Collection Procedures Followed by the SCET***

Each SC is responsible for implementing collection procedures to ensure the timely processing of payments and collection of funds. The FAA currently handles the collection of funds for FMCSA. To facilitate proper handling of receipts, offices involved in receiving funds should establish procedures for controlling and safeguarding such funds in accordance with DOT Order 2770.55, dated September 17, 1979.

#### ***Processing of Payments***

Payments received by the SCET will be forwarded to the collection clerk. The FAA will designate an individual along with an alternate to act as the collection clerk. All payments received by the SCET collection clerk will be handled as follows:



**On a daily basis, the collection clerk will enter all payment information into EMIS.**

For each payment, the collection clerk also prepares a transmittal memorandum. See [Illustration E-6: Transmittal Memorandum](#). If a payment is the final payment pursuant to a Settlement Agreement payment in full, the collection clerk notifies the Division of the payment by email and places a copy of the email into the enforcement file.



**The collection clerk then prepares a Record of Cash Receipts Form printed from EMIS.**

The Record of Cash Receipts Form will be completed with the date payment received, the name of the entity/person making the payment, case number, the check number, the amount paid, bill or other reference (206 or non-206) and the appropriations or fund symbol and cost codes. EMIS generates the appropriate fund symbol based on the violations.

The collection clerk faxes copies of the Record of Cash Receipts to Jacqueline Murphy, FAA, Oklahoma City, OK. The original Record of Cash Receipts, Checks, and Transmittal Memos are sent by Federal Express next day delivery to:

Bank of America

FMCSA Lock Box 409934

6000 Feldwood Road

College Park, GA 30349

***Procedures for Collection in Instances Where the Respondent Fails to Pay a Civil Penalty***

If a respondent does not pay the civil penalty when assessed and has not entered into a settlement agreement for payment of the civil penalty, the SCET is responsible for ensuring collection of the civil penalty. A respondent is prohibited from operating in interstate commerce and will have its operating authority suspended (if applicable) if it fails to pay a civil penalty in full within 90 days of the date specified for payment. If the respondent does not pay the civil penalty within 90 days and the SCET has issued the OCO, the SCET will forward the case to FAA for further collection proceedings.

The collection clerk will forward by electronic mail a copy of the NOC, NDFAO, Settlement Agreement, AA Order, or ALJ Order), the OCO, and the FAA Finance Memorandum directly to FAA Finance: See [Illustration E-6: Transmittal Memorandum](#).

DOT/FAA/MMAC

FMCSA/AMZ-300

6500 S MacArthur Blvd

Oklahoma City, OK 73169

The collection clerk notifies the Division by email that the case has been referred to Finance.



**The collection clerk is responsible for entering the transmittal of the case to Finance into EMIS.**

***If the Respondent Files for Bankruptcy after the Case Has Been Referred for Collection***

If the SCET or Division receives notification that the respondent has filed for bankruptcy and the case has been sent to Finance, the collection clerk will consult with SC attorneys on the appropriate procedures to follow. Generally, the collection clerk will notify Finance of the bankruptcy filing by email and fax a copy of the filings to Finance.

***6.2.2.5.7 Illustration E-3: Notice of Claim******Notice of Claim***


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HEADING

[NOTICE OF CLAIM]

Certified Mail number

Date

Address

NOTICE OF CLAIM<sup>[1]</sup> -- Violation

CIVIL PENALTY: \$\$

Case Number: ID-20XX-XXXX- US0???

Dear \_\_\_\_\_:

A compliance review was conducted at in \_\_, \_\_ on \_\_\_\_\_, 20XX. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal

Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against \_\_\_\_\_ for the amount of \$\_\_\_\_\_.

Unless settled or otherwise resolved in a manner set forth below, FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. **Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, FMCSA may prohibit \_\_\_\_\_ from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.**

### *Summary of Violations*

Your company is charged with:

1. One (1) violation of:

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

### *Notice of Abatement*

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions.

1. (Abatement is violation-specific.)

### **Failure to Abate Cited Violations**

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions.

(The following is also included in Section 222 cases.)

Under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a 6-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a check mark in the "§ 222 Applied" column in the penalty table below are subject to the "Section 222" provision and the maximum penalties have been assessed. See 49 U.S.C. § 521 note, 49 U.S.C. § 521(b), 49 U.S.C. § 5123, 49 U.S.C. Chapter 149, and 49 CFR Part 386, Appendix A.

### *Penalty*

#### **Penalty Factors for Violations of Safety and Hazardous Materials Regulations**

In accordance with 49 U.S.C. §§ 521(b)(2)(D) and 5123(c), FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed will be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

**Penalty Factors for Violations of Commercial Regulations**

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901(c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

**Discovered Versus Charged Violations**

Violations of either safety or hazardous materials regulations discovered during the course of the [compliance review, safety audit, roadside inspection], but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

**Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)**

A pattern of and/or repeated violations of the same or related acute or critical regulations will result in the maximum penalties allowed by law to be assessed under Section 222 of MCSIA. A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during an investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period. Any violations with a check mark in the “§ 222 Applied” column in the penalty table below are subject to the “Section 222” provision and maximum penalties have been assessed pursuant to statute. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, FMCSA is proposing a civil penalty as follows:

<u>TYPE OF VIOLATION</u>	<u>NUMBER OF VIOLATION</u> <sup>[2]</sup>	<u>COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§ 222 APPLIED</u>	<u>TOTAL</u>
*****	*****	*****	*****	*****	

**Accordingly, the total amount proposed by the Federal Government as the result of these violations is \$ \_\_\_\_\_.**

***How to Reply to the Notice of Claim***

Under 49 CFR Part 386, “Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings,” you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA SC or the Chief Counsel’s office for advice or assistance in your defense. You may pursue the following courses of action:

- (1) **PAYMENT OF PENALTY:** Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at XXX-XXX-XXXX. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <<http://safer.fmcsa.dot.gov>> by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation  
 Federal Motor Carrier Safety Administration  
 \_\_\_\_\_ Service Center

ADDRESS

CITY, ST ZIP CODE

Personal or company checks will not be accepted and will be returned.

**Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations will constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions.**

- (2) **REQUEST FOR ADMINISTRATIVE ADJUDICATION:** You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim. Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1) (iii). Once you select an adjudication option, you are bound by that selection. You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.
- (3) **REQUEST FOR BINDING ARBITRATION:** If you dispute only the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay.

FMCSA's guidance on the use of binding arbitration is available through the following link: <http://www.fmcsa.dot.gov/>. You can also request a copy of the guidelines from the SC.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6. THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING

THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,

??????????

Division Administrator

Federal Motor Carrier Safety Administration

Enclosures

### **APPLICABLE STATUTES**

Section 521(b)(2)(A) of 49 U.S.C. provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 U.S.C. §§ 31131 et seq.) (except sections 31138 and 31139) or 49 U.S.C. §§ 31301 and 31306, or Section 31502 of 49 U.S.C., will be liable for a civil penalty in an amount not to exceed \$11,000 for each offense. No civil penalty will be assessed under this section against an employee for a violation in an amount exceeding \$2,750 (49 U.S.C. § 521(b)(2)(A) and 68 Fed. Reg. 15381 (March 31, 2003)). Section 5123(a) of 49 U.S.C. provides that any person who is determined to have committed an act that is a violation of regulations issued under chapter 51 will be liable for a civil penalty in an amount not to exceed \$32,500 for each offense. (49 U.S.C. § 5123(a) and 68 Fed. Reg. 15381 (March 31, 2003)).

**Table 1: Violations Discovered During Review/Inspection**

NUMBER	VIOLATION	IDENTIFYING INFORMATION: DRIVER EQUIPMENT COMMODITY	DATE OF VIOLATION
1	49 C.F.R. § _____	Interstate transport of _____ by Driver (insert driver name)	XX/XX/20XX
2	49 C.F.R. § _____	Driver (insert driver name)	XX/XX/20XX
3	49 C.F.R. § _____	Driver (insert driver name)	XX/XX/20XX
4	49 C.F.R. § _____	Driver (insert driver name)	XX/XX/20XX
5	49 C.F.R. § _____	Driver (insert driver name)	XX/XX/20XX

**6.2.2.5.8 Illustration E-4: Notice of Claim Service****Background**

The Motor Carrier Safety Administration (FMCSA) is charged with administering and enforcing the Federal Motor Carrier Safety Regulations (FMCSR). When significant violations of the FMCSR are discovered, enforcement action may be initiated. The enforcement process involves serving the Notice of Claim (NOC) on a respondent. A respondent may be a company, corporation, or an individual. In some instances these respondents may be difficult to find and serve. This will be an effort to identify our legal obligations as they pertain to serving the NOC on the respondent, and identifying possible options.

The procedures in this paper apply to Notices of Claim (NOC), NDFAO, Orders to Show Cause (OSC), and Missed Payment Letters.

**Legal Requirements**

49 CFR § 386.14(a): This regulation sets the time for the carrier to reply to a NOC. This regulation specifically states “The respondent must reply within 30 days after a Notice of Claim Letter is served. In addition, 49 CFR § 386.32(c) adds 5 days onto those days for mail delivery, unless we have other proof of when the NOC is received.

49 CFR § 386.6: This section of the regulations deals with “service” and outlines the process and definition of “service.”

**Discussion:** This regulation does not appear to need interpretation. It is rather simple in terminology as it provides that “mailing” will be considered “service”. This would denote that proof of mailing, e.g., certified receipt from Postal Service office, would meet this requirement. Due process requires that the agency take reasonable steps to ensure that the respondent receives notice of the claim. This requires that the method of service be one that is likely to reach the respondent.

Service is a growing issue with small carriers and drivers. Many carriers and drivers are refusing delivery of a NOC thinking this will preclude them from paying any penalties. Because of this growing practice, a review of the regulations and improvement of our current procedures will help reduce instances of no service and ensure our enforcement program has the desired effect. It is unreasonable to unduly prosecute a person or company without due notification and it is unreasonable to allow a person or company to avoid prosecution by merely failing to accept delivery of a mailing.

New delivery methods need to be considered that would augment our efforts. In this process we must insure that any method considered would meet all of the requirements and satisfy all of the issues presented above, and be cost efficient. On the surface there would appear to be numerous options available to us with a wide range of costs. The following are some options:

### *Methods of Service*

#### *Category A: Methods of Service*

**Personal Service (Regulatory):** More expensive but may be the only way to effect service when dealing with evasive carriers or a higher degree of reliability of service is needed. This is the most reliable form of service.

**FMCSA Personnel delivery:** May be completed by Safety Specialist conducting other duties in the same vicinity. This method is effective since the Safety Specialist physically sees the individual served and completes a Certificate of Service at the time of delivery attesting to the personal service. The problem with this method is that often the respondent could be hostile, and we may be placing our staff in harm's way.

**Private Process Server delivery:** This is the same as using a Safety Specialist except may be less of a safety issue since the server is not employed by the FMCSA and would not have that emotional tie for the carrier. Depending on where the respondent resides, this service could be more expensive. Private process servers will work with us to provide whatever documentation we need to prove service.

**Law Enforcement delivery:** This method relies on local law enforcement personnel to hand deliver the NOC and obtain proof of delivery. This is the same as using a private process server except they are armed. This method may be more effective on companies with mixed results on individuals. Individuals, normally drivers, are often away from home. The cost may vary by locality and the Division should find out the total charge before making a decision. Most include a minimum number of attempts in the one charge so be sure and know what you are paying for. This may be less expensive than a private process server since the local law enforcement officers are typically within the same county.

**Certified Mail (Regulatory):** Because the term "mail" in the regulations is defined by the courts to be by the United States Postal Service, Certified Mail is our current primary method of delivery. It is cost efficient and, when delivery is complete, affords us a signed document proving delivery. Problems arise when the respondent, often knowing it is coming, either refuses delivery or fails to pick it up. This may be more of a problem on individuals rather than companies, however, some companies have used this tactic in the past.

**Priority Mail or First Class Parcel plus Delivery Confirmation (Regulatory):** Currently First Class Mail over ¾" thick and Priority Mail can be shipped with Delivery Confirmation that you can track over the Internet and, if everything goes well, will tell you the address where the letter was received. If the address matches the address we have on record, consider it served.

**Regular U.S. Mail (Regulatory):** This method, while complying with the regulatory requirements, does not provide proof of delivery. Therefore, if a carrier or driver argues that they did not receive the NOC, the agency doesn't have evidence to defend its service. This method, however, should always be used in conjunction with Fed Ex or other non-United States Post Office delivery service.

**UPS (Not Regulatory):** Most individuals and companies accept United Parcel Service (UPS) deliveries. Costs associated with this mode could be prohibitive, if used exclusively. This method can be used as a backup, to show that delivery was made, in cases where the driver or carrier is attempting to evade service. This may be used as a primary method, if it is anticipated that the driver or carrier will attempt to evade service. This method should be followed by regular mail service (mailed on the same day). Since this method is not yet in the regulations (Part 386) as an acceptable form of service, it could be challenged.

***Category B: Additional Evidence of Notice***

**Motor Carrier Delivery (Not Regulatory):** This method may be considered as an additional method of delivery in addition to a Category A service when the respondent is a driver. If the NOC comes back “unclaimed” the NOC could be given to the driver’s employing motor carrier for delivery to the driver. The carrier would then FAX us a receipt signed by the driver. We could also ask the carrier to route the driver through to the carrier’s terminal for FMCSA staff to hand deliver the document. The signed receipt and “unclaimed” NOC would be proof of service.

**FAX (Not Regulatory):** This may be a viable alternative for most companies as most have FAX capabilities. Investigator should be advised to insure we have an accurate FAX number for the company. A FAX confirmation and acknowledgement of receipt FAX to us by the respondent will suffice as proof of delivery. This method should only be used as a backup to other service methods.

**Internet (Not Regulatory):** Here is one we have not used to date. This method may be used if both parties, the FMCSA and respondents (both individuals and companies), agree in writing that email will be used as a form of service. Proof of delivery would be when the person or company opens the email, and a delivery receipt is generated, or by acknowledgement of receipt from the respondent. This method should only be used as a backup to Category A service methods.

***NOC Service Procedures***

**Purpose:** The recommended practice below is based on the following:

The Division is responsible for issuing the NOC and making sure it is properly served. The Division should use the methods of service in Category A that ensures service of the NOC to the respondent. If all attempts of service are circumvented by the Respondent, the Division should contact the SCET enforcement specialists or attorney to determine if the Division actions constitute service. All attempts to serve must be documented. You should use the attached checklist to document service attempts. Once service is confirmed, the Division must contact the Enforcement Program Technician via email with service date and any changes to the original address in the NOC. If service is not made after repeated attempts, the Division should consult with the Enforcement Team and decide whether the case should be closed without enforcement or considered served.

**Procedure:**

Service of Agency claims and/or Notices must comply with the regulatory guidelines. Therefore the initial attempt at service should always be a method listed under Category A. If service is completed and proof of service (e.g. certified mail green card, personal delivery receipt, law enforcement certificate of service, etc...) is obtained, the NOC should be considered served. If UPS is the primary method of service, the Division should document the reason why UPS was used instead of another service. Also send the NOC by regular mail just so you can say we complied with the minimum requirements of the regulation.

**Note:** If the first attempt at service on a for-hire motor carrier is unsuccessful, serve the NOC on the Process Agent of record from the L&I site. This will then constitute service of for-hire carriers.

In the case of certified mail to the carrier, driver, or registered agent, if the NOC or Notice is returned “refused” or “unclaimed”, the NOC should be sent by regular mail. A delivery method from Category B may be selected as an additional method of ensuring the driver actually receives the NOC. Providing notification using one of these methods does not take the place of service under Category A, but provides evidence that the carrier or driver received adequate notification of the claim, and therefore received due process. Once a secondary method of delivery is used, the claim should be considered served.

In the case of personal delivery by FMCSA or process server (private or law enforcement personnel), if the NOC is refused by the driver or company official, the certificate of service should document the refusal (including the name and/or description of the person who refused service). The NOC should be

shoved under the door if possible or firmly attached to the door (i.e., duct tape) then be sent by regular mail, and upon mailing, should be considered served. A secondary method of delivery can be selected from Category B to establish additional evidence that the carrier or driver received adequate due process notification of the claim.

In the case of service to a carrier that is returned with a bad address, agency records should be checked to ensure that no other addresses are available. If no other address can be obtained, service should be made on the carrier's process agent always using a Category a method.

In the case of service to a driver that is returned with a bad address, agency records should be checked to ensure that another address is not available. The last known employer should be contacted to determine if they have another viable address, and/or to verify the address listed on the driver's CDL. Also, contact the SC Paralegal for assistance in determining the latest address of the driver through the LEXIS/NEXIS system.

**NOC Service Responsibility:** The Division office is responsible for generating the Notice of Claim and attempting to make service on the respondent. It is reasonable that if a Division office availed themselves of all of the options listed above, service should be completed. The problem arises when different attempts at service are not completed (i.e., the NOC comes back in the mail).

Each Division is obligated to document service efforts to ensure challenges regarding late delivery can be upheld at later dates. It is anticipated that some respondents, and possibly an attorney, may challenge our service at later dates. This process will insure we can defend any accusations of late service on a respondent.

If all efforts at service fail, the Division will contact the Enforcement Team specialists or the SC Attorneys to determine further action. Counsel will help the Division determine if all reasonable efforts were made by the Division, constituting service, or that all attempts have failed resulting in the Division recommending the case be closed without enforcement.

#### ***UNSAT/UNFIT and No-Pay OOS Order Service***

**Background:** There is a variety of opinions on whether Out-of-Service Orders and Orders to Cease Operations should be served by "Personal Service" or some form of mail or delivery service. Many of the DA's would prefer some form of mail or delivery service or at least be given the latitude to choose which one is best for each circumstance to include personal service. Currently the FOTM Volume II, chapter 9, Para 5e and Volume III, chapter 8, Para 2c(5) requires that both Unsat = Unfit OOS Orders and the No-Pay OCO "except in the most extreme circumstances, be hand delivered." The SC Attorneys believe that the Unsat= Unfit OOS Orders should be personally served since that is the best form of service coupled with the extreme nature of the action of placing a carrier out-of-business for safety reasons. Because of the frequent occurrence of the No-Pay OCO and the fact that many are driver cases, extreme circumstances may arise more often than with the Unsat = Unfit.

#### ***Recommended Procedure***

##### ***UNSAT=UNFIT OOS Order SERVICE***

All Unsat = Unfit OOS Order may be served by UPS, Law Enforcement Delivery or Personal Service. See "Methods of Service" for the options available to you.

For the safety of FMCSA staff, DA's should arrange escort by armed MCSAP enforcement officers or local law enforcement if available. Local law enforcement (i.e., County Sheriff) officials should also be considered as an alternate resource for service. If personal service is not feasible (e.g., distance) and an alternate method of service is needed, the DA should take additional action to ensure that the carrier does acknowledge that service was made (i.e., documented phone call with top official). The attached checklist should be used to document the specific method of service and follow-up actions.

**Order to Cease Operations (OCO)**

OCOs may be served by any United States Postal Service mail service with a return receipt. Although this permits Express Mail or Certified Mail, Express Mail is preferred in order to ensure prompt service. Additionally, when USPS is used to serve an OCO, the Order should be served within five business days of the effective date of the Order.

If a Division is contacted by a MCSAP agency or other means where a driver is stopped for violation of the Order and the driver claims no knowledge of the Order, the Division will immediately take measures to have the Order personally served by the MCSAP officer.

**Service Checklist**

Download PDF Form: [Service Checklist](#)

NOC, NDFAO, OSC, AND MPL

CARRIER/DRIVER:	
ENFORCEMENT CASE #:	
PRIMARY SERVICE METHOD:	
<input type="checkbox"/> CERTIFIED MAIL	
Date Received	
<input type="checkbox"/> Unclaimed	<input type="checkbox"/> Other
<input type="checkbox"/> Refused	<input type="checkbox"/> Not Deliverable as Addressed
Proof: Green Card with Name and Date	
<input type="checkbox"/> PERSONAL SERVICE (See attached Certificate of Service)	
Date Delivered	
Proof: Certificate of Service	
<input type="checkbox"/> PRIORITY MAIL OR FIRST CLASS PARCEL WITH DELIVERY CONFIRMATION	
Date of Delivery	
Proof: Delivery Confirmation Stub and Copy of Delivery Address from USPS Internet site.	
<input type="checkbox"/> REGULAR U.S. MAIL	
Date Mailed	
Returned? Reason	
<input type="checkbox"/> UPS	
Date of Delivery	

Proof: UPS delivery receipt.	
ADDITIONAL ACTION:	
<input type="checkbox"/> FAX:	FAX #
Date/Time	
Person	
Attach Faxed Receipt from Respondent	
<input type="checkbox"/> EMAIL:	Email Address _____
Date Mailed	
Person	
Company	
Attach e-mail acknowledgement from Respondent.	
<input type="checkbox"/> ADDITIONAL CONFIRMATION	
<input type="checkbox"/> Phone Call:	Name _____
	Position
	Date/Time
Other Facts of Service:	

**6.2.2.6 Criminal Penalties**

**6.2.2.6.1 The Time to Pursue Criminal Prosecution**



When knowing and willful violations of the regulations occur, FMCSA may pursue criminal prosecution through the United States Attorney's Office. These actions require the close working relationship of FMCSA's SC attorneys, the United States Attorney's Office, and the Division. These investigations may involve the assistance of the OIG and/or the FBI.

Once a case is referred to the United States Attorney's Office for prosecution, the Assistant United States Attorney handling the case has control of the case. The standard of proof in criminal cases is beyond a reasonable doubt. All charges must be documented accordingly. Criminal prosecution may involve months of investigation and preparation.

**6.2.2.7 Coordination With Other Law Enforcement Agencies**

**6.2.2.7.1 Actions to Take if SI Discovers Violations of the Law within the Jurisdiction of Other Federal, State or Local Laws**

The SI will forward the information through the DA to the appropriate agency officials.

 **The DA will consult with the SC attorneys before forwarding the information.**

#### *6.2.2.7.2 Time for SI to Share the Results of Investigation with Other Agencies*

Generally, when joint assignments and investigations are being conducted by the SI and employees of another agency, information may be freely and informally exchanged. Similarly, information should be freely exchanged between Divisions, if necessary, to conduct an investigation. SIs will limit their activities to matters within the FMCSA's jurisdiction.

 **By law (49 U.S.C. § 31143), the identity of a complainant may be disclosed only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, every practical means will be taken to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure. Release of such information must be coordinated with the SC attorneys.**

#### *6.2.2.7.3 Types of Partnerships the Divisions May Enter Into*

The Divisions may establish written agreements; such as Memorandum of Understanding or Memorandum of Agreement as appropriate with State and local agencies regarding working relationships.

 **The DA will consult with the SC attorneys when preparing these written agreements.**

### **6.2.2.8 Injunctions**

#### *6.2.2.8.1 Time to Pursue an Injunction*

An injunction is pursued in those situations, as determined necessary by the SC attorneys, on a case by case basis. The SC attorney may ask the United States Attorney to bring an injunction, in the appropriate United States district court, seeking such relief as necessary such as mandatory and prohibitive injunctive relief, interim equitable relief, and punitive damages. Violations of a final compliance order, consent order, OCO, or OOS Order can be enforced in the United States district courts by seeking an injunction.

 **The Division will consult with SC attorneys and SCET to determine whether injunctive relief is appropriate.**

#### *6.2.2.8.2 Time When an Injunction should not be pursued*

Seeking injunctive relief is resource intensive. Multiple hearings may be required in order to obtain relief. FMCSA and SC attorneys have no control over the length of the injunctive relief process. Therefore, careful consideration should be given to the pursuit of any type of injunctive relief.

### **6.2.2.9 Imminent Hazard**

#### *6.2.2.9.1 Responsibility for Issuing an Imminent Hazard (IHOOS) Order*

The Regional Field Administrator, the Field Administrator and/or the Director of Enforcement and Compliance are responsible for issuing an Imminent Hazard Out-of-Service (IHOOS) Order.

#### *6.2.2.9.2 Division's Responsibility in Determining an Imminent Hazard and Presenting that Information to the FA*

If, while conducting an investigation, the SI finds that an Imminent Hazard OOS Order may be warranted, the investigation process should be temporarily suspended ([Illustration E-7: Imminent Hazard Guidelines](#)). The SI should contact the DA to relate the critical details, discuss the merits of the findings, and express an opinion regarding the need for such an Order. If the DA agrees with the SI, then a discussion of the appropriateness of issuing an IHOOS Order is required. This discussion must include

the DA, the SI, the FA, HQs and Enforcement Program Manager for the appropriate SC and the assigned SC Attorney and cover the alleged Imminent Hazard and the associated evidence. The parties should agree on the course of action to be taken and assignments regarding activities should be made. Once a decision to proceed with an IHOOS Order is made, the SI should resume the investigation, gathering all necessary documents.

#### *6.2.2.9.3 Provide the Following to the SCET before an Imminent Hazard*

 **Copies of all evidence, supporting documents, etc., upon which the proposed Imminent Hazard OOS Order is based, must be provided to the SC attorneys in a timely manner prior to issuance of the Imminent Hazard OOS Order. Imminent Hazard OOS Orders will not be issued without prior coordination with the SC attorneys.**

This material should include, but is not limited to:

- A copy of the carrier's current proposed investigation report, including all supporting documents obtained in the course of the investigation, to support the 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, SMS information, or any other data in a DOT system of records is to be relied upon as evidence for an IHOOS Order (e.g., high driver/vehicle OOS rates and/or accident rates), this information must be verified by appropriate agency personnel before it is used. Actual "hard copies" of some roadside inspections may be necessary depending on their intended use to support the OOS action. These inspections usually deal with history or patterns of noncompliance, not real time (present). The reports to be relied upon should clearly show that "interstate" and not "intrastate" violations are involved, unless the intrastate violations are jurisdictional, i.e., parts 382 and 383.

#### *6.2.2.9.4 Preparing the IHOOS Order*

Once all of the evidence is submitted to the SCET, the SCET will prepare the OOS Order for the FA's signature. Examples of language and mandatory actions to include in an IHOOS Order are contained in the Appendix.

*[Illustration E-6: Sample Language for IHOOS Order](#)*

#### *6.2.2.9.5 Serving the IHOOS Order*

Due to the extreme consequences of the IHOOS Order, the DA should serve the OOS Order on the carrier. The OOS Order must be served by personal service. The DA should be accompanied by an armed MCSAP Officer.

#### *6.2.2.9.6 Actions the Carrier Can Take Once an IHOOS Order is issued*

Once an IHOOS Order is issued, the carrier can:

- Contest the Order pursuant to 49 U.S.C. § 521 within 10 days of issuance of the Order; or
- Take corrective action to eliminate the Imminent Hazard to the satisfaction of the FA.

#### *6.2.2.9.7 FMCSA Must be Prepared To Do the Following Once IHOOS Order is Issued*

It should be assumed that the carrier will contest the IHOOS Order. Once an IHOOS Order is issued to a carrier, the carrier may challenge that Order within 10 days of issuance. The entire process from issuance

of the IHOOS Order to a final decision on review must take place within 10 days (pursuant to 49 U.S.C. § 521). The agency must be ready, willing, and able to proceed to conclusion. See [Illustration E-5: Guidance on Steps to Take When Consider an IHOOS Order](#) for additional guidance and roles on steps to take when considering the issuance of an IHOOS Order.

#### ***6.2.2.9.8 Divisions must be prepared to do the Following Once IHOOS Order is issued***

The SI, DA, SC Attorney, and such other persons as the attorney may identify, including support staff, should be available continuously on short notice (with appropriate telephone numbers, pager numbers, etc., provided to the attorney) for a ten (10) day period following the service of the IHOOS Order. Divisions should notify all appropriate State agencies of the IHOOS Order.

See [Illustration E-6: Sample Language for IHOOS Order](#).

#### ***6.2.2.9.9 SCET Must Be Prepared To Do the Following When the IHOOS Order is issued***

The SC Attorney must be available on short notice to prepare pleadings in response to a challenge to the IHOOS Order. The SCET will conduct all dialogue with the carrier once the OOS Order is issued.

#### ***6.2.2.9.10 If Carrier Operates in Violation of IHOOS Order, Do the Following***

The SI should document violations of the IHOOS Order and the DA should a NOC for those violations

#### ***6.2.2.9.11 Penalty for Operating in Violation of the IHOOS Order***

The penalty for violating an IHOOS Order by failure to cease all or part of the CMV operation is a maximum of \$11,000 per day after the effective date and time of the order to cease.

#### ***6.2.2.9.12 Division Should Do the Following if a Carrier Continues to Violate the IHOOS Order after Having Been Issued an NOC for Violating the Order***

The Division should document the violations of the Order and work with the SCET to initiate proceedings for an immediate court-ordered injunction. In such situations, an injunction is a Court Order from a judge ordering the carrier to comply with the IHOOS Order, until such time as the hazard is abated.

#### ***6.2.2.9.13 Consequences if the Carrier Violates the Court Order***

A Court Order brings with it the threat of jail time if the motor carrier continues to operate in violation of the administrative order and the Court's Order. If the carrier still does not cease that portion of its operation which is subject to the IHOOS Order and continues to operate in violation of the Court Order, the judge can hold the carrier in contempt of court and place the carrier (usually the president) in jail.

#### ***6.2.2.9.14 Illustration E-5: Guidance on Steps to Take When Considering an IHOOS Order***

### **ROLES AND RESPONSIBILITIES FOLLOWING SERVICE OF IMMINENT HAZARD OUT OF SERVICE (IHOOS) ORDER**

Immediately after service of an IHOOS Order the following actions must be completed:

#### **Internal Notifications:**

##### Division Office

Send summary/background information to Service Center. Include:

- Vehicle identification number (VIN) listing, driver listing, and photos of vehicles, if available.
- Information on carrier principals, phone numbers, addresses, etc.
- Any information on attempts to evade the IHOOS Order.

##### Service Center

- Distribute summary/background to the following offices in Headquarters: Director, Office of Enforcement and Compliance
- Assistant Chief Counsel for Enforcement and Litigation
- Associate Administrator (AA) for Field Operations

Forward briefing packet with the summary and background information to the other Regional Field Administrators and Field Administrators. Provide directions to Division Offices to contact State and local law enforcement partners, the IRP/PRISM registration office, and other relevant State agencies.

MC-CCE

Notify Office of General Counsel, Office of Litigation (C-30)

**IT Systems Updates and Confirmations:**

Division Office

Ensure investigation, IHOOS Order, IHOOS Order documentation of service, and above summary/background information are placed into EDMS.

Service Center

Enter OOS status is entered into MCMIS and inactivate the USDOT number (Service Center Enforcement Team).

(Service Center Enforcement Team)

Revoke operating authority, if appropriate, in the Licensing and Insurance System

Send notification to AA, Office of Research and Information Technology (MC-R) and to the Director of the Office of Registration and Safety Information (MC-RS) informing them about the actions taken (revoking operating authority, inactivating USDOT number) and if needed, to request a manual update of SaferSys, Query Central, and other status websites. SaferSys and other systems update information from MCMIS nightly; however, an immediate update is required.

(Service Center Enforcement Team).

Enter IHOOS Order into EMIS

Service Center and Division Office

Confirm the OOS status; the revocation of operating authority and the suspension of safety registration have been updated on appropriate FMCSA websites.

**External Communications**

Office of Communications

The FA should notify the Office of Communications (MC-CM) and provide all the information needed for press releases. MC-CM will issue a press release to national and local media outlets. The press release will be distributed to state consumer protection distribution list for regions served by the carrier.

Division Offices

Notify local consumer groups, State and local consumer's affairs offices, State licensing and registration agencies, local media, and local industry association contacts: utilize press release generated by the Office of Communications.

**Follow-up Actions**

Division Office

Obtain from OOS carrier a written record of the whereabouts and disposition of all vehicles and drivers. Update periodically during the duration of the OOS status.

Monitor motor carrier's activities to verify adherence to OOS conditions.

Conduct checks of known pickup or delivery locations for evidence of continuing activity in violation of OOS order.

Send periodic status updates to HQ and SC personnel.

Where circumstances suggest that the carrier may attempt to evade the IHOOS order by operating as or through another entity, provide detailed carrier, vehicle, driver, and corporate structure and personnel information to HQ Vetting Team.

Alert persons overseeing and conducting new entrant safety audits to be on the aware of any potential reincarnated or affiliated carrier operations and/or attempts to reincarnate.

#### *6.2.2.9.15 Illustration E-6: Sample Language for IHOOS Orders*

##### **Violations**

#### **383.23(a) OPERATING A MOTOR VEHICLE WITHOUT A VALID COMMERCIAL DRIVER'S LICENSE--missing passenger endorsement.**

**Facts:** Special Agent name discovered that Carrier driver operated a commercial motor vehicle in interstate commerce without a valid CDL in violation of 49 C.F.R. § 383.23(a). Driver possesses a Class B CDL that allows her to operate a commercial motor vehicle in excess of 26,000 pounds. She does not have the required passenger endorsement that would allow her to transport passengers.

Evidence that driver does not have a valid CDL is established by \_\_\_\_\_. Evidence of driver's operation of a commercial motor vehicle in interstate commerce for Carrier is established by \_\_\_\_\_.

**Imminent Hazard:** Operating a commercial motor vehicle in interstate commerce without a commercial driver's license with the proper endorsement means that driver has not demonstrated that she has the special knowledge, skill, and ability to operate a motor coach. Thus, Carrier cannot insure the safe transport of passengers. Driver's failure to demonstrate the special knowledge, skills and abilities substantially increases the likelihood that this driver could inflict serious injury or death to herself, her passengers, and/or the motoring public.

#### **§ 383.37(a) KNOWINGLY ALLOWING, REQUIRING, PERMITTING, OR AUTHORIZING AN EMPLOYEE WITH A COMMERCIAL DRIVER'S LICENSE WHICH IS SUSPENDED, REVOKED OR CANCELED BY A STATE OR WHO IS DISQUALIFIED TO OPERATE A COMMERCIAL MOTOR VEHICLE.**

**Facts:** Special Agent name discovered during the investigation that Carrier knowingly allowed, required, permitted, or authorized an employee with a Commercial Driver's License that was suspended, revoked or canceled by a state or who is disqualified to operate a commercial motor vehicle in interstate commerce in violation of 49 C.F.R. § 383.37(a). Driver name's driving privileges were \_\_\_\_\_ on date for \_\_\_\_\_. This violation is supported by \_\_\_\_\_. Evidence of operating in interstate commerce as a driver of a commercial motor vehicle in interstate commerce for Carrier is evidenced by \_\_\_\_\_.

#### **§ 395.8(e) FALSE RECORDS OF DUTY STATUS.**

**Facts:** During the investigation, Special Agent name reviewed records of duty status for ## carrier drivers; a total of ## records of duty were reviewed for accuracy. Special Agent name discovered that ## of the ## drivers had submitted false records of duty status, for a total of ## false records of duty status, in violation of 49 C.F.R. § 395.8(e). Evidence to support the ## violations consists of \_\_\_\_\_. Each violation is listed in Exhibit \_\_\_\_\_.

**Imminent Hazard:** The Assistant Administrator has held that each carrier must effectively monitor compliance with the FMCSR, especially those aimed at driver fatigue, a "major safety concern." In the Matter of National Retail Transportation, Final Order: Decision on Review, Docket No. RI-92-03, Sept. 12, 1996, at 7. The discovery of the violations shows that Carrier does not have an effective monitoring system.

Without effectively monitoring Carrier driver records of duty status, there is no way to deter a driver from exceeding allowable driving hours. Consequently, Carrier's failure to insure that its drivers are not exceeding the maximum allowable driving hours and Carrier's further failure to insure that its drivers are completing their mandatory off-duty hours as required by the FMCSR substantially increases the likelihood that a Carrier driver will be involved in an accident with resulting serious injury or death. A driver operating over hours has been held to be an imminent hazard. Over hours violations are "safety violations imposing an imminent risk of serious injury or death." In the Matter of Jerry J. Kobs, Inc., Order of ALJ, Docket No. FHWA-97-2869-10, Sept. 26, 1997 at 6, footnote 14.

**§ 396.11(c) FAILING TO CORRECT OUT-OF-SERVICE DEFECTS LISTED BY DRIVER IN A DRIVER VEHICLE INSPECTION REPORT BEFORE THE COMMERCIAL MOTOR VEHICLE IS OPERATED AGAIN.**

**Facts:** During the investigation, Special Agent name reviewed ## driver vehicle inspection reports (DVIR) that reported defects which would be likely to affect the safety of the operation of the commercial motor vehicle. Carrier continued to use these vehicles in interstate commerce without correcting the various defects in violation of 49 C.F.R. §396.11(c). The defects identified in these reports consist of the following: These commercial motor vehicles were not repaired prior to the next dispatch. Evidence to support these ## violations is listed in Exhibit \_\_\_\_\_. Exhibit \_\_\_\_\_ identifies each vehicle, provides a copy of the driver vehicle inspection report which lists the defects, repair records for each commercial motor vehicle which do not indicate that the defects were corrected prior to the next dispatch, and trip reports which evidence an interstate trip.

**Imminent Hazard:** Not only would the defects be likely to affect the safety of operation of the vehicle, but are also types of out-of-service defects that when discovered on the roadside by Federal or State officials applying the CVSA Out-of-Service Criteria require immediate corrective action before the vehicle can proceed due to the serious nature of the defect(s). &to operate a commercial motor vehicle with these defects substantially increases the likelihood of serious injury or death to Carrier's driver, carrier's passengers, and the motoring public.

***Examples of Mandatory Corrective Actions***

- CARRIER will immediately comply with the FMCSR, including, but not limited to the regulations violated as determined by the investigation date. Compliance with the terms of this Out-of-Service Order will not excuse any failure to comply with the requirements of the FMCSR. CARRIER will not permit or require any commercial motor vehicle to be operated, or any driver to drive, in violation of the FMCSR and will take the following measures to assure such compliance:
- CARRIER must ensure that its personnel are adequately trained in the requirements of the FMCSR (Controlled Substances and Alcohol Use and Testing, Commercial Driver's License Standard, Minimum Levels of Financial Responsibility, Qualification of Drivers, Driving of Commercial Motor Vehicles, Parts and Accessories Necessary for Safe Operation, Hours of Service of Drivers and Inspection, Repair and Maintenance) and that personnel are able to conduct motor carrier operations consistent with those regulations.
- CARRIER must implement a system whereby no driver will be dispatched on any trip unless and until CARRIER certifies in writing that the estimated driving time necessary for completion of the trip will not result in a violation of 49 C.F.R. Part 395. Any driver who is properly dispatched but whose continued service will subsequently exceed maximum permissible driving time (49 C.F.R. §§ 395.3(a) and 395.3(b)), will be ordered by CARRIER to cease driving and to accumulate, and the driver will accumulate, adequate off-duty rest time before continuing.
- CARRIER will dispatch no driver whose on-duty time equals or exceeds the maximum permitted hours of service (49 C.F.R. § 395.3).

- CARRIER must insure that drivers accurately complete their daily records of duty status and that drivers submit their daily records of duty status to CARRIER within 13 days of their completion (49 C.F.R. § 395.8(i)).
- CARRIER must maintain drivers' records of duty status and all supporting documents for a minimum period of 6 months. CARRIER must insure that all records of duty status are accurate by using all means available to CARRIER and by comparing each record of duty status with all supporting documentation.
- CARRIER must cease using any driver to operate a commercial motor vehicle whose license is revoked, suspended or canceled by a state or who is disqualified to operate a commercial motor vehicle, as required by 49 C.F.R. § 383.37(a) and 49 C.F.R. § 383.51(a)/391.15(a).
- CARRIER must cease using any driver that does not possess a valid commercial driver's license as required by 49 C.F.R. § 383.23. CARRIER will not dispatch any driver who does not possess a valid commercial driver's license with the appropriate endorsement.
- CARRIER must establish procedures to conduct pre-employment controlled substances testing of all driver applicants, in accord with 49 C.F.R. § 382.301.
- CARRIER must establish a random controlled substances and alcohol testing program consistent with 49 C.F.R. § 382.305. CARRIER will not utilize drivers who are not subject to the random program.
- CARRIER must comply with all controlled substance pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing requirements as required by 49 C.F.R. §§ 382.301, 382.303, 382.305, 382.307, 382.309, and 382.11. CARRIER must also comply with all requirements relating to random alcohol testing, post-accident alcohol testing, reasonable suspicion, return-to-duty, and follow-up alcohol testing.
- CARRIER must establish procedures which will insure that drivers' qualification files are maintained in accordance with 49 C.F.R. Part 391, and that only drivers who are qualified to drive are dispatched by CARRIER. CARRIER will not dispatch any driver who is not properly qualified in accordance with 49 C.F.R. Part 391.
- CARRIER will establish and maintain a system to properly inspect, repair, and maintain equipment in accordance with 49 C.F.R. §§ 396.3 and 396.17.
- CARRIER will not dispatch any commercial motor vehicle that has not met the standards for parts and accessories necessary for safe operation of a commercial motor vehicle. 49 C.F.R. Parts 393.

***Transmittal Memorandum Illustration***

Memorandum

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

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Subject: Motor Carrier Safety Enforcement Date:

Settlement AR #

Reply to

From: Field Administrator Attn. of: MC-EFX-XX

XXXXXX Service Center

City, State

To: Chief, Finance Division (HFS-22)

Washington, D.C.

This memo transmits the settlement agreement for the following enforcement action.

TYPE: Settlement Agreement

INVESTIGATION #: XX-01-XXX-USXXX

RESPONDENT'S NAME:

MAILING ADDRESS:

CITY: STATE: ZIP:

IRS #: CARRIER PHONE NO:

POINT OF CONTACT: Enforcement Program Technician

Portion attributable to GENERAL FUND (HM/387) violations: \$AMOUNT

If you have any questions regarding this information, please advise.

/Original signed by/

Name of Field Administrator

---

[1] Or other division equivalent

[2] Safety Management Plan

#### ***6.2.2.9.16 Illustration E-7: Imminent Hazard Guidelines***

A motor carrier with a proposed unsatisfactory rating should be evaluated against the criteria below. . However a motor carrier with a conditional or even a satisfactory rating could be subject to an imminent hazard. A motor carrier poses an imminent hazard to the motoring public when it meets the following criteria:

- (1) An evaluation of the BASICS with the highest correlation of future crash risk in SMS (Unsafe Driving, HOS Compliance, Vehicle Maintenance, and the Crash Indicator) identifies at least one of the following:
  - a. A motor carrier of property with a percentile of 85 or higher in 3 or more of the 4 crash-correlated BASICS.
  - b. A motor carrier of passengers or a motor carrier subject to the Hazardous Materials threshold with a percentile of 75 or higher in two or more of the four crash-correlated BASICS.
  - c. Notwithstanding the above, any single crash-correlated BASIC or combination of crash-correlated BASICS significantly exceeding the percentiles described above may meet these initial criteria when found in conjunction with the criteria listed in items 2-7 below.
- (2) The findings of an investigation that reveal at least 3 unsatisfactory rating factors, including Factors 2 and 3, and also
  - a. Factor 2 (Parts 382, 383, 391) is unsatisfactory based on drivers still operating after testing positive for controlled substances or alcohol use, or drivers still operating on suspended licenses when the licenses have been suspended or revoked for safety-related reasons; or

- b. Factor 3 (Parts 392 and 395) is unsatisfactory based on a high violation rate and excess hours by drivers currently employed by the motor carrier.
- (3) Recent dispatch of vehicle(s) known by the carrier to be unsafe combined with evidence of an ineffective or nonexistent vehicle maintenance program.
  - (4) Recent crash (es) caused by driver fatigue or lack of maintenance, combined with evidence of ongoing failure or refusal by the motor carrier to monitor vehicle repairs and maintenance and/or driver hours.
  - (5) Ongoing pattern and practice of requiring or permitting drivers to falsify records of duty status or exceed maximum HOS limitations, combined with evidence showing a blatant disregard for safety and lack of knowledge of Federal Motor Carrier Safety Regulations.
  - (6) Evasion of an OOS order, combined with evidence of ongoing failure or refusal to comply with driver and vehicle safety regulations. In these situations, the Agency may concurrently pursue injunctive relief, and/or an OOS or record consolidation order under 49 CFR § 386.73.
  - (7) Evidence reveals a regulatory violation that is not described above, where the motor carrier's actions are so egregious (shocking the conscience) that the Agency would be negligent in its responsibility to protect the public, if it failed to take immediate steps to reduce the risk.

Additionally, if one or more of these circumstances exists and, in the course of an investigation, related ongoing violations are discovered, an imminent hazard situation may exist. When FMCSA declares a motor carrier with operating authority registration an imminent hazard, in addition to the Order, FMCSA will simultaneously serve a Revocation Order notifying the motor carrier that its operating authority registration is revoked

A Revocation Order must include notification to the regulated entity that it must re-apply for operating authority registration and demonstrate during the application process that the entity is fit, willing, and able to comply with appropriate regulations and statutes. A Revocation Order must be served using a delivery method that can be tracked and confirmed. ([SEE IMMINENT HAZARD POLICY.](#))

#### **6.2.2.10 Revocation of Operating Authority**

The revocation (13905) policy applies to any entity required to maintain operating authority registration that demonstrates an unwillingness or inability to comply with applicable statutes and regulations and operates in a manner that shows a blatant and sustained disregard for, or an inability to meet regulatory requirements.

Revocation of operating authority registration forces a regulated entity to cease the elements of their operations that require registration.

- Revocation follows a 30-day notice (Order to Show Cause) that provides an opportunity to respond.
- This remedy should be considered only when there is evidence of continued willful noncompliance that has not been deterred through use of other enforcement measures.
- The Agency will exercise its authority to revoke operating authority registration in cases where there is conduct that demonstrates willful disregard for applicable requirements.
- Inadvertent, isolated, or sporadic violations of applicable requirements generally should not result in revocation.

**It is important to note the section 13905 revocation process is separate and distinct from the Agency's imminent hazard authority.**

#### **Factors to be considering before Initiating a Revocation Proceeding**

- (1) The nature and extent of existing or past violations;

- (2) The degree to which existing or past violations will affect, or have affected, the safety of operations, taking into account any crashes, deaths, or injuries associated with the violations;
- (3) Whether existing or past regulatory or statutory violations are the result a willful failure to comply with applicable requirements;
- (4) The existence and nature of pending and closed enforcement actions;
- (5) Whether adequate safety management controls exist to ensure acceptable compliance with applicable requirements; and
- (6) The existence of corrective action, if any.

When evaluating a possible revocation order, it is critical to look into the compliance and enforcement history from the motor carrier within the past 6 years. See attachment: [New Application Letter](#).

### **Coordination**

The Office of Field Operations (MC-F) must coordinate all revocation actions with MC-EC and the Assistant Chief Counsel for Enforcement and Litigation. Documentation must include the basis for the order and legally sufficient evidence of the ongoing violations.

A Revocation Order must include notification to the regulated entity that it must re-apply for operating authority registration and demonstrate during the application process that they are fit, willing, and able to comply with appropriate regulations and statutes. A Revocation Order must be served using a delivery method that can be tracked and confirmed.

### **6.2.2.11 Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers**

When an investigation discloses an apparent continuity of operations between the motor carrier assigned for investigation and another motor carrier, the first step is to determine the FMCSA operational status of the suspected predecessor motor carrier. [Appendix K](#) is an investigative reference tool listing key analysis factors that the investigator should consider when reincarnation/affiliation is suspected. If the predecessor motor carrier is subject to an OOS Order, or has a negative safety history, investigators should follow the August 29, 2012 policy: [Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers](#), and work closely with the Division Administrator (DA), Service Center Enforcement Team (SCET), and Field Attorneys to gather and organize the evidence in order to bring a case against a suspected reincarnating carrier.

- **Coordination:** Experience has shown that coordination between two or more DAs may be needed, as attempts to reincarnate sometimes include incorporating in another State, to avoid detection. The investigator should begin collecting preliminary information and documents to establish the status of both the predecessor entity and the new entity. Coordination with field counsel is also recommended. Counsel can be a valuable resource in ensuring that the investigator is able to obtain sufficient information and documentation to support action under part 386.
- **Evidence Collection:** Reincarnation investigations require investigator analysis and documentation that differs slightly from the usual documentation needed to support typical violations discovered during routine investigations. Appendix K: Reincarnated/Affiliated Carrier Analysis Factors and Checklist provides a guide to the types of evidence that should be sought in a reincarnation/affiliation investigation. The checklist is intended to enable the investigator to take notes and comment on the availability of evidence, and otherwise describe the investigation as needed. For example, Attachment K refers to tax documents to be collected as part of the investigation. These types of tax documents may not be available for the three year period mentioned, or may not be available at all. If that is the case, investigators should describe the available evidence and document any information that is still needed. In some instances, subpoenas to third parties may be necessary to obtain documents that the motor carrier is not required to maintain, but may be available from the motor carrier's business contacts, such as an accountant, insurance agent, representative, or bank. Accordingly, when the carrier is unable to

produce these important documents, the investigator should obtain the names and necessary identifying information for company accountants, insurers, banks, and other third parties.

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

#### **Division Administrator:**

As soon as practicable, the DA should notify the SCET and appropriate Field Attorney upon discovery of information that requires a chameleon/affiliate investigation. The DA may choose to have the investigator contact the SCET directly. The SCET and Field Attorney can provide advice and guidance on the applicable law and evidence to collect.

The DA should forward to the SCET and appropriate Field Attorney the investigator's summary, key analysis factors, document checklist and associated evidence. When Field Counsel in coordination with the DA and the SCET agree that further action is warranted, the next step is for counsel to prepare an out-of-service order, as appropriate, and consolidation of record order under § 386.73.

#### **Service Center Enforcement Team (SCET) and Field Administrator or Director:**

The SCET will review the information submitted and forward to the appropriate Field Attorney for counsel review. The SCET, in consultation with Field counsel, will make a recommendation and the Field Administrator or Service Center Director will decide whether to proceed with issuing a Notice of Claim (NOC), Notice of Violation (NOV), an OOS Order (OOSO) under 386.73, a record consolidation order under 386.73, or both an OOSO and record consolidation order under 386.73, or other action, as appropriate. Sample language of an OOSO and record consolidation order is attached to this policy as [Attachment C](#).

This section does not supersede existing policies related to charging FMCSR violations but rather supplements the tools available to FMCSA. For example, issuing an OOSO/record consolidation order does not necessarily preclude issuing a NOC charging safety, commercial, or hazardous materials violations that may have been discovered during the course of the investigation/compliance review.

#### **Section 386.73 Operations Out-of-Service and Record Consolidation Order:**

Section 386.73 authorizes FMCSA to issue out-of-service orders to motor carriers, intermodal equipment providers, brokers, and, freight forwarders determined to be reincarnated or operating as affiliates to avoid enforcement action or a negative compliance history and provides a mechanism for administrative review of such orders. The rule also establishes procedures to consolidate the compliance records of reincarnated or affiliated entities. These procedures more fully implement the Agency's current authority to prohibit unsafe entities from operating while, at the same time, providing due process for companies that seek to challenge a finding that they are reincarnated/affiliated. These new procedures provide a straightforward means to identify and expeditiously address reincarnated/affiliate carriers. The standard

for determining that an entity is reincarnated is set out in section 386.73(c). The § 386.73(c) factors are incorporated in the outline in [Appendix K](#).

Past experience has often shown a need to link multiple entity histories to the current carrier; the evidence to link the records of multiple entities to the current motor carrier is the same as the evidence needed to link two motor carriers.

The Service Center Enforcement Program Coordinator will link the carriers in MCMIS.

**Suggested Language for § 386.73 Notice of Claim in Reincarnated Carrier Cases/Record Consolidation Cases**

There are certain sections of law and language that would be common to most reincarnated carrier Notices of Claim (NOC) and there is other language that can be selected when applicable.

***Phrases normally used in the address (addresses), for example:***

[NAME] jointly and severally liable with

[NAME] jointly and severally liable with

[COMPANY NAME] jointly and severally liable with

[COMPANY NAME]

***These are examples of language that can be used in the opening paragraph of the NOC:***

On or about [DATE], an investigation into the operations of [CARRIER NAME] and [CARRIER NAME] was begun. The purpose of the investigation was to determine whether [CARRIER NAME] continues to operate in commerce after the effective date of Orders to Cease operations, and after FMCSA suspended or revoked its registration; whether [CARRIER NAME] is a successor entity and/or alter ego of [CARRIER NAME] and/or its principals; whether [CARRIER NAME] has established its motor carrier operations to evade FMCSA regulations; and whether [CARRIER NAME] and/or [CARRIER NAME] are operating in compliance with Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations (FMCSRs), 49 C.F.R. §§ 350-399 and registration requirements. The [NON-RATABLE] review was conducted at [CARRIER ADDRESS] and concluded on or about [DATE].

As a result of FMCSA's investigation, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation (USDOT), FMCSA, against [NAME], an individual, jointly and severally liable with [NAME], an individual, jointly and severally liable with [COMPANY NAME], jointly and severally liable with [COMPANY NAME] (referred to collectively herein as "You," or "Your") for a total asserted civil penalty in the amount of [\$ AMOUNT].

Unless settled or otherwise resolved in a manner set forth below, FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties.

**Pursuant to 49 C.F.R. §§ 386.83 and 386.84, once a final order has been issued, FMCSA may prohibit you from operating in interstate commerce, or in operations affecting interstate commerce, until the civil penalty is paid in full and, your FMCSA operating authority/registration will be revoked suspended, if applicable.**

Examples of violations that could be alleged are included here. Not all will apply in every case and the SCET should act in concert with Service Center Counsel in selecting violations.

**SUMMARY OF VIOLATIONS**

You are charged with:

***There are potential violations listed in a separate attachment to this policy.***

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

Some examples of Statement of Charges language are included here.

#### **STATEMENT OF CHARGES**

##### **Violation 1: 49 U.S.C. § 14906 – Evasion of regulation by motor carrier**

CHARGE #1: [NAME] and [NAME] applied for a USDOT number and operating authority/registration for [COMPANY NAME] (USDOT XXXX) - hereinafter referred to as ["NAME"] - to evade FMCSA regulations, provided under Part B of Title 49 United States Code for motor carriers, and to avoid the consequences of the performance, compliance, and enforcement history of [COMPANY NAME] (USDOT XXXX), including FMCSA Orders to Cease, unsatisfactory safety rating, and registration suspension and revocation, in order to continue motor carrier operations transporting property or passengers in interstate commerce. There is substantial continuity between the [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

*Alternatively, in the final sentence, substitute:*

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

***Describe background of Out of Service Order, timing, and evidence of de facto merger or consolidation or mere continuation. The Service Center Enforcement Team should act in concert with the Service Center Counsel to determine whether to use de facto merger or consolidation, or mere continuity. Evidence can include reference to such items as operating out of the same office, with the same insurance policy, using many of the same drivers and vehicles, and with significant commonality of management, management officials, and functions.***

##### **Violation 2: 49 C.F.R. § 385.13(a)(1) – Operating a commercial motor vehicle after the effective date of an “unsatisfactory” rating.**

CHARGE #1: On or about [DATE], the [COMPANY NAME] (USDOT XXXX) / [COMPANY NAME] (USDOT XXXX), [ADDRESSEE NAME], and [ADDRESSEE NAME, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce from [LOCATION] to [LOCATION]. On [DATE], an Out of Service Order was served on [COMPANY NAME], and effective [DATE], [COMPANY NAME] safety rating was “unsatisfactory.” [ADDRESSEE NAME] and [ADDRESSEE NAME] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between the [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

*Alternatively, in the final sentence, substitute:*

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

##### **Violation 3: 49 C.F.R. § 386.83(a)(1)/386.84(a)(1) – Operating a commercial motor vehicle in interstate commerce during a period when prohibited from operating for failure to pay a civil penalty.**

CHARGE #1: On or about [DATE], the [COMPANY NAME (USDOT XXXX) / COMPANY NAME (USDOT XXXX)], [PRINCIPAL NAME], and [ADDRESSEE NAME, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce from [LOCATION] to [LOCATION]. The carrier failed to pay a civil penalty in full within 90 days after the date specified by

FMCSA's final agency order. On [DATE], an Out of Service Order for failure to pay civil penalty, effective [DATE], was served on the carrier. [ADDRESSEE NAME] and [ADDRESSEE NAME, if applicable] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

Alternatively, in the final sentence, substitute:

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

**Violation 4: 49 C.F.R. § 386.82(a)(3) – Violating a Final Order**

CHARGE #1: On or about [DATE], the [COMPANY NAME (USDOT XXXX) / COMPANY NAME (USDOT XXXX), [ADDRESSEE], and [ADDRESSEE, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce from [LOCATION] to [LOCATION] in violation of an [DATE] Final Order to cease all interstate transportation and registration suspension, effective [DATE], for failure to pay a civil penalty. [ADDRESSEE] and [ADDRESSEE, if applicable] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

*Alternatively, in the final sentence, substitute:*

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

**Violation 5: 49 C.F.R. § 390.21(b) – Failing to mark a commercial motor vehicle with the legal name or a single trade name and/or the USDOT identification number.**

CHARGE #1: On or about [DATE], the [COMPANY NAME (USDOT XXXX) / COMPANY NAME (USDOT XXXX), [ADDRESSEE], and [ADDRESSEE, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce after failing to mark the commercial motor vehicle with the legal name or a single trade name and/or the USDOT identification number. [ADDRESSEE] and [ADDRESSEE, if applicable] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

*Alternatively, in the final sentence, substitute:*

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

---

<sup>1</sup> Order to Cease for Unsatisfactory Safety Rating, Case No. [CASE NUMBER] Unfit [(DATE)]; Order to Cease for Failure to Pay [\$ AMOUNT] civil penalty, Case No. [CASE NUMBER] [(DATE)].

***6.2.2.11.1 Revocation of operating authority in reincarnation/affiliation cases Pattern of Safety Violations (PoSV) by Motor Carrier Management***

Although the PoSV final rule authorizes both suspension and revocation proceedings, the Agency will generally pursue revocation of operating authority in reincarnation/affiliation cases, as opposed to suspensions using the procedures below, in addition to pursuing civil penalties. As stated in section 385.1011, in order to proceed with a revocation of operating authority, the FMCSA must determine under 49 CFR 385.1007 that there was a violation and that the carrier willfully violated an order directing compliance for a period of at least 30 days.

### ***Designating the Authority to Revoke***

The Director, Office of Enforcement and Compliance (MC-EC), is the Agency Official authorized to revoke the operating authority of any for-hire motor carrier that he or she determines has reincarnated or affiliated to avoid regulatory compliance or mask or otherwise conceal regulatory noncompliance, or a history of noncompliance. Under 49 CFR 385.1003, MC-EC may designate one or more individuals to act on his behalf. For purposes of this policy, the Director designates the Regional Field Administrator or the Field Administrator ("Designated Agency Official" or "DAO"), the authority to issue orders to revoke the operating authority of reincarnated/affiliated carriers and to rescind those orders. This authority may not be designated further. This designation is distinct from the delegation of authority to issue out-of-service and/or Record Consolidation Orders pursuant to 49 CFR 386.73.

### ***Using Appropriate Enforcement Options***

The FMCSA has several tools available to it to address carriers that reincarnate. The DAO has the discretion to pursue the most appropriate course of action, depending on the circumstances surrounding the reincarnation. The PoSV Order to Show Cause (OSC) should be issued in addition to the Orders issued in numbers two and three below. It is beneficial to issue these Orders together because the Records Consolidation Order functions to consolidate records, while the PoSV OSC will potentially revoke the authority. The following are examples of the options; however, other situations may exist.

- ***Issue a Record Consolidation Order.*** This should be considered if the carrier has several U.S. Department of Transportation (DOT) numbers or the motor carrier requests that its records be consolidated, for example.
- ***Issue a Record Consolidation Order and a PoSV OSC.*** This should be considered if the carrier reincarnates to avoid poor safety performance history.
- ***Issue a Record Consolidation Order, Out-of-Service (OOS) Order, and a PoSV OSC.*** This series of actions may be appropriate when a carrier reincarnates to avoid, for example, an Imminent Hazard (IH) and/or Unfit OOS Order, a Willful Noncompliance (13905) Revocation Order (as outlined in the "Revocation of Operating Authority for Willful Non-Compliance" policy (MC-ECE-2013-0003) that was issued on March 28, 2013, an Order revoking new entrant safety audit authority, or an Order to Cease Operations for failing to pay a fine.

The OSC must include the requirements found in 49 CFR 385.913 - Revocation Proceedings. See example of a PoSV OSC.

### ***Determining the Appropriate Course of Action***

If the motor carrier responds to the OSC, the DAO may either determine that the motor carrier's registration should not be revoked and issue an order terminating the proceeding(s) or that motor carrier's registration should be revoked and issue a revocation order or determine

### ***Coordination***

Prior to issuing an OSC or revocation order for a PoSV, the DAO, or its designee, must coordinate with MC-EC and MC-CCE.

### ***Rescission***

A motor carrier that has had its operating authority revoked under these proceedings must petition the DAO to rescind the revocation order and may not resume operations until the petition has been granted, the motor carrier reapplies for operating authority, and FMCSA grants operating authority. MC-EC reserves the right to determine whether these carriers are willing and able to comply with applicable requirements as part of the operating authority registration process.

### ***Initiating Enforcement against Reincarnated and Affiliated Motor Carriers***

Enforcement should be initiated against for-hire motor carriers that were placed out of service or had their operating authority revoked for improper reincarnation or affiliation. It may be advisable to initiate enforcement after the revocation order is final. This is being recommended because if the revocation order is not sustained during the Administrative Review process, the pending Notice of Claim (NOC) could be affected. Accordingly, the best practice is to issue the NOC once the revocation order is final. If there are additional violations found as a result of an investigation, it is advisable to issue a separate enforcement case for those violations and issue a separate NOC for the 49 CFR 385.1005 violation, once the revocation order becomes final.

Field staff should bring enforcement for a reincarnation or affiliation violation as shown below. This is a non-recordkeeping violation, which has a statutory maximum civil penalty of \$11,000.

<b>Violation Citation</b>	<b>Violation Description</b>
385.1005	Operating as a reincarnated or affiliated motor carrier to avoid regulatory compliance, or to mask or conceal regulatory noncompliance or a history of noncompliance.

Also, if there is sufficient evidence to document that a motor carrier has had its registration revoked because of its reincarnation or affiliation, and the motor carrier continues to operate while revoked, the Division Office should include a violation of 392.9a(a)(1) in the NOC.

The evidence should demonstrate that:

- The motor carrier was revoked at the time of the activity;
- The motor carrier operated a commercial motor vehicle at the time of the activity; and
- The transportation was in interstate commerce.

Sources of such evidence can include:

- The Driver Vehicle Examination Report, completed with all relevant information;
- Police Accident Report with Attachments (Supplemental Commercial Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report); and
- Motor carrier statements.

#### **6.2.2.12 Denial of Access to Records (DOA)**

When investigators encounter motor carriers who deny access they will consult with their DA to consider pursuing the DOA procedures as outlined in the Penalties for Denial of Access Policy (MC-ECE-2015-002). Further information on this process is found in the Enforcement Manual and in the DOA Policy. This may include both placing the motor carrier OOS issuing an NOC for civil penalties, and suspension of operating authority. An FA or RFA may also use discretion to choose to suspend the non-compliant motor carrier's operating authority. In such cases where this is used as an additional enforcement tool, the FDA or RFA must coordinate with MC-EC and MC-CCE.

The DA and/or a DA delegated program specialist will determine in consultation with their investigator the appropriate date and time to specify in a Demand for access to records by which the motor carrier

must comply. Discretion will be used to fit the date and time to the specifics of the case, taking into account the desire to get quick access as well as whether the carrier has multiple terminals and must be given a 48-hour time frame as permitted by 49 CFR 390.29.

The DA is responsible for coordination with the corresponding service center enforcement and legal staff for the service of a Demand either in person or by mail in circumstances that necessitate mail service. When the motor carrier fails to grant access as per the Demand, the Division Office is responsible for the service of an OOS Order prepared by the corresponding service center enforcement team. Then, that same office will prepare the associated NOC for the enforcement of civil penalties either as a standalone NOC when the motor carrier reaches 10 days of non-compliance with the Demand, or together in one NOC with violations to be enforced as discovered by investigation in cases where prior to the 10 day of non-compliance, the motor carrier grants access and the investigation is completed.

Service center enforcement staff is responsible for ensuring that motor carriers placed OOS for DOA are designated as OOS in the MCMIS system and that the OOS is removed if the motor carrier later complies with the demand. Currently there is no designation in MCMIS for OOS due to DOA. Until the system is updated to include an appropriate reason code, the “90-day Failure to Pay” options should be used as a workaround.

#### **6.2.2.13 Phase II Patterns of Safety Violations (Egregious Disregard for Safety)**

If a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance with the safety regulations, FMCSA may suspend or revoke the motor carrier’s operating authority. For more information see the policy titled, “Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management” A pattern refers to conduct that is widespread, continuing over time, and involves more than isolated violations. The finding of a pattern does not require a specific number of violations. A practice is an organization’s policy, whether written or not, that informs its conduct and operational management; the practice could be evidenced by one or more instances of conduct.

#### ***Phase II PoSV Discovery Process***

When an investigator has discovered such a motor carrier, they will consult with their DA about their findings. The Division Office will consult with a designated Service Center representative, a Field Attorney, and the designated Enforcement Division representative to discuss the case. This group of individuals will work as a team to discuss and evaluate the factors listed in 49 CFR 385.909 that must be considered to determine whether to pursue revocation of the motor carrier’s authority. The team will use the worksheet found as Attachment C to the policy titled, “Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management” to assess the evaluation factors. If it is determined that revocation should be pursued, it is discussed with the Agency Official (Director of the Office of Compliance and Enforcement).

#### ***Decision to Pursue a Phase II PoSV Revocation***

It is the Agency Official who will make the decision whether to pursue revocation. If so, it is the Service Center’s responsibility to prepare an Order to Show Cause (OSC) that will be served by a representative of the Enforcement Division. A sample of the OSC is found in Attachment D to the policy titled, “Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management.” If the motor carrier responds to the OSC within 30 days the Service Center representative assigned to the case must review it in consultation with other group members to make a recommendation to the Agency Official who must make a final determination w/in 10 days of the receipt of the response. If the motor carrier fails to

respond within 30 days and/or if the Agency Official makes a determination that the motor carrier's operating authority should be revoked then the Service Center should prepare a revocation order like that found in the template in Attachment F to the policy titled, "Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management." The revocation order will be signed by the Agency Official and served to the carrier by the Enforcement Division representative who will also ensure that the revocation is done in FMCSA information systems.

### ***Termination of Phase II PoSV Proceedings***

If the Agency Official makes a final determination that the proceeding should be terminated, an order terminating the proceeding as found in Attachment E to the policy titled, "Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management" will be prepared for the Agency Official's signature by the Service Center in consultation with the Office of Chief Counsel. The Enforcement Division will ensure that the Termination Order is signed and served on the motor carrier.

### ***Motor Carrier Request for Administrative Review of a Phase II PoSV Revocation***

After the issuance of a Revocation Order, the motor carrier may petition for administrative review or may petition for rescission of the Order based on evidence of corrective action. Within 15 days following receipt of a petition for administrative review, the Agency Official must serve a response, which the Service Center, in consultation with the Office of Chief Counsel, will draft. Within 14 days after a motor carrier serves a petition for rescission, the Service Center representative in consultation with other group members, if needed must review the documentation submitted and meet with the Agency Official to outline the facts and make a recommendation whether the petition should be granted or denied. The Agency Official will make a final decision, taking into account the group's recommendation. Within 30 days of service of the petition, the Service Center, the Office of Chief Counsel, will prepare the written decision to the motor carrier's petition for the Agency Official's signature. If the petition is granted, the Agency Official's written decision will become the Final Agency Order. If the petition is denied the motor carrier may petition the Assistant Administrator for review of the denial.

## **6.2.2.14 Subpoenas**

### ***6.2.2.14.1 The Time When FMCSA Issues Subpoenas***

The DAs have the authority to issue administrative subpoenas when a respondent refuses or fails to provide access to records or permit requested inspections pursuant to FMCSA's authority. The DA signs the administrative subpoena. The Division is responsible for service of the subpoena.



**Prior to issuing the subpoena the DA must consult with SC attorneys for exact language. Copies of the proposed subpoena must be provided to the SC attorneys.**

Notes regarding all efforts made to obtain documentation or inspection without subpoena should be maintained in the carrier file. These notes will be necessary if the carrier refuses to comply with the subpoena.

### ***6.2.2.14.2 Action to Take if Carrier Does Not Comply with the Subpoena***

If the carrier does not comply, enforcement of the subpoena may be sought in the appropriate United States district court.



**The DA, or designee, will consult with the SC attorneys to determine the appropriate enforcement action.**

When seeking enforcement of a subpoena, it is important to document all contact(s) with the carrier.

## 6.2.2.15 Border Enforcement Process

### 6.2.2.15.1 Definition of the Border Enforcement Process

FMCSA has implemented a safety monitoring system and compliance initiative to help determine whether Mexico-domiciled carriers conducting operations in the United States border commercial zones and beyond comply with applicable safety regulations and conduct safe operations. A major element of this safety monitoring system is the use of an expedited action process to alert Mexico-domiciled carriers to safety problems.

### 6.2.2.15.2 Types of Enforcement Actions that are Initiated Against Mexico-domiciled Motor Carriers

Mexico-domiciled motor carriers that commit certain violations, discovered as part of a roadside inspection or other means, may be subject to one of the following:

- An expedited safety audit (SA);
- An expedited investigation; or
- Issuance of an expedited action letter that identifies the violations and directs the carrier to submit a written response demonstrating corrective action(s).

### 6.2.2.15.3 Types of Violations that May Generate an Expedited Action Letter

The following violations may generate an expedited action letter:

- Using drivers not possessing, or operating without, a valid CDL or Licensee Federal de Conductor;
- Operating vehicles that have been placed OOS for CVSA OOS violations, without making required repairs;
- Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving highway route controlled quantity of certain Hazardous Materials;
- Involvement in, due to carrier act or omission, two or more hazardous materials incidents within the United States;
- Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests;
- Operating within the United States a motor vehicle that is not insured, as required by 49 CFR Part 387; or
- Having a driver or vehicle OOS rate of at least 50 percent based upon three inspections within a consecutive 90-day period.

### 6.2.2.15.4 If Respondent Fails to Respond to a Request for a Written Response

Failure to respond to an agency request for a written response, demonstrating corrective action within 30 days, will result in suspension of the carrier's provisional Certificate of Registration or Operating Authority.

### 6.2.2.15.5 Mexico-domiciled Carrier is Subject to Expedited Action Procedures at this Time

The expedited action procedures apply only during a Mexico-domiciled carrier's first 18 months of operation.

#### **6.2.2.15.6 Procedures Used by FMCSA to Identify Mexico-Domiciled Motor Carriers Subject to Expedited Action Proceedings**

FMCSA will “review” its database on a monthly basis looking for regulatory violation cites that match the seven expedited actions in 49 CFR § 385.105.

The “review” will look at all Mexico-domiciled motor carriers with provisional authority or provisional certificates of registration.

#### **6.2.2.15.7 When a Violation is discovered by FMCSA during its Review of Records**

When a violation that matches one of the seven expedited actions is discovered, the system will then look to see if the Mexico-domiciled carrier has had a SA or an investigation.

If the Mexico-domiciled motor carrier has not had either a SA or an investigation, then they will be highlighted, as requiring an expedited SA/investigation. These carriers will be automatically moved to the top of the priority list.

For Mexico-domiciled carriers with provisional certificates of registration (commercial zone carriers), a SA should be scheduled within five days of the carrier being identified as having committed an expedited action; and

For Mexico-domiciled carriers with provisional operating authority (“long haul” carriers), an investigation should be scheduled within five days of the carrier being identified as having committed an expedited action.

If the Mexico-domiciled motor carrier has had a SA (commercial zone carriers) or an investigation (“long haul” carriers), then an expedited action letter ([see example](#)) will be mailed to the carrier’s process agent in care of the carrier. A copy of this letter will be sent to the Division office.

The carrier will have fifteen days to provide evidence of corrective actions for the violations documented in the letter. Failure to provide corrective actions will result in the carrier having its provisional certificate of registration or operating authority suspended and revoked.

For expedited actions involving HM incidents, the information will be sent to the appropriate SC HM Specialist before the carrier is identified for an expedited SA/investigation or suspension letter.

#### **6.2.2.16 Special Topic: VUU Table Protocol**

We have designated certain fields to be required fields whenever a violation is entered into the VUU Table. Though other data may be captured in other fields, these required fields must always be completed. These required fields have been identified because they each play an important role in at least one of our proprietary software applications. These fields and their requirements are:

1. Primary Violation
2. Short Description of the Violation
3. Long Description of the Violation
4. Abatement Clause
5. Effective Date\*
6. Rescind Date\*
7. VCAT for All Safety and HM Violations (list of acronyms attached)\*\*

\*If you do not have either the effective date or the rescind date, use these default dates:

Effective date = 01/01/1901

Rescind date = 12/31/2999

\*\*VCAT for HHG and commercial violations are programmed somewhat differently. For all commercial violations (non-HHG), the VCAT is CR; for HHG violations, the VCAT is CRF. A listing of new VCAT designations is included with the attached list. These will be used for all new violations in these categories which are entered in the future. **Do not attempt to go back and enter these VCAT designations into existing violation fields that are currently in VUU which may not already have these entries.**

**Note:** In addition to the primary violation, if there is an appropriate secondary violation, it should also be captured in VUU.

Due to VKEY issues, never delete a violation. Should you find that an error was made and the violation has already been entered and accepted into VUU, rescind the violation by entering the current date in the rescind field. Then enter a new violation with the correct data showing an effective date for the following day and a rescind date for the new violation of 12/31/2999.

In addition to these required fields, it is highly encouraged that the Guidance/Example field also be completed for each new violation entry. This field captures the information which is displayed in Case Rite and gives general instructions to the SI regarding basic evidentiary requirements for this specific violation.

#### *Meanings for the Violation Categories*

<b>Category</b>	<b>Meaning</b>
GARB	Arbitration HHG - HHG
GHTN	110% Rule - HHG
GLAD	Loss and Damages - HHG
GNRO	Other Non-Recordkeeping
GRKA	Recordkeeping - HHG
GSDL	Service Delay - HHG
GTFR	Tariff - HHG
GWHT	Weight - HHG
GUTR	Unauthorized Transportation - HHG
GOLD	Hostage Load - HHG
GBCA	Brokering HHG w/o Carrier Agreement - HHG
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM

NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR
NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR
O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL- Notices/Orders
ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUHM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
EDRK	Recordkeeping - Employee
EFTC	False to Conceal - Employee
ENRA	Non-Recordkeeping - Employee
E383	CDL Part 383 - Employee
EONC	OOS Other than OOS CDL (1) & (2) - Employee (was OOS Non-CDL)
EOCA	OOS CDL (1) - Employee
EOCB	OOS CDL (2) - Employee
EDOA	Denial of Access - Employee
EHMI	HM Violation - Employee (was HM Incident)

EHTR	HM Training - Employee
NRCC	Operating Authority - Safety (Commercial Non-HHG)

***Meanings for UFA Violation Categories that Can Be Entered in VUU's VCAT Field***

<b>Category</b>	<b>Meaning</b>
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM
NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR
NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR
O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL - Notices/Orders
ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUHM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
NRCC	Operating Authority - Safety (Commercial Non-HHG)

# Administration Manual

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**Federal Motor Carrier Safety Administration  
(FMCSA) U.S. Department of Transportation**



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## 6.3 Administration Manual

### 6.3.1 Providing Security Information

#### 6.3.1.1 Requests for Security Information or Assistance from the Media Be Forwarded

You should forward requests for information or assistance from the media to the Office of Communications at (202) 366-8810.

#### 6.3.1.2 FMCSA's Policy on Providing Security Information or Assistance to Other Governmental Agencies

You must refer requests from other governmental agencies including, but not limited to the FBI, DHS, TSA or a State, for security information or assistance related to ongoing security threats to an FMCSA employee who is a supervisor or is acting in a supervisory capacity, or an FMCSA emergency Point of Contact (POC).

FMCSA supervisors, acting supervisors, or emergency POCs receiving a request from another governmental agency, including those referred by subordinate staff, must immediately contact the FMCSA Security Officer.

- (1). Contact Alex Keenan.
    - Phone: 202-366-0177
    - Email: Alex.Keenan@dot.gov
  - (2). Contact the DOT Crisis Management Center (CMC).
  - (3). Phone: 202-366-1863
  - (4). Email: CMC-01@phmsa.dot.gov
- Note:** If you notify the CMC, make note of the name of the specific staff member taking the report.
- (5). Inform them who you are, who you work for, where you are calling from, and why you care calling.
  - (6). Send an email to the same person, referencing the phone conversation.
  - (7). Make sure to carbon copy (CC) Alex Keenan at FMCSA headquarters.
  - (8). Notify FMCSA leadership through normal protocol.

### 6.3.2 FOIA

The Freedom of Information Act (5 U.S.C. 552) [FOIA] establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the U.S. Government are available to the public. FOIA sets standards for determining when Government records must be made available and which records may be withheld. FOIA also gives requesters specific legal rights and provides administrative and judicial remedies when access to records or portions of records is denied. Most importantly, the FOIA statute requires Federal agencies to provide access to, and disclosure of, information pertaining to the Government's business to the fullest extent possible.

#### ***Division Should Handle FOIA Requests in Following Manner***

FOIA requests need to be forwarded to the FMCSA FOIA Team via the following methods:

- Mail  
Federal Motor Carrier Safety Administration  
Attn: FOIA Team (MC-MMI)  
1200 New Jersey Avenue, SE.  
Washington, DC 20590
- FOIA SC  
Phone: (202) 366-2960

- Fax: (202) 385-2335  
Attn: FOIA Team
- Email [foia@fmcsa.dot.gov](mailto:foia@fmcsa.dot.gov)

If the request is made via telephone, please direct the requester to the FOIA SC number, listed above, or to the FMCSA FOIA website at [www.fmcsa.dot.gov/foia/foia.htm](http://www.fmcsa.dot.gov/foia/foia.htm). **Under no circumstances should the Division provide information that needs to undergo FOIA review.**

### *Types of Records Available through FOIA*

1. Records on specific motor carriers or specific motor carrier files including:
  - Enforcement Reports;
  - Compliance Reviews or Investigations;
  - Roadside Driver/Vehicle Inspection Reports;
  - State Accident Reports; and
  - General Correspondence.

**Note:** The requirement for the Motor Carrier Accident Report (MCS 50-T or 50-B) was eliminated effective March 3, 1993.

2. Copies of Agency final orders, which may include negotiated Settlement Agreements, Notices of Claim (to which a motor carrier has replied or failed to reply), and OOS Orders.
3. Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Agency; Administrative Rulings FMCSA adopts, issued by an Administrative Law Judge (ALJ) in the adjudication of motor carrier enforcement cases; and decisions of the CSO.

**Note:** In accordance with the Agency's records management procedures, the required maintenance for motor carriers' files is six years.

### **6.3.3 Ex parte communication**

Ex parte communications are any communication between a party and the government body holding a proceeding or contemplating government action that is made outside the presence of other interested parties to the proceeding. Under FMCSA's procedures for Section 385.15 appeals, "a party" is both the appealing carrier and the Division Administrator/State Director, his staff, a member of the decision-makers staff, or other interested FMCSA employees. Such communications include: one-sided informal telephone calls, e-mails, meetings where the carrier does not attend, and written arguments directed to the decision-maker or his staff. This includes interoffice memoranda.

The CSO, as a final Agency decision-maker, essentially takes the place of a United States District Court Judge with the full power to affirm or deny all motions. All final decisions, like those of a District Court, are appealable to a U. S. Court of Appeals. That Court will review the CSO's decision to ascertain whether it was rendered in accordance with law, whether or not the decision was arbitrary and capricious, and whether it was an impartial decision. The Court of Appeals may determine that an ex parte communication, or the mere look of an improper communication, prejudiced the decision maker. Thus, the Court could conclude that the final Agency decision was not impartial. In this situation, the Agency decision would be overturned and the carrier would be granted its requested relief. More importantly, the CSO's future decisions would be greeted by the Court with suspicion. There is an exception to the rule on ex parte communications, as outlined above: questions concerning procedure to be followed or the timing of a decision (status reports) are not prohibited.

The CSO will issue his/her formal written decision after reviewing all necessary documentation, arguments of the carrier and the Division Administrator/State Director, and consultation and approval of legal counsel. The decision may uphold the Agency action in its entirety, grant the relief requested by the carrier, or grant some alternate form of relief. Carriers have been granted relief from the proposed rating

because of improper document samples, the use of violations in the safety rating process when the Agency lacked jurisdiction, the imposition of strict liability, improper ex parte communication, and the citing of violations that no longer exist or no longer are classified as acute or critical by regulation.

### **6.3.4 On boarding new FMCSA employees**

--New Data--

### **6.3.5 General Guidelines for Administration of the FMCSR and HMR**

#### ***6.3.5.1 FMCSA's Policy on the Administration of the FMCSR and HMR***

Our Agency's intent is to save lives by reducing commercial motor vehicle (CMV) crashes and decreasing injuries by increasing compliance with the FMCSR and HMR. Our strategy focuses on education, compliance, enforcement, risk assessment, and technological development activities. Our policy is to administer and implement the FMCSR and HMR. We will develop operating procedures and guidelines to ensure maximum consistency and uniformity of all regulations. We will also interpret and enforce the regulations at all levels of the organization.

#### ***6.3.5.2 Roles and Program Responsibilities of Headquarters Personnel***

Headquarters carries out the legislative mandates of Congress, as delegated by the Secretary of Transportation. In this capacity, Headquarters is responsible for promulgating regulations; developing policies and procedures; providing uniform direction, assistance, and interpretation for the full and effective administration and monitoring all FMCSA programs.

Headquarters has the following program responsibilities:

- Developing National Program Plans specific to CMV safety and hazardous materials;
- Developing policies and programs to promote safe transportation;
- Promoting safety initiatives among States;
- Increasing compliance with the HMR and raising awareness of security issues through education, compliance, enforcement, risk/threat assessment, and technological development activities;
- Developing policies and programs to promote the secure transportation of hazardous materials;
- Coordinating FMCSA Programs among the Division office, States, and other Department of Transportation (DOT) modal administrations, including planning and conducting FMCSA strike force activities;
- Providing input into all training programs for Federal and State enforcement personnel;
- Developing and producing outreach materials promoting safe transportation of all commodities;
- Working with other DOT modal administrations and government agencies on program issues, rule makings, and regulatory interpretations;
- Improving data quality and promoting safety and hazardous materials risk management;
- Identifying and promoting new technology to enhance safety; and
- Coordinating our Agency's research initiatives.

#### ***6.3.5.3 Roles and Program Responsibilities of the FA and SC Managers***

The Field Administrator (FA) and Service Center (SC) Managers ensure proper administration of all regulations in their respective SC areas. The administration of the regulations should be consistent with all established policies, procedures, and guidelines. The FA or his or her designee has signatory authority for approval/disapproval of all program areas, as delegated by the Office of the Administrator. The FA and SC Managers ensure proper program administration in accordance with all legislative and regulatory requirements and applicable directives, policies, and procedures in an effective, efficient, and innovative manner.

The FA and SC Manager's program responsibilities include:

- Coordinating and communicating the national safety and hazardous materials program to the Division offices within the SC area;
- Serving as advisors to Division Administrator (DA) and State Directors (SDs);
- Providing technical assistance during complex safety and hazardous materials investigations;
- Serving as a safety and hazardous materials training resource;
- Ensuring various SC specialists carry out their responsibilities in support of National and Division goals;
- Providing oversight of the security program for the States within their SC area.
- Providing program feedback to Headquarters; and
- Serving as a co-chair of all Technical Advisory Groups (TAGs). The program responsibilities for TAGs include:
  - Providing technical assistance to Division offices during complex safety and hazardous materials investigations;
  - Providing program feedback to Headquarters upon request;
  - Recommending and facilitating changes to technical manuals, FMCSA software, and all FMCSA training;
  - Serving as technical and training experts as needed;
  - Reviewing, analyzing, and commenting on rule making actions;
  - Participating in strike force activities;
  - Providing liaison with industry associations and special groups to identify common problems and share informational resources;
  - Providing technology transfer to our Agency's field staff, State enforcement personnel, and the regulated industry; and
  - Maintaining a high level of FMCSA expertise and safety program reference materials.

#### *6.3.5.4 Roles and Program Responsibilities of the DAs/SDs*

DAs/SDs is required to follow the guidance below when responding the significant crashes or HM incidents.

1. Each division is responsible for establishing a network with State agencies and local law enforcement agencies for prompt identification and reporting of significant crashes and incidents. The method of communication should be documented in Division operational plans to ensure any member of the staff can obtain time sensitive information.
2. The Division will gather vital information on the significant crash or police report as promptly as possible, to include, but not limited to, a synopsis of the crash event, the general location, a status of actual/possible fatalities/injuries and the motor carrier(s) involved.
3. Vital information will be immediately emailed to the Automated Hazardous Material Incident (AHMI) email box, Alex Keenan, Chief, Emergency Preparedness and Security, at alex.keenan@dot.gov; and the appropriate FA. The initial email should contain, at a minimum, the date, time, location and a narrative of preliminary information. A Crash/HM Incident Notification Report should be prepared as soon as more details are known. Mr. Keenan and the FA should be notified by telephone. Mr. Keenan can be reached by cell phone [REDACTED]. Mr. Keenan or the FA will make a decision as to whether to contact the Associate Administrator (AA) for Field Operations or the Administrator by phone immediately. If the AA for Field Operations is unreachable, you should contact the alternate, the Director of Field Operations. The Administrator's alternate is the Deputy Administrator and/or the Chief Safety Officer (CSO).
4. If the involved motor carrier(s) is domiciled in a State other than the State in which the crash/incident occurred, the DA of the motor carrier's State of domicile must be sent the significant crash/incident report when completed. Copies of the crash/incident report must also be forwarded to AHMI and your respective FA when the report has been completed. Please use the following number to report crashes and other significant events after normal business hours: 202-

366-5373. This number is answered 24 hours/7 days a week, and you are also able to leave detailed messages. During normal business hours, please use 202-366-0177 and continue to email your information to the crash/incident mailbox (AHMI). Also, please send all Crash/Hazardous Material incidents reports to alex.keenan@dot.gov.

#### Contact information for Field Administrator

Email Address	Cell Phone Number	Home Phone Number
<a href="mailto:william.paden@dot.gov">william.paden@dot.gov</a>	[REDACTED]	[REDACTED]
<a href="mailto:darrell.ruban@dot.gov">darrell.ruban@dot.gov</a>	[REDACTED]	[REDACTED]
<a href="mailto:robert.miller@dot.gov">robert.miller@dot.gov</a>	[REDACTED]	[REDACTED]
<a href="mailto:darin.jones@dot.gov">darin.jones@dot.gov</a>	[REDACTED]	[REDACTED]

#### 6.3.5.5 Roles and Program Responsibilities of Various Program Managers within FMCSA Divisions

The various Program Managers at the Division level administer and implement their respective programs at the Division level. Program Managers execute planned activities to accomplish the Division and National program objectives. The Program Manager should serve as a training and information resource.

The Program Manager's responsibilities include:

- Providing assignments and monitoring of investigators and ensuring investigations are completed in accordance with the SI, electronic Field Operations Training Manual (effort) policy, procedures, and guidance;
- Monitoring and ensuring the efforts of the SIs are in support of the Division Safety Plan;
- Executing planned security activities to help accomplish the security program activities;
- Reporting to the Division Administrators/State Directors (DAs/SDs) on the investigator's progress and accomplishments as they relate to the Division Safety Plan;
- Working in partnership with State counterparts to monitor Motor Carrier Safety Assistance Program (MCSAP) programs and ensure that MCSAP program efforts are conducted in accordance with Part 350 requirements (if applicable); and
- Providing direction, guidance, and assistance to Division employees, State counterparts, and the motor carrier industry.

#### 6.3.5.6 Certification Cycle for Safety Inspectors, Safety Auditors, and Safety Investigators

On December 18, 2002, FMCSA issued guidance on the process for certifying Safety Inspectors, Safety Auditors, and Safety Investigators. The process called for certifications to be made at the same time annual performance ratings are completed. Currently, FMCSA's certification cycle (and its annual performance cycle) runs from June 1st of one year to May 31st of the following year.

In the topic below are the requirements for individuals to become certified to conduct compliance reviews (CRs), SAs, and Level I or V inspections (see Certification for Conducting CRs, SAs, and Level I and/or VI Inspections). These requirements will apply to any FMCSA or Motor Carrier Safety Assistance Program MCSAP-funded State or local employee who performs one or more of these job activities. Individuals seeking Federal employment as a safety auditor, investigator, or inspector will need to meet these requirements as a condition of employment. Also, DAs, SDs, SC Enforcement Specialists, Division Program Specialists, and Safety Program Managers are strongly encouraged to be certified to conduct CRs.

MCSAP agencies will certify through their Commercial Vehicle Safety Plan that their MCSAP-funded employees conducting these types of activities meet the certification requirements. DAs/SDs will ensure that any individuals (Federal, State, or local) conducting these types of activities in their States meet the requirements, including those individuals on temporary assignments, or working on special projects, in their states.

It is important for our personnel conducting investigations, CRs, and SAs to have the complete knowledge of commercial motor vehicles, as well as, the overall motor carrier operations. Therefore, all investigators and auditors must conduct 32 level I and/or V vehicle inspections in order to be certified, or to maintain their certification. Due to physical demands of these inspections not all of our field personnel will be able to conduct them and therefore the Agency has developed a separate waiver process for individuals who physically cannot conduct vehicle inspections.

Persons designated as "Special Agents" in accordance with 49 C.F.R. Chapter III, Subchapter B, Appendix B of the FMCSR who do not conduct any of these job functions will not have to meet these requirements in order to maintain their credentials. Also, those individuals who only conduct Level II, III, or IV inspections have no certification requirements.

By accessing the GOTHAM website at [https://ai.fmcsa.dot.gov/FSAS/Productivity/Certification\\_Report.aspx](https://ai.fmcsa.dot.gov/FSAS/Productivity/Certification_Report.aspx) and viewing the Annual Certification Report, a DA can track the progress of his/her staff to ensure that each staff member will meet all of the certification requirements of his/her position before the certification period ends each year on May 31.

#### *6.3.5.7 Certification for Conducting CRs, SAs, and Level I and/or VI Inspections*

### **CERTIFICATION OF SAFETY INSPECTORS, SAFETY AUDITORS AND SAFETY INVESTIGATORS**

#### **Preface**

This document prescribes Agency policy and operational procedures for certification of Federal Motor Carrier Safety Administration (FMCSA) employees, State or local government employees funded through the Motor Carrier Safety Assistance Program (MCSAP), and contract employees, as required by Section 211 of the Motor Carrier Safety Improvement Act of 1999 (The Act). The Act requires that all persons performing motor carrier compliance reviews, onsite investigations, safety audits, or driver/vehicle inspections, after June 17, 2002, be qualified and certified to do so. In addition, the rule requires the maintenance of certification for persons performing these inspection and compliance activities. On March 19, 2002, FMCSA published an Interim Final Rule to meet the requirement of Section 211 of the Act. The certification process ensures that all personnel have and maintain the proper training and experience to perform inspection and compliance activities.

#### **General**

The FMCSA must ensure that persons performing compliance reviews, onsite investigations (comprehensive and focused), safety audits, and/or Level I and/or V driver/vehicle inspections are qualified and maintain their certifications each 12-month performance cycle. Certifications are a mandatory condition of continued employment for FMCSA Safety Investigators, Safety Auditors, and Safety Inspectors who are required to perform compliance reviews, onsite investigations, safety audits, and/or Level I and/or V driver/vehicle inspections, on a recurring basis.

The supervisor of FMCSA Safety Investigators, Safety Auditors, and Safety Inspectors must document the certifications obtained by their employees, and advise them that maintaining certification is a mandatory condition for continued employment, and failure to maintain their certification may result in termination of their employment with FMCSA. (Refer to [Attachment 1: MCSIA Initial Certification Based on previous Training and Work Experience.](#))

State or local government employees funded through MCSAP must certify, in the State's Commercial Vehicle Safety Plan, that the state or local government employees conducting compliance reviews, onsite investigations, safety audits, driver/vehicle inspections, and/or specialized proficiency driver/vehicle inspections, meet the certification requirements.

Contractors must certify, in the company's Annual Summary Report, that contract employees conducting compliance reviews, onsite investigations, safety audits, and/or driver/vehicle inspections, and/or specialized proficiency driver/vehicle inspections, meet the certification requirements.

Initial certification for Federal employees is managed by the National Training Center (NTC); the life cycle maintenance of certification is managed by the Office of Field Operations. For State or local government employees, the initial certification and the maintenance of certification is managed by the Lead MCSAP agency. For private contractor employees, the initial certification and the maintenance of certification is managed by the private contractors with oversight by the contracting officer's technical representative.

To receive an initial certification and maintain certifications to perform compliance reviews, onsite investigations, safety audits, and/or Level I and/or V driver/vehicle inspections, and/or Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized hazardous materials (HM) and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections, FMCSA employees, State or local government employees funded through MCSAP, and contract employees, must perform a minimum of 6 compliance reviews or onsite investigations, 24 safety audits, and/or 32 Level I and/or V driver/vehicle inspections, and/or 8 Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections, and/or 8 Level I, II, IV and/or V specialized HM driver/vehicle inspections, and/or 8 Level I, II, IV and/or V specialized cargo tank and/or other bulk packaging driver/vehicle inspections each 12-month performance cycle. Level III, specialized HM and/or cargo tank and/or other bulk packaging driver inspections will not count towards certification because the Level III driver inspection procedures do not cover the requirements of an HM inspection.

New employees who join FMCSA from a State or local agency, and former FMCSA employees who are returning to the Agency after more than 6 months of not performing the work for which they are seeking certification, must demonstrate proficiency in the required knowledge, skills and abilities by either successful completion of the associated training courses, as defined by NTC, and complete the required number of compliance reviews, onsite investigations, safety audits, and/or Level I and/or V driver/vehicle inspections prior to certification. Current FMCSA employees changing from one position to another, who are currently certified and have demonstrated required proficiency, as demonstrated by work approved by their immediate supervisor, will not be required to restart the certification process.

## **Part I. Certification Process**

### **Duration of Certification**

If initial certification training is successfully completed, the individual has through the last day of the next performance cycle to complete the required number of activities for each certification held. For example, if an FMCSA employee completed the training on August 15, 2012, that person has until May 31, 2014, to complete the required number of activities for each certification held.

### **Certification to Conduct Level I and/or V Driver/Vehicle Inspections**

#### **Initial Certification**

The Level I and/or V driver/vehicle inspections must be conducted in accordance with the FMCSA electronic Field Operations Training Manual (effort), the North American Standard Inspection Procedures, and all applicable policies and procedures. The certification to conduct Level I and/or V

driver/vehicle inspections includes the certification to conduct Level II, III, and IV driver/vehicle inspections. The requirements for initial certification are as follows:

#### FMCSA Safety Inspectors

- Successful completion of the FMCSA Inspector Academy, including any pre- and/or post-Academy training requirements; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

#### FMCSA Safety Investigators

- Successful completion of the FMCSA Safety Investigator Academy, including any pre- and/or post-Academy training requirements; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

#### FMCSA Safety Auditors

- Successful completion of the FMCSA Safety Auditor Academy, including any pre- and/or post-Academy training requirements; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

#### Non-Federal Employees

- Successful completion of the FMCSA North American Standard Part A and Part B and General HM courses, as defined by FMCSA's NTC including any pre- and/or post-training requirements; and
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

#### Maintenance of Certification

To maintain Level I and/or V driver/vehicle inspection certification, each person conducting inspections, as a requirement of his/her position, must meet the following requirements during each 12-month performance cycle:

- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections); and,

- Successful completion of any required in-service or refresher training.

### **Certification to Conduct Specialized Proficiency Level I, II, IV and/or V Driver/Vehicle Inspections**

Specialized proficiencies include HM, cargo tank and/or other bulk packaging, and passenger-carrying vehicles. Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections may count as part of the required minimum 32 Level I and/or V driver/vehicle inspections. The requirement to maintain specialized proficiency certifications is at the discretion of the employee's supervisor.

#### **Initial Certification for Federal and non-Federal Employees**

To be eligible for specialized inspection certifications, the individual must have successfully completed the North American Standard Part A and Part B courses, including any pre- and/or post-training requirements.

The other requirements for initial certification are specific to the area of specialization.

#### **Specialized Hazardous Materials**

- Successful completion of the General HM courses, including any pre- and/or post-training requirements; and,
- Successful completion of a minimum of 8 Level I, II, IV and/or V Specialized HM driver/vehicle inspections, under the direction of a person certified to conduct Level I, II, IV and/or V Specialized HM driver/vehicle inspections.

#### **Specialized Cargo Tank and/or other Bulk Packaging**

- Successful completion of the General HM, and Cargo Tank Inspection and Other Bulk Packaging courses, including any pre- and/or post-training requirements; and,
- Successful completion of a minimum of 8 Level I, II, IV and/or V Specialized Cargo Tank and/or other Bulk Packaging driver/vehicle inspections, under the direction of a person certified to conduct Level I, II, IV and/or V Specialized Cargo Tank and/or other Bulk Packaging driver/vehicle inspections.

#### **Specialized Passenger-Carrying Vehicles**

- Successful completion of the Passenger Carrying Vehicle Inspection courses, including any pre- and/or post-training requirements; and,
- Successful completion of a minimum of 8 Level I and/or V Specialized Passenger Carrying Vehicle driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V Specialized Passenger Carrying Vehicle driver/vehicle inspections.

#### **Maintenance of Specialized Inspection Certifications**

To maintain each of the specialized inspection certifications, each person must meet the following requirements each 12-month performance cycle:

- Successfully completion of a minimum of 8 Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections;
- Successful completion of 8 Level I, II, IV and/or V specialized HM driver/vehicle inspections;
- Successful completion of 8 Level I, II, IV and/or V specialized cargo tank and/or other bulk packaging driver/vehicle inspections; and,
- Successfully complete of any required in-service or refresher training.

## **Certification to Conduct Safety Audits**

### **Initial Certification**

The requirements for initial safety audit certification are as follows:

#### **FMCSA Safety Investigators**

- Successful completion of the FMCSA Safety Investigators Academy, including any pre- and/or post-Academy training requirements or North American Standard Part A and Part B, General HM and Compliance Review/Investigation, courses, including any pre- and/or post-training requirements; and,
- Successful completion of a minimum of 6 compliance reviews or onsite investigations under the direction of a person certified to conduct compliance reviews or onsite investigations; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

#### **FMCSA Safety Auditors**

- Successful completion of the FMCSA Safety Auditor Academy, including any pre- and/or post-Academy training requirements or North American Standard Part A and Part B, General HM, and New Entrant Safety Auditor courses, including any pre- and/or post-training requirements; and,
- Successful completion of a minimum of 24 safety audits, under the direction of a person certified to conduct safety audits or is currently certified to conduct compliance reviews or onsite investigations; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

#### **Non- Federal Employees**

- Successful completion of the North American Standard Part A and Part B, General HM and, Compliance Review/Investigation courses, including any pre- and/or post-training requirements, or New Entrant Safety Audit courses, including any pre- and/or post-training requirements; and,
- Successful completion of a minimum of 24 safety audits, under the direction of a person certified to conduct safety audits, or is currently certified to conduct compliance reviews and onsite investigations; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

### **Maintenance of Certification**

To maintain safety audit certification, each person must meet the following requirements, during the 12-month performance cycle:

- Maintain certification to conduct compliance reviews or onsite investigations; or

- Successful completion of a minimum of 24 safety audits; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections); and,
- Successful completion of any required in-service or refresher training.

### **Certification to Conduct Compliance Reviews or Onsite Investigations**

The compliance reviews, onsite investigations and safety audits must be conducted in accordance with the effort and the North American Standard Inspection Procedures. The certification to conduct compliance reviews and onsite investigations includes the certification to onsite comprehensive and focused investigations, safety audits, and all compliance activities, unless it requires a specialized training course (e.g., Household Goods Enforcement).

#### **Initial Certification**

The requirements for initial compliance review and onsite investigations certification are as follows:

#### **FMCSA Safety Investigators**

- Successful completion of the FMCSA Safety Investigator Academy, including any pre- and/or post-Academy training requirements; and,
- Successful completion of a minimum of 6 compliance reviews or onsite investigations under the direction of a person certified to conduct compliance reviews or onsite investigations; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

#### **Non-Federal Employees**

- Successful completion of the North American Standard Part A and Part B, General HM; and, Compliance Review/Investigations courses, including any pre- and/or post training requirements; and,
- Successful completion of a minimum of 6 compliance reviews or onsite comprehensive investigations, under the direction of a person certified to conduct compliance reviews or onsite investigations; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections.)

### **Maintenance of Certification**

To maintain compliance review or onsite investigation certification, each person must meet the following requirements during the 12-month performance cycle:

- Successful completion of a minimum of 6 compliance reviews or onsite investigations; and,
- Successful completion of a minimum of 32 Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or

Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections); and,

- Successful completion of any required in-service or refresher training.

### **Part 2: Decertification Process**

Any FMCSA employee, State or local government employee funded through MCSAP, or FMCSA contract employee who was certified to perform compliance reviews, onsite investigations, safety audits, Level I and/or V driver/vehicle inspections, or Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM, and/or cargo tank and/or other bulk packaging driver/vehicle inspections will be decertified for that function if he or she fails to meet any of the established requirements for maintenance of certification, within the applicable 12-month performance cycle.

However, a person who is decertified to conduct compliance reviews or onsite investigations may continue to conduct safety audits, Level I and/or V driver/vehicle inspections, and/or Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections, and/or Level I, II, IV and/or V specialized HM and/or cargo tank and/or other bulk packaging driver/vehicle inspections if that person meets the certification requirements for the safety audit, Level I and/or V driver/vehicle inspections and/or Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or cargo tank and/or other bulk packaging driver/vehicle inspections. For example, if a person was certified to conduct compliance reviews or onsite investigations failed to conduct the required 6 compliance reviews or onsite investigations, but did complete 24 safety audits, during the 12-month performance cycle period, that person would lose certification to conduct compliance reviews or onsite investigations but retain certification to conduct safety audits.

Decertification will be automatic for any person who does not meet the requirements for maintenance of certification. For example, if a FMCSA employee certified to conduct compliance reviews and onsite investigations, fails to conduct the required minimum of 6 compliance reviews or onsite investigations by May 31, he or she would be decertified to conduct compliance reviews or onsite investigations on June 1.

The employee supervisor must monitor performance to ensure that individuals are certified and maintain certification. The FMCSA employees who become decertified, and whose positions require certification, will be provided no more than 180 days, from the date of decertification, to obtain recertification, unless the appropriate training course(s) are not available, or the employee obtains a waiver, as described in Part 3 – Temporary Waiver Process, of these procedures.

The FMCSA employees who are not certified, or become decertified and whose positions do not require certification, may request recertification at any time, as described in Part 4: Recertification Requirements of these procedures.

If an FMCSA employee, whose position description requires certification, fails to obtain recertification, within 180 days from the date of decertification, and he or she is not reassigned to another position, he or she is subject to demotion, removal and/or termination.

### **Part 3: Temporary Waiver Process**

An FMCSA employee who has been decertified may apply for a temporary waiver from decertification. The request must be made, in writing, by the employee supervisor to the Associate Administrator for Field Operations (deciding official). A waiver will only be granted to a person who was previously certified and subsequently became decertified due to reasons beyond his or her control. (Refer to Attachment 3 for Waiver Process.)

For example, an employee who was certified to conduct Level I and/or V driver/vehicle inspections, but failed to complete the required minimum of 32 Level I and/or V driver/vehicle inspections, due to a

management-directed temporary assignment or medical condition, would be eligible to apply for a waiver. A person who was certified, but failed to maintain certification, because of an employee-related disciplinary action, would not be eligible for a waiver.

State or local government employees funded through MCSAP may apply for a waiver. The waiver request must be made to the State's MCSAP Lead Agency Head, or designated.

A FMCSA contract employee may also apply for a waiver. The waiver request must be submitted to the Contracting Officer's Technical Representative.

A waiver will only be granted for the period of time that is commensurate with the reason the employee was unable to maintain certification (e.g., the duration of the temporary assignment or illness). For example, an employee who was certified to perform compliance reviews or onsite investigations, but failed to maintain his or her certification due to a medical condition or disability that lasted 4 months, would be eligible to apply for a waiver. If granted, the employee would be granted up to 4 months to complete the recertification process.

If a waiver is not granted, or has expired, the requirements for recertification must be met within 180 days of decertification.

The supervisor of FMCSA Safety Investigators, Safety Auditors, and Safety Inspectors should document the employees; Initial Certification Period, Maintenance of Certification Period, and the Decertification and Recertification processes using the MCSIA Employee Certification form. (Refer to Attachment 2: MCSIA Employee Certification.)

#### **Part 4: Recertification Process**

A FMCSA employee who is decertified may request recertification. The request must be made to the employee's supervisor. Before granting a recertification request, it is the responsibility of the employee's supervisor to determine that the employee has satisfactorily completed the recertification requirements. Recertification is only necessary in the functional area in which the employee was decertified. For example, if an employee was decertified in conducting compliance reviews and onsite investigations, because he or she did not complete the required minimum of 6 compliance reviews or onsite investigations, but the employee did successfully complete the required minimum of 32 Level I and/or V driver/vehicle inspections, the employee would only be required to be recertified to conduct compliance reviews or onsite investigations.

State or local government employees funded through MCSAP must make the request for recertification to the State MCSAP Lead Agency Head, or designated.

A FMCSA contract employee must submit the request for recertification to the Contracting Officer's Technical Representative.

#### **Recertification requirements to Conduct Compliance Reviews or Onsite Investigations**

The person must:

- Successfully complete the FMCSA Compliance Review/Investigation, North American Standard Parts A and Part B, and General HM courses, including any pre- and/or post-training requirements; or successfully "challenge" (not more than once each recertification cycle) the courses, listed above, without retaking the class but by taking and passing the course final examinations (tests); and,
- Successfully complete a minimum of 6 compliance reviews or onsite investigations under the direction of a person certified to conduct compliance reviews or onsite investigations; and
- Maintain driver/vehicle inspection certification

### Recertification requirements to Conduct Safety Audits

The person must:

- Complete the recertification requirements to conduct compliance reviews or onsite investigations; or
- Successfully complete the FMCSA New Entrant Safety Auditor and General HM courses, including any pre- and/or post-training requirements; or successfully “challenge” (not more than once each recertification cycle) the courses listed above without retaking the class, but by taking and passing the course final examinations (test); and,
- Successfully complete a minimum of 24 safety audits, under the direction of a person certified to conduct safety audits, or is currently certified to conduct compliance reviews or onsite investigations; and,
- Maintain driver/vehicle inspection certification.

### Recertification requirements to Conduct Level I and V Driver/Vehicle Inspections

The person must:

- Successfully complete the North American Standard Part A and Part B and General HM courses, including any pre- and/or post-training requirements; or successfully “challenge” (not more than once each recertification cycle) the courses, listed above without retaking the class, but by taking and passing the course final examinations (tests); and,
- Successfully complete a minimum of 32 Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Level I and/or V driver/vehicle inspections (may include Level I and/or V specialized passenger-carrying vehicle driver/vehicle inspections and/or Level I, II, IV and/or V specialized HM and/or specialized cargo tank and/or other bulk packaging driver/vehicle inspections).

### Recertification requirements to Conduct Specialized Hazardous Materials Level I, II, IV and/or V Driver/Vehicle Inspections

The person must:

- Successfully complete the North American Standard Inspection Procedures Part A and Part B; and General HM courses, including any pre- and/or post-training requirements; or successfully “challenge” (not more than once each recertification cycle) the courses listed above without retaking the class, but by taking and passing the course final examinations (tests); and
- Successfully complete a minimum of 8 Specialized HM Level I, II, IV and/or V driver/vehicle inspections, under the direction of a person certified to conduct the Specialized HM Level I, II, IV and/or V driver/vehicle inspections.

### Recertification requirements to Conduct Specialized Cargo Tank and/or other Bulk Packaging Level I, II, IV and/or V Driver/Vehicle Inspections

The person must:

- Successfully complete the North American Standard Inspection Procedures Part A and Part B, General HM, Cargo Tank Inspection, and Other Bulk Packaging courses, including any pre- and/or post-training requirements; or successfully “challenge” (not more than once each recertification cycle) the courses listed above without retaking the class, but by taking and passing the course final examinations (tests);
- Successfully complete a minimum of 8 Specialized Cargo Tank and/or other Bulk Packaging Level I, II, IV and/or V driver/vehicle inspections.

Recertification requirements to Conduct Specialized Passenger Carrying Vehicle Level I and/or V Driver/Vehicle Inspections

The person must:

- Successfully complete the North American Standard Inspection Procedures Part A and Part B and Passenger Carrying Vehicle Inspection courses, including any pre- and/or post-training requirements; or successfully “challenge” (not more than once each recertification cycle) the courses listed above without retaking the class, but by taking and passing the course final examinations (tests); and
- Successfully complete a minimum of 8 Specialized Passenger Carrying Vehicle Level I and/or V driver/vehicle inspections, under the direction of a person certified to conduct Specialized Passenger Carrying Vehicle Level 1 and/or V driver/vehicle inspections.

**ATTACHMENT 1**

**U.S. Department**

**Of Transportation**

**Federal Motor Carrier**

**Safety Administration**

Subject: Motor Carrier Safety Administration Act 1999:  
Initial Certification Based on previous Training  
And Work Experience

Date:

From: XXXXXX; XXXXXX  
Employee Supervisor  
XXXXXXX Division

In Reply Refer To:

To: Employee Name

In support of Section 211 of the Motor Carrier Safety Improvement Act of 1999 (the Act), the Federal Motor Carrier Safety Administration (FMCSA) published an Interim Final Rule requiring certification for any individual conducting compliance reviews or onsite investigations, safety audit or Level I and/or V inspection after December 31, 2002. Subsequently, on **[Insert Date]**, FMCSA issued updated policy and procedures on certification. The certification process is designed to ensure that all personnel have the proper training and experience to perform the inspection and compliance activities of FMCSA.

This is to inform you that as a result of satisfactory completion of the FMCSA Safety Training Academy, you are currently certified to conduct (insert either compliance reviews or onsite investigations, safety audits, or Level I and/or V driver/vehicle inspections). This initial certification will expire on May 31, 20XX. Starting on June 1, 20XX, and every subsequent 12-month performance cycle thereafter, you must maintain certification consistent with FMCSA requirements.

Due to the requirements of the Act, maintaining certification is a mandatory condition for continued employment for Safety Inspectors, Safety Auditors, and Safety Investigators. Failure to maintain your certification may result in termination of your employment with FMCSA.

Should you have any additional questions, please contact your immediate supervisor with X days.

#### Acknowledgment

I acknowledge receipt of this memorandum. I understand that: 1) Maintaining certification consistent with FMCSA requirements is a mandatory condition for continued employment; and 2) failure to maintain certification may result in termination of my employment with FMCSA.

Acknowledgment: \_\_\_\_\_

Name

Date

## ATTACHMENT 2

### Motor Carrier Safety Improvement Act of 1999 (MCSIA) Employee Certification

Employee Name:

Position:

Office:

This form is used to document:

1. The initial period during which the employee is certified to conduct Compliance Reviews or Onsite Investigations, Safety Audits, Level I and/or V Driver/vehicle Inspections, and/or Specialized Proficiency Level I and/or V Driver/Vehicle Inspections;
2. Whether or not the employee has successfully completed the requirements for maintaining certification during the period specified; and,
3. Whether the employee has successfully completed the requirements for recertification during the period specified, after being decertified.

**1. Initial Certification Period:** This must be completed by the last day of the next performance cycle. For example, if a FMCSA employee completed the FMCSA Safety Investigators Academy on August 15, 2012, that person would be certified to conduct compliance reviews or onsite investigations until May 31, 2014.

**The employee's initial certification is for the period \_\_\_\_\_ through \_\_\_\_\_ (12 month period) based upon:**

FMCSA Academy

FMCSA courses (NASTI, General Hazardous Materials, etc.)

The employee is certified to conduct the following activities:

Safety Audits;

Compliance Reviews or Onsite Investigations;

Level I and/or V Driver/Vehicle Inspections;

Specialized Level I, II, IV and/or V Hazardous Materials Driver/Vehicle Inspections;

Specialized Level I, II, IV and/or V Cargo Tank and/or other Bulk Packaging Driver/Vehicle Inspections; and/or

Specialized Level I and/or V Passenger Carrying Vehicle Driver/Vehicle Inspections.

**2. Maintenance of Certification Period:** This must be updated each 12 performance cycle to reflect the current certification period (e.g. after initial certification, maintenance of certification, or recertification, if decertified).

The employee is certified for the period \_\_\_\_\_ through \_\_\_\_\_ to conduct:

Safety Audits;

Compliance Reviews or Onsite Investigations;

Level I and/or V Driver/Vehicle Inspections;

Specialized Level I, II, IV and/or V Hazardous Materials Driver/Vehicle Inspections;

Specialized Level I, II, IV and/or V Cargo Tank and/or other Bulk Packaging Driver/Vehicle Inspections; and/or

Specialized Level I and/or V Passenger Carrying Vehicle Driver/Vehicle Inspections.

**3. Decertification:** The employee has not completed the requirements for maintenance of certification during the period in Number 2 (Maintenance of Certification Period) above and is currently not certified to conduct:

Safety Audits;

Compliance Reviews or Onsite Investigations;

Level I and/or V Driver/Vehicle Inspections;

Specialized Level I, II, IV and/or V Hazardous Materials Driver/Vehicle Inspections;

Specialized Level I, II, IV and/or V Cargo Tank and/or other Bulk Packaging Driver/Vehicle Inspections; and/or

Specialized Level I and/or V Passenger Carrying Vehicle Driver/Vehicle Inspections. Taking into account any temporary waiver granted, a plan for recertification must be developed. The plan must contain the requirements for recertification and the period during which the opportunity for recertification is provided.

[ ] 4. Recertification: The employee has [ ;] has not [ ;] completed the requirements for recertification during the period in Number 2 (Maintenance of Certification Period) above and is [ ] is not [ ] currently certified to conduct:

[ ] Safety Audits;

[ ] Compliance Reviews or Onsite Investigations;

[ ] Level I and/or V Driver/Vehicle Inspections;

[ ] Specialized Level I, II, IV and/or V Hazardous Materials Driver/Vehicle Inspections;

[ ] Specialized Level I, II, IV and/or V Cargo Tank and/or other Bulk Packaging Driver/Vehicle Inspections; and/or

[ ] Specialized Level I and/or V Passenger Carrying Vehicle Driver/Vehicle Inspections.

If applicable, the new certification period will be documented in Number 1, above. If the employee is not recertified, a plan of action must be determined.

Each 12 Month Certification Requirements are as follows:

Safety Audits: Six (6) Compliance Reviews or Onsite Investigations or 24 Safety Audits and 32 Level I and/or V Driver/Vehicle Inspections.

Compliance Reviews or Onsite Investigations: 6 Compliance Reviews or Onsite Investigations and 32 Level I and/or V Driver/Vehicle Inspections.

Level I and/or V Driver/vehicle Inspections: 32 Level I and/or V Driver/Vehicle Inspections.

Specialized Level I, II, IV and/or V Hazardous Materials Driver/Vehicle Inspections: 32 Level I and/or V Driver/vehicle Inspections; 8 of which are HM.

Specialized Level I, II, IV and/or V Cargo Tank and/or other Bulk Packaging Inspections: 32 Level 1 and/or V Driver/Vehicle Inspections; 8 of which are Cargo Tank and/or other Bulk Packaging.

Specialized Level I and/or V Passenger Carrying Vehicle Inspections: 32 Level I and/or V Driver/Vehicle Inspections; eight (8) of which are Passenger Carrying Vehicles.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT 3**

**Part [3] - Waiver Process - Level I and V Driver/vehicle Inspections**

A Federal employee who is required to conduct Level I and/or V driver/vehicle inspections for each 12-month performance cycle (see General Section: for a definition of each 12-months) may apply for a waiver of this requirement. Such a waiver is granted for one 1-year or less, and may be tailored to specific situations. If an employee wishes to request a waiver beyond any waiver period granted, he or she must reapply at the expiration of the waiver period.

Waiver requests must be made, in writing, to the Associate Administrator for Field Operations, the Deciding Official in all field certification wavier issues, by the employee’s supervisor.

All requests for a waiver under this Part that are based on medical issues will include documentation from a medical or healthcare practitioner providing the following information:

- 1). Employee's name;
- 2). The medical condition that precludes the employee from conducting Level I and/or V driver/vehicle inspections;
- 3). How the above medical condition precludes the employee from conducting Level I and/or V driver/vehicle inspections;
- 4). Beginning and ending dates of the above medical condition and prognosis for recovery;
- 5). The date(s) the employee was treated or examined for the above medical condition;
- 6). An original document signed in ink by the physician or other medical practitioner, on the physician's or medical practitioner's letterhead; and
- 7). The physician's or medical practitioner's name, address, and phone number.

The documentation must be sufficient in detail so that:

- 1). The Deciding Official can understand the medical basis for the request, and, if necessary, the information can be provided to a physician for his or her advice; and
- 2). The information can be used to determine whether any reasonable accommodation can be taken to facilitate the completion of Level I and V inspections. The Deciding Official may request additional medical or other documentation. The Deciding Official will advise the employee, in writing, of the decision on the waiver request.

#### **6.3.5.8 Programs, Information Systems, Databases, and Networks Used by FMCSA Headquarters, Service Center, and Division Personnel while Conducting Safety & HM Investigations**

We use the following programs and systems to assist in the furtherance of the Vision, Mission, Values, and Goals set forth by our Agency. We developed these programs in an on-going effort to support the Agency's strategic direction. We will use these programs for the improvement of commercial vehicle operations, thus ensuring safe and efficient movement of goods on our Nation's highways.

##### ***Programs, Information Systems, Databases, and Networks***

- **ASPEN** – This driver/vehicle inspection software runs on laptops. Our Agency, as well as most States, use ASPEN to collect inspection details and print the inspection report. The software includes communication features that transfer inspections electronically to Safety and Fitness Electronic Records (SAFER) and SAFETYNET.
- **Compliance Analysis & Performance Review Information (CAPRI)** - This software helps us prepare investigations, as well as specialized cargo tank facility reviews (CTFRs), HM shipper reviews, and safety audits. CAPRI includes worksheets for collecting (1) hours of service (HOS) data, (2) driver qualification (DQ) data, and (3) drug and alcohol compliance data. The software also creates the preliminary carrier safety fitness rating and various reports to motor carriers.
- **Case Rite** - Used in conjunction with CAPRI or ASPEN, Case Rite allows creation of legal enforcement cases for Federal prosecution of FMCSR and HMR violations. The current version of Case Rite is optimized for Federal prosecutions.
- **CDLIS Access** - This software retrieves driver status reports from the Commercial Driver License Information System (CDLIS). It is coupled with ASPEN and CAPRI but can be operated as standalone software.
- **Commercial Vehicle Information Systems and Networks (CVISN)** - Refers to the collection of information systems and communications networks that support commercial vehicle operations (CVOs). These include information systems owned and operated by governments, motor carriers, and other stakeholders. The CVISN program is not trying to create a new information system, but rather to create a way for existing and newly designed systems to exchange information using standards and available communication infrastructure.

- The CVISN program provides a framework or “architecture” that will enable government agencies, the motor carrier industry, and other parties engaged in CVO safety assurance and regulation to exchange information and conduct business transactions electronically. The goal of the CVISN program is to improve the safety and efficiency of commercial vehicle operations.
- The CVISN Architecture is the CVO part of the National Intelligent Transportation Systems (ITS) Architecture. It includes standards for communications technologies, such as electronic data interchange (EDO) and dedicated short range communications (DSRC). These standards are being developed to promote interoperability and efficiency. The Transportation Equity Act for the 21st Century (TEA-21) requires that ITS projects funded from the Highway Trust Fund must be consistent with the National ITS Architecture and applicable standards.
- The current, primary objective of the CVISN program is to develop and deploy information systems that will support new capabilities in three areas: Safety Information Exchange; credentials administration; and electronic screening. The CVISN program uses an approach based on open architecture and standards so that these capabilities may be deployed in a manner that is interoperable from State-to-State from a motor carrier’s perspective.
- **Inspection Selection System (ISS)** - The primary tool used on the roadside to screen motor carrier vehicles and determine the usefulness of conducting an inspection. ISS returns the carrier snapshot that includes many critical safety performance indicators. ISS is linked to ASPEN to auto-populate name and address data fields and initiate the inspection. ISS uses a local database that is refreshed weekly via SAFER. It can also operate as an online query tool.
- **Motor Carrier Management Information System (MCMIS)** - The National data warehouse and information system that captures State-level data from SAFETYNET and other sources. MCMIS currently runs on Oracle servers with web front-end access.
- **Motor Carrier Regulatory Information System (MCREGIS)** - A specialized text retrieval system. It allows instant access to all Federal safety regulations (FMCSR and HMR) as well as all official interpretations of these regulations, various operations manuals, rosters, and specialized data tables. States may obtain MCREGIS from J.J. Keller and Associates, Neenah, Wisconsin 54957. 800 558-5011. <http://www.jjkeller.com>.
- **Motor Carrier Safety Assistance Program (MCSAP)** - A Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous material incidents involving commercial motor vehicles (CMVs). MCSAP gives the States 80 percent of the cost to run their enforcement programs, with the States picking up the remaining 20 percent of the costs. The goal of MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents. Some States use MCSAP monies to perform investigations on interstate carriers.
  - MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSR and Federal HMR for both interstate and intrastate motor carriers.
- **PC\*MILER** - A highway routing and mileage calculation package commercial software from ALK Associates. It has been the standard used by FMCSA and most States for many years. Contact: ALK Associates, 1000 Herron town Rd., Princeton, NJ 08540, 800 377-6453 or 609 683-0220. <http://www.alk.com>.

- **Past Inspection Query (PIQ)** - Accesses a national database of recent inspection reports (those done within the last 60 days), and retrieves copies and summaries. It allows checking for unrepaired defects and driver hours of service problems.
- **Performance and Registration Information Systems Management (PRISM)** - This began as a mandate by Congress to explore the potential of linking the commercial vehicle registration process to motor carrier safety. The intent was to link the motor carrier safety information network system of the DOT and similar State systems with the motor vehicle registration and licensing systems of the States. The PRISM program serves two vital functions. First, it establishes a system of accountability by ensuring that no vehicle is plated without identifying the carrier responsible for the safety of the vehicle during the registration year. Second, the use of registration sanctions (denial, suspension and revocation) serves as a powerful incentive for unsafe carriers to improve their safety performance. This program causes the carrier to improve its safety performance through an improvement process and, where necessary, the application of registration sanctions. PRISM also gives States the ability to pull the registration and license plates of motor carriers.
- The second core process comprising PRISM is the Motor Carrier Safety Improvement Process (MCSIP). MCSIP is the means by which carrier safety is systematically tracked and improved. The process improves the safety performance of carriers with demonstrated poor safety performance through accurate identification, performance monitoring, and treatment. MCSIP carriers that do not improve their safety performance face progressively more stringent penalties that may culminate in a Federal imminent hazard determination and possible suspension of vehicle registrations by the State.
- **Provo** - A viewer which allows Federal, State, and private industry users to electronically analyze standard motor carrier profile reports available from FMCSA. This application displays nearly every data element found on the hard-copy version of the carrier profile in an easy-to-understand format that users can sort, filter, and optimize.
- **Safety Fitness Electronic Records (SAFER)** - The SAFER system makes it possible to offer carrier safety data to industry and the public via an electronic medium. Limited SAFER functions are now provided free of charge over the Internet. SAFER includes access to carrier snapshots. A carrier snapshot is a concise electronic record of a carrier's identification, size, commodity information, and safety record, including the safety rating (if any), a roadside out-of-service (OOS) inspection summary, and crash information. Presently, SAFER consists of interstate carrier data and several States' intrastate data. Operations data such as inspections and crashes are generally only presented for interstate carriers, but plans are to include them for the intrastate carriers at a later time.
  - The SAFER system is a component of the Intelligent Transportation System (ITS), being designed to increase roadway safety, reduce motorist delays and air pollution, and improve the overall productivity of commercial vehicle operations using advanced technology. We are currently testing and evaluating ITS technologies to enhance intrastate and interstate commercial vehicle operations. The focus is on creating transparent borders for interstate commercial vehicles and improving the safety of commercial vehicle operations.
  - The SAFER system is now being expanded to include the capability to provide carrier, vehicle, and driver safety and credential information to fixed and mobile roadside inspection stations. This information will allow the roadside inspector to select vehicles and/or drivers for inspection based on the number of prior carrier inspections, as well as carrier, vehicle, and driver safety and credential historical information.
- **Safety Measurement System (SMS)** (<http://ai.fmcsa.dot.gov/sms>) - Quantifies the on-road safety performance of individual carriers and drivers to:
  - Identify entities for interventions

- Determine the specific safety problems exhibited by an entity
- Monitor whether safety problems are improving or worsening
- FMCSA uses the SMS to measure the safety of motor carriers and commercial motor vehicle (CMV) drivers. As such, SMS uses carrier and driver data from roadside inspections; State-reported crashes; and the Federal motor carrier census to quantify performance in the following Behavior Analysis and Safety Improvement Categories (BASICS):
  - Unsafe Driving — Operation of CMVs in a dangerous or careless manner. Example violations: speeding, reckless driving, improper lane change, and inattention. (FMCSR Parts 392 and 397).
  - Hours-of-Service (HOS) Compliance — Operation of CMVs by drivers who are ill, fatigued, or in noncompliance with the HOS regulations. This BASIC includes violations of regulations pertaining to records of duty status (RODS) as they relate to HOS requirements and the management of CMV driver fatigue. Instances related to the HOS Compliance BASIC are distinguished from incidents where driver impairment is brought about by the use of alcohol, drugs, or other controlled substances. Example violations: HOS, RODS, and operating a CMV while ill or fatigued. (FMCSR Parts 392 and 395).
  - Driver Fitness — Operation of CMVs by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualifications. Example violations: failure to have a valid and appropriate Commercial Driver's License (CDL) and being medically unqualified to operate a CMV. (FMCSR Parts 383 and 391).
  - Controlled Substances/Alcohol — Operation of CMVs by drivers who are impaired due to alcohol, illegal drugs, and misuse of prescription or over-the-counter medications. Example violations: use or possession of controlled substances/alcohol. (FMCSR Part 382 and 392).
  - Vehicle Maintenance — Failure to properly maintain a CMV and/or failure to properly prevent shifting loads and spilled or dropped cargo. Example violations: brakes, lights, and other mechanical defects, failure to make required repairs, improper load sacrament, and cargo retention. (FMCSR Parts 392, 393 and 396).
  - Hazardous Materials (HM) Compliance — Unsafe handling of HM on a CMV. Example violations: Release of HM package, no shipping papers (carriers), and no placards/markers when required. (FMCSR Part 397 and Hazardous Materials Regulation Parts 171, 172, 173, 177, 178, 179, and 180).
  - Crash Indicator — Histories or patterns of high crash involvement, including frequency and severity. It is based on information from State-reported crashes.
    - Along with the seven BASICS, there is an Insurance/Other Indicator. This indicator was created to hold motor carriers accountable for compliance with registration and insurance requirements. The Insurance/Other Indicator will display if the motor carrier has been cited for violations related to registration and/or insurance requirements from a previous investigation. This Insurance/Other Indicator is not based on on-road safety performance data.
    - The detailed SMS Methodology can be downloaded using the following link:  
<http://csa.fmcsa.dot.gov/Documents/SMSMethodology.pdf>.
- **SAFETYNET** - A major database management system that allows entry and access of data from driver/vehicle inspections, crashes, investigations, CRs, assignments, complaints, enforcement cases, etc. State safety agencies and Federal Divisions use this system that includes links to SAFER, MCMIS, etc. SAFETYNET-2000 is an Oracle-based client/server system.
- **Sentry (formerly known as the Mobile Client Application)** - Represents the next major step in the COMPASS program (the Agency's IT modernization initiative). Sentry will ultimately combine the functionality from all of FMCSA's legacy Field systems and streamline the Agency's existing workflow processes. By combining roadside inspection, investigative, and enforcement functions into a single interface, Sentry will provide Enforcement and Field users

with easier access to carrier and driver information and will help in their efforts to target unsafe carriers and drivers and keep them off our roadways. Eventually, all of the legacy Field systems will be retired and replaced by Sentry.

- **Uniform Fine Assessment (UFA)** - The purpose of the UFA software is to assist FMCSA in calculating uniform proposed civil penalties for violations of the Federal Motor Carrier Safety Regulations (FMCSRs), Hazardous Materials Regulations (HMRs), Federal Household Goods Regulations (HHGs) minimum financial responsibility regulations, registration regulations, and all other statutes and regulations enforced by FMCSA. The software is designed to ensure that statutory, regulatory, and administrative policies are considered in determining each penalty assessment, to promote uniformity in assessments throughout FMCSA, and to create transparent and easily understood assessments. FMCSA has used UFA to calculate penalties since the mid-1990's. Under a long line of administrative decisions, starting with Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking, FHWA-1996-5323 (Final Order, Feb. 7 1996), FMCSA and its predecessor agency have held that UFA is presumed to properly consider the statutory penalty factors under 49 U.S.C. §521 (b)(2)(D) and 49 U.S.C. 5123(c).

Refer to the UFA Policy (signed PDF; Word version), User's Manual and Calculations Guide regarding use of the software and questions about the selections to be made in the system.

#### ***6.3.5.9 General Guidelines for the Administrative Adjudication for the SA and the Corrective Action Submittal***

##### **Administrative Adjudication**

A new entrant (NE) motor carrier may request administrative review of a determination of a failed SA. A NE motor carrier may also request administrative review of a determination by the Service Center Director (SCD) that its submitted corrective action, after a failed SA, is insufficient, and its safety management controls remain inadequate. Any request by a NE motor carrier for administrative review must be made to the FA of the FMCSA SC for the geographic area of the new entrant's principal place of business (PPOB). The NE motor carrier's request for administrative review must explain the error the NE motor carrier believes FMCSA committed and include a list of all factual and procedural issues it wishes to raise.

If a NE motor carrier believes FMCSA committed an error in its determination of a failed SA, the carrier may request that FMCSA conduct an administrative review of the determination that the NE's safety management controls are inadequate. If the NE motor carrier does not submit its corrective action plan in response to FMCSA's notice of the failed SA, the carrier must request administrative review of the determination of a failed SA within 90 days of the service date of the notice. ***Submittal of a request for administrative review will not put on hold the USDOT number registration revocation and OOS provisions of the regulations.*** The NE should submit its request for administrative review within 15 days of the notice of failed SA, to ensure that the FA will be able to review the request and issue a decision before the NE's USDOT number registration is revoked, and its operations placed OOS. If the NE motor carrier fails to submit the request within 15 days of the notice of failed SA, its NE registration may be revoked and its operations placed OOS, before completion of the administrative review.

If a NE motor carrier submits its corrective action plan after a failed SA, and the SCD determines that the corrective action plan is insufficient, the NE motor carrier may request administrative review of the SCD's determination that its safety management controls remain inadequate. The NE motor carrier must submit its request for administrative review within 90 days of FMCSA's notice that the corrective action plan submitted is inadequate.

The FA will complete his/her review and notify the NE motor carrier in writing of the decision during the administrative review proceeding. The FA's written decision will be issued within 30 days after receiving the request from a motor carrier required to submit its corrective action plan within 45 days of notice of a

failed SA, and within 45 days after receiving the request for administrative review from a motor carrier required to submit its corrective action plan with 60 days of notice of the failed SA.

The Decision of the FA becomes the final Agency action in the administrative review proceeding. Only in Federal court, may the NE motor carrier appeal the Field Administrator's determination that no error was made in the failed SA or denial of a NE motor carrier's corrective action. The regulations do not provide for a review of the Field Administrator's decision to the Assistant Administrator or any other agency official. The Decision of the FA in a request for administrative review becomes the final agency action in the matter, and any appeal of that decision must be made to the United States Court of Appeals.

In the NE Safety Assurance Program, the FA is the decision-maker for administrative review proceedings for failed SAs and denied corrective action plan submittals that result from failed safety audits. In order to ensure the neutrality and independence of the administrative review process, the FA, and any counsel and staff designated to assist the FA in administrative review determinations, must be separated from FMCSA personnel making determinations regarding SAs and corrective action plan submittals. Other than in the context of administrative adjudication, the FA may not have any involvement in conducting and reviewing SAs, corrective action plan submittals, or determining the adequacy of corrective action submittals. The FMCSA and State personnel, including the SCD, Division Administrators, NE Coordinators, and corrective action plan submittal reviewers responsible for conducting and reviewing SAs and reviewing corrective action plans, may not, in any administrative review proceeding or a factually related matter, discuss or communicate the facts or issues involved with the proceeding to the FA (and Counsel and staff assigned to assist the FA in administrative review determinations) except during conferences or written submittals during the administrative review proceeding.

Because of the need to ensure the separation of functions between the Field Administrator's adjudicatory role and the oversight responsibilities of the SCD for SAs and corrective action plan determinations, the FA may assign his/her decision making functions under the NE rule only to another FA.

### 6.3.6 General Guidelines for Personnel Protection

#### 6.3.6.1 Definitions that Apply to FMCSA's Policy for Protecting Personnel

The following definitions apply to our policy for protecting personnel:

- **Field Activities** - The term (as used in this manual includes), but is not limited to, the inspection of motor vehicles, investigations, safety audits, crash investigations, and the investigation of hazardous materials incidents.
- **Assault** – Includes, but is not limited to, any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force, such as would give the victim reason to fear or expect immediate bodily harm. Notice that an assault may be committed without actual touching, or striking, or doing bodily harm, to some other person.
- **Battery** - The intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching. Battery includes a contact with another. Notice that some injury must occur or an offensive touching occurs. Offensive touching is based on a "reasonable person" determination, not an individual person determination. For example, if you think our accidental touching was offensive, but society would think otherwise, it is not a battery.
- **Assault and Battery** - Any unlawful touching of another that is without justification or excuse.

#### 6.3.6.2 FMCSA's Policy for Protecting Personnel

We are responsible for ensuring our employees apply their skill, knowledge, and techniques in any work situation that will ensure health and safety of themselves and others. Employees must notify their supervisor of any potential hazardous work situation and make suggestions for corrective measures.

FMCSA's policy requires you to:

- Furnish personnel with appropriate safety equipment to assure the protection of employees during the performance of certain field activity assignments or tasks;
- Prohibit FMCSA employees from having a firearm in their possession, on their person, or in a Government Owned Vehicle (GOV), while in the performance of their official job duties. Should any FMCSA employee have a firearm in his or her possession, on his or her person, or in a GOV, severe disciplinary action up to and including termination will result;
- Ensure FMCSA special agents or special investigators are protected while performing official duties delegated by the Transportation Secretary;
- Ensure any FMCSA person(s) who encounters a hostile environment or becomes a victim of assault and/or battery, while performing his or her official job duties, is aware that he or she should immediately leave the environment and contact his or her first line supervisor for further direction (first line supervisor must immediately contact Chief Counsel);
- Provide ethics training and advise FMCSA employees on the consequences of accepting a bribe from any regulated entity and/or person in connection with the performance of the job duties. Any person(s) offered a bribe by any regulated entity and/or person should immediately contact his or her supervisor. The employees' supervisor must immediately contact the FMCSA Chief Counsel, first line supervisor, and the Regional Office of the Department of Transportation's Inspector General;

#### ***6.3.6.3 Safety Protection Equipment FMCSA Personnel Must Use While Conducting Driver/Vehicle Inspections***

Personnel must be attired in safety equipment that is designed to provide protection against limited hazards that may be encountered while conducting vehicle inspections. The safety protection equipment will include the following:

- Uniforms or coveralls
- Hard hats
- Safety shoes (steel toe) with non-slip type soles for personnel who conduct ultrasonic testing of cargo tanks (i.e., cork sole)
- Safety goggles
- Chock blocks

#### ***6.3.6.4 Procedures for Using Wheel Blocks While Conducting Driver/Vehicle Inspections***

Personnel should abide by the following wheel blocking procedures when conducting driver/vehicle inspections:

- Use chocking blocks for wheel blocking of vehicle being examined.
- Secure the power unit of a combination motor vehicle, or a straight truck, by placing chock blocks at the front and rear of a drive axle wheel.

#### ***6.3.6.5 Procedures FMCSA Should Follow to Protect its Personnel during a HM Incident***

It is imperative that FMCSA personnel DO NOT enter a hazardous material incident spill zone until experts at the scene have established that the hazard level is no longer present.

In the event that an FMCSA employee encounters an ongoing hazardous material incident, the FMCSA employee will immediately evacuate the area and contact the appropriate Federal, State, or local authorities.

## **6.3.7 General Guidelines for Office Management**

### **6.3.7.1 FMCSA's Policy for Weekly Itineraries**

Weekly itineraries are used as a means to ensure that supervisory personnel can contact their staff in case of an emergency and also help determine a staff member's planned activities. The preferred format for the weekly itinerary is via an electronic means, such as the Outlook calendar function.

If a change in the itinerary must be made, the staff member will notify his/her supervisor and provide the updated information. If an electronic calendar is used, staff should have the ability to modify it from any location. It is the responsibility of the entire Division staff to ensure the accuracy of the itinerary.

- It is FMCSA's policy to ensure the weekly itinerary:
- Is prepared by each member of the staff using the Outlook calendar function;
- Can be viewed by the entire staff within that office, by means of proxy rights;
- Is used by the supervisory personnel to assign tasks, schedule appointments, and modify the itinerary when necessary;
- Is used to determine scheduling conflicts when field staff members are needed to perform other duties as assigned; and
- Is capable of being printed and submitted to supervisory personnel when requested.

### **6.3.7.2 Information that should be Included on the Weekly Itinerary**

Each week an itinerary showing the location of each employee on each day, including the address and phone number where he/she can be reached during official hours, should be prepared. The hotel/motel information should also be included on the itinerary so staff can be reached during off-duty hours.

### **6.3.7.3 FMCSA's Policy for Leave Administration**

For the current FMCSA policy on Leave Administration, please refer to the Leave Administration section of the Directives system within the Know Zone.

### **6.3.7.4 FMCSA's Policy and Procedures Regarding Time and Attendance**

For the current FMCSA policy on Time and Attendance, please refer to the Human Resources system within the Know Zone.

### **6.3.7.5 FMCSA's Policy for Telecommuting**

For the current FMCSA policy on Telecommuting, please refer to the Directives system within the Know Zone.

### **6.3.7.6 FMCSA's Policy for Travel Card Management**

For the current FMCSA policy on Travel Card Management, please refer to the Directives system within the Know Zone.

### **6.3.7.7 FMCSA's Policy for Reimbursement for Use of a Privately Owned Vehicle**

For the current FMCSA policy on Reimbursement for Use of a Privately Held Vehicle (POV), please refer to the Directives system within the Know Zone.

### **6.3.7.8 FMCSA's Policy for Travel Claims**

For the current FMCSA policy on Travel Claims, please refer to the Travel and Transportation section within the Know Zone.

### **6.3.7.9 FMCSA's Policy for Telecommunication Management**

For the current FMCSA policy on Telecommunication Management, please refer to the Directives section within the Know Zone.

### **6.3.7.10 FMCSA's Policy for Motor Vehicle Management**

For the current FMCSA policy on Motor Vehicle Management, please refer to the Directives section within the Know Zone.

### **6.3.7.11 FMCSA's Policy for Record Management**

For the current FMCSA policy on Records Management, please refer to the Directives section within the Know Zone.

### **6.3.7.12 FMCSA's Policy for Mail Management**

For the current FMCSA policy on Mail Management, please refer to the Directives section within the Know Zone.

### **6.3.7.13 FMCSA's Policy for Form Management**

For the current FMCSA policy on Form Management, please refer to the Directives section within the Know Zone.

### **6.3.7.14 FMCSA's Policy for Exiting Employees**

All Field personnel exiting FMCSA must present the Clearance of Employment Accountability form (MCSA -126), along with all credentials, government information cards, and the government travel/purchase card to their immediate supervisor, DA or Administrative Officer in accordance with their established organization procedures. The recipient of the card must notify the Headquarters points of contact identified below of the departure. Additionally, the recipient must forward (via FedEx) the MCSA-126 and credentials/ID cards/travel cards/purchase cards to the following address:

Department Of Transportation -- Federal Motor Carrier Safety Administration  
MC -- MHR Employee Relations Office (Attn: Ed Dinep)  
1200 New Jersey Ave. S.E. West Wing 6th floor  
Washington, DC 20590

- Present Government credentials and identification cards to the Agency Security Officer located in the Office of Human Resources (MC-MHR) for completion of Section II - Security Office Clearance, items 1, 2 and 3. For further assistance regarding credentials or identification cards, contact Mr. Ed Dinep at (202) 366-0079 or ed.dinep@dot.gov.
- Present the Government Travel Card to the Agency/Organization Program Coordinator (A/OPC) located in the Finance Office (MC-BF) for completion of Sections V -Finance and Management Services Clearance, items 1 and 2. For further assistance with Government Travel Card activities, contact Ms. Toni Douglas at (202) 366-9222 or toni.douglas@dot.gov.

- Present Government Purchase Card to the Agency/Organization Program Coordinator (A/OPC) located in the Office of Acquisitions Management (MC-MA) for completion of Section V-Finance and Management Services, item 4. For further assistance with Government Purchase card activity, contact Ms. Constance Duncan at (202) 385-2311 or constance.duncan@dot.gov.

## 6.3.8 General Guidelines for Administration of CDL Regulations

### 6.3.8.1 Definitions that Apply to FMCSA's Policy for Administration of the CDL Regulations

In addition to the definitions contained in 49 CFR Parts 383 and 384, the following words and phrases, as used in this chapter, mean:

- **The Act** - The Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570, 49 U.S.C. 31301 et seq.), as amended.
- **State Compliance Monitoring** - The process whereby States certify their compliance with the Act and its amendments. There is currently having 29 compliance requirements. We require a State to meet all 29 requirements in order to be considered in substantial compliance. You can find these requirements in 49 CFR Part 384.
- **Annual Self-Certification** - The written declaration by the State regarding its compliance with 49 CFR Part 384. The annual certification requirements are contained in 49 CFR 384.305.
- **Program Review of State Compliance** - The onsite evaluation of all the requirements contained in 49 CFR Part 384. The review includes both the State's procedures for issuing Commercial Drivers Licenses (CDLs) to qualified individuals and the State's procedures for disqualifying drivers convicted of specified moving violations while operating a CMV. The review also includes the State's data processing procedures in regard to transmitting and receiving driver history information (convictions and disqualifications) between States and the updating of the driver history records of its own drivers.
- **Alternate Certification** - The certification used by the States that have active compliance findings, but the State and FMCSA have determined that the State is still in substantial compliance with 49 CFR Part 384, because an action plan has been submitted and accepted.
- **CDL Legal Indicator** - The matrix form completed by the State prior to the State CR to document its statutory compliance with the requirements of the Act.
- **Annual Program Review** - The follow-up review of the State's CDL program to evaluate the State's progress toward, or completion of, previously agreed-to remedies. These remedies are in regard to one or more outstanding issues, identified during a previous State CR, in order to determine whether the State's CDL program is in substantial compliance with 49 CFR Part 384.
- **State Process Review** - The follow-up review of the State's CDL program to evaluate the State's progress toward, or completion of, previously agreed-to remedies. These remedies are in regard to one or more outstanding issues identified during a previous State CR in order to determine whether the State's CDL program is in substantial compliance with 49 CFR Part 384.
- **State CR Team** - The individuals responsible for conducting the State review to determine if the CDL program is in substantial compliance with the Federal requirements. The team will be led by the DA in that State and may consist of other members of the Division Office, SC, and Headquarters, as well as the contractors hired by FMCSA to conduct the review.
- **Federal Convictions and Withdrawal Database (FCWD)** – A central database of all conviction and withdrawal information pertaining to Mexico-domiciled drivers reported by States through the Commercial Driver's License Information System (CDLIS) or by mail.
  - **FCWD Quality Control Process** – The quality control process will ensure that States report to the FCWD all convictions, occurring within their jurisdiction, of Mexico-domiciled CMV drivers, regardless of the type of license held by the driver, including convictions of drivers found operating with proper licenses or with possession of their license.

All States are to submit all convictions received on the following drivers:

- 1). All Licensee Federal de Conductor holders operating a CMV or non-CMV,
- 2). All Mexico-domiciled drivers operating a CMV with an operator license,
- 3). All Mexico-domiciled drivers operating a CMV without a license in their possession.
  - **FCWD Systematic Error** – A systematic error is the transmission of erroneous or incomplete conviction data as a result of a widespread information system or procedural deficiency. A systematic error includes a failure to transmit conviction records as a result of a widespread information system or procedural deficiency.

### 6.3.8.2 Roles and Program Responsibilities of Headquarters Personnel

Headquarters is responsible for carrying out the legislative mandates of Congress as delegated by the Secretary of Transportation. In this capacity, Headquarters has the following roles:

- Promulgating regulations;
- Developing regulatory guidance, policy, procedures, and methodologies;
- Providing direction, resources, and technical expertise;
- Reviewing and monitoring the program management provided by the Division offices and the technical assistance provided by the Service Centers; and
- Providing necessary assistance and training for full and effective administration of the program.
- **The FCWD Quality Control Process**

The North American Borders Division (MC-ESB) will:

- Provide the Division Offices and Service Centers with quarterly summaries, detailed State reports and quarterly State trend charts.
- Track the Division Office responses to the reports and trend charts, and notify the Service Centers of any outstanding responses.
- Retain and archive the Division Office responses.
- Document the completion of any State Reporting Agency corrective action plan for systematic errors.
- Report the status of the Division Office responses to the Director, Office of Safety Programs, and the AA for Field Operations.
- Report the completion of any State Reporting Agency corrective action plan for systematic errors to the Director, Office of Safety Programs, the AA for Enforcement and Program Delivery, and the AA for Field Operations.

### 6.3.8.3 Roles and Program Responsibilities of the FA and SC Managers

The FA provides technical assistance and guidance to the DAs in the administration of the CDL program in their respective States. The guidance must be in accordance with all legislative and regulatory requirements and consistent with all the established policies, directives, procedures, and guidelines. The FA also provides assistance to Headquarters by promoting and carrying out the CDL program's National goals and objectives. The FA may delegate responsibilities to the State Programs Manager (SPM) or other personnel in the SC as appropriate.

#### The FCWD Quality Control Process

- The FA or his/her designee will:
  - Provide copies of the State Reporting Agency's corrective action plan for systematic errors to MC-ESB, if such plan is required.
  - Monitor the status of the State Reporting Agency's corrective action plan on a quarterly basis.
  - Report to MC-ESB when such corrective plan is completed.

#### 6.3.8.4 Roles and Program Responsibilities of the DA

The DA administers the CDL program in his or her respective State in accordance with all legislative and regulatory requirements and consistent with all the established policies, directives, procedures, and guidelines.

- Program responsibilities include:
- Providing information, guidance, and assistance to his or her respective State;
- First level review of all grant applications and reimbursement vouchers; and
- Program monitoring, evaluation, and formal State CDL CRs in accordance with the Program Management section of this chapter.

The DA may delegate responsibilities to the Safety Program Manager, State Programs Specialist (SPS), or SI, as appropriate.

#### The FCWD Quality Control Process

The DA or his/her designee will:

- Distribute the quarterly summaries, detailed State reports and quarterly State trend charts to the State Reporting Agency.
- Communicate with the States to ensure that the information provided quarterly is complete and accurate with respect to:
  - a. The number of Mexico-domiciled driver convictions submitted to the FCWD; and
  - b. The accuracy of the conviction data.
- Report the results of the Division Office's communication with the State to MC-ESB and provide a copy to the Service Centers.
- Ask the State to submit a corrective action plan to the DA if the State agency determines the inaccuracy is the result of a systematic error.
- Provides copies of State Reporting Agency's corrective action plan for systematic errors to the FMCSA Service Centers, if such plan is required.
- Monitor the status of the State Reporting Agency's corrective action plan on a quarterly basis. Division Offices will report to MC-ESB and the Service Centers when such corrective action plan is completed.

#### 6.3.8.5 Roles and Program Responsibilities of the Various Program Manager/Specialists within FMCSA Divisions

The DA or the Program Manager/Specialist is responsible for oversight of the CDL Program in his or her respective State.

The DA or Program Manager/Specialist must perform the following activities:

- Conduct ongoing monitoring of the State's CDL program, including proposed legislative actions, implementation of new requirements, and the enforcement of current requirements. This includes monitoring State progress in addressing open compliance findings listed in the Automated Compliance Review System (ACRS).
- Conduct periodic site visits to State and third-party examination facilities to observe testing and licensing procedures and compliance with Federal CDL requirements.
- Review yearly State Certification for accuracy and load into the ACRS.

#### 6.3.8.6 Document State Must Submit Annually to Ensure Compliance with 49 CFR Part 384

A State must submit a CDL Yearly State Self-Certification according to the following guidelines:

Prior to January 1 of each year, each DA or Program Manager/Specialist must receive a written certification from the State on the status of its compliance with 49 CFR Part 384. The original signed

certification will be submitted with two copies to the DA or Program Manager/Specialist located in that State.

The DA or Program Manager/Specialist must keep the signed original of the State certification on file and send a scanned copy via email to the State Programs Division, Office of Safety Programs at FMCSA Headquarters and the appropriate FA.

If the State determines that it is in substantial compliance with 49 CFR Part 384, it will submit a certification consisting of a statement signed by the Governor of the State, or by an official designated by the Governor in accordance with 49 CFR 384.305.

**ALTERNATE CERTIFICATION:** This certification is to be used only if the State has open findings identified during a CR, but is still in substantial compliance with 49 CFR Part 384 because its action plan to address the findings has been accepted by FMCSA.

The State will submit an (Alternate) certification consisting of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of \_\_\_\_\_, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. 31311(a), as defined in 49 CFR 384.301, since [the first day of the current Federal fiscal year], except as noted below and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof except as noted below, which would affect such substantial compliance through [the last date of the current Federal fiscal year]."

If the State fails to submit a written certification to the DA or Program Manager/Specialist by January 1, the State will be determined not to be in substantial compliance, as required by 49 CFR 384.309. The DA or Program Manager/Specialist will notify the CDL Division in Headquarters of the situation. The Administrator may, in coordination with the Federal Highway Administrator, take sanctions against the State, in accordance with 49 CFR Part 384, Subpart D. If sanctioning action is taken, the Administrator will inform the State in writing of the decision.

The Roles and Responsibilities for the Divisions, Service Centers, and the CDL Division are defined in the policy memo MC-ESL-2013-001, dated May 16, 2013. The effective date of the policy is July 1, 2013. The excerpts, listed below, designate roles as defined within The Roles and Responsibilities Memo:

## **POLICY**

The Agency will ensure that the CDL program is operated, in accordance with existing statutes and regulations by fulfilling the responsibilities defined in this policy. In addition, required reviews will be completed in accordance with the procedures prescribed in this document.

This policy establishes minimum requirements and standards. Additional monitoring and program management is acceptable.

Organizations within FMCSA will complete the duties required to successfully support the CDL program, as described in this document.

## **RESPONSIBILITIES**

**CDL Division:** The CDL Division will:

1. Serve as a resource for Service Center and Division Office personnel, as they oversee the CDL programs in their respective States;
2. Communicate the impact of regulations and legislation, relating to CDL, to the Agency;
3. Analyze prior years' data and reports to evaluate each State's resolution of findings and resolve persistent compliance issues to ensure that the State is meeting the stipulations within its corrective action plan (CAP);

4. Monitor the status of each State's action plan and coordinate with the State, Division Office, and Service Center to facilitate resolution of findings; In consultation with the Service Center and Division Offices, conduct on-site focused CDL program reviews, as needed, to determine if a State is in substantial compliance with the regulations, as required by 49 CFR §384.301. The determination of which States to review will be made by the CDL Division, using available data, findings, and information. The reviews will be coordinated and performed with the assistance of the Service Center and Division Office
5. Establish schedule and deadlines for future State CDL program reviews;
6. Coordinate the collection of State CDL transaction data, legislative and statutory data, and operational data, in preparation for State CDL program reviews with the Division Office;
7. Perform analysis of State CDL transaction data to ensure compliance;
8. Perform analysis of State CDL operational procedures to ensure compliance;
9. Identify findings, program improvements, and fraud vulnerabilities for each State;
10. Coordinate, oversee, and monitor use of ACRS;
11. Review all findings and State corrective action plans, for adequacy;
12. Prepare memoranda of acceptance of corrective action plans, as appropriate;
13. Address State challenges to and questions about findings and other program review results;
14. Evaluate State requests for reconsideration of findings;
15. Coordinate with Office of Chief Counsel, to obtain legal interpretations and guidance concerning statutory and regulatory issues, to resolve State challenges to findings and other review results;
16. Prepare briefing and reports for the Office of the Inspector General (OIG) and other entities, as requested;
17. Prepare letters of final determination of noncompliance, as appropriate;
18. Provide task management tools for Division Office and Service Center personnel;
19. Conduct CDL program training for Division Office, Service Center personnel, and other stakeholders;
20. Conduct training for States that will be subject to all program reviews;
21. Compare the relative levels of compliance by States with the requirements of Parts 383 and 384, and make the results of the comparison available to the public;
22. Identify upcoming regulations and requirements that affect the CDL program;
23. Approve or disapprove requests for extensions to corrective action plans beyond 180 days;
24. Enter new findings into ACRS;
25. Ensure that AAMVA provides requested CDLIS data and provide to the Division Offices and Service Centers, as needed; and
26. Confirm that AAMVA performs testing to ensure State compliance with CDLIS specifications.

**Service Center CDL Program Manager:** Service Centers provide management oversight and technical assistance to the Division Offices. The Service Center will designate a CDL Program Manager, who is tasked with providing the Division Offices with guidance and support for the CDL program. This CDL Program Manager will:

1. Assist Division Offices with program compliance reviews, as necessary, including participation in and facilitating meetings and monitoring to resolve outstanding issues with the States.
2. Attend and participate in reviews, as necessary.
3. Review compliance findings and State corrective action plans, for adequacy.
4. Track compliance issues across States within the Service Center and report trends, systematic problems, delays, or other concerns to the CDL Division.

**Division Office:** The Division Office will meet and communicate with the SDLA, to review ongoing compliance efforts. The roles listed below are considered minimum requirements. Division Offices may,

at the discretion of the Division Administrator, perform additional monitoring of a State's CDL program and activities. The Division Office will:

1. Observe the CDL issuance process and identify fraud vulnerabilities on an ongoing basis.
2. Communicate with the CDL Division regarding potential non-compliance findings identified during the Division Office's monitoring.
3. Review and monitor the action plan developed by the State to ensure compliance. Verify that the State correctly resolved findings when the action plan is marked as completed in ACRS.
4. Participate in meetings with the State, and coordinate with Service Center CDL Program Manager, to ensure that FMCSA perspective is provided.
5. Monitor new State legislation, regulations, and policy to ensure continuous compliance with Federal regulations, and notify the CDL Division of any potential non-compliance issues;
6. Communicate with the SDLA to ensure the State is aware of upcoming requirements and is working towards continuous compliance.
7. Review AAMVA management reports to monitor the State's data quality, reviewing the data accuracy tabs in the monthly AAMVA Timeliness and Accuracy Summary and Detail Reports, and bringing deficiencies to the State's attention.
8. Monitor the State's convictions and withdrawals, on a quarterly basis, by utilizing AAMVA report CD90.4.1 Out of State Transaction Report. Review at least five major convictions, to determine if the proper disqualification was taken by the State. In addition, review at least one conviction in each of the other report categories.
9. Assist the State in conducting internal reviews and self-reporting on the State's CDL statutory, operational, and data activities.
10. Ensure that the State submits information regarding its CDL activities to FMCSA annually, including transaction data, legislative and operational information, using checklists and other tools to be developed by the CDL Division for this purpose.
11. Ensure that the State submits the State's certification of compliance, annually to FMCSA, prior to January 1 of each year, as required by 384.305.
12. Provide assistance to the State, when required, to develop and implement an action plan, to correct any deficiencies in its CDL activities.
13. Conduct Annual Program Reviews and Skills Test Reviews, per the procedures in this policy.

#### **6.3.8.7 Structure of a State CR Report**

1. Reports will include, at a minimum, the information contained in this section in the following format:
  - a. Introduction,
  - b. Purpose and Scope,
  - c. Compliance Items,
  - d. Findings and Resolutions, and
  - e. Additional Comments
2. The Introductory section of the report will contain the following:
  - a. Reasons for the State CR;
  - b. Review dates;
  - c. The names, title, telephone number, and the agency or governmental unit responsible for the administration of the CDL program. Email addresses are optional;
  - d. The names, title, telephone number, and agency of all State persons present during all or parts of the review; and
  - e. The names, title, telephone number, and agency of review team members.

3. The Purpose and Scope section of the report will contain a brief statement describing the following actions that are performed as part of the review process:
  - a. State laws, regulations, and administrative procedures and practices are reviewed for compliance with the provisions of the Commercial Motor Vehicle Safety Act of 1986, as amended, and the implementing regulations in 49 CFR Parts 383 and 384.
  - b. Recommendations are made to the State on any issues or problems discovered during the review that may affect the State's effective management of the CDL program.
  - c. All administrative and operational procedures and practices are observed, including the administration of knowledge and skills tests to ensure that they are in compliance with 49 CFR Parts 383 and 384.
  - d. The computer and system are reviewed to ensure that driver history records are properly maintained, and the conviction data are transmitted, received, and posted to a driver's record in a timely manner and are accurate and complete.
4. The Compliance Items section of the report will contain the following:
  - a. A general discussion of the actions the State is taking to comply with each of the minimum standards described in 49 CFR Part 384, §§ 201 through 222.
  - b. The discussion of the State's compliance with the standards should include any actions, procedures, or other documentation that were observed or discovered that support the conclusions made in this section.
5. The Findings and Resolutions section of the report will contain the following for each finding:
  - a. Subject/CFR - reference appropriate regulation, order, policy, etc.;
  - b. Findings - should consist of a brief, positive or negative statement of existing conditions;
  - c. Recommendation - describe recommendations made to the State for correction of the finding;
  - d. Resolution - This is the State's response to the findings and resolution; and
  - e. Resolution Date - the date that the State effects the correction or anticipates correction will be implemented. If the resolution involves legislative action, the State should take into account in its response the time periods the legislature will be in session.
  - f. Overall finding - should consist of a statement that the State is or is not in substantial compliance with 49 CFR Part 384. FMCSA requires a State to meet all requirements in order to be considered in substantial compliance.
6. The Additional Comments section of the report is provided for reporting general information or a summary of the report.

#### **6.3.8.8 Time to Submit the Initial CDL CR Report be Submitted**

1. The draft State CR report should be completed by the DA/SD or Program Manager/Specialist as soon as possible, but not later than 30 days following the review. If a computer and system review was also conducted as part of the State CR, the results of this review will be reviewed by the DA/SD and incorporated into the report along with any addition compliance issues that the DA/SD identifies from the computer and system review results. The DA/SD will sign the draft report.
2. The DA/SD or Program Manager/Specialist will submit the draft State CR report to the State Programs Division, Office of Safety Programs, FMCSA, Washington, D.C. for Headquarters concurrence of the finding(s) contained in the report along with copies of the completed CDL Compliance Indicator and all supporting documentation referenced on the Indicator. This process will be followed regardless of whether the DA/SD or Program Manager/Specialist has determined that the State is or is not in substantial compliance with all requirements found in 49 CFR Part 384, Subpart B.

3. Upon receipt of the State CR report from the DA/SD or Program Manager/Specialist, the State Programs Division, Office of Safety Programs, FMCSA, Washington, D. C. will review the report. The Division will also verify that the State has submitted the latest required fiscal year compliance certification.

#### **6.3.8.9 Follow-up Procedures Headquarters Will Follow upon Receipt of a State CDL CR**

1. If the State Programs Division determines that the State has submitted the required certification and concurs with the DA's/SD's or Program Manager/Specialist's finding that the State is in substantial compliance with all of the 49 CFR Part 384 requirements, the State Programs Division will write a memorandum to the DA/SD or Program Manager/Specialist. The memorandum will state the Headquarters concurrence with the finding that the State is in substantial compliance with all 49 CFR Part 384 requirements. The DA/SD or Program Manager/Specialist will write a letter to the head of the State driver-licensing agency advising him or her that the State is in substantial compliance with all 49 CFR Part 384 requirements.
2. If the State Programs Division determines that the State has submitted the required certification and concurs with the DA's/SD's or Program Manager/Specialist's finding that the State has one or more outstanding issues that affect its substantial compliance with 49 CFR Part 384, the State Programs Division will write a memorandum to the DA/SD or Program Manager/Specialist requesting the DA/SD or Program Manager/Specialist to write a letter to the head of the State driver-licensing agency. The DA/SD or Program Manager/Specialist will advise the State that it has one or more outstanding issues that affect its substantial compliance with 49 CFR Part 384. The DA/SD or Program Manager/Specialist will enumerate these issues and ask the State to submit an action plan to the DA/SD or Program Manager/Specialist detailing both how the State will correct the issue(s) and when the State will submit information documenting implemented changes which will bring it into compliance with 49 CFR Part 384.
3. The State will have 30 days to respond to the preliminary determination.
4. If the DA/SD or Program Manager/Specialist advises the State that it has one or more outstanding issues that affect its substantial compliance with 49 CFR Part 384, the State may request, at any time, an informal conference to help resolve the issue(s).
5. The DA/SD or Program Manager/Specialist will review the State response and make a written finding whether the action plan is acceptable.
6. The DA/SD or Program Manager/Specialist will submit an updated draft State CR report that incorporates the State's response and the DA's/SD's or Program Manager/Specialist's finding to the State Programs Division, Office of Safety Programs, FMCSA, Washington, D.C., for Headquarters concurrence within 2 weeks of receipt of the State's response.
7. If the State Programs Division concurs with the DA/SD or Program Manager/Specialist that the State has submitted an acceptable action plan to remedy the one or more outstanding issues, the State Programs Division will write a memorandum to the DA/SD or Program Manager/Specialist. If Headquarters does not accept the State's action plan, Headquarters will so advise the DA/SD or Program Manager/Specialist along with the reason for not accepting it.
8. If the State fails to submit an action plan or fails to provide an acceptable action plan to correct noted compliance issues, the State will be determined not to be in substantial compliance as required by 49 CFR 384.309. The DA/SD or Program Manager/Specialist will notify the State Programs Division in Headquarters of the situation. The Administrator may in coordination with the Federal Highway Administrator take sanctions against the State in accordance with 49 CFR Part 384, Subpart D. If sanctioning action is taken, the Administrator will inform the State in writing of the decision.

9. The DA/SD or Program Manager/Specialist must schedule a State process review within one year after the State CR if the State was required to submit an action plan to either:
  - a. Verify the changes that the State has made to bring it into compliance with 49 CFR Part 384; or
  - b. Document the progress made in coming into compliance if the approved action plan has provided for a period longer than one year to complete the needed changes.

The format for the State process review is the same as the format for the State CR. The Administrator may request a State process review in less than one year in unusual circumstances. The review team is to review only the previous issues that affect the State's substantial compliance with 49 CFR Part 384.
10. The DA/SD or Program Manager/Specialist must review, sign, and submit the State process review to the State Programs Division, Office of Safety Programs, FMCSA, Washington, DC, for Headquarters concurrence of the finding(s) contained in the report.
11. If Headquarters concurs that the State is in substantial compliance, the DA/SD or Program Manager/Specialist will write a letter to the head of the driver-licensing agency stating that the State process review shows that the State is in substantial compliance with 49 CFR Part 384.
12. If Headquarters determines the State is not in substantial compliance, another process review must be conducted by the review team at least yearly until the State is in substantial compliance.
13. If the Administrator determines, based on the results of the process review, that the State is not in substantial compliance within the agreed time period in the action plan, the Administrator may in coordination with the Federal Highway Administrator take sanctions against the State in accordance with 49 CFR Part 384, Subpart D. If sanctioning action is taken, the Administrator will inform the State in writing of the decision.
14. Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

#### **6.3.8.10 CDL System Review**

FMCSA has temporarily suspended comprehensive CRs. However, Division should continue to actively monitor their State's progress towards addressing open findings as indicated in the Automated Compliance Review System (ACRS). The CDL Division at FMCSA Headquarters is preparing a formal policy memorandum that will address the various roles and responsibilities for management of the CDL oversight process in each State. The CDL Division, in coordination with the Eastern SC, is preparing a CDL training course for all Field offices that will assist in the responsibilities established in the policy memorandum.

#### **6.3.8.11 Process of Review of Proposed State CDL Legislation**

- 1). The DA or Program Manager/Specialist will review proposed legislation, make comments and recommendations for proposed changes, if the proposed legislation hinders the State's CDL program compliance or places a significant burden on either the State, CDL holders, CDL applicants, motor carriers, training schools, etc.
- 2). The DA or Program Manager/Specialist will forward the proposed legislation along with the DA's/SD's or Program Manager/Specialist's comments and recommendations to the CDL Division, Office of Safety Programs, FMCSA, Washington, DC.
- 3). The CDL Division will review the proposed legislation and the DAs/SDs or Program Manager/Specialist's comments and recommendations and propose draft changes where

necessary. The CDL Division will forward the proposed legislation to Chief Counsel's Office for further review and final approval.

#### **6.3.8.12 Requirement for Maintaining Correspondence Involved in the State CDL Review Process**

The DA or Program Manager/Specialist will verify that all required documents related to the State compliance have been uploaded to the ACRS.

If the DA or Program Manager/Specialist determines that the State is not in substantial compliance with all requirements of 49 CFR Part 384, the DA Director will send a copy of all correspondence sent to, and received from, the State to the CDL Division, Office of Safety Programs, FMCSA Headquarters and the appropriate FA.

### **6.3.9 General Guidelines for Administration of Crash/HM incident Reporting**

#### **6.3.9.1 Explaining the Requirement to Report a Significant Crash and HM Incident**

Uniform inquiry and reporting guidelines result in timely notification to the Secretary of Transportation and the Administrator of FMCSA of significant CMV crashes and/or significant HM incidents of local, regional, or national significance.

#### **6.3.9.2 Definitions that Apply to Significant Crash and HM Incidents**

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

**Significant HM Incident** - A significant HM incident is defined as: a person is killed; a person has received injuries requiring his or her hospitalization; estimated motor carrier or other property damage exceeds \$50,000; evacuation of the general public occurs lasting one or more hours; one or more major transportation arteries or facilities are closed or shut down for one hour or more; fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material; fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; release of a marine pollutant in a quantity exceeding 450 liters (l) [119 gallons (gal)] for liquids or 400 kilograms (kg) [882 pounds (lb.)] for solids; or a situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that in the judgment of the Division, it should be reported.

#### **6.3.9.3 Roles and Program Responsibilities of the DAs/SDs**

DAs/SDs is required to:

- 1). Establish a network with State agencies for prompt identification and reporting of significant crashes and HM incidents.
- 2). Gather vital information on the significant crash and/or HM incident as promptly as possible.
- 3). Forward initial vital information to Headquarters (HQ) by email, fax, or telephone. If the involved motor carrier is domiciled in a State other than the State in which the accident/incident occurred, the DA/SD of the motor carrier's State of domicile should be notified of the preliminary information simultaneously with HQ. Copy the respective State's FHWA DA and the FMCSA SC on all written communications regarding significant crashes. Service Centers will ensure that appropriate communications with other model offices is accomplished.
- 4). All accident notification must be sent via email to "AHMI" address on Outlook, as well as a copy to the FA in your SC, the DA of the State of domicile for the motor carrier involved (if out-of-

State) and the Emergency Preparedness Coordinator (currently Keith Dixon) in the Emergency Preparedness office in HQ. Keith Dixon can be reached at 202-366-2942.

- 5). Develop your State network and collaborate with other Federal and State agencies to improve the reporting process for the crash and/or HM incident information and timely updating to HQ.
- 6). Provide timely updates to HQ concerning sensitive issues arising from the significant crash.

#### **6.3.9.4 Conducting a Preliminary Crash Investigation (PCI)**

A PCI of a significant crash will be conducted by personnel identified by each DA when:

- a). The actions of the CMV driver may have been a contributing factor to the cause of the crash;
- b). Preliminary finding from officers investigation at the scene or post-crash inspection reveal possible violations of the FMCSR or HMR that existed prior to or at the time of the crash; or
- c). Other factors indicate that further investigation is warranted (e.g., unknown motor carrier, Mexico-domiciled motor carrier).

#### **6.3.9.5 Components of a PCI**

Any PCI activity performed at the crash site will be coordinated with the lead State officer investigating the crash. Cooperation with National Transportation Safety Board investigation activities is mandatory whether FMCSA is present at the scene or not. Additional PCI activity should be conducted at the motor carrier's PPOB or alternate location if necessary. A PCI will consist of the following for the driver and vehicle involved in the crash:

- a). A review of the driver's Qualification File, including CDLIS report, and compliance with the controlled substance testing regulations and
- b). A review of the driver's hours of service (HOS) during the 8-day period prior to and at the time of the crash; and
- c). 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
- d). A review of the Inspection and Maintenance Records for that vehicle, which are required by Part 396 of the FMCSR.

Violations discovered during the PCI should be documented and, if warranted, an enforcement case prepared. Care should be taken to coordinate enforcement case preparation with any enforcement actions contemplated by other Federal, State, or local jurisdictions to avoid duplicating enforcement for the same violations.

The DA has primary responsibility for ensuring that all elements of the PCI and/or investigation are completed. After careful review of the PCI and other relevant information (i.e., Carrier history, L&I compliance, current rating, date of last investigation, etc.), the DA will determine if further action is appropriate (i.e., an Onsite Investigation, enforcement or referral to another agency).

#### **6.3.9.6 Circumstances Under Which an Onsite Investigation is required after the Motor Carrier was involved in a Significant Crash**

An Onsite Investigation will be conducted after a significant crash for the following carrier groups:

- 1). High-risk carriers without an Onsite Investigation in the past nine months;
- 2). Unrated passenger carriers;
- 3). All carriers with less than satisfactory ratings without an Onsite Investigation in nine months;
- 4). Carriers that meet or exceed the BASIC Intervention Thresholds and driver or vehicle violations discovered during the PCI. An Onsite Investigation may be conducted in other situations when the DA, in the exercise of his or her discretion, determines that a significant crash merits an

Onsite Investigation. Where guidance is required, the DA will consult with their FA to determine the best course of action.

### **6.3.9.7 Responsibilities of the DA/SD after the Crash Occurs**

The DA/SD has primary responsibility for ensuring that all elements of the PCI and/or investigation are completed. Possible sources for assistance or information include his or her staff, the Service Centers, and/or State and local agencies.

### **6.3.9.8 Form that Significant Crashes and HM Incidents Should be Reported On**

All significant crashes and HM incidents must be reported on the form in Appendix A of this section.

### **6.3.9.9 Appendix A: Crash/HM Incident Notification Report**

Download PDF Form: Crash/HM Incident Notification Report

WHY IS THIS A SIGNIFICANT CRASH/HM INCIDENT?

TYPE OF CRASH/HM INCIDENT (Passenger, HM, Railroad Grade Crossing, Work Zone, etc.):

LOCATION OF CRASH/HM INCIDENT (State/City/County/Route/Milepost/ Railroad, etc.):

DATE AND TIME OF CRASH/HM INCIDENT:

NUMBER OF INJURIES/FATALITIES:

DESCRIPTION OF CRASH/HM INCIDENT:

WEATHER AND ROAD CONDITIONS:

CARRIER(S) INVOLVED (Name, Address, City, State, Telephone #, DOT #, Current Rating, date of last contact and any additional information that the Division Administrator deems appropriate):

VEHICLE(S) INVOLVED (By number and type of configuration, e.g., Tractor & Trailer, Tractor & Cargo Tank, Straight Truck, etc.):

DRIVER INFORMATION (Include driving record and additional information which the Division Administrator deems appropriate):

HM INVOLVED (Type and Extent):

INVESTIGATING AGENCIES (Federal, State, Local, NTSB, etc.):

REPORTING OR ASSIGNED DIVISION ADMINISTRATOR (Name, Telephone #, name of on-site investigator, and cell phone #):

STATUS OF INVESTIGATION (Keep headquarters advised of the situation):

CARRIER OPERATION (Interstate vs. Intrastate):

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

## 6.3.10 General Guidelines for Emergency Relief

### 6.3.10.1 FMCSA's Policy on Emergency Relief

In accordance with 49 CFR 390.23 certain motor carriers are exempt from 49 CFR parts 390 through 399 if an emergency, as defined in 49 CFR 390.5, is declared by FMCSA or a governmental jurisdiction. Please note that a fuel shortage due to high demand and other economic issues does not generally constitute an emergency without extenuating circumstances, such as a winter storm that interrupts deliveries and/or evidence that human life is threatened.

The authority within FMCSA to issue emergency exemptions pursuant to 49 CFR 390.23 rests with the Field Administrators in the four Service Centers. Field Administrators should consult with the appropriate Division Administrator(s) or State Director(s) prior to issuing emergency exemptions.

Field Administrators (FAs) and DAs/SDs should establish a communication system with appropriate State agencies in their respective SC areas/States to validate the existence of an emergency and determine the best course of action.

Once it is determined that an emergency exists, every effort should be made by the FA or DA/SD to encourage the appropriate State agency to seek an emergency or disaster declaration from the Governor (or designated representative).

If the Governor (or designated representative) issues a disaster or emergency declaration under § 390.23, motor carriers providing emergency relief are automatically exempt from 49 CFR parts 390 through 399 pursuant to 49 CFR 390.23. In this case, FMCSA should not issue an emergency exemption.

If the Governor (or designated representative) does not issue an emergency declaration, the FA may issue an emergency exemption in accordance with these instructions.

If an emergency is declared under § 390.23 by FMCSA or a State, the emergency exemption extends to all interstate motor carriers/drivers that are providing direct assistance in supporting the emergency relief effort even when operating outside the State or area in which the emergency exists. Emergencies declared under § 390.23 provide no exemptions for intrastate motor carriers. Exemptions for intrastate motor carriers must be issued by the appropriate State agency.

### 6.3.10.2 FMCSA's Definition of an Emergency

FMCSA defines an emergency as any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mudslide, drought, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts the delivery of essential services (such as electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

- 1). A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA FA for the geographical area in which the occurrence happens; or by the Federal, State, or local government officials having authority to declare emergencies, or
- 2). A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

### 6.3.10.3 The Two Types of Emergency Exemptions

There are two types of emergency exemptions:

- Regional Emergencies - This category includes State emergencies or disasters declared by the Governor (or designated representative); single- or multiple-State emergencies declared by the President of the United States; and single- or multiple-State emergencies declared by FMCSA.

Exemptions issued for “regional” or State emergencies are good for a maximum of 30 days (unless extended).

- **Local Emergencies** - This category includes emergencies declared by Federal, State, or local government officials having the authority to declare an emergency; or by FMCSA determining that a local emergency exists (e.g., extensive tornado damage within a localized area). Exemptions issued for local emergencies are good for a maximum of 5 days from the date of issue or effective date of emergency declaration by the State or local official, or the duration of the motor carrier’s direct assistance in providing emergency relief.

#### **6.3.10.4 Emergency Exemption Procedures for Governor- or State-Declared Emergencies**

Once a Governor (or designated representative) has issued a disaster or emergency declaration under 49 CFR 390.23, the FA should send an email message to all Divisions, Service Centers, and FMCSA Headquarters informing them of the emergency declaration. Reference the applicable official State declaration.

#### **6.3.10.5 Emergency Exemption Procedures for FMCSA-Declared Emergencies**

Requests for emergency exemptions must be in writing. They may be received via mail, fax, or electronic mail. Once an initial request is received, the FA involved should make every effort to confirm the existence of an emergency situation by contacting the appropriate DA/SD, State agencies, and other organizations.

If the State or local jurisdiction does not issue an emergency or disaster declaration, the FA must make a decision whether to issue an emergency exemption.

The decision to issue an exemption should be based on the best available information obtained from motor carriers, motor carrier associations, weather services, State agencies, and industry representatives (e.g., Propane Gas Assn.). Factors should include weather and road conditions that interrupt the delivery of essential services or essential supplies or otherwise immediately threaten human life or public welfare and safety. Severe cold weather and/or economic concerns alone do not necessitate the declaration of an emergency. The FA should maintain documentation (e.g., records of telephone conversations) supporting his or her decision to grant or deny the request(s).

Once it is determined that an emergency exists and there is a need for an emergency exemption, the FA will issue an emergency exemption similar to the examples in Illustrations 8-1 and 8-2. Time periods may be different depending on the type of emergency exemption (regional or local). If it is determined that an emergency does not exist, the FA should notify the applicant in writing.

Motor carriers should be notified that a copy of the exemption should be, to the extent possible, carried in each vehicle operating pursuant to the exemption. Although this is not required, it can avoid problems with roadside inspectors and State enforcement personnel and is to the motor carrier’s benefit.

Emergency exemptions may not be issued to or used by motor carriers that are under an Operations OOS Order, including passenger carriers under an HM/Passenger OOS Order.

If an extension of the emergency exemption is necessary the FA may issue one similar to Illustration 8-3. Extensions are only allowed for “regional” exemptions pursuant to 49 CFR 390.25.

The FA should send a copy of the exemption to all Divisions, Service Centers, and FMCSA Headquarters. Divisions should in turn provide a copy to the MCSAP agency.

#### **6.3.10.6 The Motor Carrier’s Responsibility as it Relates to Emergency Exemptions**

The exemption pursuant to 49 CFR 390.23 only applies when the motor carrier is providing direct assistance to the emergency relief effort. Direct assistance terminates when a driver or CMV is used in interstate commerce to transport cargo not destined for the emergency relief effort or when the motor

carrier dispatches such driver to another location to begin operations in commerce. Upon termination of support for this emergency, a motor carrier may not permit a driver to drive until he/she has met the requirements of § 395.3(a) and the driver has had at least 34 consecutive hours off duty when the driver has been on duty more than 60 hours in the previous 7 days or more than 70 hours in the previous 8 days.

#### **6.3.10.7 Procedures for Investigations on Motor Carriers Who Participate in Emergency Relief Efforts**

If an investigation is conducted on a motor carrier as a result of the FMCSA selection process, and it is suspected that the motor carrier may have operated pursuant to an emergency exemption, the investigator should ask the motor carrier for a list of drivers operating under the exemption and ensure that the exemption was not used for operations other than in direct support of the emergency assistance. The investigator must not cite the carrier or driver for what would have otherwise been a violation of the regulations for those drivers operating under the exemption.

#### **6.3.10.8 Declaration of Emergency Notice**

Please see the current [Declaration of Emergency Notice](#).

#### **6.3.11 Procedures for Capturing Outreach Efforts for IEPs**

FMCSA will continue to provide education and outreach to the intermodal industry and will familiarize itself with the industry as a whole. The industry is dynamic and is dependent upon interdependencies among IEPs and motor carriers and involves various entities including port authorities, public and private terminal operators, steamship lines, railroads, and third-party service providers. As such, our education and outreach efforts will be geared toward educating IEPs on the rules. We will capture information on our outreach efforts so that we may document the extent of our efforts to Congress and oversight agencies.

##### ***Educating IEPs on the New Requirements of the Rule***

FMCSA has been and will continue to be called upon to provide information on the requirements of the IEP rule to interested parties. The DAs/SD or designees are asked to continue to present the regulatory information to the industry using the presentation in the memorandum titled “Information: New Entrant Safety Assurance Process and Requirements for Intermodal Providers and for Motor Carriers and Drivers Operating Intermodal Equipment Final Rules.” The presentation should help IEPs better understand their responsibility to comply with the applicable regulations.

IEPs, motor carriers, and drivers may visit <http://www.fmcsa.dot.gov/rules-regulations/topics/IEP/index.htm> to retrieve updated information on the IEP rule.

The Maritime Administration (MARAD) produces a glossary of shipping terms that may prove helpful in your understanding of the intermodal industry. The glossary of shipping terms can be found on MARAD’s website ([http://www.marad.dot.gov/documents/Glossary\\_final.pdf](http://www.marad.dot.gov/documents/Glossary_final.pdf)).

##### ***Capturing Our Outreach Efforts***

In an effort to provide interested parties with an update on FMCSA’s IEP outreach efforts, the number of contacts (e.g., presentations, workshops, seminars, brochure dissemination) and the number of persons in attendance or affected will be reported. With this information, FMCSA will be able to report how many individuals have been educated on the new IEP rule.

All previous and future contact details should be entered in GOTHAM located on the FMCSA Portal. Personnel entering the contacts must have “GOTHAM Roster Data Entry” rights to access the data entry tool. Staff who does not currently have these rights should request them. Future contacts should be placed in the systems as contacts are completed. To access the Portal, you should follow these steps:

- 1). Go to the FMCSA Portal (<https://portal.fmcsa.dot.gov>).

- 2). Click on “A&I.”
- 3). Under “FMCSA Tools,” click on “GOTHAM Reports.”
- 4). In the bottom left of the screen, click on “Data Input Forms.”
- 5). Click on “Outreach Efforts.”
- 6). Complete the data entry field.

# Mexico-Domiciled Motor Carrier Manual

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**



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## 7.0 Mexico-Domiciled Motor Carrier Manual

### 7.1 Procedures for Mexico-Domiciled Long-Haul Carriers

The procedures contained in this Manual currently address Mexico-domiciled long-haul carrier activities only, and only as the procedures differ from standard procedures found in current eFOTM manuals. The Manual does NOT seek to replace or repeat content in the eFOTM Safety Audit Manual, Compliance Review Manual, Inspection Manual, Enforcement Manual, or Managers Manual. Rather, the content refers the reader back to the relevant eFOTM manuals and their provisions when standard procedures are to be followed.

The intent of North American Borders Division (MC-ESB) is to expand this manual as additional policies are developed, modified, and implemented. The intent also is to include commercial-zone carrier operational procedures, again, as they differ from standard procedures found in existing eFOTM manuals.

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.

MC-ESB welcomes comments and critiques that seek to improve the relevance, accuracy, and reliability of the content.

#### 7.1.1 Applicable Definitions

##### 7.1.1.1 Operating Authority

Mexico-domiciled motor carriers seeking long-haul operating authority first obtain “**provisional operating authority.**” That provisional operating authority lasts a minimum of 18 months. Toward the end of that 18-month period (preferably at the 16<sup>th</sup> month), the Mexico-domiciled motor carrier undergoes a compliance review before receiving “**standard operating authority.**” The compliance review must result in a SATISFACTORY rating. If the compliance review results in a CONDITIONAL or UNSATISFACTORY rating, the Mexico-domiciled motor carrier must satisfactorily complete a CAP that results in an upgrade to a SAT rating before obtaining standard operating authority.

##### 7.1.1.2 Limitations on Operating Authority

Unless grandfathered as a long-haul motor carrier, Mexico-domiciled long-haul carriers have the following limitations specified in their authority certificates:

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

- Deem the carrier to be operating beyond the scope of its operating authority,
- Cite for a violation of 49 CFR §392.9a(a)(2), and
- Place 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.

## **7.2 Mexico-Domiciled Long-Haul Carrier Security Vetting**

### **7.2.1 Mexico-Domiciled Long-Haul Security Vetting Conducted Prior to PASA**

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 not a security risk.

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.

MC-ECC will initiate the security review upon notification from the Office of Registration and Safety Information, West and Midwest Division (MC-RSW) that a complete application is available in the Electronic Document Management System (EDMS).

### **7.2.2 Mexico-Domiciled Long-Haul Carrier Vetting Procedures**

- MC-RSW notifies MC-ECC of the availability of a completed OP-1(MX) application posted to and available in EDMS.
  - MC-RSW 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.

### **7.3 Safety Audit on Mexico-Domiciled Long-Haul Carrier**

#### **7.3.1 Security Vetting of Mexico-Domiciled Long-Haul Carrier Completed**

MC-ECC completes the security vetting and notifies the Western Service Center of the application availability in the Electronic Document Management System (EDMS).

#### **7.3.2 Safety Vetting of Mexico-Domiciled Long-Haul Carrier Applicant**

The Western Service Center (WSC) designee and Division Office conduct the safety vetting reviewing documentation and the Safety Vetting Verification Form:

1. The OP-1(MX) application to verify the status of the motor carrier's US DOT number and Motor Carrier Docket Number (operating authority), if appropriate.
2. MCMIS and 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 commercial-zone operating authority.
4. The applicant's SMS BASICS to determine if the motor carrier is classified as high-risk. To determine high-risk:
  - a. Log on to SMS online through the Portal;
  - b. Enter the carrier's USDOT number
  - c. Click on "Carrier History" on the bottom right of the carrier main page;
  - d. View the current "High Risk Indicator" field.
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 eFOTM Compliance Review Manual if the applicant meets either of the following:
  - a. The applicant has any one BASIC at or above the 90<sup>th</sup> percentile, unless the BASIC is Driver Fitness and the only violations causing the Driver Fitness BASIC to exceed the threshold is related to English Language Proficiency; or
  - b. The applicant has two or more BASICS at or above the 80<sup>th</sup> percentile regardless of the BASIC.
  - c. If a CR is deemed necessary, the Safety Investigator should:
    - i. Perform the CR simultaneously with the PASA;

- ii. Conduct the safety audits on-site at the motor carrier’s principal place of business or off-site, but in either case, the CR must be conducted at the same location as the PASA; and
  - iii. Follow the sampling criteria for drivers and vehicles ([Parts 393 & 396 - Parts, Accessories and Inspection, Repair, Maintenance](#)) as required in the eFOTM.
6. Results from any previous safety audit or compliance review, 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, the WSC designee should recommend dismissal of the application to the Chief of the North American Borders Division (MC-ESB).
  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, or settled or closed during the prior six years.
  8. A Data Analysis and Reports Team (DART) Report to determine whether:
    - a. An applicant with an existing OP-2 commercial zone (CZ) Certificate of Registration has operated beyond its CZ authority within the past 12 months;
    - b. The applicant is affiliated with an Enterprise carrier:
      - i. Where both carriers have used a common vehicle that operated beyond the CZ, or
      - ii. The Enterprise carrier lacks a legitimate Principal Place of Business (PPOB)<sup>1</sup> in the United States and there is evidence the applicant’s CMVs have been used beyond the CZ; or
      - iii. Identified as having compliance, enforcement and/or performance history (high SMS, COND/UNSAT, unpaid fine, enforcement during the prior six years).
  9. A New Applicant Screening (NAS) report on the applicant to determine whether the applicant is a potential “chameleon carrier” within the FMCSA past and present carrier population during the prior six years.

If, during the items 1-9 document reviews outlined above, the Safety Auditor discovers any statutory or regulatory violations, the WSC designee should follow the guidance below:

Vetting Issue	Process
Operating beyond the scope of the carrier’s OP-2 Authority	If the violation occurred <b>AFTER</b> the OP-1 (MX) application was submitted, recommend dismissal of the application to the Chief of MC-ESB. If the violation occurred <b>BEFORE</b> the OP-1(MX) application was submitted, consider enforcement action consistent with FMCSA policy.
Conditional or Unsatisfactory safety rating	Recommend dismissal of the application to the Chief of MC-ESB.

<sup>1</sup> See Policy Memorandum: Principal Place of Business Requirements (MC-ECS-2012-0007) dated Oct. 31, 2012.

Unpaid delinquent penalties or enforcement activity	Forward the applicant's information to the appropriate Division Office to proceed with the PASA. If the motor carrier passes the PASA, ensure that the unpaid penalty is resolved.
Affiliation violation – Enterprise carrier and vehicles used by both carriers have operated beyond the CZ	Notify WSC management and then contact the Chief of MC-ESB to discuss and determine next steps.
Affiliation violation – Enterprise carrier that does not or may not meet the PPOB definition, and there is no evidence that the applicant's vehicles have been operated beyond the CZ	<u>Applicant:</u> If there is no evidence that the applicant's vehicles were being used by the Enterprise carrier, forward the applicant's information to the appropriate Division Office to proceed with the PASA. <u>Enterprise Carrier:</u> Contact the appropriate Division Office and advise them of the improper or inadequate PPOB discovery, and advise the Division Office to follow the PPOB policy See Policy MC-ESC-2012-0007 and initiate enforcement action, as appropriate.
Affiliation violation – Affiliated with a carrier identified as having compliance, enforcement and/or performance history (high SMS, COND/UNSAT, unpaid fine, enforcement in the past 12 months).	<u>Applicant:</u> Forward the applicant's information to the appropriate Division Office to proceed with the PASA. If the applicant passes the PASA, advise the Chief of MC-ESB to process the application. <u>Affiliated Carrier:</u> Consult with the Division Office and WSC Legal Counsel concerning appropriate intervention on the affiliated carrier.

### 7.3.2.1 Results of Safety Vetting of Mexico-Domiciled Long-Haul Carrier Applicant

The WSC designee makes a recommendation to the WSC management and Chief of MC-ESB on whether a PASA (and, if the high-risk threshold is met, a CR) should be scheduled, or the application be dismissed after reviewing and documenting the information collected through the processes listed in items 1 through 9 on the [Safety Vetting Verification Form](#). The WSC designee makes the recommendation to schedule a PASA directly to WSC management and the appropriate Division Office, with a courtesy copy to the Chief of MC-ESB. The WSC designee makes the recommendation to dismiss the application to the Chief of MC-ESB with a courtesy copy to WSC management.

The WSC designee provides the completed [Safety Vetting Verification Form](#) to the WSC Regional Field Administrator, the WSC Field Administrator, and Service Center Director and uploads the document into EDMS.

Upon approval of a PASA (and CR) scheduling, 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 section and the documents/forms in the Appendix unless directed to refer to the eFOTM.**

### 7.3.3 Safety Audit on Mexico-Domiciled Long-Haul Applicant: The Pre-Authorization Safety Audit

#### 7.3.3.1 Introduction

In lieu of a New Entrant Safety Audit, Mexico-domiciled motor carriers seeking long-haul operating authority must undergo a pre-authorization safety audit (PASA). This section provides guidance to FMCSA staff on the processes and procedures for conducting a PASA on these applicant motor carriers.

The PASA process is a comprehensive review of the applicant motor carrier's safety management systems, addressing the motor carrier's current performance and past history, including prior safety audits and investigations, previous enforcement actions, and roadside inspections. The PASA must document any past or current affiliations with other FMCSA regulated entities. The process ensures that reviewers and approvers have all available and necessary information to determine whether the motor carrier passed the PASA, and should be granted provisional authority to operate in long-haul transportation. Rather than using SENTRI, the PASA process uses the Compliance Analysis and Performance Review Information (CAPRI) software, and a required document review during the PASA. Differences are noted throughout this section.

Appendix A to Subpart E of 49 CFR Part 365 specifies nine elements that FMCSA must include in the PASA, a specific group of five of which (in bold face, below) are required for the motor carrier to successfully pass the PASA. If FMCSA cannot verify each of the five specified elements and confirm the motor carrier has basic safety management controls in place, the motor carrier will fail the PASA.

The nine elements that must be included are:

1. Verification of available performance data and safety management programs.
2. **Verification of a controlled substances and alcohol testing program consistent with Part 40.**
3. **Verification of the carrier's system of compliance with hours-of-service rules in Part 395, including recordkeeping and retention.**
4. **Verification of proof of financial responsibility.**
5. Review of available data concerning the carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with the FMCSRs Parts 382-399 and the FHMRs Parts 171-180.
6. Inspection of available commercial motor vehicles to be used under provisional operating authority, if any of these vehicles have not received a CVSA decal (required by Sec. 385.103(d)).
7. **Evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections.**
8. **Verification of drivers' qualifications, including confirmation of the validity of the Licencia Federal de Conductor of each driver the carrier intends to assign to operate under its provisional authority.**

9. An interview of carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

**NOTE:** Verification elements 2, 3, 4, 7, and 8, above, that are **highlighted** are REQUIRED for the Mexico-domiciled long-haul applicant to successfully pass the PASA; they are alternately known as the “five mandatory elements.” If a Safety Auditor cannot verify each of the five specified elements and confirm that the motor carrier has basic safety management controls in place, the applicant MUST fail the PASA.

### 7.3.3.2 PASA Process – Initial Procedures/Contact and Scheduling

#### **PASA Assignment/Location**

The location of the PASA depends on two distinct factors: (1) the safety of travel in and about the carrier’s location in Mexico, 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 determine whether the PASA should be conducted in Mexico or the United States.

MC-ECC conducts a security check through the State Department on the specific location in Mexico concerning the safety of travel to and within the particular area. If travel in Mexico is approved, the Safety Auditor should discuss the PASA location with the Division Administrator and WSC designee, remembering that the Agency is currently required to complete 50 percent of the PASAs in Mexico for motor carriers with four or more CMVs and taking into consideration the Safety Auditor’s personal safety.

If MC-ECC advises 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, after consulting with the WSC management, makes the final decision on the location of the PASA. The WSC designee will keep a spreadsheet listing the audits and CRs conducted in Mexico and in the United States, including whether the carrier operates three or fewer commercial vehicles.<sup>2</sup>

#### **Scheduling the PASA and Contact with the Motor Carrier**

The assigned Safety Auditor uses the Safety Vetting Verification Form and the MCMIS company safety profile to become familiar with the motor carrier’s operations and any potential safety or compliance problems, 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 the PASA Contact and Scheduling Documentation Form. The Safety Auditor should work with the motor carrier to establish the date, time, and location of the PASA. Advise the company official

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<sup>2</sup> 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.

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. Any and all correspondence must be addressed to the company's owner and/or highest ranking official. Correspondence to the motor carrier must be sent to both the motor carrier and its process agent 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 the [PASA Contact and Scheduling Documentation Form](#) 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.

In 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 five mandatory elements:

1. A controlled substance and alcohol testing program has been or will be implemented;
2. The requirement for the driver(s) intended to be used in the United States to comply with the hours of service (HOS) requirements, including record keeping and retention of records;
3. The motor carrier's ability to obtain financial responsibility, including the ability to obtain insurance in the United States;
4. The implementation of the motor carrier's Safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections it intends to use in the United States; and
5. Each driver's qualifications, including confirmation of the validity of the Licencia Federal de Conductor (LF) of each driver.

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 inform the motor carrier to be prepared to discuss and explain, high SMS scores, previous enforcement actions, insurance lapses, 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, the completed [Safety Vetting Verification Form](#), the completed [PASA Contact and Scheduling Documentation Form](#), including documents supporting the information listed in those forms, such as MCMIS reports and carrier letters or emails.

### **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 and provides a legitimate reason for missing the scheduled PASA 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.

If the motor carrier fails to contact the Safety Auditor to reschedule the PASA, the Safety Auditor should make three attempts to contact the motor carrier and document those attempts in the Safety Audit Refusal (SAR) screen in MCMIS.

The Safety Auditor should enter the date of the initial contact to schedule the PASA as the first attempt in the SAR screen. The second attempt in the SAR screen should be entered as the date the Safety Auditor attempted to reschedule the PASA. Finally, all methods used for the final contact attempt should be noted in the SAR screen. For example, “contact attempts were telephone, cell, fax and email.” During the final contact attempt(s), the Safety Auditor should communicate, if possible, by voice mail, email or fax, that this is FMCSA’s final contact attempt and that the motor carrier must notify FMCSA within 5 business days or its application will be dismissed.

### **Conducting the PASA Using CAPRI**

The PASA process results in either a Pass or Fail outcome.

To pass, the PASA must verify that the motor carrier has satisfied each of the five mandatory elements of Appendix A to Part 365 and that the motor has adequate basic safety management controls.

The Safety Auditor confirms compliance with the five mandatory elements and determines whether basic safety management controls exist through the following process:

1. The verification procedures for each mandatory element outlined below; and
2. Answering the PASA Part B questions in accordance with the guidance in the [PASA-CAPRI Question and Answer Guidance](#).

The Safety Auditor completes the PASA by reviewing the motor carrier’s performance data and regulatory compliance, and recording the results using the CAPRI software. Through this process, the Safety Auditor will evaluate the motor carrier’s safety management controls and any available written safety oversight policies and practices.

#### **7.3.3.3 Completing Part A of the Audit**

The Safety Auditor should complete Part A as follows:

1. **Mileage** - For all motor carriers, enter the total mileage: (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.
2. **Gross Revenue** - For motor carriers that have not begun operations, enter gross revenue as zero. For motor carriers that currently operate in the United States, follow the eFOTM Safety Audit Manual, “Completing Part A of the Audit” guidance when entering the gross revenue.
    - Remember to convert foreign currency to U.S. dollars.
  3. **Equipment** – Record the total number of CMVs the motor carrier intends to operate in the United States (including CMVs used exclusively in the commercial zone) with the exception of trip-leased vehicles (<30 days).<sup>3</sup> For trip-leased vehicles, enter an average number of trip-leased vehicles per month the motor carrier intends to operate in the United States. Safety Auditors must advise motor carriers that all CMVs must meet the CMV definition in 49 CFR § 390.5 (i.e. Gross Vehicle Weight Rating (GVWR) of 10,001 lb. or more).
  4. **Drivers** – Record the total number of drivers the motor carrier intends to have operating CMVs in the United States (including driver(s) used exclusively in the commercial zone).
  5. **Crashes** – For all motor carriers, enter 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, 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).
  6. **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.

### 7.3.3.4 PASA Process – Verification of the Five Mandatory Elements and Completing Part B in CAPRI

#### 7.3.3.4.1 PASA Process – Verification of the Five Mandatory Elements and Completing Part B in CAPRI

The Safety Auditor must confirm the five mandatory elements and determine that basic safety management controls are in place by:

1. Following the verification procedures for each element outlined below; and
2. Answering the PASA Part B questions in accordance with the guidance in the [PASA-CAPRI Questions and Answers Guidance](#) (Attachment 3).

To ensure the five mandatory elements are met, the Safety Auditor will follow the CAPRI procedures, as outlined in the most current version of CAPRI, and the [eFOTM instructions](#) for conducting a safety audit, **except** as outlined below or in the [PASA-CAPRI Questions and Answers Guidance](#). However, **disregard** CAPRI or eFOTM guidance concerning circumstances that require the Safety Auditor to stop the safety audit and conduct a CR. Instead, continue the safety audit and bring the issue to the attention of your supervisor.

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<sup>3</sup> Auditors should enter the data for all the vehicles the motor carrier has in Part C.

### 7.3.3.4.2 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?*

To answer, fill out the CAPRI PASA questions following the New Entrant Safety Audit sampling guidance in Part 382 of the eFOTM Safety Audit Manual and use the following guidance.

- **If the carrier has not yet operated into the United States, but will be using drivers with an LF in the United States**, answer Driver Question #6 (*Has the carrier implemented an alcohol and/or controlled substances testing program?*) as “Yes,” after reviewing the four items listed below, and finding adequate proof of implementation and, thus, demonstrated compliance with 49 CFR Parts 40 and 382.
  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.<sup>4</sup>
  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:
  1. Check all drivers who have been or will be operating in the United States (including commercial zone) and are subject to Part 382, to determine whether they are currently enrolled in the company’s random controlled substance and alcohol testing program.
  2. If drivers are not currently enrolled, 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):**
  1. Mark this element as **pending** on the Five Mandatory Element Verification Checklist.
  2. Advise the motor carrier that it will be notified at a later date if any deficiencies are discovered.

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<sup>4</sup> 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.

### 7.3.3.4.3 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?*

To answer, fill out the CAPRI safety audit and follow 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. Print-out from 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, review 30 days of RODS per driver following the New Entrant Safety Audit 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 U.S.;
  2. A company policy or other information demonstrating adoption of this requirement; or
  3. Training material provided to the drivers.

### 7.3.3.4.4 PASA Process – Mandatory Element III – Insurance

**Section 350 – Mandatory Element Question:** *Does the carrier have proof of insurance?*

To answer, fill out the CAPRI safety audit and follow New Entrant Safety Audit guidance in Part 387 of the eFOTM Safety Audit Manual and using the following guidance.

- 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.
- If the motor carrier does not already have an adequate level of term insurance and an MCS-90, or an agreement from an approved U.S.-based insurance company, obtain documentation from the motor carrier identifying the insurance company name, address, telephone number and policy number (if available) of the anticipated insurance provider, establishing the motor carrier’s ability to obtain the required level of financial

responsibility upon the grant of provisional operating authority. Verify the insurance information, including policy expiration or renewal dates (if applicable), by contacting the insurance company provided by the motor carrier.

- Inform the motor carrier that acceptable documentation consists of proof of an adequate level of financial responsibility or a letter from a qualifying insurance company offering to insure the carrier upon approval of its application.
  - Absent these documents, the carrier will not pass the PASA and will not be granted authority until acceptable proof of adequate financial responsibility is on file with FMCSA<sup>5</sup>.
  - Mark this element as **pending** on the Five Mandatory Elements Verification checklist until it can be verified. If approved for operating authority, 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 operating long-haul 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 on file with FMCSA, at the time of transportation.
- If the motor carrier has current operations and no trip insurance information and MCS-90 available, this should be cited as a violation when answering the questions in Part B (Part 387 – Question 1 – *Does the carrier have required minimum levels of financial responsibility in effect?*) and noted as an issue in Part C of the PASA.

#### 7.3.3.4.5 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?*

To answer, fill out the CAPRI safety audit, follow the New Entrant Safety Audit sampling criteria guidance in Part 396 of the eFOTM Safety Audit Manual where indicated, and use the following guidance:

- Advise the motor carrier that all vehicles 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 thereafter.
- Verify inspection of available CMVs to be used in the United States for long-haul operations that do not have a current CVSA safety decal. The motor carrier must establish, in writing, which of its vehicles the motor carrier will use in the United States

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<sup>5</sup> 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 and Safety Information, West and Midwest division (MC-RSW) will verify the appropriate insurance filing is submitted and accepted before the motor carrier will be granted provisional authority to operate.

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.
- Inspect all available vehicles that do not have a current CVSA safety decal and that the motor carrier intends to use in the United States for long-haul operations.
  - The inspection report should note the vehicle type, make, year, and license plate number, state that issued the license plate, VIN and whether or not the vehicle displays a current CVSA safety decal.
  - The vehicle information, in conjunction with the CAPRI information, should be used to evaluate the motor carrier's CMV safety inspection and maintenance management systems, including verification of periodic vehicle inspection records.
- Review at least one of the following documents for each CMV to be used in the United States in long-haul operations:
  - Periodic inspection report(s); Federal or State inspection reports with CVSA decal information, or
  - Inspection reports from Mexico's Secretaria de Comunicaciones y Transportes (SCT) (**If determined to be equivalent to a periodic inspection by FMCSA**)
- Conduct all vehicle inspections using the ASPEN inspection software. The vehicle inspection report must include:
  - The proper level of inspection and designation of "PASA Inspection" in the Special Check field on the Start tab; and
  - 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 municipalities and commercial zones, verify that the motor carrier is using the "Z" suffix after the USDOT number.
  - The Safety Auditor should explain that if the commercial zone motor carrier is granted provisional long-haul authority, 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 they intend to use only within the commercial zone.
- 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.
- Provide a copy of the signed inspection report to the applicant motor carrier.
- Upload the PASA vehicle inspections conducted **into EDMS but not into SAFER**.
- Use the New Entrant Safety Audit sampling criteria guidance in Part 396 of the eFOTM Safety Audit Manual to answer the following questions:

- **CAPRI Maintenance Question #1** - *Can the carrier produce maintenance files for requested vehicle(s)?*
- **CAPRI Maintenance Question #3** - *Does the motor carrier require driver(s) to complete Driver Vehicle Inspection Reports (DVIR)?* When reviewing DVIRs, please remember that no DVIR is required for days where the driver discovered no defect.

#### 7.3.3.4.6 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?*

To answer, fill out the CAPRI safety audit and use 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, in writing, 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 of license issuance. Upload the driver information into EDMS.
- **Disregard the “sampling” criteria guidance in Part 383 and Part 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) on each driver to determine if the driver has offenses that would disqualify him/her from operating in the United States for the period of time defined in the 49 CFR Part 383.51 disqualification tables.
- **CAPRI Driver Question #4** – *Is the carrier using any disqualified drivers?* If the carrier is **using** LF drivers in the United States and one or more of those drivers has a disqualifying offense on his/her record that would preclude him/her from operating a CMV in the United States (see 49 CFR § 383.51), answer the question with a “yes.” If the carrier **plans to use** an LF driver in the United States who has an offense on his/her record that would disqualify him/her from driving a CMV in the United States, answer the question “no” but advise the carrier that it may not use that driver in the United States, while that disqualifying offense is on his/her record.
- **CAPRI Driver Question #5** – *Does the carrier maintain driver and employment history inquiry data in the Driver Qualification (DQ) file?* The Safety Auditor should determine whether the motor carrier has obtained driving records from Mexico's SCT (and the Mexico State of licensure, if applicable). Any available results should be reviewed. If the motor carrier is unable to obtain driving records for its drivers, the Safety Auditor should answer the question with a “No,” and note this in Part C. Be aware that for LF drivers, a copy of the LF in the driver qualification file is proof of a medical examiner's certification. Medical examination reports from SCT are not required.
- If the motor carrier uses or intends to use a driver in the United States who has repeatedly been cited with violations of 49 CFR § 391.11(b) (2), (e.g., Lack of English Proficiency), the Safety Auditor should advise the motor carrier of the necessary level of English

Language Proficiency, as outlined in 391.11(b)(2), required for driving a CMV in the United States.

- For motor carriers with existing operations that employ a driver as a multiple-employer driver (as defined by 49 CFR 390.5), the applicant may be permitted to use the multiple-employer driver exemption under 49 CFR 391.63. This should be documented with a signed statement from the motor carrier.
- For motor carriers who use drivers who operate in the United States with a Mexican state license rather than an LF or CDL,<sup>6</sup> request the motor carrier to identify: (1) drivers who will be operating vehicles between 10,001 pounds and 26,000 pounds GVWR; and (2) drivers who will be operating vehicles 26,001 pounds GVWR and greater.
  - Advise the motor carrier that drivers operating vehicles over 26,000 GVWR in the U.S. must have an LF.
- Ensure that the motor carrier driver files are maintained in accordance with Section 391.51 with special attention given to the following items:
  - The minimum 21 years old age requirement; and
  - Medical Examiner's Certificate. For LF drivers, the LF in the driver qualification file is proof of a medical examiner's certification. Medical examination reports from SCT are not required. However, carriers using drivers with a Mexican state-granted license, to operate a vehicle under 26,000 pounds in the United States, are required to have a Medical Examiner's Certificate from a qualified Mexican 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 Five Mandatory Element Verification Checklist until it can be verified. Advise the motor carrier that they will be notified at a later date if any deficiencies are noted.
- The Safety Auditor should examine the company safety profile to determine whether drivers that the motor carrier uses or intends to use in the United States have prior Part 392 violations. If such safety-related violations exist for these drivers, thoroughly review Part 392 procedures with the motor carrier, paying special attention to the safety violation(s) discovered. Ensure the motor carrier understands the importance of compliance with this part.

Discovery of violations of 49 CFR § 392.9a(a): If one or more violations of 49 CFR 392.9a(a) are discovered during review of the motor carrier's records, the Safety Auditor must document the evidence establishing the violation(s) and notify his/her supervisor and the WSC designee.

#### **7.3.3.4.7 PASA Process – Advisement of Obligation to Comply with Statutes, Regulations and Requirements to operate in the United States**

- Review with the motor carrier the Advisement of Obligation to Comply with Statutes, Regulations and Requirements to operate in the United States. This document provides additional notice to the motor carrier of its continuing and ongoing duty and

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<sup>6</sup> See Mexican Licencia Federal Enforcement Policies dated October 24, 2001 and June 9, 2008, plus Mexican Licencia Federal de Conductor Enforcement Policy Clarification dated November 25, 2006 for guidance. The November 25, 2006 Mexican Licencia Federal de Conductor Enforcement Policy Clarification 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.

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 household goods (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 a Compliance Review on their 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 in long-haul operations; and
  - The motor carrier must operate its vehicles in compliance with Federal, State, local and tribal laws and regulations, including vehicle size and weight limitations. 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.
- Inform the motor carrier that violating any of the long-haul authority restrictions outlined in the first four bullets above 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, request that the motor carrier sign the Advisement of Obligation to Comply with Statutes, Regulations and Requirements (Attachment 5) acknowledging the review.
    - The motor carrier official is not required to sign the form Obligation to Comply with Statutes, Regulations and Requirements; however, the Safety Auditor must note in Part C that the advisement was reviewed with the motor carrier official, and identify the official(s) present during the review of the advisement.
    - The Safety Auditor should also note on the advisement if the motor carrier official refused to sign. The Safety Auditor should make a copy of the advisement (signed or unsigned) and provide a copy to the motor carrier official and upload the copy to EDMS.

#### **7.3.3.4.8 PASA Process – Protest of Application for Granting Provisional Operating Authority**

- Provide the motor carrier with a copy of the Protested Application Process Flow Chart and explain the post-PASA process to the motor carrier. The Protested Application Process Flowchart briefly illustrates the process followed if a protest is received to an OP-1(MX) application. Specifically, that upon successfully completion of the PASA, FMCSA will publish a summary of its application in the FMCSA Register providing public notice as required in 49 CFR § 365.109(b). Interested persons have 10 days from the date of FMCSA Register publication to file a protest opposing the application. If any

protests are filed, the motor carrier may file a reply statement within 20 days from the date of publication of the preliminary grant of authority.

- The Safety Auditor must document in Part C that the motor carrier was provided a copy of the Protested Application Process Flow Chart, and that the Protest Application Process Flow Chart was discussed with the motor carrier.

#### **7.3.3.4.9 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 the 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 the Program Description and Contact Information for IRP/IFTA Registration Requirements, Heavy Vehicle Use Tax and Unified Carrier Registration System.
  - Safety Auditors should document in Part C that the information for IRP/IFTA was provided to and discussed with the motor carrier.

#### **7.3.3.4.10 PASA Process – Reciprocal Recognition of Restrictions for Certain Mexican Motor Carrier Operations Seeking Provisional Operating Authority to operate beyond the Border Commercial Zones**

- Advise the motor carrier that FMCSA will reciprocally recognize the restrictions issued by the Government of Mexico on certain motor carrier transportation services seeking operating authority to operate beyond the border commercial zones. Mexico's rules include certain operations as being unable to obtain authority to operate into Mexico because they are not classified as freight operations in Mexico and receive separate authority from motor carriers of freight. These operations include packaging and courier services. Mexico is allowing U.S. carriers of freight to operate into Mexico. While the U.S. does not distinguish between these types of freight operations, in order to comply with reciprocity requirements, the U.S. 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.

#### **7.3.3.4.11 PASA Process – Concluding the PASA**

- Upon completion of the PASA in CAPRI, ensure that the Five Mandatory Elements Verification Checklist was completed based on the answers to the Part B questions and the results of the element verification procedures.

- 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 the Five Mandatory Elements Verification Checklist 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.
- Verify any information provided by the motor carrier and marked as “Pending” on the Five Mandatory Elements Verification Checklist 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, inform the motor carrier that it has not successfully completed the PASA.
- If any of the questions on the Five Mandatory Elements Verification Checklist 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 after the Safety Auditor’s supervisor and WSC complete their review of the PASA to ensure adherence to the PASA memorandum and FMCSA policies and guidance.
  - [If the PASA proposed result is to fail, MC-RSW prepares and sends the failed PASA letter to the Division office, which then informs the motor carrier that it has not successfully completed the PASA.]
- If the motor carrier’s official refuses to sign or accept a copy of the above listed items, the Safety Auditor should note the refusal in Part C and send a certified copy of the above items (excluding Part C) to the motor carrier and the motor carrier’s Process Agent by certified mail or United Parcel Service.

Applicants that fail the PASA must reapply for long-haul operating authority after correcting the deficiencies, pay any necessary fees for reapplication and submit to a new PASA. The Safety Auditor should advise the motor carrier that an authorized commercial zone applicant that fails the PASA may continue to operate within the commercial zone until such time as it becomes subject to enforcement or other action resulting in a suspension, revocation, or order to cease commercial zone operations.

The Safety Auditor must use the Part C Template to document the PASA information. Additional information to be included is noted in PASA Process – Additional Information to Be Included in Part C.

### 7.3.3.4.12 PASA Process – Additional Information to Be Included in Part C

Answers to the following questions should be noted in Part C:

1. Where was the PASA conducted?
2. What dates did the PASA start and end?
3. How many years has the motor carrier been in operation?
4. 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?
5. How many total power units is the motor carrier currently operating within the United States?
6. 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?
7. If the motor carrier is currently operating within the United States, discuss any prior expedited action letters, New Entrant Safety Audit results, CR results, roadside inspections, deficiencies/ violations observed and corrective actions taken by the motor carrier.
8. If the motor carrier is granted long-haul operating authority to operate in the United States, does the motor carrier have plans to operate within the United States southern border commercial zones as well?
9. Does the motor carrier have any parent companies or subsidiaries?
10. 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?
11. How many power units does the motor carrier operate within Mexico?
12. Was the Advisement of Obligation to Comply with Statutes and Regulations discussed with the motor carrier's officials and provided to the motor carrier?
13. Who were the motor carrier's officials present during the discussion of the advisement?
14. Was the Application Protest Process discussed and provided to the motor carrier?
15. Was the IRP/IFTA Program Registration discussed and provided to the motor carrier?
16. 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?

### 7.3.3.4.13 PASA Process – Review, Approval and Uploading of the PASA

- The Safety Auditor's supervisor reviews all PASAs, whether resulting in a proposed pass or fail.
- The Safety Auditor's supervisor reviews the PASA and the Five Mandatory Elements Verification Checklist for accuracy and to ensure that the information about the motor carrier provides a full picture of the applicant's compliance history.
  - Samples of the PASA pass/fail letters that MC-RSW generates can be found in the Appendix for the Mexico-domiciled Motor Carrier Manual.
- After supervisor's approval, forward the PASA to the WSC.
- When approving the PASA, WSC should review the PASA and the Five Mandatory Elements Verification Checklist to determine that it was conducted in accordance with PASA policy and is complete and well-written.
- After the WSC approves the PASA with a pass result,

- Upload a PASA to **MCMIS and EDMS that is projected to result in a “pass,”** based upon the results of the Five Mandatory Elements Verification Checklist form. Include the following completed forms: PASA Contact and Scheduling Documentation Form, Five Mandatory Elements Verification Checklist, and Obligation to Comply with Statutes, Regulations and Requirements.
- Upload to **EDMS but not MCMIS a PASA with a result of “fail”** based on the PASA Five Mandatory Elements Verification Checklist. Include the following completed forms: PASA Contact and Scheduling Documentation Form, Five Mandatory Elements Verification Checklist, and Obligation to Comply with Statutes, Regulations and Requirements.
- To ensure expeditious processing of the motor carrier’s application for provisional operating authority, the upload and approval of the PASA with a “pass” result should be completed within 7 days of the completion of the PASA.

#### **7.4 Comprehensive Compliance Review Conducted for Mexico-Domiciled Long-Haul Carrier with Provisional Authority and Prior to Standard Authority**

This section provides guidance to FMCSA personnel for prioritizing the completion of a comprehensive compliance review (CR) of Mexico-domiciled long-haul motor carriers that have received **provisional long haul operating authority**.

FMCSA must conduct a comprehensive CR of a Mexico-domiciled carrier within 18 months after FMCSA issues the carrier provisional operating authority for long-haul operations under 49 CFR Part 365. If, at the end of the 18-month safety monitoring period, the carrier’s most recent safety rating is SATISFACTORY and no additional enforcement or safety improvement actions are pending, the Mexico-domiciled carrier’s provisional operating authority becomes standard operating authority.

Prioritization of the CRs of Mexico-domiciled motor carriers with long-haul authority is based on the date that the motor carrier was granted provisional operating authority. These CRs should be completed within 18 months of the provisional authority issuance date. It is recommended that the CR be conducted in the 16th month.

- Conduct each CR in accordance with current Agency guidelines and procedures outlined in the eFOTM Compliance Review Manual and issued a safety rating in accordance with 49 CFR Part 385, Subpart B - Safety Monitoring System for Mexico-domiciled carriers and Section 385.109.
- Each CR of a Mexico-domiciled motor carrier with provisional authority to operate in long-haul transportation must include a review of all motor carrier, driver and vehicle requirements for its entire operations, including both commercial zone and long-haul operations, to ensure proper safety management controls are in place before a motor carrier is granted standard operating authority.
- Ensure that any required inspections are performed based on the sampling criteria specified in the eFOTM Parts 393 & 396 – Investigative Procedures.
  - That can include FMCSA Inspectors coordinating with investigators to complete the required inspections.

##### **7.4.1 Location of CRs**

Federal law requires FMCSA to meet certain requirements for the siting of a CR.

- Mexico-domiciled long-haul motor carriers with three or fewer commercial motor vehicles (CMVs) operating in the United States are not required to undergo an onsite CR.

- However, 50 percent of all compliance reviews are required to be conducted onsite at the motor carrier's principal place of business.
- Furthermore, any Mexican motor carrier with four or more CMVs operating in the United States that did not undergo an onsite PASA must have an onsite CR.
- Division office staff responsible to complete CRs coordinate with the WSC Mexico Program Specialist to determine if an onsite CR should be conducted.

In advance of any travel into Mexico, the Division Office contacts the Commercial Enforcement and Investigations Division (MC-ECC) to request an advisement on the safety of the travel.

- If, based on State Department direction, it is unsafe to travel into Mexico at that time:
  - Retain the MC-ECC advisement in the motor carrier's file in EDMS, and
  - Conduct the CR in the United States in accordance with current Agency guidelines and procedures outlined in the eFOTM.

A decision/process flowchart describes the Interim Safety Rating Issuance Process for Safety Investigators and the WSC Mexico Program Specialist to follow. This document also provides instructions on how to request an upgrade based on corrective action.

- 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 motor carriers. [The eFOTM guidance will be updated based on MCMIS programming changes replacing manual interventions.]
- This includes following the guidance for uploading the completed CRs to ensure the appropriate safety rating letter is issued.

Samples of the conditional and unsatisfactory safety rating letters and out-of-service orders can be found in the Mexico-domiciled Carrier Manual Appendix.

#### **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.<sup>7</sup>

- 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.

## 7.5 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.

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<sup>7</sup> 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.

### 7.5.3 CVSA Decal Procedures at Time of Inspection

#### 7.5.3.1 Introduction - CVSA Decal Procedures at Time of Inspection

Mexico-domiciled long-haul carriers must ensure that each power unit operated in the U.S. displays a current CVSA inspection decal during provisional operating authority and then an additional 36 consecutive months after receiving standard operating authority. This includes power units used solely within the commercial zones as part of the long-haul carrier's operations. Non-CMV's are not required to display CVSA decals to operate in the U.S.

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:

<b>No Critical Vehicle Inspection Violations Discovered:</b>	<b>Critical or OOS Vehicle Violations Discovered:</b>
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<b>No Critical Vehicle Inspection Violations Discovered:</b>	<b>Critical or OOS Vehicle Violations Discovered:</b>
<p>DO NOT cite the Out-of-Service (OOS) violation for failing to display a current CVSA inspection decal.</p> <p>Affix a CVSA inspection decal and record the decal number in the “CVSA Decal Issued” field of the inspection report.</p> <p>Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports.</p>	<p>Cite the appropriate OOS violation for failing to display a current CVSA inspection decal.</p> <p>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.</p> <p>Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports.</p> <p>Refer to re-inspection guidance.</p>

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:

<b>No Critical Vehicle Inspection Violations Discovered</b>	<b>Critical or OOS Vehicle Inspection Violations Discovered:</b>
<p>Cite and place the vehicle OOS for failing to display a current CVSA inspection decal as required</p> <p>Affix a CVSA inspection decal and record the decal number in the “CVSA Decal Issued” field of the inspection report</p> <p>Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports.</p>	<p>Cite and place the vehicle OOS for failing to display a current CVSA inspection decal as required</p> <p>Record the critical or OOS vehicle inspection item(s) and any other vehicle defect(s) discovered.</p> <p>Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports.</p> <p>Refer to re-inspection guidance</p>

### 7.5.3.2 Enforcement of Decal Requirement

- For a carrier discovered to be operating in the United States, beyond the POE without the required CVSA inspection decal or fails to pass an inspection for CVSA decal within the POE, cite as follows:

- During provisional operating authority, cite 49 CFR 385.103(c) Failure to display a current CVSA decal: Mexico-domiciled carrier with Provisional Operating Authority.
- State Inspectors in States not permitted to cite 49 CFR 385.103(c) may cite 49 CFR §390.3(e)(1) Mexico-domiciled carrier failing to display a current CVSA decal as required by 385.103(c).
- During the first 36 months of standard operating authority, cite 49 CFR §365.511 Failure to display a current CVSA decal: Mexico-domiciled carrier with Standard Operating Authority.
- State Inspectors in States not permitted to cite 49 CFR §365.511 may cite 49 CFR §390.3(e)(1) Mexico-domiciled carrier failing to display a current CVSA decal as required by 365.511.
- Consider the appropriate enforcement action when a power unit of a Mexico-domiciled motor carrier with long-haul authority is discovered to be operating in the United States without a CVSA inspection decal during the period of provisional operating authority or during the first 36 months of standard operating authority.

### **7.5.3.3 Re-inspection Guidance for Vehicles Not Displaying a Current CVSA Inspection Decal**

- If the inspector who performed the initial inspection is available for re-inspection of the vehicle(s);
  - a. Verify that the defect(s) has been repaired.
  - b. Annotate in the inspection report the verification of the repairs.
  - c. Issue a CVSA inspection decal.
  - d. Allow the vehicle to proceed out of the inspection area.
- If the same inspector is not available, the subsequent inspector must:
  - a. Complete a Level I inspection.
  - b. Note the previous OOS item(s) and verification of the repair in the notes field in the inspection report.
  - c. Issue a CVSA inspection decal.
  - d. Allow the vehicle to proceed out of the inspection area.
- When critical safety defects cannot be repaired onsite:
  - a. Do not apply the CVSA inspection decal
  - b. The vehicle must be either towed to a repair facility or returned to Mexico.
  - c. The vehicle may not proceed from the inspection site to the United States under its own power without a CVSA inspection decal.

# Appendix D - CaseRite Software Instructions

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**

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## Appendix D - CaseRite Software Instructions

There are four screens in the CaseRite software. As you click on each tab across the top of the screen, a new worksheet (screen) comes up. You must complete the required fields in each screen prior to the completion of your enforcement action. Once you make the decision to initiate an enforcement action, CaseRite transfers the investigation information you entered into CAPRI, and penalty assessment information you entered into UFA together, which pre-populates many fields within CaseRite.

### What are the six basic elements of the enforcement report?

The six basic elements of the enforcement report, generated by CaseRite, are as follows:

1. The Case Report,
2. Continuation Page (located in the General Tab),
3. Numbered Exhibit Abstracts (located in the Violations Tab),
4. Lettered Exhibit Abstracts (located in the General Tab),
5. Notice of Claim (which includes the Statement of Charges and Service List),
6. The Investigation Summary

We will be explaining each of them as you go through the numerous sections of CaseRite. There are four screens that will require your data entry while in CaseRite: **Subject, Violations, General and Management.**

### Screen 1 (Subject)

From the File menu option, select New, and then select CAPRI/UFA. Select the subject name you will be initiating an enforcement action against. This will start the process of automatically transferring the subject information from CAPRI and UFA, with all of its accompanying information, into CaseRite. Ensure that the information on the Subject screen is correct; enter the case number in the CASE NUMBER box if it has not been pulled in from CAPRI and UFA. Enter any other missing required data.

### What if I initiate an enforcement action on a motor carrier when an investigation was not done?

From the File menu option, you would select New, and then Create (e.g., a crash investigation, etc.) You will be required to enter all of the required data on all of the CaseRite screens.

### **What if I initiate an enforcement action after discovering serious safety and/or out-of-service (OOS) violations while conducting a roadside inspection?**

From the File menu option, you would select New, and then ASPEN. Select the subject name, report number or US DOT number you will be initiating the enforcement action against. The subject information and violation information will automatically transfer, in the same method used, as if you had transferred the data from CAPRI/UFA.

You are now ready to move to Screen 2.

## **Screen 2 (Violations)**

Under Screen 2, you will be entering data to complete your Numbered Exhibit Abstracts. The Numbered Exhibit Abstract presents a description of the violation and those essential elements which set the basis of the violation. The essential elements are:

- Transportation (origin and destination)
- Commercial Motor Vehicle
- On a public highway
- In commerce subject to our jurisdiction
- Failing to comply with some provision of the regulations

Numbered exhibit abstracts are prepared for each violation documented within the enforcement report.

There are two data fields under the Violations Screen, **Violations and Charges**. We will explain both for you:

**Violations:** These are the violations you discovered and cited within the CAPRI software, and subsequently identified in the UFA software, as a violation that you are going to initiate an enforcement action against. Using your mouse, right-click over the Primary Violation Cite. Your options are: New Violation, Edit Violation, Delete Violation or Select Abatement.

### **When would I select the New Violation option?**

You would select the New Violation option when you select to assess a penalty for a violation that you did not include in the initial UFA assessment software. You will be required to enter the Primary Violation Code, the Number Discovered, the Number Documented, and the Fine Amount for this violation. You would select UFA Fine Used, only if you re-entered the UFA software, and added the New Violation to the UFA Assessment Software. We will explain the Section 222 option next.

### **What does the Section 222 option mean?**

Section 222 refers to Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Section 222 requires FMCSA to assess the maximum civil penalty for each violation of the law (i.e. Federal Motor Carriers Safety Regulations and Commercial Driver's License Regulations) by any person who is found to have committed a pattern of violations of a critical or acute regulation, issued to carry out

such a law or to have previously committed the same or related violation of critical or acute regulations issued to carry out such a law. **This option must be checked if you are preparing a Section 222 case.**

A motor carrier will be assessed the maximum penalty if it is found to have committed a pattern of violations. A pattern of violations is defined as critical or acute violations within the same part and has been previously assessed penalties (i.e. two closed enforcement actions) within the past 6 years, they could potentially be penalized the maximum civil penalty allowed by law for violations in the same FMCSR Parts. It is also known as the Three Strikes Penalty Rule.

**Example:** A motor carrier has had three enforcement actions issued to them: **First** Closed Enforcement Action issued four years ago, for critical violations of Parts 391 and 395-Strike one in Parts 391 and 395; **Second** Closed Enforcement Action issued two years ago for an acute violations of Part 382 and Part 383 and for critical violations of Part 395 (strike one for Parts 382 and 383. Strike two for Part 395). You are conducting an investigation **today**, and you discover still critical violations within Part 395. This will be their third strike for being assessed penalties for critical violations in Part 395. You will now be required to amend the initial UFA assessed amount to the maximum penalty amount for your Part 395 violation.

#### **When would I select the Edit Violation option?**

You would select the Edit Violation option when you have made a change to the Number Checked, Number Discovered, Violation Category or if it's a Section 222 penalty.

#### **When would I select Delete Violation option?**

You would select the Delete Violation option when either you or your reviewing division personnel recommend you do not pursue enforcement for a specific violation.

#### **When would I choose Select Abatement option?**

You will always be required to select the abatement clause for each violation you are pursuing enforcement action against. Generally, it will default to the standard abatement clause for that violation. On a rare occasion, you may be required to prepare a custom abatement clause. Ensure you consult with your reviewing division personnel or SCET.

**Charges:** These are the charges for each violation you have chosen to pursue an enforcement action against. You may have one charge for each violation, or you may have multiple charges. Using your mouse, right-click within the Charges blank box. Your options are Add Charge, Edit Charge, Copy Charge or Delete Charge. There will be numerous occasions when the general charge template information will be all of the information you need. However, there will be numerous other occasions when you will need to provide additional charge information, after the charge template information, to help further explain your violation charge.

#### **When would I select the Add Charge option?**

You will always be required to select the Add Charge option. When you select Add Charge, you will be entering the violation charge data. You will be required to enter the Violation Date and the Violator's Name. Next select the Charge Template. It will be defaulted to the Standard Charge Introduction Template for your violation charge. Ensure this is the primary violation charge you are initiating enforcement against, and then select Build Template. This will allow you to enter specific required charge details in a fill-in-the-blank format. As you can see, the violation date, carrier name and driver name are

already entered, as you completed that data entry earlier. Simply fill in the required text information. You can see in the lower screen the text information you are entering to complete the violation charge. After you are done, select OK to complete that charge.

### **What would I enter in the Supporting Documents field?**

You will enter the names and dates of the documents, and specific information regarding the documents you have gathered, to prove your violation charge. You will need to list each of them separately. You may also choose to further outline how the supporting document you have listed supports your violation charge. You may also reference a specific Lettered Exhibit Abstract in this field, as it may further support your violation charge.

### **When would I select the Edit Charge option?**

You would select the Edit Charge option after you have already made your initial charge information entry. You may choose to edit the violation date, violators name or other charge information.

### **When would I select Copy Charge option?**

You would select the Copy Charge option when you are entering an additional separate charge for the same violation. Such as, you have one driver who violated the 10-hour rule on three separate dates. You simply, select copy charge and change the violation date and then change the charge information to reflect the specific violation information. You may also use the Copy Charge option when you have two different drivers who have committed the same violation.

### **When would I select Delete Charge option?**

You would select the Delete Charge option when either you or your reviewing division personnel recommend you do not pursue enforcement for a specific violation.

## **Screen 3 (General)**

Under Screen 3, you will be entering data to complete your Lettered Exhibit Abstracts and your Continuation Page. There are two data fields under the General Screen: **Lettered Exhibit** and Background Information. We will explain both for you:

### **Lettered Exhibit**

You will prepare Lettered Exhibit Abstracts to show (or establish) a motor carrier's knowledge and willfulness of the committed violations. You may list a motor carrier official's written statement, acknowledging the committed violations, or how the motor carrier's paperwork is processed. You may prepare a Lettered Exhibit Abstract to support one or multiple violation charges. When you prepare a Lettered Exhibit Abstract to support one or multiple violations, ensure that you reference the Lettered Exhibit Abstract within the Supporting Documents field in the Numbered Exhibit Abstracts. There is no limit to the documents you may list on a Lettered Exhibit Abstract.

Your options are Add, Delete or to enter data in the Exhibit Text field. Using your mouse, click on Add, and move your cursor to the highlighted box with the asterisk to the left. Enter the Alpha character (e.g., A, B, C, D, etc.) for each Lettered Exhibit Abstract. You may choose to enter motor carrier statements on

one Lettered Exhibit Abstract, and other motor carrier procedural documents on another Lettered Exhibit Abstract. You would select the Delete function to remove a prepared Lettered Exhibit Abstract.

### **Exhibit Text**

You will enter the names and dates of specific documents, and specific information regarding the documents you have gathered, which support your violation charge. You will need to list each of them separately. You may also choose to further outline how the documents you have listed further support your violation charge. You may also reference a specific Numbered Exhibit Abstract in this field, as it may have been referenced within your violation charge.

### **Background Information (AKA Continuation Page)**

Information for completion of the Continuation Page is entered in the background information. The Continuation Page contains information that is used to furnish a description of the subject in the enforcement report and to report the areas of violation discovered during the investigation. This document provides background information that is helpful to supervisors and counsel in determining extent of violations and culpability of subject. This narrative must contain factual information and be clear and precise to persons who may or may not have knowledge of transportation industry practices. The Continuation Sheet contains six headings as follows:

1. **Description** - Enter additional information that is not shown in Part A of the investigation. Additional names, such as of corporate officials and their titles, should be provided here. If sufficient information appears on Part A for the subject, the only entry under this heading is "See Parts A and C of the investigation."

**In the event an enforcement report is being prepared for an additional subject (e.g., Driver, Employee: Dispatcher, Consultant, etc.) or the enforcement report did not result from an investigation, the following information is required in the description of the subject:**

- Full legal name and mailing address.
- Driver's license information, issuing State, and license number.
- Social Security Number.
- Physical description, date of birth, height, weight, color of hair, color of eyes, and other information, as appropriate.
- Individual's Cellular Phone Number
- Occupation and description of duties, as appropriate.
- Information on gross income for past year (include any evidence of financial insolvency, if known or any claimed by the subject of the report).

NOTE: If you are preparing an enforcement action not initiated from an investigation, refer to *Uniform Fine Assessment (UFA)* under [Initiating an Enforcement Action](#)

2. **Contact Reason** - Provide the reason for contacting the subject. This investigation was initiated because:
  - The subject is listed on the Investigate 1 prioritization list. The carrier has two BASICS requiring investigation. They are: Vehicle at 99.3% and a prior Serious Violation in Driver Fitness at 88%.

- Written complaint alleging violations of Part 391 (driver qualifications), Part 395 (excessive hours), and Part 396 (maintenance of equipment) was received against subject, etc.
- Falsified Medical Examiner's Certificate was discovered for subject during another investigation of a different subject.
- Special Circumstances: Fatal Crash, Multiple Injury Crash, Roadside Inspection, Conditional Carrier Review, Safety Audit, etc.

**NO ENFORCEMENT REPORT IS LIMITED TO THE ABOVE EXAMPLES.**

3. **Enforcement Reason** - Enter factual information explaining the reason enforcement action is being taken, e.g., pattern of violations, failing to maintain safety management controls, serious risk to the public, or fatal accident.

An example of this type entry might include, but is not limited to, the following: Enforcement Reason - This report is being submitted because:

- This investigation revealed the carrier is operating in noncompliance of the FMCSR. The carrier did not have a complete driver qualification (DQ) file for any of the 26 drivers employed. Two of the 26 drivers had no DQ file maintained by the carrier. Sixteen drivers records of duty status (RODS) were checked; all 16 failed to make records when required, or they operated in violation of the 10, 15, and 60-hour/70-hour limits, or falsified their records to conceal hours violations.
  - The carrier has taken no action to correct those areas of noncompliance discovered during a previous investigation.
  - Driver admitted, in a written statement, to having falsified the medical examiner's certificate himself.
  - A Fatal Crash, Multiple Injury Crash, or Crash resulting in an HM spill due to motor carrier's failure to maintain their vehicles, or properly manage their drivers' hours of service.
4. **Knowledge and Willfulness** - Enter prior enforcement activity and other efforts that have been taken to encourage compliance. Reference should be made to the lettered Exhibit Abstracts that pertain to the information. An example of this type of entry might include, but is not limited to, the following:
- Violations discovered and documented in this report were also cited on the previous investigation dated 00/00/00 (see Exhibit B).
  - Following the previous review, carrier President John S. Smith submitted a letter to FMCSA on 00/00/00 stating the company's operation had been brought into compliance and detailed his personal involvement in the process (see Exhibit C).
  - Violations of this type and documented in this present report also appeared on state inspection reports which are included as lettered Exhibit D.
5. **Defenses** - Enter the defenses or excuses provided by the various employees interviewed during the investigation. An example of this type of entry might include, but is not limited to, the following:
- Mr. John S. Smith, carrier President, stated their safety compliance problems have been related to the turnover of personnel in the operations division.
  - Mr. John S. Cooper, Operations Manager, stated there was not enough time to qualify the new drivers and control their hours, due to pressure from their customers.
  - Ms. Jane B. Smoot, Dispatcher/Log Clerk, stated that she had been advising drivers verbally not to drive more than 10 hours without 8 hours off duty.

- Mr. Jake V. Brown, road driver, advised he was never asked by the company to stay under any certain hours before resting.
6. **Additional Information-** Identify the various documents collected during the investigation and identify the person(s) that provided them. Identify any witness not previously described in the report. As necessary, identify the persons preparing the documents, the person who can explain the purpose and distribution of the documents, or other facts not readily apparent from the face of the documents. If not clear from other parts of the enforcement report, explain the facts, which the witnesses can testify to. An example of this type of entry might include, but is not limited to, the following:
- All carrier documents obtained in this investigation were obtained from John S. Cooper, Operations Manager and Jane B. Smoot, Dispatcher/Log Clerk. Both of them personally obtained the records from the carrier's files and identified the RODS, trip sheets, receipts, and the company's procedures for dispatching freight and controlling the driver's activities.
  - Mr. John S. Smith, carrier President reported the gross revenue of \$750,000 for calendar year 0000.

Additional Information section can also be used for information about the subject that is not deemed appropriate for any of the above sections. The investigator shall use this section to more fully explain the investigative process, so that agency supervisors, counsel, and decision makers can have a more clear understanding of the facts of the case. Included herein is an explanation as to why the investigator may have deviated from the required sampling requirement of this manual.

Once you have completed filling out the information required on the Subject Screen, entered all of the Charge information on the Violation Screen, and entered all of the information in the General Screen, you will be required to enter data in the Management Screen to complete your Enforcement Case Report.

## Screen 4 (Management)

Under Screen 4, you will be entering data to complete the Managing Reviewer Information, how the Enforcement Action originated, and critical tracking dates. There are three data fields within the Management Screen: **Management Review, Origin of Enforcement, and Tracking Dates**. We will explain each of them for you:

### Management Review

You and your division reviewing personnel (or Service Center Enforcement Team) will be entering the following information:

1. The Name of the Reviewer,
2. The Title of the Reviewer, and
3. The Date the Review of the Enforcement Case Report was completed.

### Origin of Enforcement

From the drop down selection box, you will need to select the Origin for your enforcement action from the following selection choices:

- CR,
- HMPIP (a Hazardous Materials Package Inspection),
- Roadside Inspection,

- Terminal Review,
- CTFR, and
- Special Investigation.

### **Tracking Dates**

You will need to manually enter the following tracking dates:

- Investigation Assigned,
- Investigation Completed,
- Date NOC (Notice of Claim) Served, and
- Date of CR/Inspection.

The tracking dates are important, as there are specific timeframes a motor carrier has to respond to a Notice of Claim. If the Notice of Claim is signed at the Service Center, they will enter the Date the NOC was served.

Additional data fields within Screen 4 (Management) are Reviewer Comments, Investigator Notes, and Part C Comments.

### **Reviewer Comments**

This field is where the reviewing official would enter any comments regarding the accuracy and timeliness of the enforcement report. Additional comments regarding the enforcement report may also be entered here regarding the proposed civil penalty.

### **Investigator Notes**

These are notes of additional information the investigator wishes to include with the enforcement report that are not presented elsewhere in the enforcement report.

### **Part C Comments**

This field contains the comments the investigator entered in CAPRI Part C. The Part C comments are included for both the investigator's and reviewer's reference.

Now that you have completed the data entry process for your Enforcement Case Report (e.g., The Numbered Exhibit Abstracts, Lettered Exhibit Abstracts, the Continuation Page), you are ready to print the Enforcement Case Report.

With Screen 1 (Subject) open, select File from the menu bar, and then select Print. Your Print Selections are as follows:

- Notice of Claim
- Statement of Charges
- NOC Service List
- Lettered Exhibits
- Numbered Exhibits
- Case Report
- Continuation Page
- Reviewer Notes
- Investigator Notes
- CR Summary
- UFA Report

The Notice of Claim, Statement of Charges and NOC Service List are the standard documents which are mailed to the claimant. These documents may be included in your enforcement case report submitted to the reviewing official, or the reviewing official will print them after completing the review process.

We have explained the Lettered Exhibits, the Numbered Exhibits, the Continuation Page, Reviewer Notes, and Investigator Notes. The UFA Report is the same report that was imported when you initiated the CaseRite process.

### **What is the Case Report?**

The Case Report is also referred to as the Cover Page. The Case Report outlines the following information for the Enforcement Case Report:

- a. The Case Number,
- b. The U.S. DOT number (if applicable),
- c. The Subject Name and Mailing Address,
- d. The Violations,
- e. The Violation Description,
- f. The Number Discovered,
- g. The Number Documented,
- h. The Tracking Dates you entered on the Management Page,
- i. The Reviewing Official Name and Title, and Date of Review, and
- j. The Signature of the Investigator and their SI Code (e.g., US####)

The Case Report document is generally submitted as a cover to the enforcement case report, followed by the Continuation Page and the Lettered and Numbered Exhibits. Your reviewing official or division policy determines the order in which you submit your enforcement case report documents.

### **What is the CR Summary?**

This is a summary of the completed investigation. It provides basic information about the subject. One of the most important elements of the summary is the Part C Comments section. This is the section that contains essential information, provided by the investigator, that will be used by supervisors and counsel in consideration of sanctions.

What information must I ensure was listed in Part C Comments of **CAPRI for inclusion in the CR Summary?**

The following information must be shown in the Part C Comments of the investigation:

- Statements made by officials relative to corrective actions or safety system breakdowns discovered during the investigation
- The subject's attitude toward compliance
- The subject's level of understanding of applicable regulations
- The degree of assistance and cooperation given by officials to the investigator during the investigation
- The educational materials provided to the subject
- Anything that is atypical about the subjects operation
- The extent and nature of any divisions or business locations of the subject
- The financial condition of the subject
- The names and titles of any relevant company official or employee who were interviewed, but were not listed on Part A of the CR

- The reason for not initiating enforcement action in response to any discovered acute violation or pattern of critical violations
- The number of commercial motor vehicles which have a GVWR between 10,001 pounds and 26,000 pounds, and the number of commercial motor vehicles which have a GVWR greater than 26,000 pounds
- The names and locations of any relevant documents
- Any other information that explains and/or complements the cited violations in Part B, would increase the accuracy of the evaluation process, and aid the follow-up investigator

### **How do I export the enforcement report from CaseRite?**

From Screen 1 (Subject), select Close Case. From the CaseRite-Enforcement Case Preparation Software main screen, select Utilities from the menu bar. Select Import/Export. You will see three screen tabs: Export, Import, and View Transfer File. From the Export Screen, select the enforcement report to be exported. Next, click on the menu bar, Export Options. You will have three options: Export to Email, Export to Disk, and Export to EMIS.

### **What happens when I select Export to Email?**

When you select Export to Email, CaseRite will create an email attachment file in the form of a zip file. Then, CaseRite will automatically load the current email software, import the enforcement report attachment file to the email, and then allow you to select the name of the recipient of the email. Once you send the email with the enforcement report attachment, the recipient (usually the reviewing official), will be able to import the email attachment into their CaseRite program for further processing.

### **What happens when I select Export to Disk?**

When you select Export to Disk, CaseRite will transfer an electronic export of the enforcement report to a floppy diskette. You will then be able to either provide the floppy diskette with the electronic export of the enforcement report to the reviewing official, or you will be able to send the electronic export file as an attachment to an email in the same fashion, as previously described, for import and processing by the reviewing official.

### **What happens when I select Export to EMIS?**

When you select Export to EMIS, CaseRite will transfer an electronic export of the enforcement report to EMIS. EMIS is a FMCSA Information System, which allows entry of enforcement information by Service Center Enforcement Team (SCET) personnel relating to critical information regarding tracking dates, issuance of settlement agreements, issuance of out-of-service (OOS) orders and critical enforcement-related actions. In the majority of the cases, the reviewing official will export the reviewed enforcement report to EMIS.

# Appendix F - Hazardous Materials Checklists

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## **Appendix F – Hazardous Materials Checklists**

Below are Hazardous Materials Checklists which may be used to assist in your investigation of Hazardous Materials Carriers, Shippers, and Cargo Tank Testing and Inspection Facilities

### **CARGO TANKS**

[DOT-406](#)

[DOT-407](#)

[DOT-412](#)

[MC-306](#)

[MC-307](#)

[MC-312](#)

[MC-331](#)

[Checklist to Conduct an HM Cargo Tank Carrier](#)

[R and U Stamp Facilities](#)

[CTFR Check and Inspection Checklist](#)

### **PORTABLE TANKS**

[Indicators of Hazardous Materials DOT 51 Portable Tank Violations](#)

[Indicators of Hazardous Materials DOT 56/57 Portable Tank Violations](#)

[Indicators of Hazardous Materials IM 101 or IM 102 Portable Tank Violations](#)

[Indicators of Hazardous Materials Violations for All Portable Tanks](#)

### **GENERAL HAZARDOUS MATERIALS**

[Indicators of Hazardous Materials Shipment Violations \(HM\)](#)

[HM CR Checklist](#)

[HM Shipping Paper Checklist](#)

[Guide to Developing a HM Training Program](#)

[MOTs Brochure](#)

[UN Performance Package Codes Brochure](#)

[Indicators of Hazardous Materials Shipment Violations \(Hazardous Wastes and Hazardous Substances\)](#)

[Indicators of Hazardous Materials Shipment Violations - Radioactive Materials](#)

### **CYLINDERS**

[Indicators of Hazardous Materials Shipment Violations \(Cylinders\)](#)

[Checklist for Identifying Additional Violations of the HM Regulations that Apply to Cylinders](#)

## [Cylinders - What You Need to Know](#)

### **EXPLOSIVES**

[Indicators of Hazardous Material Shipment Violations for Explosive HM](#)

### **SECURITY RELATED**

[Security Plan, Applicability, Requirements and Checklist](#)

[Short Guide to Handling Sensitive Security Information \(SSI\) for External Parties](#)

### **ONLINE TRAINING and RESOURCE OPPORTUNITIES**

FMCSA SharePoint HM Resources: <https://one.dot.gov/fmcsa/MC-F/Hazmat/Forms/AllItems.aspx>

PHMSA Training Modules: <http://phmsa.dot.gov/hazmat/training/publications/modules>

PHMSA Publications: <http://phmsa.dot.gov/hazmat/training/publications>

Interpretations from PHMSA: <http://phmsa.dot.gov/hazmat/regs/interps>

### **ILLUSTRATIONS**

[Illustration HM-1 - Agency Notification Letter](#)

[Illustration HM-2 - Emergency Response Phone Number Q&A](#)

[Illustration HM-3 - Properly Cite HM Training Violations](#)

[Illustration HM-5 - Security Talking Points](#)

[Illustration HM-6 - Suspicious Activity Report](#)

[Illustration HM-7 - Security Contact Reviews Questions & Comments](#)

[Illustration HM-8 - Exhibit Abstract Example Part 107 \(HM Registration\)](#)

[Illustration HM-9 - Exhibit Abstract Example Part 171](#)

[Illustration HM-10 - PHMSA position on using CDL for HM Training](#)

[Illustration HM-11 - Exhibit Abstract Example Part 172](#)

[Illustration HM-12 - Exhibit Abstract Example Part 173/178](#)

[Illustration HM-13 - Exhibit Abstract Example Part 177](#)

[Illustration HM-14 - Exhibit Abstract Example Part 180 \(Cargo Tank Carrier\)](#)

[Illustration HM-15 - Exhibit Abstract Example Part 397](#)

[Illustration HM-16 - Exhibit Abstract Example Part 107 \(Cargo Tank Number\)](#)

[Illustration HM-17 - Exhibit Abstract Example Part 180 CTRF](#)

[Illustration HM-19 - Exhibit Abstract Example Part 385](#)

# Appendix G - Red Flag Violations

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### **Appendix G – Red Flag Viloations**

There is an increased focus on the driver’s role in motor carrier safety due to data showing that unsafe driver behavior is a major contributor to commercial motor vehicle (CMV) crashes. 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. Red Flag Violations are limited to the list of violations provided in the table below:

<b>BASIC</b>	<b>FMCSR Part</b>	<b>Violation Description</b>
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 CDL
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 a safety-related or unknown reason and outside 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 vehicle being operated
Driver Fitness	391.11(b)(7)	Driver disqualified from operating CMV
Driver Fitness	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
Driver Fitness	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
Controlled Substances/Alcohol	392.4(a)	Driver possesses, uses, or is under the influence of controlled substance(s)
Controlled Substances/Alcohol	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty
HOS Compliance	395.13(d)	Driving after being declared out-of-service (OOS) (Violating Part 395 OOS Order)
Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle before making repairs

# Appendix H - Serious Violations

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## **Appendix H - Serious Violations**

FMCSA considers investigation findings (e.g. what FMCSA or State Partners find as a result of a CR or motor carrier investigation) when assessing motor carrier safety performance and prioritizing investigative resources. SMS incorporates the discovery of serious violations in the following way:

- Use in prioritization:
  - When a carrier's most recent investigation discovered a serious violation, the BASIC requires an investigation and the carrier is prioritized for an intervention. The carrier remains prioritized, regardless of the age of the investigation and factors into the calculation of the Investigate 1, 2, and 3 prioritization lists. Investigations performed on carriers with serious violations should include the BASIC associated with the serious violation in the investigation scope.
- Display and use in BASIC assessment:
  - If the investigation associated with the discovery of the serious violation is less than 12 months old, the investigation and overall BASIC columns in SMS are indicated: this remains for 12 months unless a new investigation is performed and uploaded.
  - If the investigation associated with the discovery of the serious violation is greater than 12 months old, the investigation and overall BASIC columns in SMS are not indicated and is viewable to enforcement users only.

Serious Violations are defined as those where noncompliance is so severe that they require immediate corrective action by a motor carrier regardless of its overall safety posture or as 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. A complete list of Serious Violations is included in the Table below. Serious Violations can be categorized as:

- Those violations where noncompliance is so severe that they require immediate corrective action by a motor carrier regardless of its overall safety posture, such as a one-time occurrence (e.g., failing to implement an alcohol and/or controlled substance testing program); or
- Those violations 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 such as a pattern of violations [e.g., false reports of records of duty status (RODS)].

Serious Violations are considered resolved when an investigation of the motor carrier is performed and there are no new serious violations discovered in the associated BASIC. At that point in time, the serious violation will cease to impact prioritization. If there are newly discovered serious violations, the investigation and overall column of the associated BASIC are indicated and the 12-month clock is reset.

### **Discovering Serious Violations Outside of BASICs Requiring an Investigation**

If the Safety Investigator (SI) discovers occurrences of Serious Violations outside of the investigation scope, it is necessary to expand the number checked in accordance with policies on minimum record sampling. Expanding the number checked does not represent an expansion into full BASIC record sampling. Record sampling should be limited to only the specific Serious Violation discovered.

For example, a motor carrier has 20 vehicles subject to the Federal Motor Carrier Safety Regulations (FMCSR), and the SI is conducting an Onsite Focused Investigation on Hours of Service (HOS) Compliance. However, the SI subsequently discovers two occurrences of 396.11(a) violations, which indicate a Vehicle Maintenance-related Serious Violation. The SI should not ignore these violations, but instead document them in CAPRI. Based on record sampling, the SI needs to sample 7 vehicles for 30

days for a total of 210 Driver Vehicle Inspection Reports (DVIRs). Expanding the number checked does not represent expansion in scope to a full Vehicle Maintenance BASIC investigation. The SI should only sample DVIRs in this example.

### Table: Serious Violations

**Violations marked with an “\*” are Essential Safety Management (ESM)/Fundamental Violations that are not Acute or Critical Violations and will not impact the motor carrier’s formal safety rating. However, all Serious Violations are subject to the same policy and procedures related to required enforcement action. If enforcement action is not taken, an explanation must be documented in the Part C of the investigation to explain why enforcement was not initiated.**

Violation	Violation Description	BASIC	Violation Type
171.15	Carrier failing to give immediate telephone notice of an incident involving hazardous materials (HM)	HM Compliance	Pattern of Occurrence
171.16	Carrier failing to make a written report of an incident involving HM	HM Compliance	Pattern of Occurrence
172.200(a)*	Transporting HM without preparing a shipping paper (no shipping paper at all)	HM Compliance	Pattern of Occurrence
172.313(a)	Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words “Inhalation Hazard”	HM Compliance	One-time Occurrence
172.704(a)*	Failing to train HM employees as required	Driver-Fitness	Pattern of Occurrence
172.800(b)	Transporting HM without a security plan / Transporting HM without a security plan that conforms to Subpart I requirements / Failure to adhere to a required security plan	HM Compliance	One-time Occurrence
172.802(b)	Failure to make copies of security plan available to HM employees	HM Compliance	Pattern of Occurrence
173.24(b)(1)	Transporting HM in a package with an identifiable release of HM	HM Compliance	One-time Occurrence
173.24b(d)(2)*	Loading a cargo tank with an HM which exceeds the maximum weight of lading marked on the specification plate	HM Compliance	Pattern of Occurrence
173.3*	Loading HM not in accordance with the segregation table	HM Compliance	Pattern of Occurrence
173.33(a)(1)*	Transporting HM in an unauthorized cargo tank	HM Compliance	Pattern of Occurrence

173.33(a)(2)*	Transporting or loading two or more materials in a cargo tank motor vehicle which resulted in an unsafe condition	HM Compliance	Pattern of Occurrence
173.33(b)(1)*	Transporting HM in a cargo tank motor vehicle which has a dangerous reaction when in contact with the tank	HM Compliance	Pattern of Occurrence
173.421(a)	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)	HM Compliance	One-time Occurrence
173.431(a)	Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized	HM Compliance	One-time Occurrence
173.431(b)	Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized	HM Compliance	One-time Occurrence
173.441(a)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits	HM Compliance	One-time Occurrence
173.442(b)	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	HM Compliance	One-time Occurrence
173.443(a)	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	HM Compliance	One-time Occurrence
177.800(c)	Failing to train HM employees as required	Driver Fitness	Pattern of Occurrence
177.801	Transporting a material identified in 49 CFR 172.101 as forbidden for highway transportation	HM Compliance	One-time Occurrence
177.817(a)	Transporting HM without preparing a shipping paper (no shipping paper at all)	HM Compliance	Pattern of Occurrence
177.817(e)	Failing to maintain proper accessibility of shipping papers.	HM Compliance	Pattern of Occurrence
177.823(a)	Moving a transport vehicle containing HM that is not properly marked or placarded	HM Compliance	Pattern of Occurrence
177.834(i)*	Failing to attend a cargo tank during loading/unloading	HM Compliance	Pattern of

			Occurrence
177.835(a)	Loading or unloading a Class 1 (explosive) material with the engine running	HM Compliance	One-time Occurrence
177.835(c)	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	HM Compliance	One-time Occurrence
177.835(j)	Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted	HM Compliance	One-time Occurrence
177.841(e)	Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in §177.841(e)(i) or (ii) is met	HM Compliance	One-time Occurrence
177.848(d)*	Loading HM not in accordance with the segregation table	HM Compliance	Pattern of Occurrence
180.407(a)	Transporting a shipment of HM in a cargo tank that has not been inspected or retested in accordance with §180.407	HM Compliance	Pattern of Occurrence
180.407(b)(2)*	Failing to test and inspect a cargo tank which has been in an accident and has been damaged	HM Compliance	Pattern of Occurrence
180.407(b)(3)*	Failing to conduct a pressure test on a cargo tank which has been out of HM service for 1 year or more	HM Compliance	Pattern of Occurrence
180.407(b)(4)*	Failing to test and inspect a cargo tank which has been modified	HM Compliance	Pattern of Occurrence
180.407(b)(5)*	Failing to conduct a test or inspection on a cargo tank when required by DOT	HM Compliance	Pattern of Occurrence
180.407(c)	Failing to periodically test and inspect a cargo tank	HM Compliance	Pattern of Occurrence
180.415	Failing to mark a cargo tank which passed an inspection or test required by §180.407	HM Compliance	Pattern of Occurrence
180.417(a)(1)	Failing to retain cargo tank manufacturer's data report certificate and related papers, as required	HM Compliance	Pattern of Occurrence
180.417(a)(2)	Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required	HM Compliance	Pattern of Occurrence
382.115(a)	Failing to implement an alcohol and/or controlled	Controlled	One-time Occurrence

	substance testing program	Substance/Alcohol	
382.115(b)	Failing to implement an alcohol and/or controlled substance testing program	Controlled Substance/Alcohol	One-time Occurrence
382.201	Using a driver known to have an alcohol content of 0.04 or greater to perform a safety sensitive function	Controlled Substance/Alcohol	One-time Occurrence
382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382	Controlled Substance/Alcohol	One-time Occurrence
382.213(b)	Using a driver known to have used a controlled substance	Controlled Substance/Alcohol	One-time Occurrence
382.215	Using a driver known to have tested positive for a controlled substance	Controlled Substance/Alcohol	One-time Occurrence
382.301(a)	Using a driver before receiving a negative pre-employment result	Controlled Substance/Alcohol	Pattern of Occurrence
382.303(a)	Failing to conduct post-accident testing on driver for alcohol	Controlled Substance/Alcohol	Pattern of Occurrence
382.301(b)	Failing to conduct post-accident testing on driver for controlled substances	Controlled Substance/Alcohol	Pattern of Occurrence
382.305	Failing to implement a random controlled substances and/or an alcohol testing program	Controlled Substance/Alcohol	One-time Occurrence
382.305(b)(1)	Failing to perform random alcohol tests at the applicable rate	Controlled Substance/Alcohol	Pattern of Occurrence
382.305(b)(2)	Failing to perform random controlled substance tests at the applicable rate	Controlled Substance/Alcohol	Pattern of Occurrence
382.309	Using a driver without a return to duty test	Controlled Substance/Alcohol	Pattern of Occurrence
382.503	Allowing a driver to perform safety sensitive functions after engaging in conduct prohibited by Subpart B of Part 382 without being evaluated by a substance abuse professional as required by §382.605.	Controlled Substance/Alcohol	Pattern of Occurrence
382.505(a)	Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04	Controlled Substance/Alcohol	One-time Occurrence
383.23(a)	Operating a commercial motor vehicle (CMV) without a valid commercial driver's license (CDL)	Driver Fitness	Pattern of Occurrence
383.3	Knowingly using a driver who does not possess a valid CDL	Driver Fitness	One-time Occurrence

383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV with a CDL which is suspended, revoked, or canceled by a State or who is disqualified to operate a CMV as defined in Part 383	Driver Fitness	One-time Occurrence
383.37(b)	Knowingly allowing, requiring, permitting, or authorizing an employee with more than one CDL to operate a CMV	Driver Fitness	One-time Occurrence
383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a CMV	Driver Fitness	One-time Occurrence
390.35	Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records	Vehicle Maintenance	One-time Occurrence
391.11(b)(4)	Knowingly using a physically unqualified driver	Driver Fitness	One-time Occurrence
391.11(b)(5)*	Using a driver without a currently valid motor vehicle operator's license or permit	Driver Fitness	One-time Occurrence
391.15(a)	Knowingly using a disqualified driver	Driver Fitness	One-time Occurrence
391.23(a)*	Failing to investigate a driver's background	Driver Fitness	Pattern of Occurrence
391.45(a)	Using a driver not medically examined and certified	Driver Fitness	Pattern of Occurrence
391.45(b)(1)	Using a driver that has not been medically re-examined each 24 months	Driver Fitness	Pattern of Occurrence
391.51(a)	Failing to maintain a driver qualification file on each driver employed	Driver Fitness	Pattern of Occurrence
391.51(b)(2)	Failing to maintain inquiries into a driver's driving record in a driver's qualification file	Driver Fitness	Pattern of Occurrence
391.51(b)(7)	Failing to maintain medical examiner's certificate in driver's qualification file	Driver Fitness	Pattern of Occurrence
392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated	Multiple BASICS	Pattern of Occurrence
392.4(b)	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	Controlled Substance/Alcohol	One-time Occurrence

392.5(b)(1)	Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage	Controlled Substance/Alcohol	One-time Occurrence
392.5(b)(2)	Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle	Controlled Substance/Alcohol	One-time Occurrence
392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed	Unsafe Driving	Pattern of Occurrence
392.9a(a)(1)	Operating without the required operating authority	Other	One-time Occurrence
392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured	HM Compliance	Pattern of Occurrence
395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after being on duty 20 hours (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive after 70 hours in 7 days (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after 80 hours on duty in 8 days (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after 20 hours on duty (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after 70 hours on duty in 7 consecutive days (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after 80 hours on duty in 8 days (Alaska)	HOS Compliance	Pattern of Occurrence
395.1(o)	Requiring or permitting a short-haul property carrying CMV driver to drive after 16 hours on duty	HOS Compliance	Pattern of Occurrence
395.13(c)(1)*	Knowingly requiring or permitting a driver declared out-of-service (OOS) to operate a CMV before that driver may lawfully do so under the rules of Part 395	HOS Compliance	One-time Occurrence
395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive more than 11 hours	HOS Compliance	Pattern of Occurrence

395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after 14 hours on duty	HOS Compliance	Pattern of Occurrence
395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after 60 hours on duty in 7 days	HOS Compliance	Pattern of Occurrence
395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after 70 hours on duty in 8 days	HOS Compliance	Pattern of Occurrence
395.3(c)(1)*	Requiring or permitting a property-carrying CMV driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours	HOS Compliance	Pattern of Occurrence
395.3(c)(2)	Requiring or permitting a property-carrying CMV driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours	HOS Compliance	Pattern of Occurrence
395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours	HOS Compliance	Pattern of Occurrence
395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after 15 hours on duty	HOS Compliance	Pattern of Occurrence
395.5(b)(1)	Requiring or permitting a passenger-carrying CMV driver to drive after 60 hours on duty in 7 days	HOS Compliance	Pattern of Occurrence
395.5(b)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after 70 hours on duty in 8 days	HOS Compliance	Pattern of Occurrence
395.8(a)	Failing to require a driver to make a record of duty status (RODS) / No RODS	HOS Compliance	Pattern of Occurrence
395.8(e)	False reports of RODS	HOS Compliance	Pattern of Occurrence
395.8(i)	Failing to submit a RODS within 13 days	HOS Compliance	Pattern of Occurrence
395.8(k)(1)	Failing to preserve RODS for 6 months / Failing to preserve supporting documents	HOS Compliance	Pattern of Occurrence
396.11(a)	Failing to require driver to prepare driver vehicle inspection report	Vehicle Maintenance	Pattern of Occurrence
396.11(c)	Failing to correct OOS defects listed by a driver in a driver vehicle inspection report before the vehicle is operated again	Vehicle Maintenance	One-time Occurrence
396.17(a)	Using a CMV not periodically inspected	Vehicle Maintenance	Pattern of Occurrence
396.17(g)	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards	Vehicle Maintenance	One-time Occurrence

396.3(b)	Failing to keep minimum records of inspection and maintenance	Vehicle Maintenance	Pattern of Occurrence
396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared OOS before repairs are made	Vehicle Maintenance	One-time Occurrence
397.101(d)	Requiring or permitting the operation of a motor vehicle containing a highway-route-controlled quantity of radioactive materials as defined in §173.403 without an accompanying written route plan	HM Compliance	Pattern of Occurrence
397.13(a)	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	Unsafe Driving	Pattern of Occurrence
397.19(a)	Failing to furnish 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	HM Compliance	Pattern of Occurrence
397.5(a)	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	Unsafe Driving	One-time Occurrence
397.67(d)	Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 without an accompanying written route plan	HM Compliance	Pattern of Occurrence
397.7(a)(1)	Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street	Unsafe Driving	Pattern of Occurrence
397.7(b)	Parking a motor vehicle containing HM other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street	Unsafe Driving	Pattern of Occurrence

# Appendix I - Warning Letter Sample Text

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## **Appendix I – Warning Letter Sample Text**

### ***Dear Motor Carrier:***

A review of [INSERT MOTOR CARRIER NAME]'s safety data shows a lack of compliance with motor carrier safety regulations and suggests that your safety performance has fallen to an unacceptable level in the area(s) of [List of BASICS]. The purpose of this letter is to: 1) inform you of your company's current safety deficiencies; 2) explain how you can view your safety record and correct it if it contains erroneous data; and 3) describe what actions may be taken in the future if your safety performance does not improve.

This review and notice was based on the roadside inspection and crash performance of [Carrier Name]. Based upon this review, the Federal Motor Carrier Safety Administration (FMCSA) will continue to assess the regulatory compliance of [Carrier Name] on a monthly basis. FMCSA will also evaluate your safety performance through increased roadside inspections that target your company's deficient area(s).

You are encouraged to visit the website <http://ai.fmcsa.dot.gov/sms> to review your company's record. This website also contains instructions for requesting corrections to information that you believe to be incorrect. A password will be required to view your company information. Instructions to obtain a password are found on the website.

We urge you to take this warning letter seriously and improve your safety record. Failure to improve your company's safety performance will result in further investigation of your safety management practices, which may include requests for additional data through offsite or onsite interventions. Continued poor safety performance will result in penalties/sanctions, which could include civil penalties, suspension and/or revocation of State vehicle registration and revocation of your company's operating authority. Further, your operating record is available to other parties, which include shippers, brokers and insurance companies.

You can visit the FMCSA website at <http://www.fmcsa.dot.gov> to receive information about motor carrier safety rules and regulations. If you have additional questions regarding this matter or need assistance, please contact one of the following:

[Division Office]

[Federal Motor Carrier Safety Administration]

[Street Address]

[Street Address]

[City, State Zip Code]

[Telephone Number]

[State Office]

[Street Address]

[Street Address]

[City, State Zip Code]

[Telephone Number]

# Appendix J - Parts by BASIC Tables

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## Appendix J – Parts by BASIC Tables

This Reference provides guidance for selecting the appropriate CFR Part (Full or Sub-part) that should be examined depending on which BASIC is being investigated. The following tables provide more detailed explanations (by BASIC). Each table provides guidance for selecting the appropriate CFR Part (Full or Sub-part) that should be examined.

As part of every Investigation the SI will always check the following:

- **Commercial Driver's License Information System (CDLIS)** - following e-FOTM guidance for checking the minimum number of drivers using CDLIS.
- **Authority** - verifying that the motor carrier has the appropriate type of 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 it has an HM Compliance BASIC requiring an 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
- **Insurance** - verifying that the motor carrier has the appropriate level of insurance using the L&I (e.g., MCS-90).
- Red Flag Violations - investigating all drivers with Red Flag Violations as described in Section 3.4.

**Appendix J-a: Investigating CFR Parts by 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		
CFR Part	Full or Subpart	Description
40 - Drug & Alcohol Testing		
380 - Special Training	●	Longer Combined Vehicle (LCV) and Entry Level Driver Training Requirements – <b>Required if</b> motor carrier has drivers subject to Part 380 training requirements.
382 - Drug & Alcohol Testing		
383 - Commercial Driver’s License (CDL)	●	<b>Required:</b> Driver Fitness BASIC and part of the CAIR process. Perform Commercial Driver’s License Information System (CDLIS) checks in accordance with CDLIS policy memo.
390 - Federal Motor Carrier Safety Regulations (FMCSR) General	⊗ .3, .15, .23, .25	390.3 - General Applicability – ensures drivers are subject to regulations – <b>Required</b> 390.15 - Accident Register – <b>Required if</b> Crash BASIC Investigation is performed. 390.23/25 - Relief - <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration or emergency condition
391 - Driver Qualifications	●	Required: Driver Fitness BASIC
392 - Driving of Motor Vehicles	⊗	392.3 - Ill and Fatigued Driver - <b>Consideration</b> when ill and fatigued driving is evident on the profile. Investigator should examine if violations may be related to a medical issue.

	.3, .9a(a)	392.9a(a) Authority - <b>Required</b> as part of the CAIR process
393 - Vehicle Parts and Accessories		
395 - Hours of Service (HOS)		
396 - Vehicle Maintenance		
<b>Hazardous Materials</b>		
CFR Part	Full or Subpart	Description
107 - HM Program Procedures (Registration)		
171 - HM General		
172 - HM Table/Communication	⊗ .704	172.704 – Training Records - <b>Required if</b> HM carrier
173 - Shipper Requirements		
177 - Carriage by Highway	⊗ .816	177.816 - Training Requirements – <b>Required if</b> HM carrier
178 - Package Specifications		
180 - Package Quality and Maintenance		
397 - HM Driving and Parking		
<b>Other</b>		

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	398.3 – Qualification of Drivers and Operators – Required if motor carrier transports migrant workers.
399 - Employee Health and Safety		

**Appendix J-b: Investigating CFR Parts by 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	●	<b>Required:</b> Controlled Substances and Alcohol BASIC
380 - Special Training		
382 - Drug & Alcohol Testing	●	<b>Required:</b> Controlled Substances and Alcohol BASIC
383 - CDL	⊗ Part of CAIR	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
390 - FMCSR General	⊗ .15	390.15 - Accident Register - <b>Required</b> to determine which crashes required post-accident controlled substance and alcohol testing. Additionally <b>Required if</b> Crash BASIC Investigation is performed.
391 - Driver	⊗	391.23 (d-m) – Controlled substance and alcohol program driver background checks and carrier

Qualifications	.23(d-m), .41-.45	responsibilities – <b>Required</b> 391.41, .43, .45 - Physical qualification for drivers, specific to controlled substances and alcohol issues. <b>Required if</b> positive tested driver.
392 - Driving of Motor Vehicles	<input checked="" type="checkbox"/> .9a(a)	392.9a(a) Authority - <b>Required</b> as part of the CAIR process.
393 - Vehicle Parts and Accessories		
395 - HOS		
396 - Vehicle Maintenance		
<b>Hazardous Materials</b>		
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		
<b>Other</b>		
CFR Part	Full of Subpart	Description
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> 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		

**Appendix J-c: Investigating CFR Parts by Vehicle Maintenance BASIC**

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

<b>Safety</b>		
CFR Part	Full of Subpart	Description
40 - Drug & Alcohol Testing		
380 - Special Training		
382 - Drug & Alcohol Testing		
383 - CDL	⊗ Part of CAIR	<b>Required</b> 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 – <b>Required</b>  390.15 - Accident Register - <b>Required if</b> 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 - <b>Consideration</b> when present on profile  390.23/25 - Relief - <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration.
391 - Driver Qualifications	⊗  .13	391.13 - Responsibilities of drivers - <b>Consideration</b> 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 - <b>Required if</b> 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 - <b>Consideration</b> when the profile shows evidence of 392.2 Cargo-Related violations. Use “1 of 1” violation citation logic.  392.62 - Safe operation or buses - <b>Consideration</b> when evidence of violation exists on the profile.  392.9a(a) Authority - <b>Required</b> as part of the CAIR process.
393 - Vehicle Parts and Accessories	●	<b>Required:</b> 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 - <b>Consideration</b> when the profile shows evidence of cargo-related issues. Use “1 of 1” violation citation logic.
395 - HOS		
396 - Vehicle Maintenance	●	<b>Required:</b> Vehicle Maintenance BASIC  396.3(a) Inspection, repair, and maintenance - <b>Consideration</b> when profile shows evidence that may be related to the maintenance of load securement devices. Use “1 of 1” violation citation logic.
<b>Hazardous Materials (HM)</b>		
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		
<b>Other</b>		
CFR Part	Full or Subpart	Description
325 - Noise Emission		
387 - Financial Responsibility	⊗  As applicable	<b>Required</b> 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 - <b>Required if</b> motor carrier transports migrant workers.
399 - Employee Health and Safety		

### Appendix J-d: Investigating CFR Parts by Hours-of-Service (HOS) 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.)

<b>Safety</b>		
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 - <b>Required if</b> motor carrier has drivers subject to training requirements.  380.505 - Proof of Training - <b>Required if</b> motor carrier has drivers subject to entry-level driver training.  380.513 - Training Certificate - <b>Required if</b> motor carrier has drivers subject to entry-level driver training.
382 - Drug & Alcohol Testing		
383 - CDL	Part of CAIR	<b>Required</b> 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 – <b>Required</b>  390.15 - Accident Register - <b>Required if</b> Crash BASIC Investigation is performed.  390.23/25 - Relief - <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration or emergency condition.
391 - Driver Qualifications	.21, .41, .43	391.21 - Application for Employment - <b>Consideration</b> in those cases where multiple employers may be contributing to the HOS Compliance BASIC  391.41 - Physical Qualifications of Drivers - <b>Consideration</b> in those cases where physical qualifications may be impacting the HOS Compliance BASIC  391.43 - Medical Exam – <b>Consideration</b> 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

		<p>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.</p> <p><b>Example:</b> 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.</p>
392 - Driving of Motor Vehicles	.3, .6, .9a(a)	<p>392.3 – Ill and Fatigued Driver - <b>Consideration</b> when ill and fatigue driving is evident on the profile. Investigator should examine if violations may be related to a medical issue.</p> <p>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 – <b>Required</b></p> <p>392.9a(a) Authority - <b>Required</b> as part of the CAIR process.</p>
393 - Vehicle Parts and Accessories		
395 - Hours of Service	●	<b>Required:</b> HOS Compliance BASIC
396 - Vehicle Maintenance		
<b>Hazardous Materials</b>		
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		
<b>Other</b>		
CFR Part	Full or Subpart	Description
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> 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 - <b>Required if</b> motor carrier transports migrant workers.
399 - Employee Health and Safety		

**Appendix J-e: Investigating CFR Parts by Hazardous Materials 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.)

<b>Safety</b>		
CFR Part	Full or Subpart	Description
383 - CDL	⊗	<b>Required</b> as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.

	Part of CAIR	
392 - Driving of Motor Vehicles	<p style="text-align: center;">⊗</p> <p style="text-align: center;">.2</p>	392.2 - Applicable Operating Rules – <b>Required if</b> state or local routing laws are applicable to the motor carrier under investigation. Use “1 of 1” violation citation logic.
<b>Hazardous Materials</b>		
CFR Part	Full or Subpart	Description
107 - HM Program Procedures (Registration)	<p style="text-align: center;">⊗</p> <p style="text-align: center;">.101 - .405</p> <p style="text-align: center;">.501 - .504</p> <p style="text-align: center;">.601 - .620</p>	<p>107.101 - 107.405, <b>required if</b> carrier/shipper is a party to a special permit.</p> <p>107.501 - 107.504, <b>required if</b> carrier meets any Cargo Tank registration requirements.</p> <p>107.601 - 107.620, <b>required if</b> person meets any of the HM registration criteria found in 107.601.</p>
171 - HM General	<p style="text-align: center;">⊗</p> <p style="text-align: center;">.1, .2, .15, .16</p>	<p>171.1 - Applicability of Hazardous Materials Regulations (HMR) - <b>Required</b> to verify applicability of regulations.</p> <p>171.2 - General requirements - <b>Required</b></p> <p>171.15 - Immediate notice of certain hazardous material incidents - <b>Required if</b> carrier/shipper was involved in an incident that required immediate notice. Refer to criteria in 171.15(b).</p> <p>171.16 - Detailed hazardous material incident reports - <b>Required if</b> carrier has incidents meeting detailed reporting criteria.</p>
172 - HM Table/Communication	<p style="text-align: center;">⊗</p> <p style="text-align: center;">.200 - .205</p> <p style="text-align: center;">.300 -.338</p> <p style="text-align: center;">.400 -.450</p> <p style="text-align: center;">.500 -.560</p> <p style="text-align: center;">.600 -.606</p> <p style="text-align: center;">.700 -.704</p>	<p>172.200 - 172.205, Shipping Paper Requirements - <b>Required</b> as applicable to each proper shipping name or class/division of hazardous material transported or shipped.</p> <p>172.300 - 172.338, Marking Requirements - <b>Required</b> for each proper shipping name or class/division of non-bulk and bulk packages requiring marking in accordance with Subpart D or Part 172.</p> <p>172.400 - 172.450, Labeling Requirements - <b>Required</b> 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.</p> <p>172.500 - 172.560, Placarding Requirements - <b>Required</b> for each proper shipping name or class/division of hazardous material being transported or shipped requiring Placarding in accordance with Subpart F of Part</p>

	.800 -.822	<p>172.</p> <p>172.600 - 172.606, Emergency Response Requirements - <b>Required</b> for each proper shipping name or class/division of hazardous material required to have emergency response information.</p> <p>172.700 - 172.704, Training Requirements - <b>Required</b> for hazardous material employees as defined by Subpart H of Part 172, check all requirements in Subpart H.</p> <p>172.800 - 172.822, Security Plan Requirements - <b>Required</b> for hazardous material transporters and shippers that are required to have a security plan in accordance with Subpart I or Part 172.</p>
173 - Shipper Requirements	●	<b>Required</b> 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	<p>177.800 - 177.823, General information and regulations - <b>As applicable</b> to the hazardous materials being transported.</p> <p>177.834 - 177.843, Loading and unloading - <b>As applicable</b> to the hazardous materials listed in Subpart B of Part 177.</p> <p>177.848, Segregation and Separation of Hazardous Materials - <b>Required if</b> 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.</p> <p>177.854, Vehicles and shipments in transit - <b>As applicable</b> and investigative evidence reveals.</p> <p>177.870, Regulations applying to hazardous material on motor vehicles carrying passengers for-hire - <b>Required if</b> 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.</p>
178 - Package Specifications		As applicable to the hazardous material packaging - <b>Required if</b> 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. <b>Required if</b> 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 - <b>As applicable</b> 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.
<b>Other</b>		
CFR Part	Full or Subpart	Description
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> as part of CAIR process as applicable to the commodity transported or motor carrier operation type.

**Appendix J-f: Investigating CFR Parts by Unsafe Driving BASIC**

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

**Unsafe Driving**

<b>Safety</b>		
CFR Part	Full or Subpart	Description
40 - Drug & Alcohol Testing		
380 - Special Training	●	Longer Combined Vehicle (LCV) and Entry Level Driver Training Requirements – <b>Required if</b> motor carrier has drivers subject to training requirements.
382 - Drug & Alcohol Testing		
383 - CDL	⊗ Part of CAIR	<b>Required</b> 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 – <b>Required</b> 390.15 - Accident Register – <b>Required if</b> Crash BASIC Investigation is performed. 390.23/25 - Relief - <b>Required if</b> a carrier is claiming relief. Confirm emergency declaration.

391 - Driver Qualifications	⊗	<p>A review of driver qualification regulations should be a <b>consideration</b> 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.</p> <p><b>Example:</b> 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.</p>
392 - Driving of Motor Vehicles	●	<p>A review of the profile is <b>required</b> 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.</p> <p>392.9a(a) Authority - <b>Required</b> as part of the CAIR process</p>
393 - Vehicle Parts and Accessories		
395 - Hours of Service		
396 - Vehicle Maintenance		
<b>Hazardous Materials</b>		
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	⊗	177.810 - Vehicular Tunnels - <b>Required if</b> carrier transports quantities of HM that are prohibited from being transported through tunnels

	.810, .816, .823	177.823 - Movement of motor vehicles in emergency situations – <b>Required if HM carrier</b> 177.816 - Training requirements – <b>Required if HM carrier</b>
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 <b>required if</b> 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 - <b>Required if</b> route controlled HM operation
<b>Other</b>		
CFR Part	Full or Subpart	Description
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	<b>Required</b> 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 – <b>Required if</b> motor carrier transports migrant workers. 398.4 - Driving of Motor Vehicles - <b>Required if</b> motor carrier transports migrant workers.
399 - Employee Health and Safety		

# Appendix K – Reincarnated/Affiliated Carrier Analysis Factors and Checklist

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**Federal Motor Carrier Safety Administration (FMCSA)  
U.S. Department of Transportation**

**INVESTIGATION ANALYSIS - KEY FACTORS**

- I. Prior History: Does the predecessor company have a negative safety history? Safety Measurement System (SMS) alerts? Is there an existing:
- Out of Service Order \_\_\_\_\_
  - Order to Cease Operations \_\_\_\_\_
  - Civil Penalty \_\_\_\_\_
- II. Compensation: Was there a valid transfer of assets for compensation?
- What, if anything, did the new company pay or exchange to acquire the predecessor company or its assets (vehicles, building, lease)? \_\_\_\_\_
  - Are there any written agreements or other records memorializing the transaction? \_\_\_\_\_
  - Are there documents, or a lack of documents, indicating a transfer of assets without adequate or any consideration, i.e., compensation? \_\_\_\_\_
- III. Timing: Is there a timing connection between the predecessor ceasing operations and the new company's formation? Did the new company exist but without any activity or documented operations?
- What do the company records and State filing documents indicate? \_\_\_\_\_
  - What connections can be drawn to prior enforcement action, if any? \_\_\_\_\_
  - Do any other factors exist that might explain why the new company was created? \_\_\_\_\_
- IV. Identity: Similarities between the new company and predecessor; list similarities: \_\_\_\_\_
- Is the new company performing the same function as the predecessor? \_\_\_\_\_
  - How are the companies identified in State business/corporate filing records? [Articles of Incorporation, Fictitious Name Statement (d/b/a), etc.] \_\_\_\_\_
  - Who filed the State business/corporate filing documents? \_\_\_\_\_
  - Are the corporate officers the same? What were, and are, their functions? \_\_\_\_\_
  - Are the shareholders the same? \_\_\_\_\_
  - Do the companies have assets in common (vehicles, equipment, land)? \_\_\_\_\_
  - Are the addresses and telephone numbers of both companies the same? \_\_\_\_\_
  - Was there any change to any equipment, vehicle, or facility lease, utility bills or insurance contract? \_\_\_\_\_
  - Did the vehicle registration(s) change? \_\_\_\_\_
  - Are the customers the same? \_\_\_\_\_
  - Is the predecessor still in business? If not, what notifications, if any, were the customers given? What is the customer's understanding regarding who will provide transportation services? \_\_\_\_\_
  - Did the predecessor file bankruptcy? \_\_\_\_\_
  - Is the public face of the new company the same as the predecessor's (name, logo, advertising, vehicle markings)? \_\_\_\_\_
  - Is the new company performing services under contracts entered into by the predecessor?  
\_\_\_\_\_

- o. Are the bank accounts the same (same account number, names on account)? \_\_\_\_\_
  - p. In its tax returns, is the new company taking depreciation for assets that belonged to the predecessor company? \_\_\_\_\_
- V. Operational control: Are the employees the same individuals as the employees of the predecessor?
- a. Are the managers and supervisors in the same positions with essentially the same job functions? \_\_\_\_\_
  - b. Does the new company rely on any of the predecessor's records to establish compliance with the FMCSRs? For example: Did the new company re-qualify the drivers and establish a new controlled substances and alcohol testing program? \_\_\_\_\_
  - c. Is the person responsible for safety and FMCSR compliance the same person as in the predecessor company? \_\_\_\_\_
  - d. Is the person(s) with signatory authority on the checking/banking accounts the same as the person with the predecessor company? \_\_\_\_\_

- Copies of records of Carrier 1 used by Carrier 2 to show compliance with FMCSRs
- Copies of any bill of Carrier 2 showing Carrier 1 as the obligated party
- Copies of contracts serviced by Carrier 2 that are signed by Carrier 1 or predate Carrier 2
- Copies of correspondence regarding Carrier 1 ceasing operations and Carrier 2 assuming operations
- Copies of trip packets for invoices for Carrier 1 where the transportation was completed by Carrier 2
- Copies of trip packets for invoices for Carrier 2 where the transportation was completed by Carrier 1
- Copies of corporate meeting and shareholder reports for each carrier
- Photographs – Take photographs when possible for visual record of business identity, for example, vehicle markings
- Insurance documents showing same policy numbers
- Company letterhead, business cards
- Internet site

# Appendix L - Serious Violations - Corrective Action Requirements (100% state)

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## **Appendix L – Serious Violations – Corrective Action Requirements(100% State)**

A carrier is subject to intervention based on the discovery of Serious Violations found during a previous investigation. Serious Violations include violations of Acute, Critical, Fundamental, and Essential Safety Management (ESM) regulations. They are briefly described below:

- Violations of **Acute** regulations are those where non-compliance is so severe that they require immediate corrective action by a carrier regardless of its overall safety posture. Discovery of a single Acute Violation constitutes a Serious Violation
- Violations of **Critical** regulations are those which relate directly to the carrier's management and/or operational controls and are indicative of breakdowns in a carrier's management controls. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) results in a Serious Violation.
- Violations of **Fundamental** regulations are those where non-compliance is so severe that they require immediate corrective action by a carrier regardless of its overall safety posture. Discovery of a single Fundamental Violation constitutes a Serious Violation.
- Violations of **Essential Safety Management** regulations are associated with elements of safety management controls necessary to operate. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) results in a Serious Violation.

Verification of Corrective Action can occur in several different ways depending on whether the violation is Type A or Type B

- **Type A Violations**-Serious Violations for which corrective action can be demonstrated through carrier submitted documentation. For these violations, a carrier can supply the evidence of corrective action listed in the table below at any time. Even if corrective action is received, the associated BASIC will remain as Investigation-Identified for 12 months. After 12 months the Serious Violations will no longer impact the overall BASIC assessment but will become a factor in prioritizing the carrier for Intervention.
- **Type B Violations**-Serious Violations for which corrective action can only be demonstrated through a carrier's sustained on-road performance. These are primarily related to the Hours-of-Service (HOS) Compliance, 392.2 (any BASIC), and 392.9(a)(1) (within the Vehicle Maintenance BASIC).
  - For the 392.2 (any BASIC) and 392.9(a)(1) (within the Vehicle Maintenance BASIC) the carrier must have 12 months free of any related violation.
  - For the HOS Compliance BASIC the table to the right gives the number of HOS-violation-free driver inspections that are required to meet the performance-based criteria, based on the carrier's number of Power Units. The inspections must be the most recent.

### **Type B Serious Violations On road Performance Standards for Serious Violations related to the HOS Compliance**

<b>No. of Power Units</b>	<b>Required No. of Clean Inspections (most recent)</b>
1-5	3
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
1,201-3200	125
3,201-10,000	200
10,001-35,000	315
35,001-150,000	500

It should be noted that the corrective actions listed in the following table are minimum requirements designed to ensure correction of a given violation. It is important that the carrier proposes a systematic correction of the discovered violation to prevent the violation from occurring in the future in accordance with 49 CFR Part 390.3(e), knowledge of and compliance with the Federal Motor Carrier Safety Regulations.

Violations marked with an asterisk (\*) are ESM/Fundamental Violations that are not Acute or Critical Violations and will not impact the motor carrier's formal safety rating. However, all Serious Violations are subject to the same policy and procedures related to required enforcement action. If enforcement action is not taken, an explanation must be documented in Sentri to explain why enforcement was not initiated.

<b>Part</b>	<b>Violation</b>	<b>BASIC</b>	<b>Type A or B</b>	<b>Corrective Action</b>
171.15	Carrier failing to give immediate telephone notice of an incident involving hazardous materials (HM).	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a copy of the incident report.</li> <li>• Provide a statement on how this issue was handled.</li> <li>• Provide evidence of</li> </ul>

				policies, procedures and training that will prevent this violation from occurring in the future.
171.16	Carrier failing to make a written report of an incident involving HM.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a copy of the incident report.</li> <li>• Provide a statement on how this issue was handled.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
172.200(a)*	Transporting an HM without preparing a shipping paper (§ 172.200(a) and § 177.817(a)) (no shipping paper at all).	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide an example of properly prepared shipping paper for each class of HM for which a shipping paper was improperly prepared.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
172.313(a)	Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words "Inhalation Hazard."	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide evidence to support that required package marking has occurred.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
172.704(a)*	Failing to train HM employees as required (§ 172.704(a) and § 177.800(c)).	Driver Fitness	A	<ul style="list-style-type: none"> <li>• Provide evidence of policies, procedures and training to prevent this violation from occurring in the future.</li> </ul>

172.800(b)	Transporting HM without a security plan (acute) / Transporting HM without a security plan that conforms to Subpart I requirements (acute) / Failure to adhere to a required security plan.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide a copy of a Security Plan that conforms to Part 172.800 and training program for in-depth security training.</li> </ul>
173.24(b)(1)	Transporting HM in a package with an identifiable release of HM.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide a copy of the incident report and a copy of shipping paper to identify the HM, and package identification markings in accordance with 178.3.</li> <li>Provide evidence of policies, procedures and training to prevent this violation from occurring in the future.</li> </ul>
173.24b(d)(2)*	Loading a cargo tank with an HM which exceeds the maximum weight of lading marked on the specification plate.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide a copy of the Cargo Tank Manufacturers Certificate of Compliance, loading slips, and HM shipping paper.</li> <li>Provide evidence of policies, procedures and training to prevent this violation from occurring in the future.</li> </ul>
173.30*	Loading HM not in accordance with the segregation table.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide policy procedures and training to prevent this violation from occurring in the future.</li> </ul>
173.33(a)(1)*	Transporting HM in an unauthorized cargo	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide a copy of the Cargo Tank</li> </ul>

	tank.			<p>Manufacturers Certificate of Compliance, loading slips, and HM shipping paper.</p> <ul style="list-style-type: none"> <li>• Provide evidence of policies, procedures and training to prevent this violation from occurring in the future.</li> </ul>
173.33(a)(2)*	Transporting or loading two or more materials in a cargo tank motor vehicle which resulted in an unsafe condition.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide shipping papers to verify that materials were not transported together post-investigation.</li> <li>• Provide evidence of policies, procedures and training to prevent this violation from occurring in the future.</li> </ul>
173.33(b)(1)*	Transporting HM in a cargo tank motor vehicle which has a dangerous reaction when in contact with the tank.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a copy of the Cargo Tank Manufacturers Certificate of Compliance, loading slips, and HM shipping paper.</li> <li>• Provide evidence of policies, procedures and training to prevent this violation from occurring in the future.</li> </ul>
173.421(a)	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).	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide evidence which demonstrates knowledge of and correct use of radiation meter.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>

173.431(a)	Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
173.431(b)	Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future</li> </ul>
173.441(a)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
173.442(b)	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.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
173.442(b)	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	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>

	exclusive use shipment.			
173.443(a)	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.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
177.800(c)	Failing to train HM employees as required (§ 172.704(a) and § 177.800(c))	Driver Fitness	A	<ul style="list-style-type: none"> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> <li>• Provide documentation that personnel received the training; up to three (3) persons.</li> </ul>
177.801	Transporting a material identified in 49 CFR 172.101 as forbidden for highway transportation.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide shipping papers from date of Investigation to ensure that no documented HM that is forbidden was transported.</li> </ul>
177.817(a)	Transporting an HM without preparing a shipping paper (§ 172.200(a) and § 177.817(a))(no shipping paper at all)	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide an example of properly prepared shipping paper for each class of HM for which a shipping paper was improperly prepared.</li> <li>• Provide evidence of policies, procedures and training to prevent this violation from occurring in the future.</li> </ul>
177.823(a)	Moving a transport vehicle containing HM that is not properly	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide photographic evidence of properly marked or placarded</li> </ul>

	marked or placarded.			<ul style="list-style-type: none"> <li>vehicle.</li> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
177.834(i)*	Failing to attend a cargo tank during loading/unloading.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide policy, procedures and training to prevent this violation from occurring in the future.</li> </ul>
177.835(a)	Loading or unloading a Class 1 (explosive) material with the engine running.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide a statement on how this issue was handled.</li> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
177.835(c)	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.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
177.835(j)	Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted.	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide a statement on how this issue was handled.</li> <li>Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
177.841(e)	Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any	HM Compliance	A	<ul style="list-style-type: none"> <li>Provide a statement on how this issue was handled.</li> <li>Provide evidence of policies, procedures and training that will</li> </ul>

	edible material intended for consumption by humans or animals unless an exception in §177.841(e)(i) or (ii) is met.			prevent this violation from occurring in the future.
177.848(d)*	Loading HM not in accordance with the segregation table.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
180.407(a)	Transporting a shipment of HM in a cargo tank that has not been inspected or retested in accordance with § 180.407.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide Cargo Tank Certificate and proof of test for up to three (3) units.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
180.407(b)(2)*	Failing to test and inspect a cargo tank which has been in an accident and has been damaged.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a Cargo Tank Certificate and proof of test for up to three (3) units.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
180.407(b)(3)*	Failing to conduct a pressure test on a cargo tank which has been out of HM service for 1 year or more.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a Cargo Tank Certificate and proof of test.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
180.407(b)(5)*	Failing to conduct a test or inspection on a cargo tank when required by	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a Cargo Tank Certificate and proof of test.</li> <li>• Provide evidence of</li> </ul>

	DOT.			policies, procedures and training that will prevent this violation from occurring in the future.
180.407(c)	Failing to periodically test and inspect a cargo tank.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a Cargo Tank Certificate and proof of test for up to three (3) units.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
180.413(d)(3)(iv)	Failing to verify mod affecting structure of cargo tank.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide evidence of mod affecting structure of cargo tank.</li> <li>• Provide evidence of policies, procedures, and training that will prevent this violation from occurring in the future.</li> </ul>
180.415	Failing to mark a cargo tank which passed an inspection or test required by §180.407.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide proof of proper marking (i.e., photographs)</li> <li>• Provide evidence of cargo tank inspection or test.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
180.417(a)(1)	Failing to retain cargo tank manufacturer's data report certificate and related papers, as required.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide copies of specification cargo tank's manufacturer certificate, the manufacturer's ASME U1A data report, where applicable and required related</li> </ul>

				<p>documents; up to three (3) DOT specification cargo tanks.</p> <ul style="list-style-type: none"> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
180.417(a)(2)	Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide evidence of cargo tank manufacturer's certificate.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
382.115(a)	Failing to implement an alcohol and/or controlled substance testing program.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• Provide proof contract with Consortium/Third Party Administrator (C/TPA) and/or collection site if applicable and up to three pre-employment test(s) conducted on all drivers hired during the previous 365 days.</li> <li>• Test results, supervisor reasonable suspension training if applicable.</li> <li>• Control custody forms, policy, active random driver list.</li> </ul>
382.115(b)	Failing to implement an alcohol and/or controlled substance testing program.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• Provide proof contract with C/TPA and/or collection site if applicable and up to three pre-employment test(s)</li> </ul>

				<p>conducted on all drivers hired during the previous 365 days.</p> <ul style="list-style-type: none"> <li>• Test results, supervisor reasonable suspension training if applicable.</li> <li>• Control custody forms, policy, active random driver list.</li> </ul>
382.201	Using a driver known to have an alcohol content of 0.04 or greater to perform a safety sensitive function.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> <li>• Assuming the driver is going to drive: SAP evaluation; evidence of a return to duty test and all follow-up test results if applicable.</li> <li>• Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> <li>• Assuming the driver is going to drive: SAP evaluation;</li> </ul>

				<p>evidence of a return to duty test and all follow-up test results if applicable.</p> <ul style="list-style-type: none"> <li>Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
382.213(b)	Using a driver known to have used a controlled substance.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>If an employee has been terminated, the carrier must submit a written statement providing a date of termination</li> <li>Assuming the driver is going to drive: SAP evaluation; evidence of a return to duty test and all follow-up test results if applicable.</li> <li>Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
382.215	Using a driver known to have tested positive for a controlled substance.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> <li>Assuming the driver is going to drive: SAP evaluation; evidence of a return to duty test and all follow-up test results if applicable.</li> </ul>

				<ul style="list-style-type: none"> <li>Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
382.301(a)	Using a driver before receiving a negative pre-employment result.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>Provide pre-employment drug test results on every driver cited.</li> <li>If a cited driver is no longer employed with the carrier, motor carrier must submit a written statement providing the date the driver ceased employment with the motor carrier. Provide a list of drivers hired since the last investigation, including the first trip date, and negative pre-employment test results.</li> </ul>
382.303(a)	Failing to conduct post-accident testing on driver for alcohol.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>Provide post-accident test results for any driver involved in a crash requiring a post-accident test since last investigation.</li> <li>Provide a copy of Controlled Substance and Alcohol policy in accordance with 382.601.</li> </ul>
382.303(b)	Failing to conduct post-accident testing on driver for controlled substances.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>Provide post-accident test results for any driver involved in a crash requiring a post-accident test since last investigation.</li> <li>Provide a copy of</li> </ul>

				Controlled Substance and Alcohol policy in accordance with 382.601.
382.305	Failing to implement a random controlled substances and/or an alcohol testing program.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• Provide evidence of contract with C/TPA and/or collection site, if applicable.</li> <li>• Provide a list of all names of drivers in random testing pool and include information on how the random pool is administered.</li> <li>• Provide test results and CCF if applicable.</li> </ul>
382.305(b)(1)	Failing to perform random alcohol tests at the applicable rate.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• Provide evidence of contract with C/TPA and/or collection site, if applicable.</li> <li>• Provide a list of all names of drivers in random testing pool and include information on how the random pool is administered.</li> <li>• Provide test results and CCF if applicable.</li> </ul>
382.305(b)(2)	Failing to perform random controlled substance tests at the applicable rate.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• Provide evidence of contract with C/TPA and/or collection site, if applicable.</li> <li>• Provide a list of all names of drivers in random testing pool and include information on how the random pool is administered.</li> <li>• Provide test results and CCF if</li> </ul>

				applicable.
382.309	Using a driver without a return to duty test.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• Validate compliance with 49 CFR Part 40 Subpart O.</li> <li>• Provide a copy of Controlled Substance and Alcohol policy in accordance with 382.601.</li> </ul>
382.503	Allowing a driver to perform safety sensitive functions, after engaging in conduct prohibited by subpart B of part 382, without being evaluated by a substance abuse professional, as required by § 382.605. (§ 382.503, cross referencing part 40, Subpart O).	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> <li>• Assuming the driver is going to drive: SAP evaluation; evidence of a return to duty test and all follow-up test results if applicable.</li> <li>• Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
382.505(a)	Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> <li>• Assuming the driver is going to drive: SAP evaluation; evidence of a return</li> </ul>

				<p>to duty test and all follow-up test results if applicable.</p> <ul style="list-style-type: none"> <li>Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
382.605(c)(1)	Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by part 382 Subpart B.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>Validate compliance with 49 CFR Part 40 Subpart O.</li> <li>Provide a copy of the Controlled Substance and Alcohol policy in accordance with 382.601 and provide proof of supervisory training.</li> </ul>
382.605(c)(2)(ii)	Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>Validate compliance with 49 CFR Part 40 Subpart O.</li> <li>Provide a copy of the Controlled Substance and Alcohol policy in accordance with 382.601.</li> </ul>
383.23(a)	Operating a CMV without a valid CDL.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide evidence that State Motor Vehicle Records show that the issue has been resolved.</li> <li>If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> </ul>
383.3	Knowingly using a driver who does not possess a valid CDL.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Current State MVR driving record. If employee has been terminated, carrier must submit a written statement providing a date of</li> </ul>

				termination.
383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV with a CDL which is suspended, revoked, or canceled by a State or who is disqualified to operate a CMV as defined in part 383 (§ 383.37(a)) (safety-related reasons).	Driver Fitness	A	<ul style="list-style-type: none"> <li>• Provide evidence that State Motor Vehicle Records show issue has been resolved.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> </ul>
383.37(b)	Knowingly allowing, requiring, permitting, or authorizing an employee with more than one CDL to operate a commercial motor vehicle.	Driver Fitness	A	<ul style="list-style-type: none"> <li>• Provide evidence that driver now has only one license, updated Moving Violation Records (MVR). FMCSA/State to confirm through available systems.</li> </ul>
383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a CMV.	Driver Fitness	A	<ul style="list-style-type: none"> <li>• Provide evidence that State Motor Vehicle Records show issue has been resolved.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> </ul>
387.31(a)	Operating a passenger-carrying CMV without having in effect the required minimum levels of financial responsibility.	Insurance/Other	A	<ul style="list-style-type: none"> <li>• Provide a copy of properly executed insurance endorsement - MCS-90 or MCS-90B.</li> </ul>
387.31(d)	Failing to maintain at principal place of business required proof of financial responsibility for passenger-carrying	Insurance/Other	A	<ul style="list-style-type: none"> <li>• Provide a copy of properly executed insurance endorsement - MCS-90 or MCS-90B.</li> </ul>

	vehicles.			
387.7(a)	Operating a motor vehicle transporting property without having in effect the required minimum levels of financial responsibility coverage.	Insurance/Other	A	<ul style="list-style-type: none"> <li>Provide a copy of properly executed insurance endorsement - MCS-90 or MCS-90B.</li> </ul>
387.7(d)	Failing to maintain at principal place of business required proof of financial responsibility.	Insurance/Other	A	<ul style="list-style-type: none"> <li>Provide a copy of properly executed insurance endorsement - MCS-90 or MCS 90B.</li> </ul>
390.15(b)(2)	Failing to maintain copies of all accident reports required by State or other governmental entities or insurers.	Insurance/Other	A	<ul style="list-style-type: none"> <li>Provide copies of accident report(s) for the past one year as required by 49 CFR section 390.15(b)(2).</li> </ul>
390.35	Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records.	Applies to Multiple BASICS	A	<ul style="list-style-type: none"> <li>Division discretion</li> </ul>
391.11(b)(4)	Knowingly using a physically unqualified driver.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide a current medical certificate with waiver if applicable.</li> </ul>
391.11(b)(5)*	Using a driver without a currently valid motor vehicle operator's license or permit.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide a copy of state DMV record check.</li> </ul>
391.15(a)	Knowingly using a disqualified driver.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide evidence to show driver is no longer disqualified (current MVR).</li> <li>If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> </ul>

391.23(a)*	Failing to investigate a driver's background.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide a copy of State DMV/MVA check.</li> </ul>
391.45(a)	Using a driver not medically examined and certified.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide evidence of a valid medical examiner's certificate or proof of waiver and/or exception issued by Agency for requested drivers.</li> </ul>
391.45(b)(1)	Using a driver not medically re-examined each 24 months.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide evidence of a valid medical examiner's certificate or proof of waiver and/or exception issued by Agency for requested drivers.</li> </ul>
391.51(a)	Failing to maintain a driver qualification file on each driver employed.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide complete DQ files; up to three (3) files which include newly hired drivers if applicable.</li> </ul>
391.51(b)(2)	Failing to maintain inquiries into driver's driving record in driver's qualification file.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide evidence of inquiry of driver's record.</li> </ul>
391.51(b)(7)	Failing to maintain medical examiner's certificate in driver's qualification file.	Driver Fitness	A	<ul style="list-style-type: none"> <li>Provide copies of ME certificates.</li> </ul>
392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (§ 392.2) (safety-related violations only).	Multiple BASICS	B	<ul style="list-style-type: none"> <li>Division discretion.</li> </ul>
392.4(b)	Requiring or permitting a driver to drive while	Controlled	A	<ul style="list-style-type: none"> <li>Provide evidence of policies, procedures</li> </ul>

	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.	Substances/ Alcohol		and training that will prevent this violation from occurring in the future.
392.5(b)(1)	Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> <li>• Assuming the driver is going to drive: SAP evaluation; evidence of a return to duty test and all follow-up test results if applicable.</li> <li>• Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
392.5(b)(2)	Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.	Controlled Substances/ Alcohol	A	<ul style="list-style-type: none"> <li>• SAP evaluation; evidence of a return to duty test and all follow-up tests results.</li> <li>• If an employee has been terminated, the carrier must submit a written statement providing a date of termination.</li> <li>• Assuming the driver is going to drive: SAP evaluation; evidence of a return to duty test and all follow-up test results if applicable.</li> </ul>

				<ul style="list-style-type: none"> <li>Assuming the driver is not going to drive: Statement regarding that fact.</li> </ul>
392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed.	Unsafe Driving	B	<ul style="list-style-type: none"> <li>Must provide evidence of 12 months with no violations in the Unsafe Driving BASIC.</li> </ul>
392.9a(a)(1)	Operating without the required operating authority.	Insurance/Other	A	<ul style="list-style-type: none"> <li>Evidence of authority</li> </ul>
392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.	HM Compliance	B	<ul style="list-style-type: none"> <li>Must provide evidence of 12 months with no violations related to load securement.</li> </ul>
395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Alaska).	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after being on duty 20 hours (Alaska).	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the</li> </ul>

	after 70 hours in 7 days (Alaska).			number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).
395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after 80 hours on duty in 8 days (Alaska).	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Alaska).	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after 20 hours on duty (Alaska).	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after 70 hours on duty in 7 consecutive days	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver</li> </ul>

	(Alaska).			inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).
395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after 80 hours on duty in 8 days (Alaska).	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.1(o)	Requiring or permitting a short-haul property-carrying CMV driver to drive after 16 hours on duty.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.13(c)(1)*	Knowingly requiring or permitting a driver declared out-of-service to operate a CMV before that driver may lawfully do so under the rules of Part 395.	HOS Compliance	A	<ul style="list-style-type: none"> <li>For each driver selected, provide proof that the driver obtained 10 or 34 hours off prior to the next dispatch.</li> </ul>
395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive more than 11 hours.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number</li> </ul>

				of power units).
395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after 14 hours on duty.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after 60 hours on duty in 7 days.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after 70 hours on duty in 8 days.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.3(c)(1)	Requiring or permitting a property-carrying CMV driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>

395.3(c)(2)	Requiring or permitting a property-carrying CMV driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after 15 hours on duty.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.5(b)(1)	Requiring or permitting a passenger-carrying CMV driver to drive after 60 hours on duty in 7 days.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.5(b)(2)	Requiring or permitting a passenger-carrying	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this</li> </ul>

	CMV driver to drive after 70 hours on duty in 8 days (§ 395.5(b)(2)).			Reference for the required number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).
395.8(a)	Failing to require a driver to make a record of duty status. No records of duty status.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the required number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.8(e)	False reports of records of duty status.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the required number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
395.8(i)	Failing to submit a record of duty status within 13 days.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the required number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>

395.8(k)(1)	Failing to preserve records of duty status for 6 months. Failing to preserve supporting documents.	HOS Compliance	B	<ul style="list-style-type: none"> <li>Refer to the table at the beginning of this Reference for the required number of HOS-violation free driver inspections, which are required to meet the performance-based criteria (based on carrier's number of power units).</li> </ul>
396.11(a)	Failing to require driver to prepare driver vehicle inspection report.	Vehicle Maintenance	A	<ul style="list-style-type: none"> <li>Produce requested DVIRs</li> </ul>
396.11(c)	Failing to correct out-of-service defects listed by a driver in a driver vehicle inspection report before the vehicle is operated again.	Vehicle Maintenance	A	<ul style="list-style-type: none"> <li>Provide evidence requested vehicles were repaired prior to next dispatch</li> </ul>
396.17(a)	Using a CMV not periodically inspected (§ 396.17(a)) (Requires a violation threshold of 51 percent or more of examined records to trigger automatic failure).	Vehicle Maintenance	A	<ul style="list-style-type: none"> <li>Provide a copy of the vehicle annual inspections or equivalent; up to three (3) vehicles.</li> </ul>
396.17(g)	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.	Vehicle Maintenance	A	<ul style="list-style-type: none"> <li>Provide proof of repairs.</li> </ul>
396.3(b)	Failing to keep minimum records of inspection and maintenance.	Vehicle Maintenance	A	<ul style="list-style-type: none"> <li>Provide complete maintenance file for requested vehicles; up to three (3) vehicles, in accordance with 396.3 and proof of periodic inspection required under 396.17.</li> <li>Provide evidence of Preventive</li> </ul>

				Maintenance Plan.
396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared “out-of-service” before repairs are made (§ 396.9(c)(2))	Vehicle Maintenance	A	<ul style="list-style-type: none"> <li>• Provide an example of proof of repair from applicable OOS inspections since last Investigation.</li> </ul>
397.101(d)	Requiring or permitting the operation of a motor vehicle containing a highway-route-controlled quantity of radioactive materials as defined in §173.403 without an accompanying written route plan.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a statement on how this issue was handled.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
397.13(a)	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.	Unsafe Driving	A	<ul style="list-style-type: none"> <li>• Provide a statement of how this issue was handled.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
397.19(a)	Failing to furnish 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.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Submit a copy of a driver’s signed document indicating receipt of Part 397 and emergency response instructions.</li> <li>• Provide a statement on how this issue was handled.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
397.5(a)	Failing to ensure a motor vehicle	Unsafe Driving	A	<ul style="list-style-type: none"> <li>• Provide a statement on how this issue</li> </ul>

	containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative.			<p>was handled.</p> <ul style="list-style-type: none"> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
397.67(d)	Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 without an accompanying written route plan.	HM Compliance	A	<ul style="list-style-type: none"> <li>• Provide a statement on how this issue was handled.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
397.7(a)(1)	Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street.	Unsafe Driving	A	<ul style="list-style-type: none"> <li>• Provide a statement of how this issue was handled.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>
397.7(b)	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.	Unsafe Driving	A	<ul style="list-style-type: none"> <li>• Provide a statement of how this issue was handled.</li> <li>• Provide evidence of policies, procedures and training that will prevent this violation from occurring in the future.</li> </ul>

# Appendix M – Part C Remarks Template

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## **Appendix M – Part C Remarks Template**

### [Part C pdf template](#)

#### **PART C Template:**

**PURPOSE:** The purpose of this template is two-fold - it documents the investigation and aids in penalty assessment if applicable. This template is intended to increase the uniformity of the investigative process. Each section should be completed as applicable. The content and context of each section should be completed with details from the investigation.

**HOW TO USE:** Provide details of the investigation that are not obvious or evident from reading Parts A and B of the report. All remarks should be based in fact or actual statements made by carrier staff. All information contained in this report must be accurate and legally defensible.

Items noted as [REQUIRED] are required to be in Part C. Those noted as [SUGGESTED] are suggested items for Part C.

#### **REMARKS:**

#### **INVESTIGATIVE REPORT RECEIVED BY:**

[REQUIRED] Name:

[REQUIRED] Title:

[REQUIRED] Carrier/Shipper Name:

[REQUIRED] Date:

[REQUIRED] Telephone Number (if different from Part A):

If carrier refuses to accept investigative report or closeout was with less than highest ranking official provide mailing details below:

[REQUIRED] Name to whom it was sent:

[REQUIRED] Mailing method (i.e. FedEx UPS, etc.):

[REQUIRED] Date Sent:

[REQUIRED] Tracking/Confirmation Number:

[REQUIRED] Telephone Number (if different from Part A):

[REQUIRED] List of drivers (indicate part/full time) or where this information is stored. (Note: Use discretion, lengthy driver lists or vehicle lists would be unmanageable to include in Part C)

[REQUIRED] List of vehicles in use or where this information is stored.

[REQUIRED] Significant findings regarding accuracy of registration data (MCS-150 data.

[REQUIRED] Note recurring violations, both serious and non-serious, discovered during prior investigations.

[REQUIRED] Note techniques used in discovering violations for use in subsequent investigations

[REQUIRED] Note aspects of the carrier's maintenance program.

[REQUIRED] Note any coordination/discussion with Division office or Service Center (IH, reincarnation, etc.).

**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 an Onsite Focused Investigation 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] Explain interstate versus intrastate operations.

[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] (Required if motor carrier were involved in emergency relief) Note whether motor carrier was involved in emergency relief efforts or operating under an exemption or waiver.

[REQUIRED] Provide names and USDOT numbers of affiliated motor carriers when applicable.

[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, that is how do they make money, what is acceptable profit, how do they make up for losses, etc.

[SUGGESTED] Describe the company location and the principal place of business, maintenance facilities, etc. Provide the extent and nature of any divisions or business locations of the subject.

[SUGGESTED] Describe anything that is a typical about the subject's operation.

[SUGGESTED] Include general overview of carrier's safety operation and identify the personnel responsible for safety management.

**PRE-INVESTIGATION:**

[REQUIRED] Provide a listing of the specific supporting documents that were requested and when. Include whether or not the carrier was given 48 hours to produce records not located at the principal place of business.

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

[SUGGESTED] Document issues that posed barriers to the pre-investigation process, such as locating or reaching the carrier, availability and accuracy of information, etc. If 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.

**CDLIS (DRIVER LICENSE) CHECK:**

[REQUIRED] If applicable explain why a CDLIS licensing check was not conducted or that other methods were used to verify licenses.

**AUTHORITY (If applicable):**

[REQUIRED] Does the motor carrier have the appropriate type of authority? Yes or No and explain and note any lapses.

[REQUIRED] If applicable, provide the following:

PHMSA Registration Number:

PHMSA Registration Expiration Date:

FMCSA HMSP Number:

FMCSA HMSP Expiration Date:

**INSURANCE:**

[REQUIRED] Does the motor carrier have the appropriate level of insurance? Yes or No and explain, noting any lapses and whether the appropriate proof of insurance was on file at the PPOB.

[SUGGESTED] The amount noted on the 90 or 90B

**DRIVERS WITH RED FLAG VIOLATIONS:**

[REQUIRED] How many Drivers with Red Flag Violations were identified as needing an investigation?

[REQUIRED] What was the outcome of the Drivers with Fed Flag Violations Investigations?

Carrier NOV/NOC: Yes or No

Driver NOV/NOC: Yes or No

No further action required

**CONTROLLED SUBSTANCES AND ALCOHOL SUPPLEMENTAL REVIEW:**

[REQUIRED] Was a CONTROLLED SUBSTANCES AND ALCOHOL SUPPLEMENTAL REVIEW performed? Yes or No

[REQUIRED] If Yes - did this result in a full investigation of the CONTROLLED SUBSTANCES AND ALCOHOL BASIC? Yes or No

[Suggested] Number of CDL required drivers hired in the past 365 days.

**HAZARDOUS MATERIALS SUPPLEMENTAL REVIEW:**

[REQUIRED] Was a HM Supplemental Review performed? Yes or No

**INVESTIGATION:**

[REQUIRED] Describe what specific supporting documents were produced, when and by whom. Include the name and title of the person providing documents.

[REQUIRED] List documents that were not provided as requested and actions taken to obtain them

[REQUIRED] Describe where the supporting documents are located and how are they are 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 FOTM

[REQUIRED] When the CRASH calculation is required, number of crashes missing from profile, description of all recordable crashes, and method of discovery of missing crashes.

[REQUIRED] Explain how mileage was determined. Note if mileage was extrapolated because company has been in business less than 12 months.

[REQUIRED] As applicable for HOURS OF SERVICE related investigations if supporting documentation was available and/or presented that did not contain valid or vital information that could be used to check the accuracy of the RODS. Explain how and why.

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, explain why vehicles were not inspected IF three or more inspections were not on profile or a non-motor coach operation.

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, explain sampling used for Part A vehicle OOS rates.

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, explain findings and disposition of any vehicle inspections performed during investigation.

[REQUIRED] For VEHICLE MAINTENANCE-related investigations, note aspects of the carrier's maintenance program and facilities.

[SUGGESTED] During an investigation of the CONTROLLED SUBSTANCES AND ALCOHOL BASIC document any problems discovered with the consortium.

[SUGGESTED] Note statements made by officials relative to correcting the violations discovered during the investigation.

[SUGGESTED] Note any other information that explains and/or complements the cited violations in Part B, and would increase the accuracy of the evaluation process, and would aid the follow-up investigator.

**FOLLOW-ON 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

[SUGGESTED] Provide information about the selection of the Follow-on action

[SUGGESTED] Document areas of weakness that may be future problem areas for the carrier

**DOCUMENTS PROVIDED TO CARRIER:**

[REQUIRED] List materials provided to the carrier and any materials the carrier had on hand

# Appendix N - Record Sampling Requirements

## Appendix N: Record Sampling Requirements

### CFR Parts – 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.

Onsite		Offsite		CBI	
# of Drivers Employed	# of Pre-Employment Tests to Review	# of Drivers Employed	# of Pre-Employment Tests to Review	# of drivers to review	Sample Size: # of Pre-employment Tests to Review
1-5	All	1	1	All drivers involved in <b>RECORDABLE</b> crashes that were <b>hired in the last 365 days</b>	All pre-employment tests of drivers involved in <b>RECORDABLE</b> crashes that were hired in the last 365 days.
6-25	5	2	2		
26-50	8	≥ 3	3		
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			
<b>CFR Parts – 382 – Post-Accident Testing</b>				
<b>Onsite</b>		<b>Offsite</b>		<b>CBI</b>
<b># of Post-Accident D&amp;A Tests to Review</b>		<b># of Post-Accident D&amp;A Tests to Review</b>		<b>Sample Size: #</b>
All drivers involved in recordable crashes require post-accident testing regardless of # of drivers employed.		Same as Onsite.		All drivers
<b>CFR Parts – 382 – Random Testing</b>				
<b>Onsite</b>			<b>Offsite</b>	
<b># of Random Tests (T)</b>			<b># of Random Tests (T)</b>	
<b>Controlled Substances</b>	<b>Alcohol</b>		<b>Controlled Substances</b>	<b>Alcohol</b>
T = .5 X D/P	T = .1 X D/P		Same as Onsite.	
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.				

<b>CFR Parts – Part 383 – Commercial Driver’s License Information System (CDLIS) Checks</b>						
<b>Criteria/Timeframe:</b> All drivers employed who are subject to Commercial Driver’s License (CDL) requirements.						
<b>Onsite</b>		<b>Offsite</b>		<b>CBI</b>		
<b># of Drivers Subject to CDL Requirements</b>	<b># of CDLIS Records to Check</b>	<b># of Drivers Subject to CDL Requirements</b>	<b># of CDLIS Records to Check</b>	<b># of Drivers Subject to CDL Requirements</b>	<b># of CDLIS Records to Check (for drivers involved in crashes)</b>	<b>Sample Selection</b>
1-20	All	1-20	All	1-20	All drivers employed by carrier	Follow existing CDLIS Policy on sample size, but prioritize drivers involved in crashes.
21-150	20	21-150	20	21-150	20	
151-280	32	151-280	32	151-280	32	
281-400	50	281-400	50	281-400	50	
401-500	68	401-500	68	401-500	68	
501-1200	80	501-1200	80	501-1200	80	
1201-3200	125	1201-3200	125	1201 and above	125	
3201-10,000	200	3201-10,000	200			
10,001-35,000	315	10,001-35,000	315			
35,001-150,000	500	35,001-150,000	500			

<b>CFR Parts – Part 391 – Driver Qualification (DQ) Files</b>						
<b>Considerations:</b> Select DQ files for drivers with the highest scores within the BASIC requiring an investigation and drivers who were involved in recordable crashes.						
<b>Onsite</b>		<b>Offsite</b>		<b>CBI</b>		
<b># of Drivers Subject to the Federal Motor Carrier Safety Regulation(s) (FMCSR(s))</b>	<b># of DQ Files to Review</b>	<b># of Drivers Subject to the FMCSR(s)</b>	<b># of DQ Files to Review</b>	<b># of Drivers Involved in Recordable Crashes</b>	<b># of DQ Files to Review (for drivers involved in crashes)</b>	<b>Sample Selection</b>
1-5	All	1	1	1-5	All	Select from drivers involved in crashes.
6-25	5	2	2	6-25	5	
26-50	8	≥3	3	26-50	8	
51-90	13			51-90	13	
91-150	20			91-150	20	
151-280	32			151-280	32	
281-400	50			281-400	50	
401-500	68			401-500	68	
501-1,200	80			501-1,200	80	
1,201-3,200	125			1,201 and above	125	
3,201-10,000	200					
10,001-35,000	315					
35,001-150,000	500					

**CFR Parts – Part 393 & 396 – Vehicle Inspections (for calculating out-of-service (OOS) rates)**

**Considerations:** Select vehicles involved in accidents; then, select vehicles that have been placed out-of-service (profile) or cited for equipment violations during roadside inspections within the previous 365 days. Verify if the OOS violations and other equipment violations were repaired.

Onsite		CBI
<b># of Vehicles subject to the FMCSR(s)</b>	<b># of Vehicle Inspections to Conduct</b>	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 serious 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).
1-5	3	
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	

**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.

Onsite			CBI		
# of Vehicles Subject to FMCSR	# of Vehicles to Select	DVIRs to Request	# of Vehicles Involved in Crashes	# 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 <b>X = # of Vehicle to Select</b>	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  <b>X = # of Vehicle to Select</b>
6-15	5		6-15	5	
16-50	7		16-50	7	
51-150	11		51-150	11	
150-500	17		150-500	17	
501-Over	27		501-Over	27	

**CFR Parts - Part 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.

Onsite			CBI		
# of Vehicles Subject to FMCSR	# of Vehicles to Select	# of DVIRs to Review	# of Vehicles Involved in Crashes	# of Vehicles to Select	# of DVIRs to Review
2-5	All	# of Vehicles x 30	2-5	All	15 x # Vehicles
6-15	5	5x30 = 150	6-15	5	5x15 = 75
16-50	7	7x30 = 210	16-50	7	7x15 = 105
51-150	11	11x30 = 330	51-150	11	11x15 = 165
150-500	17	17x30 = 510	150-500	17	17x15 = 255
501-Over	27	27x30 = 810	501-Over	27	27x15 = 405

**CFR Parts – Part 393 & 396 – Maintenance Files**

Onsite		Offsite		CBI		
# of Vehicles Subject to FMCSR(s)	# of Maintenance Files to Review	# of Vehicles Subject to FMCSR(s)	# of Maintenance Files to Review	# of Vehicles involved in Recordable Crashes	# of Maintenance Files to Review	Sample Selection
1-5	All	1	1	1-5	All	Select from vehicles involved in crashes.
6-25	5	2	2	6-25	5	
26-50	8	≥3	3	26-50	8	
51-90	13			51-90	13	
91-150	20			91-150	20	

151-280	32			151-280	32	
281-400	50			281-400	50	
401-500	68			401-500	68	
501-1,200	80			501-1,200	80	
1,201-3,200	125			1,201 and Above	125	
3,201-10,000	200			<i>Additional Guidance: If the 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.</i>		
10,001-35,000	315					
35,001-150,000	500					

**CFR Parts – Part 395 – Hours-of-Service (HOS)**

Onsite			Offsite		CBI			Sample Selection
# of Drivers Subject to FMCSR	# of Drivers Selected	Minimum # RODS to Review	# of Drivers Selected	Minimum # RODS to Review	# of Drivers Involved in Recordable Crashes	# of Drivers Selected	Minimum # of RODS to Review	
1-5	All	# drivers x 30	1	1 x 30=30	1-5	All	# drivers x 15	Select from drivers involved in crashes.
6-15	5	5 x 30 = 150	2	2 x 30=60	6-15	5	5 x 15 = 75	
16-50	7	7 x 30 = 210	≥3	3 x 30=90	16-50	7	7 x 15 = 105	
51-150	11	11 x 30 = 330			51-150	11	11 x 15 = 165	
151-500	17	17 x 30 = 510			151-500	17	17 x 15 = 255	

501-Over	27	27 x 30 = 810			501-Over	27	27 x 15 = 405	
				<p><i>Additional Guidance: For <b>each</b> driver involved in a recordable crash for previous 365 days, conduct HOS review for day of crash and previous 14 days from date of crash (15 days total).</i></p> <ul style="list-style-type: none"> <li>• <i>If crash date &gt;6 months, RODS may be reviewed if available. If no RODS, select RODS for same driver within previous 6 months.</i></li> <li>• <i>If carrier has no RODS available for drivers involved in crashes within previous 6 months, first select drivers with the highest percentile in the Hours of Service (HOS) Compliance BASIC (to meet the required sample size) at the carrier's place of business who were placed OOS during roadside inspections and then those found in violation during roadside inspections.</i></li> </ul>				
<b>CFR Parts – Part 172 – Shipping Papers</b>								
<b>Onsite</b>			<b>Offsite</b>		<b>CBI</b>			
<b>Variable</b>	<b># of Documents to Review</b>		<b>Variable</b>	<b># of Documents to Review</b>	One shipping paper, at a minimum, shall be examined for each proper shipping name or class/division of HM offered for those involved in recordable crashes.			
One shipping paper, at a minimum, shall be examined for each proper shipping name or class/division of Hazardous Materials (HM) offered or transported when roadside data has shown HM related violations.			Same as Onsite.					

# Appendix O –Other (content hyperlinked throughout the eFOTM)

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## Using Hazardous Material Package Inspection Program (HMPIP) Software

### HMPIP Policies and Procedures

#### *Goal of Using HMPIP*

The goal of performing HMPIP inspections is to reduce the risk of HM incidents (spills) by identifying HM shippers that are not in compliance with the HMR. HMPIP package inspections shall be performed at dockside, less-than-truckload motor carriers, intermodal facilities, shippers with inbound shipments made to a shipper, or other locations where a wide variety of HM packages from various shippers are available for inspection.

- HM package inspections will be recorded using HMPIP and distributed according to the procedures outlined in this section.
- All package inspections will be recorded using the HMPIP program, even if no violations are found.
- USDOT numbers should be assigned to newly identified shippers prior to exporting the data to the national HMPIP database.
- For purpose of FMCSA tracking, 30 package inspections, by a given investigator using HMPIP, will continue to constitute an HM package inspection CR and counted toward their certification.

- The HMPIP software shall be used to record information on a package inspection that occurs at any location other than the place where the HM package originated.
- The CAPRI software should be utilized when conducting inspections at an HM shipper's facility when the package originates from that shipper's facility.
- See [Illustration HM-4: Package Inspection Questions and Answers](#)

### ***Assigning USDOT Numbers when Conducting an Inspection Using the HMPIP***

[Illustration HM-20](#) describes the process for assigning USDOT numbers during a shipper check and when conducting HM package inspections.

### ***Time to Take Enforcement Action***

The person performing the HMPIP inspection should take enforcement action, as appropriate, when violations are discovered during HM package inspections or shipper reviews.

- The HM portion of the eFOTM provides lists of critical and acute HM violations, as well as lists of severe HM shipper and cargo tank regulations.
- The regulations should be used as guidelines for when to initiate enforcement action.
- Throughout the HM portion of the eFOTM, violations and enforcement procedures discuss documentation requirements and procedures to be followed when preparing an HMPIP enforcement case report.
- For HMPIP, select the "HM roadside" category in UFA for the appropriate penalty assessment.

## **Notification of Packaging Violations**

### ***Number of HMPIP Report Copies that Should be Printed and How to Distribute***

HMPIP reports should be printed for inspections that identify violations of the HM regulations. Three copies of the HMPIP report should be made and distributed as follows:

- One copy of the HMPIP report, with your notes, should be provided to a responsible official representing the facility where the inspections were performed. This copy may be mailed later, if the report is not generated onsite.
- One copy of the HMPIP report, with your notes, should be mailed to the shipper's facility where the HM shipment originated.
  - A copy of the attached sample letter should accompany the report.
  - At the discretion of the DA/SD, an additional copy of the report and cover letter may be sent to the shipper's PPOB.
  - [Illustration HM-21](#) is a Sample Letter to Accompany HMPIP Violation Reports.
- You should maintain a copy of the HMPIP report, with your notes, along with a copy of the cover letter used to notify the shipper at the Division Office performing the HM Package Inspection CR. These documents may also be used as the basis for an enforcement action.

You should be careful to ensure that the notes entered in the report are appropriate for release. In the event that the notes contain information that should not be released, copies can be printed without notes.

## HM Packaging Inspection CR

### *Ways in which HMPIP Supports the HM Packaging Inspection CR*

To develop an effective prioritization system for targeting high-risk HM shippers, FMCSA must increase the use of the HMPIP software. To increase the use of the HMPIP software, and therefore, the shipper data we are collecting, FMCSA is implementing an additional compliance and enforcement process that will be known as an HM Package Inspection CR. The HM Package Inspection CR will involve the inspection of HM packages on the docks of less-than-truckload carriers, or at other locations where HM packages from a variety of shippers can be inspected.

- The packages can be either inbound or outbound.
- For purposes of FMCSA tracking, 30 package inspections using HMPIP by an investigator will constitute an HM Package Inspection CR.
- NOTE: A HMPIP can also be completed during a roadside inspection.

### *Package Inspections are Credited in this Manner*

A package inspection will be credited for each separate HM shipment reviewed for compliance. Please note that a pallet, group, or truckload of packages all packaged, labeled and marked in the same manner, would be counted as one package or one shipment.

- The 30 package inspections can be conducted at more than one location over an extended period of time.
- The aggregate of 30 package inspections will constitute an HM Package Inspection CR.
- When an aggregate total of 30 package inspections are attained, the Division Office will receive credit for the HM Package Inspection CR for investigator certification.

A HM Package Inspection CR will be credited to the SI and the division the same as a CR of a motor carrier, an HM shipper CR, or a cargo tank facility CR. DAs/SDs will report the number of package inspections completed in their divisions by their SIs on their monthly reports to HQ.

### *Individuals who Should take HMPIP Enforcement Action*

Division Offices should take enforcement action, as appropriate, when violations are discovered during HM package inspections. Guidance on enforcement of HM violations against shippers can be found in the eFOTM. Generally, violations that are Acute, Critical or Severe violations should be considered for enforcement.

Guidance on enforcement of HM violations against shippers can be found in [Investigations of HM Carriers and Shippers: General](#).

## Guidance concerning Electronic signatures and Documents

Anyone may use electronic methods, so long as the electronic documents, or signatures, accurately reflect the information in the record and remain accessible in a form that can be accurately viewed and/or reproduced according to Agency rules. Electronic documents will not be considered the legal equivalent

of traditional paper documents, if they are not capable of being retained and accurately reproduced for reference by any individual, or entity, entitled to access by law for the period of time required by the Agency's recordkeeping requirements; for example, if an entity is required to produce documents on demand, those documents may be stored electronically, so long as that entity can produce them in accordance with the Agency's substantive requirements (e.g., immediately and without risk of losing or altering data).

This guidance applies to documents required by FMCSA regulations to be generated and maintained or exchanged by private parties, regardless of whether the Agency subsequently requires them to be produced or displayed at the request of an FMCSA official or other parties entitled to access. This guidance does not apply to documents that individuals or entities are required to file directly with the Agency. The Agency, however, has already established electronic filing methods for certain documents.

**Question 1: May motor carriers use electronic methods to store records or documents to satisfy a document retention requirement in Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 CFR Parts 300-399)?**

Guidance: Yes. Anyone may, but is not required to, use electronic methods to create and store records or documents to satisfy document retention requirements in Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 Parts CFR 300-399). This guidance applies only to documents required to be generated and maintained or exchanged by private parties, regardless of whether FMCSA subsequently requires them to be produced or displayed to FMCSA staff or other parties entitled to access. This guidance does not apply to documents filed directly with FMCSA. The Agency, however, has already established electronic filing methods for certain documents. Interested parties can find out about available filing methods by consulting specific program information on FMCSA's website (<http://www.fmcsa.dot.gov>).

**Question 2: How much time does a motor carrier have to produce records if the motor carrier maintains all records in an electronic format?**

Guidance: A motor carrier must produce records within the time frame FMCSA's regulations require, regardless of whether the motor carrier maintains its records in an electronic or paper format; for example, if Agency rules require that a document be produced upon demand, you must be able to provide the Agency with an accurate copy of your electronic record upon demand. Similarly, if you are a motor carrier with multiple offices, and are allowed 48 hours to produce a document in accordance with 49 CFR Section 390.29, you must be able to provide the Agency with an accurate copy of your electronic record within 48 hours.

**Question 3: Using record scanning technology, these requirements can be fulfilled. Is my understanding of 49 CFR Section 390.31(c) correct that once qualifying documents have been suitably scanned, original paper documents may be destroyed?**

Guidance: Yes, scanned records, which include a verifiable signature, would fulfill the requirements of 49 CFR Section 390.31 and the original paper documents may be destroyed as stated in 49 CFR Section 390.31(c).

**Question 4: If my understanding of 49 CFR Section 390.31 and its associated interpretations is correct, will this negate the necessity to maintain the original road test document as required by 49 CFR Section 391.31(g)(1)?**

Guidance: Yes, as long as the road test document has been properly scanned.

**Question 5: What is an electronic signature?**

Guidance: An electronic signature is a method of signing an electronic communication that: (1) identifies and authenticates a particular person as the source of the electronic communication; and (2) indicates such person's approval of the information contained in the electronic communication. An electronic signature may be made using any available technology that otherwise satisfies FMCSA's requirements.

**Question 6: What is an electronic "captured image" signature and does it qualify as an electronic signature?**

Guidance: An electronic "captured image" signature is a scripted name or legal mark that, while conventionally created on paper, may also be created using electronic devices; for example, many supermarkets and package delivery services use electronic captured image technology when they permit customers to sign their names in script using a stylus on an electronic pad. This qualifies as an electronic signature, so long as the signature and its related document are electronically bound and can be reproduced together.

**Question 7: May anyone use electronic signatures to satisfy a requirement in Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 CFR Parts 300-399) that a party sign or certify a document?**

Guidance: Yes. Anyone may, but is not required to, use electronic signatures to satisfy the requirements of Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 CFR Parts 300-399) that he or she sign or certify a document. This guidance applies only to documents requiring signatures that are generated and maintained or exchanged by private parties, regardless of whether the Agency subsequently requires them to be produced or displayed to FMCSA staff or other parties entitled to access. This guidance does not apply to documents filed directly with the Agency. The Agency, however, has already established electronic filing methods for certain documents. Interested parties can find out about available filing methods by consulting specific program information on FMCSA's website (<http://www.fmcsa.dot.gov>).

**Question 8: Are motor carriers and other interested parties required to use electronic methods?**

Guidance: No. Interested entities may choose whether or not to use electronic methods or traditional paper methods. Where there are two parties to a transaction, both parties must agree to conduct business using electronic methods.

**Question 9: Will a document generated using any available electronic methods satisfy the requirements of Chapter III of Subtitle B of Title 49, Code of Federal Regulations?**

Guidance: No. An electronic document must fulfill the same function as a paper document. Documents generated using electronic methods may be used only if they accurately reflect the information in the record and remain accessible in a form that can be accurately reproduced for later reference. Documents generated using electronic methods will not be considered the legal equivalent of traditional paper documents, if they are not capable of being retained and accurately reproduced for reference by any party entitled to access; for example, if FMCSA rules require that a document be produced upon demand, you must be able to provide the Agency with an accurate copy of your electronic record upon demand. Similarly, if you are a motor carrier with multiple offices and are allowed 48 hours to produce a document

in accordance with 49 CFR Section 390.29, you must be able to provide the Agency with an accurate copy of your electronic record within 48 hours. It would not be sufficient to display the information on your computer terminal in your place of business. You must produce a copy that the Agency can refer to at a later date. Similarly, it would not be sufficient to provide a document with incomplete information or without a signature (whether electronic or handwritten), if required. Your electronic storage system must be capable of transferring a complete, accurate copy of the document to the Agency. Unless the agent requesting the information specifies otherwise, you should be prepared to produce paper copies of the electronically-stored records or documents within the applicable time frame. This means that if you are required to produce documents on demand, those documents may be stored electronically, so long as you can produce them in accordance with the Agency's substantive requirements (e.g., immediately and without risk of losing or altering data). For an electronic document to be the legal equivalent of a paper document, it must be the functional equivalent with respect to integrity, accuracy and accessibility.

**Question 10: If FMCSA or another agency that is entitled to access documents, requests that I produce a copy of a document or signature, may I produce an electronic copy?**

Guidance: Yes, however, you must be able to reproduce or transmit the document so the Agency can refer to it at a later date. The acceptable method of transmission may vary, depending on compatibility with the information systems and how the Agency, or other entity entitled to access, plans to use the document. Under some circumstances, electronic transfer may be acceptable. In other cases, you may be required to print paper copies of the electronically-stored records or documents. You should be prepared to produce paper copies within the time frame specified in the applicable regulations, unless the particular investigator specifically advises you that he or she is capable of accepting electronically-transferred copies.

**Question 11: May I use electronic methods to generate, sign, maintain and/or exchange any record the FMCSA regulations require without requesting an exemption or obtaining prior permission?**

Guidance: You may use electronic methods to generate, sign, maintain and/or exchange any document that is generated and maintained or exchanged by private parties, regardless of whether FMCSA subsequently requires them to be produced or displayed to Agency staff or other parties entitled to access. You do not need to request an exemption, or obtain prior permission, so long as the electronic record meets all of the regulation's substantive requirements and remains accessible in a form that can be accurately reproduced for later reference. (This does not apply to documents filed directly with the Agency. See Question No. 6.) Examples of documents generated, maintained or exchanged by private parties include, but are not limited to, employment applications, driver histories and other qualification records, leases formed under 49 CFR Part 376, driver-vehicle inspection reports, and RODS. These are only examples of documents about which FMCSA received specific questions, not an exhaustive list of the types of documents that can be generated, signed, maintained or exchanged electronically.

**Question 12: May I convert a paper document to an electronic document by typing the substantive information on the paper document into an electronic format, such as a database?**

Guidance: By typing the substantive information from a paper document into an electronic format such as a database, you are creating a new electronic record, not creating an electronic copy of the original. While you may generate and maintain such documents for your own use, they do not take the place of the original documents. To preserve an accurate copy of the original paper document, you must use scanning or other "image capture" technology. See Questions 3 and 4 for additional guidance.

**Question 13: Is an electronic signature valid if a person only has access to an excerpt or summary at the time he or she signs a document?**

Guidance: No. If you only provide an excerpt or summary at the time someone signs a document, you may not subsequently attach his or her electronic signature to the complete document.

## Investigations of HM Carriers and Shippers - General

HM Shipper and HM Carrier investigations consist of a review of the following HM areas, as applicable, in addition to the review of all applicable Safety Regulations:

- HM Registration (see [Part 107](#))
- HM Incident reporting and Special Permits (see [Part 171](#))
  - Shippers also must be reviewed for compliance with classification of HM, if they are manufacturing a hazardous material.
- Validation of HMSP (see [Part 385](#))
  - Ensure Shipper checked Carrier's HMSP prior to loading.
  - Ensure Carrier followed all requirements of program.
- HM Shipping papers
  - Preparation and offering for Shippers (see [Part 172 Subpart C](#))
  - Carrying and accessibility for Carriers (see [Part 177](#))
- Marking and labeling of packages (see [Part 172 Subparts D and E](#))
- Placarding of CMV or bulk packages (see [Part 172 Subpart F](#))
- Emergency response information and telephone numbers (see [Part 172 Subpart G](#))
- HM Training (see [Part 172 Subpart H](#))
- Security (see [Security Assessment of HM Companies](#))
- Packaging (see [Parts 173 & 178](#))
  - Selection of appropriate packaging for shippers
  - Closure, loading, unloading, securement, and segregation for both shippers and carriers (see [Part 177](#))
  - Maintenance, inspection and testing of packaging
- Shippers using reusable packaging i.e. IBCs, drums, cylinders (see [Parts 173 & 178](#))
- Carriers owning cargo tanks (see [Part 180](#)) plus verifying test dates and integrity of packaging
  - Conducting HMPIPs on HM packages entering or exiting transportation, if available (see [Using HMPIP Software](#))
- Motor vehicle operations (see [Part 397](#) and portions of [Part 392](#)) – carrier only
- Oil spill response plans (see [Part 130](#)) – carrier only

## Enforcing our Denial of Access Authority

### *Introduction*

The primary goal of Section 4103 is to provide FMCSA an additional tool to compel parties subject to the FMCSR and/or HMR 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. In circumstances involving investigations of for-hire motor carriers, Section 4103 also provides FMCSA a tool to compel parties to allow a contractor or Motor Carrier Safety Assistance Program (MCSAP) partners designated by FMCSA to inspect equipment of the motor carrier and/or inspect and copy records of the motor carrier. The

purpose of Section 4103 is to assist FMCSA in determining compliance with applicable Federal Statutes and Regulations enforced by FMCSA. Section 4103 enables the Agency to assess a civil penalty against a person subject to the HMR or a motor carrier, broker, freight forwarder, or owner or operator of a CMV that fails, upon demand, to allow authorized FMCSA personnel prompt access to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property. The non-existence of the records at the time of FMCSA's request to inspect and copy, or the inability to timely produce the records without unreasonable expense or effort may be raised as defenses to a civil penalty assessed under Section 4103.

Investigators and auditors should cite a denial of access violation when taking enforcement as follows:

- For private carriers of non-hazardous materials, cite 49 USC § 504(c) - *Failing to promptly allow, upon demand, FMCSA to inspect and copy any record and/or inspect and examine equipment.*
- For hazardous materials shippers and carriers, cite 49 USC 5121(c) - *Failing to promptly allow, upon demand, FMCSA to inspect and investigate records and property.*
- For for-hire carriers, cite 49 USC 14122(b) - *Failing to promptly allow, upon demand, FMCSA to inspect and copy any record and/or inspect and examine equipment, lands, buildings or other property.*

Persons subject to the HMR or motor carriers, brokers, freight forwarders, CMV owners, and operators of CMVs may be penalized up to \$1,000 for each day authorized FMCSA personnel are denied prompt access to inspect and copy any record and/or inspect and examine equipment, lands, buildings, and other property. The total of all civil penalties against any violator for all offenses, related to a single violation, shall not exceed \$10,000. The employee and carrier uniform penalty assessment worksheets (UPAWs) should be used to establish the per offense amounts for drivers and carriers, respectively. The Division should prepare and serve the NOC within 10 days of the failure to allow access. If other violations of Federal statutes or regulations were discovered, the Division should contact the Service Center Enforcement Team (SCET) and SC Attorney to discuss including the additional violations in the NOC.

If an enforcement action is initiated for failing, upon demand, to promptly allow FMCSA to inspect and copy and/or inspect and examine equipment, lands, building, or other property, the modified language in the attached NOC should be used. The opening paragraph of the NOC should be modified, and the appropriate charge, abatement, and applicable statutes should be included.

[Click here for questions and answers related to the enforcement of denial access authority.](#)

### ***Enforcement Discretion***

If the motor carrier, broker, freight forwarder, or person subject to the HMR makes available the demanded records to FMCSA and/or allows FMCSA the demanded access to inspect and examine equipment, buildings, land, or other property before a NOC is issued, and the integrity of the investigative process has not been jeopardized, the Division may consider discontinuing enforcement proceedings for denial of access.

### ***Settlement Guidelines***

If a NOC is issued for failure to promptly allow, upon demand, FMCSA to inspect and copy records and/or inspect and examine equipment, lands, buildings, or other property, FMCSA should ensure any settlement of the NOC enables FMCSA to conduct or complete its original review or investigation. No settlement agreement resulting in a reduction, suspension or payment plan for the penalty set forth in the NOC should be considered unless and until the respondent has produced the demanded records and/or provided access allowing FMCSA to inspect and examine the demanded equipment, buildings, land or other property.

### ***Coordination with Use of Subpoenas***

FMCSA also has broad authority to subpoena records in an investigation; subpoenas are enforced through the Federal District court. In some circumstances, the Divisions may want to consider using Section 4103 authority in conjunction with a subpoena. While Section 4103 allows FMCSA to assess penalties for failure to allow access to review and copy records, enforcement of a subpoena through the Federal District court provides an additional tool to ensure FMCSA is able to access records necessary to complete a review or investigation. If the Division believes a subpoena may be appropriate, before serving a Demand and/or initiating an action using Section 4103 authority, the Division should contact the SC Attorney and Enforcement Program Coordinator.

## **Probing Questions Related to AOB RD Systems**

The following are probing questions the investigator should consider asking a motor carrier that uses AOB RD technology. This list will not cover every possible question but will assist the investigator in establishing most of the system basics. Every motor carrier's operation is different and your questions must be tailored to the facts you discover during your review.

### **Type and Function**

Part 49 CFR 395.15 requires AOB RDs to meet minimal technical specifications. Each AOB RD manufacture includes unique features within their systems. The following questions are intended to assist the investigator with identifying the type of AOB RD the motor carrier is operating so that the investigator can become familiar with the AOB RD's functionality.

1. What type of AOB RD is the motor carrier using (brand, model, etc.)?
2. Is the motor carrier's AOB RD electronic hours of service system maintained internally or by an outside source?
  - a. If the motor carrier maintains their AOB RD electronic hours of service system internally identify the person responsible.
  - b. If the motor carrier uses an outside source to keep track of the AOB RD data, what is the name of the company and what services does that company provide?
3. Does the AOB RD system utilize telematics (cellular or satellite data)?
  - a. If not telematics, how does the system transmit data from the vehicle to the service provider/ motor carrier?
4. What vehicle positioning system (mapping/tracking) is integrated with the AOB RD?
5. Does the AOB RD use satellites, cell towers, or both?
6. How often are the AOB RD locations calculated (duty status change only, every minute, every hour, half-hour, etc.) and transmitted (every hour, when communications are sent, etc.)?

### **System Settings/Parameters**

Most AOBDR systems are designed to be tailored to the motor carrier's operations. Because of this motor carriers can define parameters that do not meet the standards of 49 CFR Part 395. The following questions are intended to aid the investigator in identifying parameters which may conflict with the 49 CFR Part 395.15 requirements or conceal hours of service violations.-

1. Who enters driver's name, vehicle, etc. for a particular AOBDR unit?
2. Who sets the parameters for the AOBDR system?
3. What setting activates the automatic drive duty status change on the AOBDR?

Miles per hour? \_\_\_\_\_ Distance? \_\_\_\_\_

4. Does the system automatically default to on-duty not driving?
5. What is the setting for the automatic default? How many minutes?
6. Does the system offer a location radius parameter in which a driver may move the vehicle without changing their duty status to drive?
7. If this location customization is utilized, what is the maximum mileage radius?

### **Installation and Repair**

Each vendor offers different installation methods. Some systems may have connectivity issues. This may occur do to a software or hardware malfunction/JBUS communication fault. Installation methods may also leave the system vulnerable to tampering by the driver. The following questions are intended to assists the investigator in determining if there is a means to tamper with the AOBDR system and if there may be connectivity issues that need to be addressed.

1. Was the installation of the AOBDR performed internally or by an external source/vendor.
  - a. Who were the individuals involved in the AOBDR installation process?
2. How is the AOBDR integrated with the vehicle? (Hardwire, Bluetooth)
3. Does the system utilize J1708 or J1939 or both data bus?
4. Are there devices installed on older pre-ECM vehicles? What sensors do these devices use to record engine data?
5. Where does the device get its power?
6. Who ensures the device is synchronized properly with the vehicle?
7. Who is responsible for repairing/maintaining equipment?
8. What is the carrier's policy/procedure for reporting malfunctions with the device?
9. Who monitors the system for reported and/or unreported malfunctions and what is the process for handling such instances?

### **System Reporting and Monitoring Capabilities**

There may be occasions when the motor carrier has not installed AOBDRs in all of their vehicles and may have a combination of electronic records and paper records of duty status. These questions are designed to assist the investigator with becoming familiar with the support system and identify available information to aid in the investigation.

1. Are all vehicle/drivers using AOBDRs?

2. In what form, web-based or software, does the motor carrier access and store AOB RD data?
3. Does the system report a driver's hours of service in real time?
  - a. If not, how often do drivers transmit/download their electronic hours of service?
4. Do operations dispatchers/planners have access to drivers real time hours of service?
5. Does the motor carrier operate with a Fleet Management System (FMS)
  - a. If so, is the AOB RD incorporated into the FMS?
6. What individuals have authority to edit driver RODS?
7. Do drivers have edit rights?
  - a. Can a driver edit driving time?
  - b. How does the system track edits?
  - c. Does the system support an edit report?
  - d. How is the original data retained? (hard copy, electronic, etc.)
8. Does the system allow drivers to manually enter a location (city, state) at duty status changes?
9. Does the system have manual logging capabilities? (Manual selection of the driving status by the driver during periods of no connectivity with the ECM)
  - a. If so, is this option utilized?
10. Can the system parameter be set to not use manual logging capabilities?
11. Does the system note (in printed or electronic form) the difference between a manual driving mode and an automatic recorded driving status?
12. Does the system provide a report of those drivers utilizing a manual logging mode?
13. Does the system give drivers the option to delay the recording of driving or override the driving time duty status?
14. Does the system support off duty driving or personal conveyance?
15. Are the drivers given rights to utilize off duty driving?
  - a. If so, is the amount of time at this status off duty driving limited and/or monitored?
  - b. Do drivers receive training on when it is acceptable to use off duty driving or personal conveyance?
  - c. What does the training consist of and what is the company's policy on utilizing personal conveyance?
16. Does the system offer alerts? (by e-mail? reports?)
  - a. What alerts does the system provide? (HOS violations, Malfunction, Unassigned driving, etc.)
  - b. Who is responsible for Monitoring system alerts?
  - c. What is the carrier policy/system for handling eHOS system alerts?
17. What sensor failures are reported by the system?
  - a. Where are the sensor failures/system malfunctions found in the support system?
  - b. How are sensor failures monitored?
  - c. What sensor failures or series of sensor failures indicates no connectivity with the ECM (no Data Bus)?
18. Does the device communicate a malfunction to the driver? How?
19. Does the system have connectivity issues with particular year model or makes of vehicles?
20. Does the system report unassigned driving?
  - a. How does it report unassigned driving?
  - b. What system parameters trigger unassigned mileage? (ex. driving without a driver logged into the system, location radius parameter, etc.)
  - c. Who is responsible for reassigning unassigned miles to the correct driver?
  - d. Are the reassignments supported in the system or are they manual edits?
21. Does the system require the driver's verification of edited data?
22. Does the system report power failures?
  - a. If not, how are periods of power failure detected?
  - b. How are periods of power failure handled/addressed?

23. What is the carrier's policy for tampering with the system?
24. How does the system report hours of service violations?
25. What is the carrier's system for monitoring hours of service violations?
26. Does the system send alerts to the driver letting him/her know they are near their driving limitations?
27. What procedures does the motor carrier use to check for false records of duty status.

# Appendix Q – CSA Probing Questions

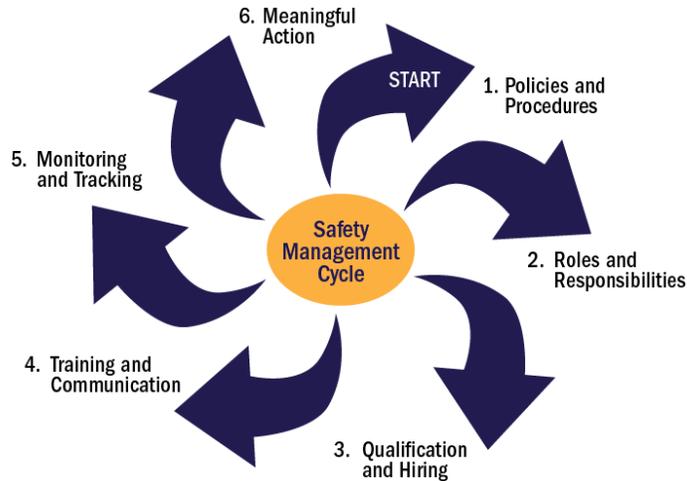
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## Appendix Q: Controlled Substances Probing Questions

This job aid provides a list of Investigative Probing Questions for the Controlled Substances/Alcohol Behavior Analysis and Safety Improvement Category. This job aid can be used to engage the carrier in a collaborative exchange designed to review the Safety Management Cycle and identify where a breakdown has occurred in the Safety Management Process (Process Breakdown), understand the reasons why the Process Breakdown(s) occurred and its consequences (e.g., violations), and develop a plan for improvement. Prior to beginning the discussion, the Safety Investigator should review the questions and identify those that may be most relevant to his or her discussion. Additional information on how the job aid can be used is provided below.



*The Safety Management Cycle*

*How can I use this job aid?* The probing questions can be used to:

- Start the discussion with the carrier;
- Develop an appropriate line of questioning; and
- Spark additional questions.

*What should I keep in mind when using this job aid?* Keep in mind the following guiding principles while engaging the carrier during the investigative questioning and remedy development process:

- Frame the questions so that the exchange moves toward determining the Process Breakdown(s);
- Stay focused on the goal of the exchange; steer away from discussions that stray from the goal;
- Engage the carrier so that he or she plays a role in diagnosing the issue and developing the remedy for improvement;
- Remember that participation in this self-assessment increases the likelihood that the carrier will change his or her behavior and is a key factor in gaining ‘buy-in’ to implement remedies; and
- Once the breakdowns are identified, ask the carrier why he or she believes these breakdowns are occurring and consider this information when selecting appropriate remedies for the carrier.

<b>1. Policies and Procedures</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Do you have a <b>policy in place that is in accordance with Part 382.601</b>?                             <ul style="list-style-type: none"> <li>○ If so, request the document.</li> <li>○ If not, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Are all <b>drivers given a copy of the company’s policies</b>?                             <ul style="list-style-type: none"> <li>○ Where do you store the certificate of receipt that is signed by each driver?</li> </ul> </li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>• Is there a <b>testing program in place</b>?                             <ul style="list-style-type: none"> <li>○ Is the testing program the <b>same for Department of Transportation (DOT)-regulated employees and non-DOT-regulated employees</b>? If not, explain the differences.</li> <li>○ What <b>methods are used to select drivers</b> for testing? How do you notify drivers that they have been selected? (Is it verbal, written, or through Qualcomm?)</li> <li>○ Do you <b>conduct reasonable suspicion</b> controlled substances or alcohol testing?</li> <li>○ Do you <b>conduct post-accident testing</b>? If so, when?</li> <li>○ What <b>collection facilities are you using</b>?</li> <li>○ Are you doing your own collections or using an external source or agent?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How can you <b>tell if a driver has been consuming alcohol or using controlled substances</b>?                             <ul style="list-style-type: none"> <li>○ How do you recognize observable symptoms?</li> <li>○ Who decides whether to conduct a reasonable-suspicion test?</li> <li>○ How do you conduct reasonable suspicion drug and/or alcohol testing?</li> <li>○ Where is the collection done, and where is the sample tested?</li> <li>○ When is the observed behavior/reasonable-suspicion record completed?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>company policy regarding drivers who test positive</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does your <b>policy ensure that positive-tested employees are removed from duty</b> and do not return before obtaining proper clearance, according to regulations?                             <ul style="list-style-type: none"> <li>○ If so, is it written or verbal?                      ○ If verbal, describe it.</li> <li>○ If written, request the document.                      ○ If there's no policy, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Please explain the processes/procedures for removing positive-tested drivers from safety-sensitive functions</b> and the return-to-duty requirements.                             <ul style="list-style-type: none"> <li>○ Who developed the processes/procedures within your organization?</li> <li>○ Did you have internal or external assistance developing this procedure?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Are you <b>familiar with all of the return-to-duty steps</b>?                             <ul style="list-style-type: none"> <li>○ Do you conduct a return-to-duty test on drivers who have tested positive?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>drivers currently going through the return-to-duty process</b>?                             <ul style="list-style-type: none"> <li>○ Did you have to remove anyone in the last year on the</li> </ul> </li> </ul>	

<b>1. Policies and Procedures</b>	
basis of controlled substances and alcohol findings?	
<ul style="list-style-type: none"> <li>○ Do you always have enough drivers for operations?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>policy for drivers who have previously tested positive</b> for controlled substances or alcohol? For example, do you continue to use them?               <ul style="list-style-type: none"> <li>○ Do you always have enough drivers for operations?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you had any <b>drivers who refused to test or tested positive on a drug test, or who tested positive or had a blood alcohol concentration greater than 0.04</b>?               <ul style="list-style-type: none"> <li>○ If so, were the drivers removed from duty?</li> <li>○ Are they currently working for you in a safety-sensitive function? Have they been through the return-to-duty process?</li> <li>○ If not, why are you allowing them to perform safety-sensitive functions?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for random drug testing</b>?               <ul style="list-style-type: none"> <li>○ When do you send the driver for random drug testing?</li> <li>○ Do you have a separate testing pool for non-DOT-regulated employees?</li> <li>○ How do you receive the results back from the drug-testing facility?</li> <li>○ Does the Designated Employer Representative (DER) understand the role of the Medical Review Officer (MRO)?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How often do you <b>update your random selection pool list</b>?               <ul style="list-style-type: none"> <li>○ How do you ensure that your random eligibility-pool lists are current?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Where do you <b>store the results of random drug tests</b>?               <ul style="list-style-type: none"> <li>○ How do you get drivers who test positive home?</li> <li>○ Do you pretest drivers before dispatch?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Where is <b>controlled substances and alcohol test information kept, including results of all tests</b>?               <ul style="list-style-type: none"> <li>○ Is it in a secured area?</li> <li>○ Who has access to it?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a system that <b>ensures that controlled substances and alcohol test results are safeguarded from disclosure to subsequent employers</b> and other parties, according to regulations?               <ul style="list-style-type: none"> <li>○ If you have such a system, is it written or verbal?</li> <li>○ If written, request the document.</li> <li>○ If verbal, describe it.</li> <li>○ If you don't have a system in place, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you require <b>prospective employers to obtain a specific written release from the driver</b>?               <ul style="list-style-type: none"> <li>○ Do you accept blanket releases from prospective employers? (Be specific.)</li> </ul> </li> </ul>	

1. Policies and Procedures	
<ul style="list-style-type: none"> <li>○ Who is responsible for handling inquiries from prospective employers?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>contract with anyone (e.g., C/PTA) to manage your controlled substances and alcohol program?</b> <ul style="list-style-type: none"> <li>○ If so, request the name and contact information of the provider.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Are you <b>familiar with the record-retention requirement, Part 382?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Request the <b>testing records for the past calendar year.</b> (Records include selection, eligibility-pool list, statistical lab summaries, annual summaries, and documentation of all tests conducted with their results.)</li> </ul>	
<ul style="list-style-type: none"> <li>● How do you <b>receive your DOT test results?</b> <ul style="list-style-type: none"> <li>○ Is this process documented?</li> <li>○ Request the documentation.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Are you <b>familiar with requirements for employing persons</b> performing safety-sensitive functions?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>conduct non-DOT testing?</b> <ul style="list-style-type: none"> <li>○ Is it a separate pool from DOT-regulated employees?</li> <li>○ Do you conduct reasonable-suspicion testing?</li> <li>○ Do you conduct post-accident testing when required?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you have a <b>contract with a Substance Abuse Professional (SAP) to conduct DOT positive-tested controlled substance</b> and/or alcohol evaluations?                     <ul style="list-style-type: none"> <li>○ Request his/her name, number, and copies of his or her certificate/credentials and agreement.</li> </ul> </li> </ul>	

2. Roles and Responsibilities	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>● What are the <b>roles and responsibilities of managers in providing training and qualification</b> for all employees regarding controlled substances and alcohol regulations and company policies/procedures?                     <ul style="list-style-type: none"> <li>○ Is this role documented?</li> <li>○ If so, request the documentation.</li> <li>○ How do you ensure that this role is aligned with company policies and regulations?</li> <li>○ Request the company’s written policies and procedures. (See if they align with the role.)</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Who is the <b>coordinator of your controlled substances and alcohol program?</b> <ul style="list-style-type: none"> <li>○ What are the coordinator’s other responsibilities?</li> <li>○ Who administers the random pool?</li> <li>○ Who has daily contact with most or all drivers?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Who is involved in your controlled substances and alcohol</li> </ul>	

<b>2. Roles and Responsibilities</b>	
process? o Are there both internal and external roles?	
<ul style="list-style-type: none"> <li>• For big companies with safety directors: Request the organizational charts.               <ul style="list-style-type: none"> <li>o Which controlled substances and alcohol training and qualification roles does the safety director serve within the company?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>To all managers:</b> How long have you held this position?               <ul style="list-style-type: none"> <li>o Have you ever been through a Safety Audit (SA), Compliance Review (CR), or Onsite Investigation?</li> <li>o Have you gone through a formalized controlled substances and alcohol program training?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are the <b>roles and responsibilities of the SAP?</b> <ul style="list-style-type: none"> <li>o Does the role include informing management of implications of regulatory requirements and best practices?</li> <li>o Is this role documented?                   <ul style="list-style-type: none"> <li>· If so, request the documentation.</li> </ul> </li> <li>o Request the company's written policies and procedures.</li> <li>o How do you ensure that this role is aligned with company policies and regulations? (See if they align with the role.)</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Who is in charge of <b>driver qualification (DQ) files?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Who is in charge of adhering to <b>testing policies?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Have you hired drivers who have had <b>positive results and completed the return-to-duty process?</b> <ul style="list-style-type: none"> <li>o Do you have all the necessary paperwork on file to document that the return-to-duty process was completed?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• With regard to drivers who <b>tested positive and have been released from your company</b>, did you give them a list of SAPs as required?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does the company have a <b>DER?</b> <ul style="list-style-type: none"> <li>o Who is the DER?</li> <li>o Do you have backup for when the DER is on vacation?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Please <b>explain the roles and responsibilities of the DER in monitoring test procedures and checking results?</b> <ul style="list-style-type: none"> <li>o Is this role documented?</li> <li>o Request the documentation.</li> <li>o How do you ensure that this role is aligned with company policies and regulations?</li> <li>o Request the company's written policies and procedures. (See if they align with the role.)</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>To DER:</b> How long have you held this position?               <ul style="list-style-type: none"> <li>o Have you ever been through an SA or CR?</li> <li>o Have you undergone formalized training?</li> </ul> </li> </ul>	

2. Roles and Responsibilities	
<ul style="list-style-type: none"> <li>• <b>To DER:</b> Do you know whether you are meeting your 50% for drugs and 10% for alcohol per average number of drivers per calendar year, or do you rely on the consortium?                             <ul style="list-style-type: none"> <li>○ How often do you check the controlled substances and alcohol results?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>To DER:</b> Do you have issues with your service agents?                             <ul style="list-style-type: none"> <li>○ If so, how do you handle these issues?</li> </ul> </li> </ul>	

3. Qualification and Hiring	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• <b>Please explain the process for hiring a driver.</b> <ul style="list-style-type: none"> <li>○ Do you check previous-employer documents?</li> <li>○ Do you have the employment application, copy of medical card, and previous-employer response?</li> <li>○ Are these documents in a DQ file and/or investigative file?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are the <b>minimum requirements for hiring drivers regarding age, experience, and number of crashes?</b> <ul style="list-style-type: none"> <li>○ Is your hiring decision based solely on the insurance company being willing to insure or not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>review and evaluate gaps in employment, frequent job changes, incomplete applications, within-company applications</b> and reassignments, and controlled substances and alcohol involvement history?                             <ul style="list-style-type: none"> <li>○ If so, describe this process.</li> <li>○ Request the documentation that supports this.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you ask the <b>driver or other safety-sensitive job applicant about controlled substances and alcohol use and violations?</b> <ul style="list-style-type: none"> <li>○ How do you do that?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>conduct background checks to see if the driver or other safety-sensitive job applicant</b> has had previous controlled substances and alcohol violations?                             <ul style="list-style-type: none"> <li>○ Do you ask the applicant's previous employer?</li> <li>○ If so, how?</li> <li>○ Do you ask the 4025J question? (Has driver tested positive or refused to test in last two years?)</li> <li>○ Do you ask the previous employer if the applicant has exhibited addictive, aggressive, or antisocial behavior indicative of substance or alcohol abuse?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• When you <b>check with the applicant's previous employer, do you have proof (e.g., dates of calls, letters sent)</b> that you made a good-faith effort to obtain documentation?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>obtain a release from the driver to obtain</b></li> </ul>	

<b>3. Qualification and Hiring</b>	
<p><b>completed medical examination (long form)</b>, and have you reviewed the long form medical examination for your drivers?</p> <ul style="list-style-type: none"> <li>○ Do you check medical histories for conditions related to controlled substances and alcohol abuse using this form or any other source?</li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Describe all methods for obtaining background information.</b> <ul style="list-style-type: none"> <li>○ Do your background checks include other types of pre-employment controlled substances and alcohol screening?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Do you have an outside source for pre-employment screening?</b> <ul style="list-style-type: none"> <li>○ If so, what is the name and number of the person?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Do you conduct pre-employment drug testing?</b> Pre-employment alcohol testing is not a requirement. <ul style="list-style-type: none"> <li>○ When do you make exceptions?</li> <li>○ Do you have documentation from other carriers/consortiums indicating that the driver was in a drug-testing pool prior to applying at your company, which would exempt the company from conducting a pre-employment drug test?</li> <li>○ When in the application process, do you send the applicant for testing?</li> <li>○ How do you receive the results from the drug-testing facility?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Do you have a cost issue with conducting pre-employment testing?</b> <ul style="list-style-type: none"> <li>○ Why didn't you do the pre-employment test for [employee name]?</li> <li>○ How quickly are test results reported back to you, and what is the process chain? (Is there a delay?)</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Describe your process for making sure that all your drivers, including part-time employees, are in your or another carrier's controlled substances and alcohol sample pool.</b> <ul style="list-style-type: none"> <li>○ Do you have documentation that shows the controlled substances and alcohol pool for each of your employees? <ul style="list-style-type: none"> <li>· Request the document.</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● <b>How do you verify that the testing program manager applicant can do the job successfully?</b> <ul style="list-style-type: none"> <li>○ Describe the process in detail.</li> <li>○ Do you check with the applicant's previous employer?</li> <li>○ Do you test the applicants?</li> <li>○ Do you use case studies and ask the applicant how he or she would handle various situations?</li> </ul> </li> </ul>	

<b>3. Qualification and Hiring</b>	
<ul style="list-style-type: none"> <li>• Has the <b>testing program manager attended formalized training</b> to verify his/her knowledge of regulations?</li> </ul>	
<ul style="list-style-type: none"> <li>• What <b>other responsibilities does the testing program manager have</b> besides controlled substances and alcohol?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>obtain documentation for all of the service agents you are using (SAPs, BATs, STTs)?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that the service agent can perform his or her job successfully?</b> <ul style="list-style-type: none"> <li>○ Describe the process in detail.</li> <li>○ Do you ask the applicant's previous employer?</li> <li>○ Do you test applicants?</li> <li>○ Do you use case studies and ask the applicant how he or she would handle the situation?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>To service agents:</b> Are you familiar with Part 40 of the regulations and its requirements?                             <ul style="list-style-type: none"> <li>○ Are you affiliated with any industry associations?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>To DER:</b> Did you <b>verify the qualifications of the service agents (through C/TPA)?</b> <ul style="list-style-type: none"> <li>○ How did you obtain references?</li> </ul> </li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• If you <b>operate school buses intrastate or transit vehicles, do you check for driver Commercial Driver's License (CDL) qualifications and adhere to controlled substances and alcohol regulations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Please describe your qualification and testing requirements for drivers involved in intrastate school-bus operations.</b></li> </ul>	

<b>4. Training and Communication</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Do you have a <b>wellness program or do you provide healthy lifestyle training?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>inform and remind all safety-sensitive employees of the importance of responsible lifestyle behaviors and personal choices in adhering to controlled substances and alcohol regulations and minimizing other aspects of safety risk.</b> <ul style="list-style-type: none"> <li>○ Describe all formal and informal methods.</li> <li>○ What documentation is used to support this communication?</li> <li>○ Request the documentation.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Describe how <b>training on driver fitness issues is reinforced in the field.</b> <ul style="list-style-type: none"> <li>○ Do you use job aids, communication, coaching, and</li> </ul> </li> </ul>	

<b>4. Training and Communication</b>	
mentoring?	
<ul style="list-style-type: none"> <li>• How do you <b>communicate with senior leaders about controlled substances and alcohol issues on a regular basis?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Do drivers have direct access to the safety director or owner/company executives</b> about these issues?               <ul style="list-style-type: none"> <li>○ Do they hash them out first with the terminal manager, dispatcher, and/or parts/inventory person(s)?</li> <li>○ How do all parties interface with each other?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you offer <b>yearly update training to all HR staff on current practices for hiring and qualifying drivers, and contracting service agents?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>maximize job appeal to recruiters so as to attract personnel who are most likely to adhere to regulations and company policies/procedures?</b> <ul style="list-style-type: none"> <li>○ Describe how you train recruiters on how best to screen and qualify applicants.</li> <li>○ Describe all formal and informal methods for both types of training.</li> <li>○ What sort of documentation is used to support both trainings?               <ul style="list-style-type: none"> <li>· Request the documentation.</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>For third party administrators:</b> Do you ask for credentials?               <ul style="list-style-type: none"> <li>○ Request them. (SAP – AAMRO has MRO credentials.)</li> <li>○ What is your relationship to your referral?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>routinely obtain a copy of the carrier profile?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>stay current with recent changes to regulations about DUIs?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide any training for current drivers for consequences of getting a DUI?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>provide awareness training to drivers to promote full disclosure in re-applying for their CDLs?</b> <ul style="list-style-type: none"> <li>○ Please discuss how this is done for new and existing employees?</li> <li>○ Describe all formal and informal methods?</li> <li>○ What sort of documentation is used to support this communication?               <ul style="list-style-type: none"> <li>· Request the documentation.</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you had any <b>drivers who received a DUI, on the job or in their private lives?</b></li> </ul>	

4. Training and Communication	
<ul style="list-style-type: none"> <li>• Describe how you <b>ensure that contracted service agents are trained and qualified to facilitate</b> your company’s adherence to controlled substances and alcohol regulations and company policies/procedures.                             <ul style="list-style-type: none"> <li>○ How is this done for new and existing service agents?</li> <li>○ How is this done when new controlled substances and alcohol policies and procedures are implemented?</li> <li>○ Describe all formal and informal methods.</li> <li>○ What documentation is used to support this training?                                     <ul style="list-style-type: none"> <li>· Request the documentation.</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>For service agents:</b> Are you familiar with Part 40 of the regulations and its requirements?                             <ul style="list-style-type: none"> <li>○ Are you, as a service agent, affiliated with any industry associations?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• When you <b>perform reasonable-suspicion training, how do you know how to coordinate with service agents?</b> <ul style="list-style-type: none"> <li>○ Request the provided training materials.</li> <li>○ Who provides training for service agents on company policies/procedures?</li> <li>○ Do you perform refresher training?</li> <li>○ Have you done this in the last year?</li> </ul> </li> </ul>	
Passenger Carrier Only Questions	Carrier Response
<ul style="list-style-type: none"> <li>• How are <b>passenger complaints generally handled?</b> <ul style="list-style-type: none"> <li>○ Is senior management involved?</li> <li>○ If so, when and how?</li> <li>○ Describe in depth your communications program with senior company leaders to address passenger complaints that have safety implications.</li> </ul> </li> </ul>	

5. Monitoring and Tracking	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• Do you <b>monitor driver behavior?</b> <ul style="list-style-type: none"> <li>○ If so, how?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for monitoring and tracking of controlled substances and alcohol regulations and company policies?</b> <ul style="list-style-type: none"> <li>○ Are the process documented?                             <ul style="list-style-type: none"> <li>· Request the documentation.</li> </ul> </li> <li>○ Who does this monitoring and tracking?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>process for monitoring adherence to all alcohol and controlled substance rules and regulations, fitted to company operations?</b> <ul style="list-style-type: none"> <li>○ If you have a process, is it written or verbal?                             <ul style="list-style-type: none"> <li>· If written, request the policy.</li> <li>· If verbal, describe it.</li> </ul> </li> </ul> </li> </ul>	

<b>5. Monitoring and Tracking</b>	
<ul style="list-style-type: none"> <li>○ If you don't have a process, why not?</li> <li>○ Are you part of a consortium?</li> <li>○ If not, have you considered joining one?</li> </ul>	
<ul style="list-style-type: none"> <li>● Describe <b>your process for monitoring, tracking, and evaluating employees subject to controlled substances and alcohol regulatory compliance and compliance</b> with company policies and procedures? <ul style="list-style-type: none"> <li>○ Are the process documented?</li> <li>○ Request the documentation.</li> <li>○ Who does this monitoring, tracking, and evaluating?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>track and document all employees' training needs and training received</b>? <ul style="list-style-type: none"> <li>○ How do you do this?</li> <li>○ Who does this?</li> <li>○ How is this information used?</li> <li>○ Request the documentation.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Who has received reasonable-suspicion training</b>? <ul style="list-style-type: none"> <li>○ How much reasonable-suspicion training have they received?</li> <li>○ How knowledgeable were they before training?</li> <li>○ How do you know if the training was adequate?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● How do you <b>monitor and track hiring and training processes (including qualification of service agents)</b> to ensure adherence with controlled substances and alcohol regulations and company policies/procedures? <ul style="list-style-type: none"> <li>○ Are the process and the results of the process documented?</li> <li>○ Request the documentation.</li> <li>○ Who does this monitoring and tracking?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● How <b>does your organizational structure ensure that all personnel responsible for hiring, training, and qualification of service agents</b> are doing their jobs?</li> </ul>	
<ul style="list-style-type: none"> <li>● <b>To DER:</b> Did you verify the qualifications of the service agents? <ul style="list-style-type: none"> <li>○ How? (Through C/TPA, obtaining references?)</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● How do you <b>track records to ensure that you are meeting periodic inspection and recordkeeping requirements</b>? <ul style="list-style-type: none"> <li>○ Request samples of reports and records.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>review your roadside inspection results via the Internet</b>? <ul style="list-style-type: none"> <li>○ How often?</li> <li>○ Who does this?</li> <li>○ How is this information disseminated throughout the organization and who receives the information?</li> <li>○ How is the information used in the organization?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Have you <b>taken any action(s) to address the violations</b></li> </ul>	

<b>5. Monitoring and Tracking</b>	
<b>noted in your warning letter?</b>	
<ul style="list-style-type: none"> <li>• What is your <b>process for monitoring and tracking an employee's removal from and return to duty according to regulations and company policies/procedures?</b> <ul style="list-style-type: none"> <li>○ Are the process and results documented?</li> <li>○ Request the documentation.</li> <li>○ Who does this monitoring and tracking?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>monitor the driver's adherence to return-to-duty rules and company policies/procedures?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>employed drivers who had positive results and completed the return-to-duty process?</b> <ul style="list-style-type: none"> <li>○ Do you have all necessary paperwork on file (SAP-qualification documentation, SAP letters, follow-up testing plan, test results from plan, return-to-duty test results) to document that the return-to-duty process was completed?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• With regard to drivers who tested positive and have been released from your company, have you received any prospective-employer requests about them? <ul style="list-style-type: none"> <li>○ Do you give them a list of SAPs (as is required)?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• For any <b>drivers removed, what were the results of their return-to-duty alcohol and/or controlled substances tests?</b> <ul style="list-style-type: none"> <li>○ Are they undergoing follow-up testing, as prescribed by DOT guidelines?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for monitoring and tracking of all test records for adherence to retention dates and non-disclosure requirements?</b> <ul style="list-style-type: none"> <li>○ Are the process and the results of the process documented?</li> <li>○ Request the documentation.</li> <li>○ Who does this monitoring and tracking?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• If the <b>person responsible is the safety director or DER, is anyone assisting him?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Where do you <b>store your driver controlled substances and alcohol records/paperwork?</b> <ul style="list-style-type: none"> <li>○ Where do you store results of the post-accident alcohol and/or controlled substances testing?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>does the organization ensure that those responsible for test records are doing their jobs? (Monitoring the monitors.)</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Describe your <b>process for monitoring, tracking, and adjusting the annual driver drug and controlled substance sampling program?</b> <ul style="list-style-type: none"> <li>○ Request the documentation.</li> <li>○ Who does this monitoring and tracking?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How many <b>drivers are currently in your pool?</b></li> </ul>	

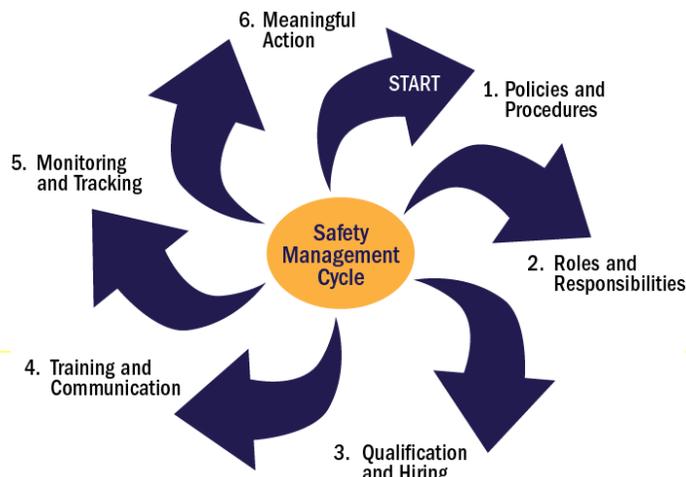
<b>5. Monitoring and Tracking</b>	
<ul style="list-style-type: none"> <li>• Do you <b>pre-test drivers before dispatch if you have not received their pre-employment drug-test results?</b> <ul style="list-style-type: none"> <li>○ Request the records.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How many <b>refusals for tests have you had in the last year?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How many <b>positive tests have you had in the last year?</b> <ul style="list-style-type: none"> <li>○ Did the positive drivers see the SAP?</li> <li>○ Did the positive drivers complete the SAP's treatment program?</li> <li>○ Did the positive drivers take a return-to-duty alcohol and/or controlled substances test?</li> <li>○ What was the result of the return-to-duty alcohol and/or controlled substances test?</li> <li>○ Were there any crashes resulting in fatalities?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>many Federal Motor Carrier Safety Administration-recordable crashes has your company had within the last 12 months?</b> <ul style="list-style-type: none"> <li>○ Were there any crashes in which vehicles were disabled and towed from the scene, and did anyone have a bodily injury that required immediate medical attention?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Were your <b>drivers tested for alcohol within two hours but not more than eight hours after the accident?</b> <ul style="list-style-type: none"> <li>○ If more than two hours but less than eight hours, do you have a record stating why the alcohol test was not conducted within the first two hours?</li> <li>○ Were the drivers tested within 32 hours after the accident for controlled substances?</li> <li>○ Who conducted the post-accident alcohol and/or controlled substances testing?</li> <li>○ How did you receive the results from the drug-testing facility?</li> <li>○ What were the results of the post-accident alcohol and/or controlled substances testing?</li> </ul> </li> </ul>	

<b>6. Meaningful Action</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How do <b>managers and employees typically react when they see coworkers not fulfilling their responsibilities?</b> <ul style="list-style-type: none"> <li>○ Do they give immediate and direct feedback?</li> <li>○ Do they ignore the problem?</li> <li>○ Do they inform their supervisor?</li> </ul> </li> </ul>	

<b>6. Meaningful Action</b>	
<ul style="list-style-type: none"> <li>• When it is <b>clear that employee(s) are deficient in understanding regulations and company policies, do you have mandatory refresher training that helps the employee(s) get the necessary information in a timely manner?</b> <ul style="list-style-type: none"> <li>○ What triggers this mandatory refresher training?</li> <li>○ Who makes these decisions?</li> <li>○ Describe some instances when this has occurred.</li> <li>○ Request the documentation of some instances when this has occurred (in the form of training materials and a list of people who received the training.)</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>have a progressive disciplinary program, ultimately leading to termination, focused on taking corrective action to ensure that drivers comply with regulations and company policies?</b> <ul style="list-style-type: none"> <li>○ Request a copy of it.</li> <li>○ Describe some instances of when this program was used.</li> <li>○ Who is involved in implementing it?</li> <li>○ Describe the program.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>continue to use a driver after he/she tests positive for drugs or alcohol?</b> <ul style="list-style-type: none"> <li>○ Do you always have enough drivers for operations?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Are there <b>circumstances when job demands take priority over controlled substances and alcohol testing and training tasks?</b> <ul style="list-style-type: none"> <li>○ Describe these situations and how they are managed.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>addressed observed consumption with the driver?</b> <ul style="list-style-type: none"> <li>○ Has the driver been disciplined? Request the disciplinary file.</li> </ul> </li> </ul>	

## Appendix Q: Crash Indicator Probing Questions

This job aid provides a list of Investigative Probing Questions for the Crash Indicator Behavior Analysis and Safety Improvement Category. This job aid can be used to engage the carrier in a collaborative exchange designed to review the Safety Management Cycle and identify where a breakdown has occurred in the Safety Management Process (Process Breakdown), understand the reasons why the Process



Breakdown(s) occurred and its consequences (e.g., violations), and develop a plan for improvement. Prior to beginning the discussion, the Safety Investigator should review the questions and identify those that

### *The Safety Management Cycle*

may be most relevant to his or her discussion. Additional information on how the job aid can be used is

<b>1. Policies and Procedures</b>	
<b>General Questions</b>	<b>Carrier Response</b>

provided below.

*How can I use this job aid?* The probing questions can be used to:

- Start the discussion with the carrier;
- Develop an appropriate line of questioning;
- Spark additional questions.

*What should I keep in mind when using this job aid?* Keep in mind the following guiding principles while engaging the carrier during the investigative questioning and remedy development process:

- Frame the questions so that the exchange moves toward determining the Process Breakdown(s);
- Stay focused on the goal of the exchange; steer away from discussions that stray from the goal;
- Engage the carrier so that he or she plays a role in diagnosing the issue and developing the remedy for improvement;
- Remember that participation in this self-assessment increases the likelihood that the carrier will change his or her behavior and is a key factor in gaining 'buy-in' to implement remedies; and
- Once the breakdowns are identified, ask the carrier why he or she believes these breakdowns are occurring and consider this information when selecting appropriate remedies for the carrier.

<ul style="list-style-type: none"> <li>• What is your <b>policy</b> or expected behavior regarding <b>crashes and crash involvement</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>crash or incident review program</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>unsafe driving policy</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>policies for Hours-of-Service</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>policy on driver traffic citations</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>dispatch policies/processes</b>?                             <ul style="list-style-type: none"> <li>○ How are they maintained?</li> <li>○ Who is responsible for them?</li> <li>○ How are they communicated?</li> </ul> </li> </ul>	
<b>2. Roles and Responsibilities</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Who is <b>responsible for safety management</b> at your company?                             <ul style="list-style-type: none"> <li>○ How are delays/weather conditions, etc., factored into schedules?</li> </ul> </li> <li>• Do you <b>have a safety officer</b>? If so, is the safety officer independent of operations?</li> <li>• What are your <b>current policies/practices regarding employee incentives and reward/recognition programs</b>?</li> <li>• Do you have <b>dispatch systems/operations</b>? If so, how is it organized? Who performs these tasks? How is compensation calculated? By hour, by load, by mile, by timeliness of delivery, etc.?</li> <li>• Who is <b>responsible for dispatch policies/processes</b>?                             <ul style="list-style-type: none"> <li>○ How are bonuses calculated?</li> </ul> </li> </ul>	
<b>3. Qualification and Hiring</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How <b>do you hire and promote drivers</b>? What are your processes and criteria? (For example, which factors/criteria are considered?)                             <ul style="list-style-type: none"> <li>○ Do you have other <b>potential scheduling constraints</b> (e.g., morning-only deliveries, loading problems, problematic shippers, etc.) that have to be considered in scheduling drivers/routes?</li> </ul> </li> <li>• What <b>background/reference checks do you perform to validate the information</b> provided by potential new hires? What is the process?                             <ul style="list-style-type: none"> <li>○ Do your drivers usually go to the same places or new places? What is the breakdown regarding the percentage of same places vs. percentage of new ones?</li> <li>○ Do you have a policy on hiring previous employees?</li> </ul> </li> <li>• What <b>tools/resources support/assist your dispatchers</b> with driver/route planning?</li> <li>• Before hiring drivers, do you <b>require them to take a road test in your vehicles</b>? Do dispatchers do alternative-route and/or scenario planning? If so, how?</li> <li>• How do you <b>validate a driver's "on-road skills"</b>? What is the process? (For example, when, how, and who?)                             <ul style="list-style-type: none"> <li>○ Is <b>driver experience considered in defining routing</b>?</li> </ul> </li> </ul>	
<b>Hazmat Carrier Only Questions</b>	
<b>Carrier Response</b>	
<ul style="list-style-type: none"> <li>• Do you <b>query applicants and previous employers to see if physical and stress demands have led to fatigue and/or reckless-driving violations in the past</b>?                             <ul style="list-style-type: none"> <li>○ In what other ways do you screen to see if physical and stress demands might lead to fatigue and/or reckless-driving?</li> </ul> </li> <li>• Are <b>drivers held accountable for specific driver incidents</b>? If so, how are they accountable?</li> </ul>	

<b>4. Training and Communication</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• <b>How do you communicate with your drivers?</b> With other employees?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>How are dispatch policies/processes communicated?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Is dispatcher training offered?</b> New hire, refresher, specialties?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Is driver training offered?</b> New hire? Refresher?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>require your drivers to attend/pass training?</b> What is the process? (For example, when, why, and how?)</li> </ul>	
<ul style="list-style-type: none"> <li>• What <b>kind of training do you offer?</b> Do you offer training on specific violation regulations (e.g., moving violations, failure to stop, improper use of signals, obeying local laws, parking commercial motor vehicles, and hazmat)? Which ones, when, and how?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>How do you make drivers aware of unsafe driving regulations?</b> What means of communication and/or training are used?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does your <b>company have safety meetings?</b> <ul style="list-style-type: none"> <li>○ If so, are the possible consequences of an unintentional release of hazmat discussed during these meetings?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How much <b>information does a dispatcher know about a particular driver's level of experience and/or skills?</b> How is this communicated?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide driver education that includes function-specific training</b>, for example, on customer communications, breakdown procedures, evacuation, and route diversion? If so: <ul style="list-style-type: none"> <li>○ Who gets this training?</li> <li>○ Does it include checking the prior seven-day duty statement?</li> <li>○ How often is it given?</li> <li>○ What triggers its delivery?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>prepare drivers for new routes?</b> If so, how?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do your <b>drivers share knowledge/information with each other?</b> If so, how (formal/informal)?</li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Request documentation on a <b>specific sample of employees</b> that shows frequency, content, attendance at, etc., the training required by the carrier.</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>request documentation to verify training of employees while at previous employers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you request <b>sample documents to verify type, content, and attendees of training?</b></li> </ul>	

<b>4. Training and Communication</b>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Do you <b>provide training on pedestrian awareness for bus drivers in inner cities?</b> If so:               <ul style="list-style-type: none"> <li>○ Who gets this training?</li> <li>○ How often is it given?</li> <li>○ What triggers its delivery?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How are <b>passenger complaints generally handled?</b> <ul style="list-style-type: none"> <li>○ Is senior management involved?</li> <li>○ If so, when and how?</li> <li>○ What is your communications program with senior company leaders to address passenger complaints that have safety implications?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you had any <b>incidents involving injuries while loading or unloading passengers in the last year?</b></li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How do you <b>ensure that all drivers, purchasing/parts-inventory agents, dispatchers, and managers receive training as required by regulations and/or company policy/procedures?</b> <ul style="list-style-type: none"> <li>○ Do you train drivers of fluid loads on how to counteract sloshing?</li> <li>○ For each type of training:               <ul style="list-style-type: none"> <li>• How often is it offered?</li> <li>• What triggers it?</li> <li>• Do you have job aids to help drivers learn the material?</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How many <b>years of cargo-tank operating experience</b> must a driver have?</li> </ul>	
<ul style="list-style-type: none"> <li>• How was <b>training on Parts 172 and 177 requirements performed?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>drivers have the ability to report perceived problems with equipment to management?</b> <ul style="list-style-type: none"> <li>○ Is this done verbally or in writing?</li> <li>○ Does the company have a written policy on reporting problems with equipment?</li> </ul> </li> </ul> <p style="text-align: center;"><i>If so, request a copy.</i></p>	

<b>5. Monitoring and Tracking</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Do you <b>monitor driver behavior?</b> If so, how?</li> </ul>	

<b>5. Monitoring and Tracking</b>	
<ul style="list-style-type: none"> <li>How often do you review the driving records of your drivers? Who does the review?</li> </ul>	
<ul style="list-style-type: none"> <li>What documentation do you keep regarding drivers and driving records?               <ul style="list-style-type: none"> <li>Request descriptions and samples.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>How do you track your drivers while they are on a trip? Do you use automated systems to track your drivers? If so, what is the process? (For example, who is responsible for the tracking/monitoring?)</li> </ul>	

<b>6. Meaningful Action</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>How do managers and employees typically react when they see coworkers not fulfilling their responsibilities?               <ul style="list-style-type: none"> <li>Do they give immediate and direct feedback?</li> <li>Do they ignore the problem?</li> <li>Do they inform their supervisor?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>Is driver behavior included in performance reviews? If so, how?</li> </ul>	
<ul style="list-style-type: none"> <li>Is safe driving recognized with respect to employee incentives and/or reward/recognition programs? How?</li> </ul>	
<ul style="list-style-type: none"> <li>What kind of follow-up action do you take on reported unsafe driving actions and/or other driver citations/violations? What is your process and what are the consequences of driver violations?</li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>Do you discipline drivers who ignore company policy and fail to drive safely with hazardous loads?               <ul style="list-style-type: none"> <li>If so, what are the measures?                   <ul style="list-style-type: none"> <li>Request a written copy of the measures.</li> </ul> </li> </ul> </li> </ul>	

## Appendix Q: Driver Fitness Probing Questions

This job aid provides a list of Investigative Probing Questions for the Driver Fitness Behavior Analysis and Safety Improvement Category. This job aid can be used to engage the carrier in a collaborative exchange designed to review the Safety Management Cycle and identify where a breakdown has occurred in the Safety Management Process (Process Breakdown), understand the reasons why the Process Breakdown(s) occurred and its consequences (e.g., violations), and develop a plan for improvement. Prior to beginning the discussion, the Safety Investigator should review the questions and identify those that may be most relevant to his or her discussion. Additional information on how the job aid can be used is provided below.



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How can I use this job aid? The probing questions can be used to:

- Start the discussion with the carrier;
- Develop an appropriate line of questioning; and
- Spark additional questions.

What should I keep in mind when using this job aid? Keep in mind the following guiding principles while engaging the carrier during the investigative questioning and remedy development process:

- Frame the questions so that the exchange moves toward determining the Process Breakdown(s);
- Stay focused on the goal of the exchange; steer away from discussions that stray from the goal;
- Engage the carrier so that he or she plays a role in diagnosing the issue and developing the remedy for improvement;
- Remember that participation in this self-assessment increases the likelihood that the carrier will change his or her behavior and is a key factor in gaining ‘buy-in’ to implement remedies; and
- Once the breakdowns are identified, ask the carrier why he or she believes these breakdowns are occurring and consider this information when selecting appropriate remedies for the carrier.

1. Policies and Procedures	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What is your <b>driver qualification (DQ) process/policy</b>?                             <ul style="list-style-type: none"> <li>○ <i>If written, provide a description.</i></li> <li>○ <i>If verbal, describe it.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>procedures for maintaining and updating DQ files</b>? How do <b>you keep track of what your drivers</b> are doing on the road in terms of violations?                             <ul style="list-style-type: none"> <li>○ Does your policy include addressing <b>DQ violations</b> recorded during roadside inspections in a timely manner?</li> <li>○ Do you require <b>drivers to submit a list of violations</b> annually?</li> </ul> </li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>○ Do you run the <b>Motor Vehicle Records (MVRs) annually?</b></li> <li>○ Do you subscribe to an <b>automated Commercial Driver’s License (CDL) monitoring system?</b></li> <li>○ Do you <b>subscribe to any outside service for driver record checks</b> (e.g., DAC)?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you have a <b>policy that requires regular updates and timely reviews of DQ files</b>, providing controls and sanctions for falsifications and for sole reliance on third-party sources (e.g., insurance carriers)?                             <ul style="list-style-type: none"> <li>○ <i>If so, is it written or verbal?</i>      ○ <i>If verbal, request description.</i></li> <li>○ <i>If written, request the document.</i>      ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● How do you <b>ensure that your DQ files and associated records and documents are organized and retained for the required periods?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you have a <b>policy on document retention and recordkeeping, including onboard possession of medical cards?</b> <ul style="list-style-type: none"> <li>○ <i>If so, is it written or verbal?</i>      ○ <i>If verbal, request description.</i></li> <li>○ <i>If written, request the document.</i>      ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you have a <b>policy for checking on new drivers’ entry-level training in accordance with Part 380 rules?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you have a <b>procedure to prevent assignment and dispatch of drivers on operations for which they are not qualified?</b> <ul style="list-style-type: none"> <li>○ <i>If so, is it written or verbal?</i>      ○ <i>If verbal, request description.</i></li> <li>○ <i>If written, request the document.</i>      ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>require a new hire to undergo a medical examination even if his/her medical certificate is still current?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you have a system that <b>dispatch uses to reference and/or verify drivers’ credentials prior to assigning them?</b> <ul style="list-style-type: none"> <li>○ To loads involving hazardous materials?</li> <li>○ To vehicles that may require specific license endorsements, depending on equipment fleet?</li> </ul> </li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>• Do you <b>use team driving</b>?               <ul style="list-style-type: none"> <li>○ Does dispatch do alternative-route or scenario planning?</li> <li>○ How do you track your drivers while they are on a trip?</li> <li>○ Who does the tracking/monitoring?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>policy regarding how medical examinations are performed</b>?               <ul style="list-style-type: none"> <li>○ Are all drivers directed to specific health-service providers selected by the motor carrier?</li> <li>○ Do you use an occupational health-service provider to perform Department of Transportation (DOT) medical examinations?</li> <li>○ Do you supply drivers with a DOT medical form when they obtain another DOT medical examination (as required)?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>policy regarding medical examination documentation</b>?               <ul style="list-style-type: none"> <li>○ Do you <b>require all new hires to undergo a medical examination</b> even if their medical certificate is still current?</li> <li>○ Does your <b>company check the accuracy of each driver's DOT medical card</b>?</li> <li>○ Does your <b>company check each driver's medical long form to ensure that it hasn't been falsified or altered</b>?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that your drivers' DOT medical cards remain current</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is <b>documentation kept when company personnel notify drivers</b> about the need for medical card renewal?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>medical card in the DQ file</b>?               <ul style="list-style-type: none"> <li>○ If not, why not?</li> <li>○ How do you update drivers' medical records?</li> <li>○ What is your driver medical card submission policy?</li> <li>○ Do you require drivers to submit a long form?</li> <li>○ Do drivers go to the carrier's doctor or their own doctor?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that your drivers are medically qualified and have valid medical certificates</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>policy that requires all drivers to submit copies of all inspections and moving violations to carrier management</b> within a designated timeframe, and to notify carrier management of suspended CDLs immediately following notification of suspension?               <ul style="list-style-type: none"> <li>○ <i>If so, is it written or verbal?</i>      ○ <i>If verbal, request description.</i></li> <li>○ <i>If written, request the document.</i>      ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you maintain <b>driver reports of driver MVRs</b>?               <ul style="list-style-type: none"> <li>○ What are your update procedures?</li> <li>○ Do you require drivers to report their violations in both commercial and non-commercial motor vehicles, both at inspection and on the road?</li> <li>○ What about suspended CDLs?</li> <li>○ Do you subscribe to an automated CDL monitoring system?</li> </ul> </li> </ul>	

1. Policies and Procedures	
<ul style="list-style-type: none"> <li>• Do you have a <b>policy requiring all new CDL drivers operating Longer Combination Vehicles (LCV) (hired since 2003)</b> to submit documentation of entry-level training?                             <ul style="list-style-type: none"> <li>○ <i>If so, is it written or verbal?</i>    ○ <i>If verbal, request description.</i></li> <li>○ <i>If written, request the document.</i>    ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
Hazmat Carrier Only Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What is the size of the driver pool, and how many drivers have an “H” or “N” endorsement on their CDL?</li> </ul>	
<ul style="list-style-type: none"> <li>• If your company hauls both HAZMAT and regular cargo, have you established policies and procedures that ensure that only drivers with an “H” or “N” endorsement are assigned to placardable HAZMAT loads?                             <ul style="list-style-type: none"> <li>○ <i>If so, are they written or verbal?</i>    ○ <i>If verbal, request description.</i></li> <li>○ <i>If written, request the documents.</i>    ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	

2. Roles and Responsibilities	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• <b>What are the roles and responsibilities of drivers, dispatchers, and other personnel?</b> <ul style="list-style-type: none"> <li>○ Are these roles/responsibilities documented?                                     <ul style="list-style-type: none"> <li>▪ <i>If so, request the documents.</i></li> </ul> </li> <li>○ How do you ensure that roles/responsibilities are aligned with company policies and Driver Fitness regulations?</li> <li>○ Are your company’s written policies and procedures aligned with roles/responsibilities?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Who is responsible for DQ?</b> <ul style="list-style-type: none"> <li>○ Does that person maintain a list of all company vehicles?</li> <li>○ How do you ensure that non-CDL drivers don’t drive CDL-required vehicles?</li> <li>○ How do you ensure that CDL drivers have the proper endorsements to drive CDL-required vehicles?</li> <li>○ Does dispatch have a system to reference or verify driver credentials prior to assignment of load?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Who is responsible for DQ files? What system do you have to update these files?</b> <ul style="list-style-type: none"> <li>○ How long has that person been assigned this task?</li> <li>○ What level of training was provided to perform this task?</li> <li>○ What other duties is this person responsible for?</li> </ul> </li> </ul>	

<b>2. Roles and Responsibilities</b>	
<ul style="list-style-type: none"> <li>• Who is in <b>charge of doing background checks on drivers and reviewing CDL information?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>dispatch systems/operations?</b> <ul style="list-style-type: none"> <li>○ If so, how are they organized?</li> <li>○ Who makes sure that assignments are made in accordance with DQs?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do <b>dispatch and safety management work together?</b> <ul style="list-style-type: none"> <li>○ How much does the dispatcher know about individual driver experience, qualifications, and skills?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>What are the roles and responsibilities of managers in providing training and maintaining qualifications for all employees?</b> <ul style="list-style-type: none"> <li>○ Are these roles and responsibilities documented? <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> </ul> </li> <li>○ How do you ensure that roles and responsibilities are aligned with company policies and regulations? <ul style="list-style-type: none"> <li>· <i>Request the company's written policies and procedures. (Check to see if they are aligned with roles/responsibilities.)</i></li> </ul> </li> <li>○ Who generally provides training for you?</li> <li>○ Who checks to see if all of your employees have proper driver-entry training? <ul style="list-style-type: none"> <li>· If nobody is assigned to that task, why not?</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is the <b>process that senior managers use to monitor compliance with policies and regulations?</b> <ul style="list-style-type: none"> <li>○ Is this process documented? <ul style="list-style-type: none"> <li>· <i>If so, request the document.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Who in the <b>company is in charge of enforcing policy?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>long has your safety manager been in that position? What type of past experience does he/she have?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Are <b>safety duties split amongst employees? If so with whom?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Who <b>conducts your drivers' DOT medical certifications?</b> <ul style="list-style-type: none"> <li>○ Do you direct drivers to a company-approved physician versus a driver-selected physician?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>use an occupational health physician?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>means for verifying the accuracy of information on medical cards?</b> <ul style="list-style-type: none"> <li>○ If so, who is responsible for this?</li> <li>○ Is this person trained to know what a falsified medical card looks like? <ul style="list-style-type: none"> <li>· If not, why not?</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>process for tracking medical card expiration dates and notifying drivers</b> of the need to be examined when his/her medical card expires?</li> </ul>	

<b>2. Roles and Responsibilities</b>	
<ul style="list-style-type: none"> <li>○ If so, what is the process and who is responsible for it?</li> <li>○ If not, why not?</li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Who is in charge of conducting background checks on drivers and reviewing CDL information?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● <b>Do you have anyone assigned to check MVRs? If not, why not? If so, when and how often?</b> <ul style="list-style-type: none"> <li>○ Where can I find copies of MVRs?</li> <li>○ Does your insurance carrier give you paper copies of MVRs?</li> <li>○ How do you keep track of medical card expiration dates? Who does this?</li> <li>○ Do you have someone who checks medical cards for falsification? Does this person know what a falsified medical card looks like? If not, why not?</li> <li>○ Do you have the means to verify that the information is correct? If not, why not?</li> <li>○ Do you send drivers to a trusted doctor?</li> <li>○ Do you direct drivers to a company-selected physician verses a driver-selected physician?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Have any of your <b>drivers had recent illnesses or crashes that may have caused a sudden health concern/change</b> or have resulted in the driver having been off work for an extended period of time?</li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>● Are your <b>managers and dispatchers for companies that haul HAZMAT and regular cargo responsible for ensuring that only drivers with an “H” endorsement</b> are assigned to placarded HAZMAT loads?                             <ul style="list-style-type: none"> <li>○ If so, is this role documented?                                     <ul style="list-style-type: none"> <li>· <i>Request the documents.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Are your <b>managers and dispatchers for companies that haul HAZMAT in tank vehicles (tanks with 1000-gallon capacity or more)</b> responsible for ensuring that only drivers with an “N” endorsement are assigned to the HAZMAT loads?                             <ul style="list-style-type: none"> <li>○ If so, is this role documented?                                     <ul style="list-style-type: none"> <li>· <i>Request the documents.</i></li> </ul> </li> </ul> </li> </ul>	

<b>3. Qualification and Hiring</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>● What is <b>your company’s process for hiring new employees?</b> <ul style="list-style-type: none"> <li>○ Is this process written?                             <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> </ul> </li> <li>○ Is your DQ process/policy in writing?                             <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> </ul> </li> </ul> </li> </ul>	

<b>3. Qualification and Hiring</b>	
<ul style="list-style-type: none"> <li>• Do you have <b>trouble attracting and retaining an adequate supply of drivers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>query applicants, check with previous employers, and obtain necessary documents regarding previous violations</b>, CDL, operational qualifications, dispatch records, and training, as well as information on related background, medical conditions, and driver behavior?               <ul style="list-style-type: none"> <li>○ If so, what is this process?                   <ul style="list-style-type: none"> <li>· <i>Request the supporting documentation.</i></li> </ul> </li> <li>○ Do you have a checklist of questions that you ask applicants and their previous employers?                   <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that information from the driver's application and previous employers is complete and accurate?</b> <ul style="list-style-type: none"> <li>· <i>Request the DQ files for these drivers.</i></li> <li>○ If documents are missing, are they in another location?                   <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> </ul> </li> <li>○ If they're not in another location, do you conduct MVR checks?                   <ul style="list-style-type: none"> <li>· <i>If not, why not?</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>review and evaluate gaps in employment</b>, frequent job changes, incomplete applications, within-company applications and reassignments, operational limitations (e.g., LCV, HAZMAT), physical impairments, and drug and alcohol involvement history?               <ul style="list-style-type: none"> <li>○ If so, what is this process?                   <ul style="list-style-type: none"> <li>· <i>Request the supporting documentation.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>look at driver violations as part of the hiring process?</b> <ul style="list-style-type: none"> <li>○ If not, why not?</li> <li>○ If so, do you obtain this information from the driver's previous employers, the insurance company, or others?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Who is in <b>charge of maintaining the DQ files?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Does your <b>staff understand the DQ/medical requirement process?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How closely <b>do you examine the drivers' medical conditions - physical qualifications and medical history?</b> <ul style="list-style-type: none"> <li>○ Do you evaluate whether there are any obvious medical conditions, such as diabetes, high blood pressure, or being very overweight?</li> <li>○ Do you have any drivers with special waivers?                   <ul style="list-style-type: none"> <li>· <i>If so, request to speak to them.</i></li> </ul> </li> <li>○ Do your drivers operate in intrastate, interstate commerce, or both?</li> <li>○ If they operate wholly in intrastate commerce, do they</li> </ul> </li> </ul>	

<b>3. Qualification and Hiring</b>	
meet a state exemption that would allow them to waive a DOT medical examination or that may allow for medical waivers (e.g., for diabetes or impaired vision)?	
• Is a <b>copy of the driver's latest medical certificate enough documentation for your company's DQ process</b> (regulatory minimum)?	
• Do you <b>ensure medical examiners are certified through the appropriate state regulatory agency?</b>	
• How have you <b>found and selected your medical examiner?</b> <ul style="list-style-type: none"> <li>○ Have you contacted a local medical group/clinic to find out if it conducts DOT medical examinations?</li> <li>○ Have you contacted other local truck companies to find out what medical examiner they use to conduct DOT medical examinations?</li> <li>○ Have you looked at classified ads in the phonebook or online to locate a local DOT medical examiner?</li> </ul>	
• How much <b>does your company pay for a DOT medical examination?</b> <ul style="list-style-type: none"> <li>○ Do you <b>require drivers to pay the cost for their DOT medical exam?</b></li> <li>○ How much does <b>each driver pay for a DOT medical examination?</b></li> <li>○ Do you reimburse drivers for the cost of the DOT medical examination?</li> </ul>	
• Have any of your <b>drivers not passed the DOT medical examination?</b>	
• Where do you <b>obtain your DOT medical examination forms?</b>	
• Does your medical examiner supply your drivers with a DOT medical long/short form when they are examined? Do you obtain a release from drivers to obtain records of the completed medical examination (long form), and have you reviewed the long form for your drivers?	
• Do you <b>screen newly hired drivers or monitor experienced drivers for medical conditions</b> that put them at increased risk of becoming medically unqualified?	
• Do you <b>check medical histories for conditions</b> such as sleep apnea, hypertension, or diabetes?	
• Do any of your <b>drivers require a diabetic/vision waiver?</b>	
• Do any of your <b>drivers require a Skill Performance Evaluation due to limb impairment or loss?</b>	
• Do any of your <b>drivers have limb impairment/loss?</b>	
• Do any of your <b>drivers have vision problems or require insulin</b> for diabetes?	
• Do you have any <b>drivers that have been in a recent accident</b> resulting in permanent injury?	

<b>3. Qualification and Hiring</b>	
<ul style="list-style-type: none"><li>• Do you have any <b>drivers who have taken an extended leave</b> of absence due to illness or injury?</li></ul>	
<ul style="list-style-type: none"><li>• What <b>provisions of the state grandfathering exemption do your drivers meet?</b></li></ul>	

<b>3. Qualification and Hiring</b>	
<ul style="list-style-type: none"> <li>• Do you <b>operate tank and double- or triple-trailer-combination trucks</b>?                             <ul style="list-style-type: none"> <li>○ Do your drivers have proper endorsements?</li> <li>○ Have you done a road test with the drivers who actually operate the tanks and/or double- and triple-combination trailers?                                     <ul style="list-style-type: none"> <li>· If not, why not?</li> </ul> </li> <li>○ How do you ensure that each driver has the proper endorsement on his/her CDL for the equipment being operated? (Used generally for private carriers with multiple types of vehicles and trailers.)</li> </ul> </li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• When <b>hiring for passenger carriers, how do you ensure that applicants have the proper class of license “P” or “S,” and do you check to see</b> if there are any restrictions on their license?                             <ul style="list-style-type: none"> <li>○ What is your process?</li> <li>○ Do you check with the applicant or the previous employer?</li> <li>○ Do you check the MVR?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Does <b>anyone check drivers for fitness prior to dispatching</b> them?                             <ul style="list-style-type: none"> <li>○ Is the dispatcher trained to determine fitness for duty?</li> </ul> </li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• <b>What are your hiring procedures for HAZMAT drivers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that driver applicants can meet physical and intellectual requirements for, and withstand additional stress associated with,</b> multiple HAZMAT transportation responsibilities?                             <ul style="list-style-type: none"> <li>○ What kinds of questions do you ask applicants and their references?</li> <li>○ Do you administer any physical or stress tests?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you use a <b>check sheet for the DQ process?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>track inquiries into driving records, past employers, and drug and alcohol testing results?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• What <b>follow-up procedures does your company use to obtain personal information during the hiring process</b> that could not be obtained during the initial qualification process?</li> </ul>	
<ul style="list-style-type: none"> <li>• What type of <b>security checks do you perform when hiring HAZMAT drivers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>test your HAZMAT employees after providing training?</b> <ul style="list-style-type: none"> <li>○ What is considered a passing score on your company’s HAZMAT tests?</li> <li>○ Are incorrect answers reviewed, or are tests administered a second time?</li> </ul> </li> </ul>	

<b>3. Qualification and Hiring</b>	
<ul style="list-style-type: none"> <li>• Do you <b>haul flammables, fuel, or gasoline</b>?                             <ul style="list-style-type: none"> <li>○ If so, what kind of expertise is needed?</li> <li>○ Are qualified drivers hard to find?</li> <li>○ What is your rate of turnover?</li> <li>○ Does this exacerbate the hiring problem?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>hiring process for drivers transporting flammable HAZMAT</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>screen new candidates for hauling flammable materials to allow only nonsmokers</b>?                             <ul style="list-style-type: none"> <li>○ What kinds of questions do you ask applicants and their references?</li> </ul> </li> </ul>	

<b>4. Training and Communication</b>	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What is your <b>training/orientation program for DQ and fitness</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for entry-level driver training</b>?                             <ul style="list-style-type: none"> <li>○ In which areas do you train your drivers?                                     <ul style="list-style-type: none"> <li>· <i>Request the training materials.</i></li> <li>· <i>Request the recordkeeping (i.e., certificates) from the training.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>list of recurring training for each employee, with corresponding endorsements</b>?                             <ul style="list-style-type: none"> <li>○ <i>Request the training records for all employees assigned to special loads (e.g., HAZMAT, passenger).</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that drivers are capable of handling your equipment even though they may be “qualified”</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>consistently communicate all driver fitness policies and procedures to staff so that senior managers</b> are confident that each employee understands the information?                             <ul style="list-style-type: none"> <li>○ How is this done for new and existing employees?</li> <li>○ How is this done when new policies and procedures are implemented?</li> <li>○ What are all formal and informal methods?</li> <li>○ What sort of documentation is used to support this communication?                                     <ul style="list-style-type: none"> <li>· <i>Request the documentation.</i></li> </ul> </li> </ul> </li> </ul>	

<b>4. Training and Communication</b>	
<ul style="list-style-type: none"> <li>• What is the <b>process that you use to consistently transmit and receive DQ and fitness information?</b> <ul style="list-style-type: none"> <li>○ How is this done for new and existing employees?</li> <li>○ How is this done when new policies and procedures are implemented?</li> <li>○ What are all formal and informal methods?</li> <li>○ What sort of documentation is used to support this communication?</li> </ul> </li> </ul> <p style="margin-left: 40px;">· <i>Request the documentation.</i></p>	
<ul style="list-style-type: none"> <li>• What is the <b>process for ensuring that hiring officials and safety managers have current knowledge and experience regarding driver fitness rules (both interstate and intrastate)</b>, interpretations, training, recordkeeping requirements, and compliant practices of other companies?                     <ul style="list-style-type: none"> <li>○ What are all formal and informal methods?</li> <li>○ What sort of documentation is used to support this communication?</li> </ul> </li> </ul> <p style="margin-left: 40px;">· <i>Request the documentation.</i></p>	
<ul style="list-style-type: none"> <li>• How does the <b>training system accommodate employee turnover, part-time employees, employees covering for others</b> on vacation/sick leave, and the training of new employees?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>How is training on driver fitness issues reinforced?</b> <ul style="list-style-type: none"> <li>○ Do you use job aids, communication, coaching, mentoring?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>do you communicate with senior leaders about driver fitness issues?</b> <ul style="list-style-type: none"> <li>○ How often is this done?</li> <li>○ Do drivers have direct access to the safety director or owner/company executives about these issues?</li> <li>○ Do they hash them out first with the terminal manager, dispatcher, and/or parts/inventory person(s)?</li> <li>○ How do all parties interface with each other?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Does your <b>staff understand the DQ/medical requirement process?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Are your <b>drivers/company officials aware of the company disciplinary process concerning driver and medical qualifications?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>often do you have an internal safety-meeting discussion without drivers present?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you provide a <b>health and wellness program for drivers?</b></li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>

<b>4. Training and Communication</b>	
<ul style="list-style-type: none"> <li>• How are <b>passenger complaints generally dealt with</b>?                             <ul style="list-style-type: none"> <li>○ Is senior management involved?</li> <li>○ If so, when and how?</li> <li>○ What is your communications program with senior company leaders to address passenger complaints that have safety implications?</li> </ul> </li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Who <b>conducts the HAZMAT training, and what are this person's qualifications</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• How does your company conduct <b>initial training</b> of a new driver?                             <ul style="list-style-type: none"> <li>○ How long is the training?</li> <li>○ What materials do you use when conducting the training?</li> <li>○ Is a test administered after the training, and how are the results evaluated?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How does your <b>company conduct recurrent HAZMAT training</b>?                             <ul style="list-style-type: none"> <li>○ How long is the training?</li> <li>○ What materials do you use when conducting the training?</li> <li>○ Is a test administered after the training, and how are the results evaluated?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that drivers understand which loads they are qualified to haul</b>?                             <ul style="list-style-type: none"> <li>○ Do you offer training on this topic?</li> <li>○ If so, how often, and what triggers the training?</li> <li>○ Do you have job aids to help drivers learn the material?</li> </ul> </li> </ul>	

<b>5. Monitoring and Tracking</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How do you <b>maintain up-to-date DQ files</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• How long do you <b>maintain DQ information</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>How do senior and middle management monitor and document staff compliance with driver fitness regulations and company policies</b>?                             <ul style="list-style-type: none"> <li>○ Where is the documentation kept?                                     <ul style="list-style-type: none"> <li>· <i>Request a copy of it.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>method for keeping track of drivers with one serious traffic violation currently on their CDL</b>? (A second serious moving violation subjects the driver to DQ.)</li> </ul>	

<b>5. Monitoring and Tracking</b>	
<ul style="list-style-type: none"> <li>• Do you <b>check the accuracy of each driver's DOT medical card</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for monitoring and documenting all drivers' job functions</b>, training, qualifications, renewal dates, medical conditions, and operational restrictions?               <ul style="list-style-type: none"> <li>○ How do you ensure that driver assignments are covered by the appropriate driver?</li> <li>○ Do you employ any driver who operates under a Skill Performance Evaluation (medical waiver)?</li> <li>○ Where is the documentation kept?                   <ul style="list-style-type: none"> <li>· <i>Request a copy of it.</i></li> </ul> </li> <li>○ Who tracks this information, and how often is it updated?</li> <li>○ With whom do you communicate when a driver is taking on an inappropriate assignment?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>methods and controls for ensuring that changes in qualifications are accurately obtained, verified, and recorded</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>track and document all employees' driver fitness training needs and training received</b>?               <ul style="list-style-type: none"> <li>○ Who does this?</li> <li>○ What is the process?</li> <li>○ How is this information used?                   <ul style="list-style-type: none"> <li>· <i>Request the supporting documentation.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>periodically review each driver's MVR to ensure compliance with company policies, federal regulations, and local laws and ordinances</b>?               <ul style="list-style-type: none"> <li>○ If so, how do you this?</li> <li>○ How often do you do it?</li> <li>○ Who is involved?</li> <li>○ What is done with the information?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>rely on the insurance company to examine MVRs</b>?               <ul style="list-style-type: none"> <li>○ Does your insurance company inform you when one of your drivers has been convicted of a violation?</li> <li>○ Do you monitor your drivers by acquiring an MVR on your own?                   <ul style="list-style-type: none"> <li>· <i>If so, how often?</i></li> </ul> </li> <li>○ Where do you maintain the copies of MVRs?</li> <li>○ How do you track whose (annual) MVRs you need to acquire?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>maintain a record of disciplinary actions (written or verbal) for each driver</b>?               <ul style="list-style-type: none"> <li>○ <i>If so, request the document.</i></li> <li>○ If not, why not?</li> </ul> </li> </ul>	

<b>5. Monitoring and Tracking</b>	
<ul style="list-style-type: none"> <li>• Do you <b>review your roadside inspection results via the Internet?</b> <ul style="list-style-type: none"> <li>○ If so, how often?</li> <li>○ Who does this?</li> <li>○ How is this information disseminated throughout the organization, and who receives it?</li> <li>○ How is the information used in the organization?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How does <b>the company track DOT medical expiration dates</b> to ensure that drivers aren't operating while being DOT-medically unqualified?                     <ul style="list-style-type: none"> <li>○ Have you used drivers that have had expired DOT medical cards?</li> <li>○ How do you monitor the roadside performance of your drivers?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>check each driver's medical long form to ensure that it hasn't been falsified or altered?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Have any of your <b>drivers been cited for medical violations during roadside inspections?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Have any of your <b>drivers been in a DOT-recordable accident due to a medical problem?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Have any of your drivers had recent illnesses or crashes that may have caused a sudden health concern/change?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you use <b>part-time or intermittent drivers?</b> <ul style="list-style-type: none"> <li>○ Do you review each driver's MVR to ensure compliance with driver fitness company policies, federal regulations, and local laws and ordinances?</li> <li>○ Does your monitoring process for compliance rely on self-reporting?</li> <li>○ Do you have a process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, medical conditions, and operational restrictions to ensure that driver assignments are covered by the appropriate driver?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>monitor your intermittent drivers for physical and license qualifications?</b> <ul style="list-style-type: none"> <li>○ Is this information tracked?                             <ul style="list-style-type: none"> <li>· <i>Request the tracking document.</i></li> </ul> </li> <li>○ Who does this?</li> <li>○ How often is it done?</li> </ul> </li> </ul>	
<b>Hazmat Carrier Only</b>	<b>Carrier Response</b>

<b>5. Monitoring and Tracking</b>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that assignments are allocated according to qualification requirements?</b> <ul style="list-style-type: none"> <li>○ Is this information tracked?                             <ul style="list-style-type: none"> <li>· <i>If so, request the tracking documents.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is the <b>size of the driver pool, and how many drivers have an “H” or “N” endorsement on their CDL?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do your <b>drivers have the ability to reject a load</b> that they have been dispatched to transport?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>back-reference a trip, and what information can you provide in relation to:</b> <ul style="list-style-type: none"> <li>○ The driver?</li> <li>○ The vehicle?</li> <li>○ The type of cargo?</li> <li>○ The destination?</li> <li>○ Pick-up and delivery times?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>monitor the smoking habits of drivers and attendants of HAZMAT vehicles?</b> <ul style="list-style-type: none"> <li>○ If so, how?</li> <li>○ Do you verify that habitual smokers are monitored for smoking while transporting flammable or incendiary loads or operating equipment by checking the vehicle and the equipment before and after the assignment?</li> <li>○ Is this information tracked?                             <ul style="list-style-type: none"> <li>· <i>If so, request the tracking documents.</i></li> </ul> </li> </ul> </li> </ul>	

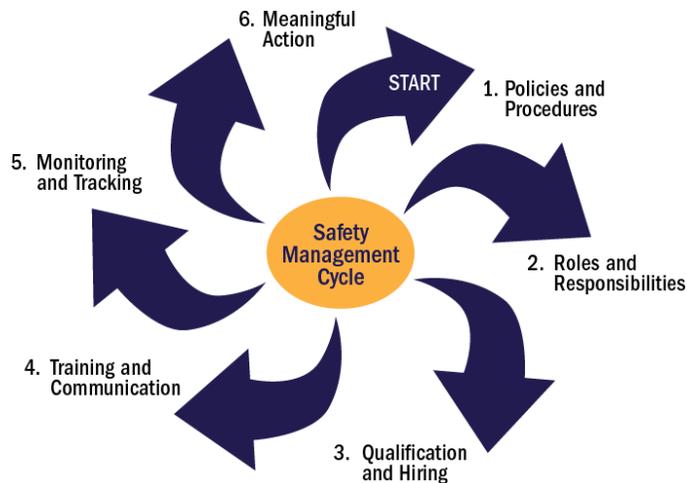
<b>6. Meaningful Action</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How do <b>managers and employees typically react when they see coworkers not fulfilling their responsibilities?</b> <ul style="list-style-type: none"> <li>○ Do they give immediate and direct feedback?</li> <li>○ Do they ignore the problem?</li> <li>○ Do they inform their supervisor?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>current policies/practices regarding employee incentives and reward/recognition programs?</b> For example:             <ul style="list-style-type: none"> <li>○ How is compensation calculated, by the hour/load/mile/timeliness of delivery?</li> <li>○ How are people promoted?</li> <li>○ How are bonuses calculated?</li> <li>○ How are safety-incentive awards dispersed (quarterly/annually) and/or adjusted for non-performance?</li> </ul> </li> </ul>	

<b>6. Meaningful Action</b>	
<ul style="list-style-type: none"> <li>• Do you have a <b>progressive disciplinary program, ultimately leading to termination, focused on taking corrective action</b> to ensure that drivers comply with regulations and company policies?                             <ul style="list-style-type: none"> <li>○ If so, what is the program?                                     <ul style="list-style-type: none"> <li>· <i>Request a copy of it.</i></li> </ul> </li> <li>○ What are some instances when this program was used?</li> <li>○ Who is involved in implementing it?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>○ When it is <b>clear that regulations and company policies are not well understood, and do you have a mandatory refresher training program/class</b> that helps employees understand the necessary information in a timely manner? What triggers when this mandatory refresher training is needed?</li> <li>○ Who makes these decisions?</li> <li>○ What are some instances when you have done this?                             <ul style="list-style-type: none"> <li>· <i>Request documentation of some instances when this has occurred in the form of training materials and a list of people who received the training.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are the <b>incentives and reward and recognition programs for each employee (or for Employee X)?</b> <ul style="list-style-type: none"> <li>○ Did you align your incentives and reward/recognition programs in such a way that they motivate the behaviors needed to successfully achieve employee’s roles and responsibilities?</li> <li>○ Does anybody check on a regular basis to make sure that this alignment is actually occurring, especially when the job or incentives change?</li> <li>○ How do you complete this alignment process?</li> <li>○ Who does it?</li> <li>○ <i>Request a written copy of the incentives and/or reward/recognition programs.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide safety-performance incentives to your drivers?</b> <ul style="list-style-type: none"> <li>○ If yes, do roadside violations related to medical certificates/licensing affect safety-performance awards?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• If the <b>company does not provide safety-performance incentives, is there a disciplinary program</b> that addresses roadside violations related to medical certification/licensing?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are your <b>drivers/company officials aware of the company disciplinary process</b> concerning driver and medical qualifications?</li> </ul>	

<b>6. Meaningful Action</b>	
<ul style="list-style-type: none"> <li>• Do you <b>maintain a record of disciplinary actions</b> (written or verbal) for each driver? If not, why not?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>system that dispatch uses to reference and/or verify driver credentials prior to assigning drivers</b>:                             <ul style="list-style-type: none"> <li>○ To loads involving HAZMAT?</li> <li>○ To vehicles that may require specific license endorsements, depending on equipment fleet?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>taken any action(s) to address the violations noted in your Driver Fitness warning letter</b> (if applicable)?</li> </ul>	
<b>Hazmat Carrier Only</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Do you <b>provide incentives and disciplinary measures for drivers who accept loads without required qualifications</b>?                             <ul style="list-style-type: none"> <li>○ If so, what are these incentives and measures?                                     <ul style="list-style-type: none"> <li>· <i>Request a written copy of them.</i></li> </ul> </li> </ul> </li> </ul>	

## Appendix Q: HM Compliance Probing Questions

This job aid provides a list of Investigative Probing Questions for the Hazardous Materials (HM) Compliance Behavior Analysis and Safety Improvement Category. This job aid can be used to engage the carrier in a collaborative exchange designed to review the Safety Management Cycle and identify where a breakdown has occurred in the Safety Management Process (Process Breakdown), understand the reasons why the Process Breakdown(s) occurred and its consequences (e.g., violations), and develop a plan for improvement. Prior to beginning the discussion, the Safety Investigator should review the questions and



*The Safety Management Cycle*

identify those that may be most relevant to his or her discussion. Additional information on how the job aid can be used is provided below.

*How can I use this job aid?* The probing questions can be used to:

- Start the discussion with the carrier;
- Develop an appropriate line of questioning; and
- Spark additional questions.

*What should I keep in mind when using this job aid?* Keep in mind the following guiding principles while engaging the carrier during the investigative questioning and remedy development process:

- Frame the questions so that the exchange moves toward determining the Process Breakdown(s);
- Stay focused on the goal of the exchange; steer away from discussions that stray from the goal;
- Engage the carrier so that he or she plays a role in diagnosing the issue and developing the remedy for improvement;
- Remember that participation in this self-assessment increases the likelihood that the carrier will change his or her behavior and is a key factor in gaining ‘buy-in’ to implement remedies; and
- Once the breakdowns are identified, ask the carrier why he or she believes these breakdowns are occurring and consider this information when selecting appropriate remedies for the carrier.

<b>1. Policies and Procedures</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• What types and quantities of HAZMAT does your company:                             <ul style="list-style-type: none"> <li>○ Ship (offer for transportation)?</li> <li>○ Transport?</li> </ul> </li> <li>• Have you:                             <ul style="list-style-type: none"> <li>○ <b>Registered with US DOT/Pipeline and Hazardous Materials Safety Administration (PHMSA)</b> as a carrier that transports HAZMAT (if required)?                                     <ul style="list-style-type: none"> <li>· <b>If so, what is your DOT HAZMAT registration number?</b></li> <li>· <b>Request a copy of your registration form.</b></li> </ul> </li> <li>○ Obtained a <b>HAZMAT Safety Permit (HMSP) from US DOT/Federal Motor Carrier Safety Administration (FMCSA) (if required)?</b> <ul style="list-style-type: none"> <li>· <i>If so, request a copy of your HMSP.</i></li> </ul> </li> <li>○ Registered with US DOT/ FMCSA to obtain a Cargo-Tank Testing Facility number (if required)? (NOTE: See Part 107, Subpart H.)                                     <ul style="list-style-type: none"> <li>· <i>If so, request a copy of your certificate.</i></li> </ul> </li> <li>○ Had any HAZMAT incidents requiring reporting?                                     <ul style="list-style-type: none"> <li>· Note: there are a number of exceptions to HM Incident Reporting. Please reference 171.15 and 171.16 for these exceptions.</li> <li>· <i>Request a copy of these reports.</i></li> </ul> </li> </ul> </li> <li>• Does your company operate/utilize any US DOT Special Permits? (NOTE: If Special Permits (SPs) are used, the investigator should look for additional training records pertaining to the specifics of the SP.)                             <ul style="list-style-type: none"> <li>○ If so, are you the original holder/applicant for the SP?</li> <li>○ If not, are you a party to the SP?</li> </ul> </li> <li>• <i>Request the SPs.</i></li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>• <b>What are your overall safety program and policies?</b> <ul style="list-style-type: none"> <li>○ <i>Request a copy.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Request the HAZMAT shipping papers for the last year.</i></li> <li>• Who handles emergency response information for your company?                             <ul style="list-style-type: none"> <li>○ Is it the company, itself?</li> <li>○ Is it a contractor?                                     <ul style="list-style-type: none"> <li>• If so, what is the contract number and contact information?</li> </ul> </li> </ul> </li> <li>• What documentation do you carry in your vehicles to comply with the emergency response information requirements?</li> <li>• Do you have processes in place to test emergency response telephone numbers? (<i>Note: While at the carrier/shipper, the investigator should randomly test numbers for validity.</i>)</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a policy that <b>ensures that regulatory requirements for HAZMAT-transportation registration, recordkeeping, packaging, securement, marking, labeling, placarding, reporting, documentation, security, and emergency response</b> are addressed?                             <ul style="list-style-type: none"> <li>○ If so, is it written or verbal?                                     <ul style="list-style-type: none"> <li>○ <i>If verbal, request description.</i></li> </ul> </li> <li>○ <i>If written, request documents.</i></li> <li>○ If there is no policy, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>policy/procedures for accepting loads, assigning drivers, and establishing delivery schedules</b> to meet safety-risk objectives?                             <ul style="list-style-type: none"> <li>○ If so, are they written or verbal?                                     <ul style="list-style-type: none"> <li>○ <i>If verbal, request description.</i></li> </ul> </li> <li>○ <i>If written, request documents.</i></li> <li>○ If there is no policy, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you package HAZMAT for transportation?</li> <li>• Are you familiar with the requirements to package HAZMAT for transportation?</li> <li>• Do you have written procedures on how to package HAZMAT?</li> <li>• Do you provide these <b>written procedures on how to package HAZMAT</b> to your employees?                             <ul style="list-style-type: none"> <li>○ <i>Request the written procedures.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>policy/procedures for drivers and other designated personnel for packaging, marking, labeling, placarding, shipping papers, and inspection tasks?</b> <ul style="list-style-type: none"> <li>○ If so, are they written or verbal?                                     <ul style="list-style-type: none"> <li>○ <i>If verbal, request description.</i></li> </ul> </li> <li>○ <i>If written, request document.</i></li> <li>○ If there is no policy, why not?</li> </ul> </li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>• Are you required to have a Security Plan according to the HAZMAT regulations?               <ul style="list-style-type: none"> <li>○ If so, do you have a written plan?                   <ul style="list-style-type: none"> <li>· <i>Request the plan.</i></li> </ul> </li> <li>○ If not, why not?</li> </ul> </li> <li>• How does the company report and record security threats?</li> <li>• NOTE: <i>If a Security Compliance Review has not been conducted within the last 12 months, the investigator should conduct one at this time.</i></li> </ul>	
<ul style="list-style-type: none"> <li>• How often do you <b>review the effectiveness of HAZMAT policies and procedures</b>?               <ul style="list-style-type: none"> <li>○ Who is responsible for writing policy, and how is information obtained for its development?</li> <li>○ Are company policies in writing and available to all employees who are responsible for their implementation?</li> <li>○ Does your company have written policies and procedures in place to ensure compliance with the Hazardous Materials Regulations?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Who does your cargo-tank testing and inspection? Do you have policies/procedures for cargo-tank <b>testing and inspecting</b>?               <ul style="list-style-type: none"> <li>○ If so, are they written or verbal?                   <ul style="list-style-type: none"> <li>○ <i>If verbal, request description.</i></li> </ul> </li> <li>○ <i>If written, request procedures.</i> <ul style="list-style-type: none"> <li>○ If there is no policy, why not?</li> </ul> </li> </ul> </li> </ul>	

<b>2. Roles and Responsibilities</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Who in your company is responsible for the following HAZMAT functions (<i>Note: there may be more than one person responsible for each function. For example – one person for developing the procedures and another for providing the information to the driver.</i>):                             <ul style="list-style-type: none"> <li>○ Training?</li> <li>○ Security?</li> <li>○ Preparing shipping papers, including emergency response information?</li> <li>○ Packaging HAZMAT (if applicable)?</li> <li>○ Marking and labeling HAZMAT (if applicable)?</li> <li>○ Placarding of transport vehicles (if applicable)?</li> <li>○ Classifying HAZMATs offered (if applicable)?</li> <li>○ Loading and securement?</li> <li>○ Separating and segregating HAZMAT on transport vehicles (including segregation requirements applicable to poisons and foodstuffs)?</li> </ul> </li> <li>• Are these roles documented?                             <ul style="list-style-type: none"> <li>○ <i>If so, request the documentation.</i></li> </ul> </li> <li>• How do you ensure that these roles are aligned with company policy?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are the <b>roles and responsibilities of drivers, dispatchers, managers, and other designated personnel</b> in relation to regulations and company policy/procedures involving HAZMAT handling functions for:                             <ul style="list-style-type: none"> <li>○ Packaging, testing and monitoring test results, and inspecting cargo tanks?</li> <li>○ Seurement, marking, labeling, placarding, and reporting?</li> <li>○ Transportation registration, documentation, recordkeeping, security, emergency response, and training?</li> <li>○ Are these roles documented?                                     <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> </ul> </li> <li>○ How do you ensure that the roles are aligned with company policies and regulations?                                     <ul style="list-style-type: none"> <li>· <i>Request the company’s written policies and procedures. (Check to see if they align with the roles.)</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for developing a HAZMAT Security Plan and providing training</b> to employees who are assigned to implement it?</li> </ul>	

<b>2. Roles and Responsibilities</b>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for preparing HAZMAT shipping papers and obtaining emergency response</b> information?                             <ul style="list-style-type: none"> <li>○ Who monitors the preparation of these papers and provides emergency response information to drivers?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are the <b>roles and responsibilities of managers and dispatchers who are accountable</b> for ensuring that drivers are in compliance with the Commercial Driver’s License (CDL) requirements, if applicable?                             <ul style="list-style-type: none"> <li>○ Do drivers who transport HAZMAT requiring placards hold a CDL with an “H” endorsement?</li> <li>○ Do drivers who transport liquid or gaseous HAZMAT in bulk packages, with aggregate capacities meeting or exceeding 1,000 gallons hold a CDL with a “T” endorsement?</li> <li>○ Are these roles/responsibilities documented?                                      · <i>If so, request the documents.</i></li> </ul> </li> </ul>	

<b>3. Qualification and Hiring</b>	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What is your <b>process and criteria for hiring and promoting employees</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your processes and criteria for <b>hiring and promoting drivers and other HAZMAT personnel</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>find and attract qualified</b> applicants?                             <ul style="list-style-type: none"> <li>○ How do you advertise openings?</li> <li>○ Who is part of the network of people you talk to in order to find an applicant?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>determine if the applicant is a good fit</b> for the opening?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you look for applicants with <b>experience directly applicable to your operations</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>prospective employees fill out employment applications</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does the employment application include questions about <b>qualifications for transporting</b> the company’s particular HAZMAT loads?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that your drivers have sufficient skills and credentials for performing HAZMAT responsibilities</b>? What is the process?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>verify if the driver or other HAZMAT personnel performs HAZMAT tasks effectively</b>?</li> </ul>	

<b>3. Qualification and Hiring</b>	
<ul style="list-style-type: none"> <li>• Do you <b>look at driver and other HAZMAT personnel violations as part of the hiring</b> process? Do you check to see if the driver has had previous HM violations?               <ul style="list-style-type: none"> <li>○ If not, why?</li> <li>○ If so, what are your methods?</li> </ul> </li> <li>• Do you obtain information from:               <ul style="list-style-type: none"> <li>○ The driver?</li> <li>○ Previous employers?</li> <li>○ The insurance company?</li> <li>○ Others?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you get <b>copies of driver Motor Vehicle Records</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>check references</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>check with previous employers</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>rate of turnover</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>have trouble attracting and retaining an adequate supply of HAZMAT qualified personnel</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• When hiring, do you <b>query applicants and check with previous employers regarding prior HAZMAT–transportation violations</b>, qualifications, experience, and responsibilities?               <ul style="list-style-type: none"> <li>○ If so, what is this process?                   <ul style="list-style-type: none"> <li>· <i>If the process or its results are documented, request the documentation.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• When senior positions are difficult to fill, <b>do you recruit and hire at the apprentice level and provide the training</b> necessary for qualification?               <ul style="list-style-type: none"> <li>○ What is this process?</li> <li>○ For which positions have you done this, and when?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• At what <b>company did your cargo-tank inspector/tester obtain experience</b>?               <ul style="list-style-type: none"> <li>○ Does this person have at least three years of experience in inspecting and testing cargo tanks?</li> <li>○ Did the individual graduate from high school or obtain a GED?</li> <li>○ <i>Request employee’s application for this position.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>prohibit the hiring of drivers (or attendants) who smoke, to perform the loading, unloading, attending, or transporting flammable and/or explosive loads</b> and other incendiary materials or equipment?               <ul style="list-style-type: none"> <li>○ If so, how is this accomplished?</li> <li>○ Do you have written procedures?                   <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> </ul> </li> </ul> </li> </ul>	

3. Qualification and Hiring	
<ul style="list-style-type: none"> <li>• Do you <b>prohibit the assignment of drivers (or attendants) who smoke, to perform the loading, unloading, attending, or transporting flammable and/or explosive loads</b> and other incendiary materials or equipment?                             <ul style="list-style-type: none"> <li>○ If so, how is this accomplished?</li> <li>○ Do you have written procedures?  <i>If so, request the documents.</i></li> </ul> </li> </ul>	

4. Training and Communication	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What is the <b>process that you use to consistently communicate expectations regarding policies/procedures</b> to drivers and other HAZMAT personnel so that senior managers can feel confident that the policies/procedures are understood by employees?                             <ul style="list-style-type: none"> <li>○ How is this done for new and existing employees?</li> <li>○ How is this done when new policies/procedures are implemented?</li> <li>○ What are all formal and informal methods?</li> <li>○ What sort of documentation is used to support this communication?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you ensure that your employees are properly trained in each HAZMAT function that they perform?</li> <li>• Do you conduct your own training?</li> <li>• Is the training contracted?                             <ul style="list-style-type: none"> <li>○ <i>If so, what is the name and contact information for the contractor?</i></li> </ul> </li> <li>• What kinds of <b>HAZMAT training</b> do you offer:                             <ul style="list-style-type: none"> <li>○ To new hires?</li> <li>○ As a refresher?</li> <li>○ <i>Request copies of these training materials.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>require your drivers and other HAZMAT personnel to attend/pass HAZMAT training?</b> (Note: Investigators should check for compliance with training requirements in section 177.816, in addition to those in Part 172, Subpart H.)                             <ul style="list-style-type: none"> <li>○ If so, why, when, and how?</li> <li>○ <i>Request copies of these training materials.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>require your dispatchers to attend/pass HAZMAT training?</b> <ul style="list-style-type: none"> <li>○ If so, why, when, and how?</li> <li>○ <i>Request copies of these training materials.</i></li> </ul> </li> </ul>	

<b>4. Training and Communication</b>	
<ul style="list-style-type: none"> <li>• Have you <b>provided specialized training or counseling to drivers and other HAZMAT personnel on the basis of roadside inspections</b>?               <ul style="list-style-type: none"> <li>○ <i>Request copies of these training materials.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>address drivers or other HAZMAT personnel</b> who need new skills?               <ul style="list-style-type: none"> <li>○ Does skill upgrading happen in-house?</li> <li>○ What combination of methods do you use (e.g., coaching, training, and/or mentoring)?</li> <li>○ Is your training interactive?</li> <li>○ Does it include hands-on demonstration?</li> <li>○ <i>Request the training materials.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Describe how <b>HAZMAT training is reinforced in the field.</b> <ul style="list-style-type: none"> <li>○ Do you use job aids, communication, coaching, and/or mentoring?</li> <li>○ <i>Request copies of these training materials.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>communicate with senior leaders about HAZMAT safety issues</b> on a regular basis?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>drivers have direct access to the safety director or owner/company executives</b> about HAZMAT safety issues?               <ul style="list-style-type: none"> <li>○ Do they hash them out first with the terminal manager, dispatcher, and/or parts/inventory person(s)?</li> <li>○ How do all parties interface with each other?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Are there <b>any business-related barriers that might affect communications between HAZMAT personnel and/or drivers regarding vehicle maintenance</b>?               <ul style="list-style-type: none"> <li>○ If so, do these barriers pertain to:                   <ul style="list-style-type: none"> <li>• Geography?</li> <li>• Functional reporting?</li> <li>• Competition?</li> <li>• Rewards/recognition?</li> <li>• Incentives?</li> <li>• Other?</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How much <b>information does a dispatcher know about a particular driver's level of experience and/or skills related to HAZMAT</b>?               <ul style="list-style-type: none"> <li>○ How is this communicated?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you use <b>an automated logistics Management Information System</b>?               <ul style="list-style-type: none"> <li>○ If so, which one?</li> <li>○ Are managers and dispatchers trained on this system?</li> <li>○ <i>Request training materials and records of attendance.</i></li> </ul> </li> </ul>	

<b>4. Training and Communication</b>	
<ul style="list-style-type: none"> <li>• What is the <b>process you use to consistently communicate expectations for adhering to all HAZMAT-handling regulations and policies/procedures</b> to drivers, dispatchers, managers, and other designated personnel, and to provide new-hire and refresher training for meeting those expectations with regard to packaging, testing and inspection of cargo tanks; securement, marking, labeling, placarding and reporting; and transportation registration, documentation, recordkeeping, security, and emergency response?               <ul style="list-style-type: none"> <li>○ How is this done for new and existing employees?</li> <li>○ How is it done when new policies and procedures are implemented?</li> <li>○ What are all formal and informal methods?</li> </ul> </li> <li>• What sort of documentation is used to support this communication?               <ul style="list-style-type: none"> <li>○ <i>Request the documentation.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>trained your HAZMAT employees on the Security Plan (if applicable)</b>?               <ul style="list-style-type: none"> <li>○ <i>If so, request documentation verifying where and when the training took place and a list of personnel who attended.</i></li> </ul> </li> <li>• How are en route security threats communicated to the company and what happens if one is received?               <ul style="list-style-type: none"> <li>○ <b>Do you have written procedures for this?</b> <ul style="list-style-type: none"> <li>· <i>If so, request the documents.</i></li> <li>· If not, why not?</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is the <b>process you use to ensure that drivers understand which loads they are qualified to haul and that dispatchers know how to confirm load requirements with shippers and to verify that drivers</b> have the proper endorsements and qualifications?               <ul style="list-style-type: none"> <li>○ What are all formal and informal methods?</li> </ul> </li> <li>• What sort of documentation is used to support this communication?               <ul style="list-style-type: none"> <li>○ <i>Request the documentation.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>prepare your employees for cargo-tank testing</b>?               <ul style="list-style-type: none"> <li>○ Do you have an apprenticeship program to provide individualized training and certification for cargo-tank testing and inspection to new hires and transfers?</li> <li>○ What sort of documentation is used to support this education?                   <ul style="list-style-type: none"> <li>· <i>Request the documentation.</i></li> </ul> </li> </ul> </li> </ul>	

<b>4. Training and Communication</b>	
<ul style="list-style-type: none"> <li>• How do you train your drivers and other HAZMAT personnel to comply with the requirements specific to PHMSA Special Permits (if applicable)?                             <ul style="list-style-type: none"> <li>○ Do you have documentation for this training?                                     <ul style="list-style-type: none"> <li>· <i>If so, request a copy of the documentation.</i></li> <li>· <i>If not, why not?</i></li> </ul> </li> </ul> </li> </ul>	

<b>5. Monitoring and Tracking</b>	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• How do you <b>monitor and track tasks, schedules, and costs for HAZMAT-related tasks?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>track compliance with HAZMAT regulations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you monitor <b>HAZMAT violations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Does a <b>company official review roadside inspection reports for HAZMAT violations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>review your roadside inspection results via the Internet?</b> <ul style="list-style-type: none"> <li>○ If so, how often?</li> <li>○ Who does this?</li> <li>○ How is this information disseminated throughout the organization, and who receives it?</li> <li>○ How is the information used in the organization?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>check on the driver's and other HAZMAT personnel's performance?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>regularly review and evaluate records of HAZMAT methods, procedures, equipment, and devices used?</b> <ul style="list-style-type: none"> <li>○ If so, how often?</li> <li>○ Who is involved?</li> <li>○ What are some recent reviews and the corresponding changes that were made as a result?</li> <li>○ Is this process documented?                             <ul style="list-style-type: none"> <li>· <i>If so, request the documentation.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you know that <b>your HAZMAT training</b> is effective?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you receive <b>complaints about HAZMAT handling or packaging</b> when it arrives at a destination?</li> </ul>	

<b>5. Monitoring and Tracking</b>	
<ul style="list-style-type: none"> <li>• How do <b>senior and middle management monitor and document staff compliance with HAZMAT regulations and address complaints of shippers and receivers?</b> <ul style="list-style-type: none"> <li>○ Where is the documentation kept? · <i>Request a copy of it.</i></li> <li>○ Do you keep a log of complaints and whether they have been handled appropriately?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>track and document all employees' HAZMAT training needs and training received?</b> <ul style="list-style-type: none"> <li>○ What is the process that is used?</li> <li>○ How is this information used?</li> <li>○ <i>Request the documentation.</i></li> </ul> </li> </ul>	
<p>What is your process <b>for monitoring and tracking compliance of all designated employees according to HAZMAT-handling regulations and company policies?</b></p>	
<ul style="list-style-type: none"> <li>• How do you <b>monitor, and who is responsible for monitoring, the performance of individuals who:</b> <ul style="list-style-type: none"> <li>○ Fill out the appropriate HAZMAT registration and other forms?</li> <li>○ Prepare shipping papers and emergency response information?</li> <li>○ Provide emergency response information to drivers?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for monitoring systems and databases, including reminders, alerts, and internal audits, that are used for compliance with HAZMAT-handling regulations and company policies?</b> <ul style="list-style-type: none"> <li>○ Do you <b>routinely obtain a copy of the carrier profile?</b></li> <li>○ Do you routinely visit the Safety Measurement System online?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you use <b>computer programs in the preparation of HAZMAT documentation and as tools for compliance?</b> <ul style="list-style-type: none"> <li>○ How often are your computer applications updated?</li> <li>○ When did you start using computer programs, and what steps were taken in making that decision?</li> <li>○ What advantages and disadvantages did your company experience with the adoption of computer-generated documents and tools?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for regularly tracking and evaluating the effectiveness of company policies, procedures, and systems related to HAZMAT transportation?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>monitor to see if drivers (or other employees) who smoke are assigned to flammable loads?</b></li> </ul>	

5. Monitoring and Tracking	
<ul style="list-style-type: none"> <li>• What is your process for monitoring and tracking to ensure that cargo tanks are inspected and tested for replacement or repair as needed?                             <ul style="list-style-type: none"> <li>○ Request the documentation.</li> <li>○ Who tracks this information, and how often is it updated?</li> <li>○ Who is made aware, and by whom, when repair and replacement are not done as needed?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your process for monitoring and tracking attendance of Division 1.1, 1.2, or 1.3 Explosive Loads, if applicable?                             <ul style="list-style-type: none"> <li>○ Do you have documentation for this process?</li> <li>○ Request the documentation.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your process for tracking and reporting movements of HAZMATs subject to the HMSP requirements, if applicable? (NOTE: Refer to Part 385, Subpart E, Section 385.415(c)).                             <ul style="list-style-type: none"> <li>○ Do you have documentation for this process?                                     <ul style="list-style-type: none"> <li>· Request the documentation.</li> </ul> </li> </ul> </li> </ul>	

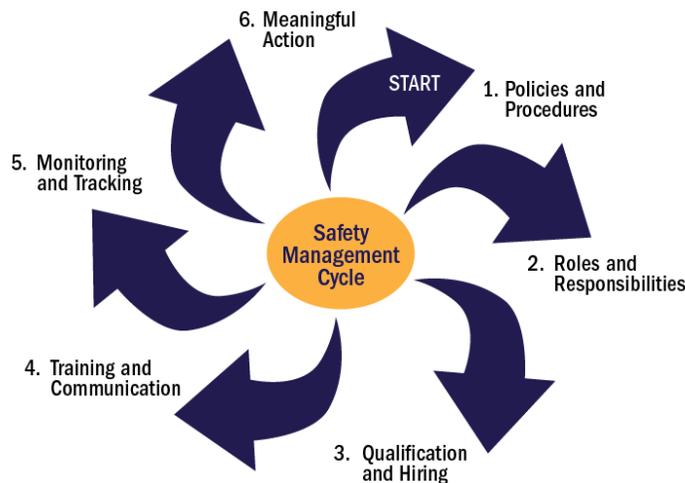
6. Meaningful Action	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• How important do you think that compliance with HAZMAT regulations is for ensuring highway safety?</li> </ul>	
<ul style="list-style-type: none"> <li>• How concerned are you about your ongoing HAZMAT issues?</li> </ul>	
<ul style="list-style-type: none"> <li>• How does HAZMAT safety impact your operations?</li> </ul>	
<ul style="list-style-type: none"> <li>• Have you aligned your incentive programs so that they motivate the behaviors needed to achieve employee roles and responsibilities?                             <ul style="list-style-type: none"> <li>○ Does anybody check on a regular basis to make sure that this alignment is actually occurring, especially when the job or incentives change?                                     <ul style="list-style-type: none"> <li>· If so, how do you complete this alignment process?</li> <li>· Who does it?</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are these incentives and/or reward/recognition programs?                             <ul style="list-style-type: none"> <li>○ Are they documented?                                     <ul style="list-style-type: none"> <li>· If so, request a copy.</li> </ul> </li> <li>○ If not documented, request a verbal description.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you test your drivers and other HAZMAT personnel on their knowledge of HAZMAT safety policies and procedures?</li> </ul>	

<b>6. Meaningful Action</b>	
<ul style="list-style-type: none"> <li>• How do you <b>respond to drivers and other HAZMAT personnel who have HAZMAT problems (violations, complaints, etc.)?</b> <ul style="list-style-type: none"> <li>○ Do you provide specific training?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do <b>managers and employees typically react when they see coworkers not fulfilling their responsibilities?</b> <ul style="list-style-type: none"> <li>○ Do they give immediate and direct feedback?</li> <li>○ Do they ignore the problem?</li> <li>○ Do they inform their supervisor?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>progressive disciplinary program ultimately leading to termination, which focuses on taking corrective action</b> to ensure that drivers comply with regulations and company policy? If so- <ul style="list-style-type: none"> <li>○ <i>Request a copy of it.</i></li> <li>○ Describe the program and some instances in which it was used?</li> <li>○ Who is responsible for implementing it?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>drivers execute HAZMAT procedures under difficult conditions?</b> <ul style="list-style-type: none"> <li>○ Do you reward drivers for time spent learning and/or completing procedures, especially under difficult conditions?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• When it is <b>clear that regulations and company policy are not well understood, do you have mandatory refresher training</b> that helps employees understand the necessary information in a timely manner?</li> </ul>	
<ul style="list-style-type: none"> <li>• What <b>triggers referral to mandatory refresher training?</b> <ul style="list-style-type: none"> <li>○ Who makes these decisions?</li> <li>○ Describe some instances when you have made such a referral.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Have you had instances when refresher training was required?</b> <ul style="list-style-type: none"> <li>○ <i>If so, request documentation. (Note: This documentation could be in the form of training materials and a list of people who received the training.)</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>factor drivers' and other HAZMAT personnel's performance</b> into training programs?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is there a <b>disciplinary and/or recognition program for performance on the basis of roadside inspections?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Have you taken any <b>action to address the violations noted in your Warning Letter (if applicable)?</b></li> </ul>	

<b>6. Meaningful Action</b>	
<ul style="list-style-type: none"> <li>• What are the <b>incentive and reward/recognition programs for each employee (or Employee X) who has a role in HAZMAT handling?</b> <ul style="list-style-type: none"> <li>○ Have you aligned your incentive programs so that they motivate the behaviors needed to achieve employees' roles and responsibilities?</li> <li>○ Does anybody check on a regular basis to make sure that this alignment is actually occurring, especially when the job or incentives change?</li> <li>○ Who completes this alignment process, and how?</li> <li>○ <i>Request a written copy of the programs.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide incentives and disciplinary measures for drivers who accept loads without required qualifications?</b> <ul style="list-style-type: none"> <li>○ If so, what are these measures?</li> </ul> </li> <li>• <i>Request a written copy of the documentation of these incentives and disciplinary measures?</i></li> </ul>	
<ul style="list-style-type: none"> <li>• What is an <b>example of a driver who has participated in your disciplinary program?</b></li> </ul>	

## Appendix Q: HOS Compliance Probing Questions

This job aid provides a list of Investigative Probing Questions for the Hours-of-Service (HOS) Compliance Behavior Analysis and Safety Improvement Category. This job aid can be used to engage the carrier in a collaborative exchange designed to review the Safety Management Cycle and identify where a breakdown has occurred in the Safety Management Process (Process Breakdown), understand the reasons why the Process Breakdown(s) occurred and its consequences (e.g., violations), and develop a plan for improvement. Prior to beginning the discussion, the Safety Investigator should review the questions and identify those that may be most relevant to his or her discussion. Additional information on how the job aid can be used is provided below.



*The Safety Management Cycle*

*How can I use this job aid?* The probing questions can be used to:

- Start the discussion with the carrier;
- Develop an appropriate line of questioning; and
- Spark additional questions.

*What should I keep in mind when using this job aid?* Keep in mind the following guiding principles while engaging the carrier during the investigative questioning and remedy development process:

- Frame the questions so that the exchange moves toward determining the Process Breakdown(s);
- Stay focused on the goal of the exchange; steer away from discussions that stray from the goal;
- Engage the carrier so that he or she plays a role in diagnosing the issue and developing the remedy for improvement;
- Remember that participation in this self-assessment increases the likelihood that the carrier will change his or her behavior and is a key factor in gaining ‘buy-in’ to implement remedies; and
- Once the breakdowns are identified, ask the carrier why he or she believes these breakdowns are occurring and consider this information when selecting appropriate remedies for the carrier.

<b>1. Policies and Procedures</b>	
<b>General Questions</b>	<b>Carrier Response</b>
• Explain your <b>dispatch system/processes</b> in detail.	
• Do dispatch and safety management work together?	
• Is there a <b>clearly stated company policy that addresses HOS regulations</b> ? <ul style="list-style-type: none"> <li>○ If so, is it written or verbal? <ul style="list-style-type: none"> <li>· <i>If written, request the document.</i></li> <li>· <i>If verbal, request description.</i></li> </ul> </li> </ul>	
• Is there a policy that requires <b>drivers to report their available hours to dispatch during “check-in” calls</b> ?	
• Is there a <b>policy that prohibits dispatchers from assigning a load to drivers without hours available</b> to complete the load on time?	
• Do you <b>use team driving</b> ?	
• What <b>tools do you use in route planning</b> ?	
• How do you <b>determine which drivers get what loads and routes</b> ?	
• Does the company have a policy that requires dispatch to know <b>about individual driver experience and skills</b> ?	
• Do you <b>have schedule constraints such as morning-delivery only</b> , problems waiting for the shipper, or problems with loading/unloading?	

1. Policies and Procedures	
<ul style="list-style-type: none"> <li>• Does the <b>dispatcher consider traffic and time of day</b> when making routes?</li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>much slack time do dispatchers allow</b> in the schedule for drivers?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does <b>dispatch do alternative route or scenario planning?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>correct errors to the logs? And what documentation do you maintain of the correction?</b> (Part 395.8(k))</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>disciplinary policy?</b> Is it written or verbal?</li> </ul>	
Passenger Carrier Only Questions	Carrier Response
<ul style="list-style-type: none"> <li>• Is there a company policy that requires that you have <b>someone who is trained/certified to recognize fatigue or fitness-for-duty issues?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>policy that prohibits drivers from deviating from the scheduled itineraries</b>, and do you advise customers of it?                             <ul style="list-style-type: none"> <li>○ If so, are they written or verbal?                                     <ul style="list-style-type: none"> <li>· <i>If written, request the documents.</i></li> <li>· <i>If verbal, request description.</i></li> </ul> </li> <li>○ If you don't have such policy/procedures, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>established policy/procedures that account for available hours for separate operations within-company, for intermittent drivers, and for "extended day"?</b> <ul style="list-style-type: none"> <li>○ If so, are they written or verbal?                                     <ul style="list-style-type: none"> <li>· <i>If written, request the documents.</i></li> <li>· <i>If verbal, request description.</i></li> </ul> </li> <li>○ If you don't have such policy/procedures, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you use <b>part-time or intermittent drivers?</b> If so:                             <ul style="list-style-type: none"> <li>○ Do you require them to fill out the seven-day duty statement?</li> <li>○ Do you require drivers to report secondary employment hours?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How often do you <b>book trips that depart at night?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>policy that discourages long-distance trips that depart at night</b> and outlines acceptable route-scheduling procedures? Does the procedure include <b>checking prior driver rest, not just off-duty time?</b> <ul style="list-style-type: none"> <li>○ If so, are they written or verbal?                                     <ul style="list-style-type: none"> <li>· <i>If written, request the documents.</i></li> <li>· <i>If verbal, request description.</i></li> </ul> </li> <li>○ If you don't have such policy/procedures, why not?</li> </ul> </li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>Do you <b>have a procedure that includes checking prior driver rest, not just off-duty time?</b></li> </ul>	
<ul style="list-style-type: none"> <li>What is your <b>disciplinary policy?</b> Is it written or verbal?</li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>Do you <b>have policy/procedures for all personnel involved in accepting HAZMAT loads, assigning drivers, and establishing delivery schedules?</b> <ul style="list-style-type: none"> <li>If so, do they take into account the full operational process and enable dispatchers to safely manage all types of loads within HOS?</li> <li>If so, are they written or verbal?                             <ul style="list-style-type: none"> <li><i>If written, request the document.</i></li> <li><i>If verbal, request description.</i></li> </ul> </li> <li>If you don't have such policy/procedures, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>At what <b>level are decisions being made prior to dispatch</b> that a load is to be taken for transportation by the company?</li> </ul>	

<b>2. Roles and Responsibilities</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>Who <b>does the dispatching and to whom do the dispatchers report?</b> How many dispatchers are there?</li> </ul>	
<ul style="list-style-type: none"> <li>Do <b>dispatch and safety management work together?</b> If so, what is the relationship?</li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>Whose <b>responsibility is it to verify that HOS are available within the company, for intermittent and relief drivers, and for "extended day"?</b> <ul style="list-style-type: none"> <li>What is the person's role?                             <ul style="list-style-type: none"> <li><i>If it is documented, request the document.</i></li> </ul> </li> <li>Who is assigned to monitor Records of Duty Status (RODS) for accuracy, communicate the results, and take meaningful action?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>Do you <b>assign drivers to multiple operations within a short timeframe (co-mingling)?</b> <ul style="list-style-type: none"> <li>Do you use part-time, intermittent, or relief drivers, or are drivers shared between employers?</li> <li>Do you require drivers to complete the seven-day duty statement?</li> <li>Is there a policy that outlines reasons why drivers need to complete this statement?</li> </ul> </li> </ul>	

<b>2. Roles and Responsibilities</b>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• When <b>assigning roles and responsibilities, are you careful not to overburden drivers who are already time-stressed?</b> <ul style="list-style-type: none"> <li>○ If so, how do you ensure this?</li> <li>○ Do you ask for driver feedback on this issue?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Are your <b>drivers involved in making business decisions?</b> <ul style="list-style-type: none"> <li>○ If so, does this interfere with their safety performance?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do your <b>drivers have the authority to park the vehicle</b> and, if so, for how long?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>restrictions as to when your drivers can load and unload at terminals</b> that you service?</li> </ul>	

<b>3. Qualification and Hiring</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• What are your <b>employee hiring and promoting</b> procedures?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>What do you look for in the ideal employee?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>driver training program for new hires?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>have trouble attracting/retaining enough drivers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>turnover rate?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>screen newly hired drivers for medical conditions that put them at increased risk for fatigue, sleep disorders, or excessive daytime sleepiness?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>many dispatchers</b> do you have?</li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Do you <b>hire part-time or intermittent drivers?</b> <ul style="list-style-type: none"> <li>○ If so, do you require them to fill out the seven-day duty statement?</li> <li>○ Is there a policy that outlines reasons why these drivers need to fill out the statement?</li> </ul> </li> <li>• Do you <b>require drivers to report secondary employment hours other than for other carriers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>process for verifying current and recent RODS as well as prior HOS violations of part-time or intermittent drivers</b> with concurrent employment/other employers?</li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• What are your <b>hiring procedures?</b></li> </ul>	

3. Qualification and Hiring	
<ul style="list-style-type: none"> <li>• What are the <b>driving-record standards for your company?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Before <b>hiring your drivers, do you require them to take a road test in your vehicles?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>query applicants and previous employers to see if physical and stress demands</b> have led to fatigued and/or reckless-driving violations in the past?                             <ul style="list-style-type: none"> <li>○ Do you have other ways in which you screen to identify high risk-applicants as a result of physical and stress demands?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>busiest season</b>, and why?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>plan recruitment and hiring of seasonal and part-time drivers to meet demands</b> without exceeding HOS limitations?                             <ul style="list-style-type: none"> <li>○ How do you perform forecasting?</li> <li>○ What kinds of agreements do you make with seasonal/part-time staff to manage their expectations and HOS?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>have a list of part-time drivers, or is your driver pool hired on the basis of the current needs of the company?</b> <ul style="list-style-type: none"> <li>○ <i>Request the list of part-time drivers.</i></li> </ul> </li> </ul>	

4. Training and Communication	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• Do you have <b>any type of training program</b> (e.g., new employee training, experienced employee training, etc.)?</li> </ul>	
<ul style="list-style-type: none"> <li>• How does the <b>company make the drivers aware of the HOS regulations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Have your <b>employees been trained on the Federal Motor Carrier Safety Regulations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>employees receive on-going training?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Who <b>provides your training?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>wellness program or do you provide healthy lifestyle education?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>offer training/education in fatigue management for your drivers, including countermeasures and operational strategies</b> (e.g., taking rest and/or exercise breaks)?                             <ul style="list-style-type: none"> <li>○ If so, how is this training on fatigued driving reinforced in the field?</li> <li>○ Do you use job aids, communication, coaching, and mentoring?</li> </ul> </li> </ul>	

<b>4. Training and Communication</b>	
<ul style="list-style-type: none"> <li>• How do you <b>communicate with senior leaders about fatigued driving issues on a regular basis?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Do drivers have direct access to the safety director or owner/company executives about issues related to fatigue?</b> <ul style="list-style-type: none"> <li>○ Do they hash them out first with the terminal manager, dispatcher, and/or parts/inventory personnel?</li> <li>○ How do all parties interface with each other?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Do you provide training on tracking and communicating HOS to the appropriate employees for all drivers, including intermittent drivers?</b> <ul style="list-style-type: none"> <li>○ If so, who gets this training?</li> <li>○ Does it include checking the prior seven-day duty statement?</li> <li>○ How often is it given?</li> <li>○ What triggers its delivery?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Do you use part-time or intermittent drivers?</b> <ul style="list-style-type: none"> <li>○ If so, do you require these drivers to fill out the seven-day duty statement?</li> <li>○ Do you train them on how to fill it out?</li> <li>○ Do you require them to report secondary employment hours other than for other carriers?</li> <li>○ Do you train dispatchers on how to evaluate and communicate the secondary employment hours?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Do you train drivers on proper use of sleeper berths to obtain rest?</b> <ul style="list-style-type: none"> <li>○ If so, how often is this training given?</li> <li>○ What triggers its delivery?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>How do your drivers get the required rest during their trips even if they are not in violation of HOS?</b> <ul style="list-style-type: none"> <li>○ Can they rest on the vehicle when it is stopped?</li> <li>○ How do your drivers fail to get adequate rest?</li> <li>○ Does the extended-day rule work for you and your drivers?</li> <li>○ Do you use relief drivers or practice “cushioning” (i.e., the use of extra drivers on buses to deploy in different cities when needed)?</li> </ul> </li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• <b>How are passenger complaints generally handled?</b> <ul style="list-style-type: none"> <li>○ Is senior management involved?</li> <li>○ If so, when and how?</li> <li>○ What is your communications program with senior company leaders to address passenger complaints that have safety implications?</li> </ul> </li> </ul>	

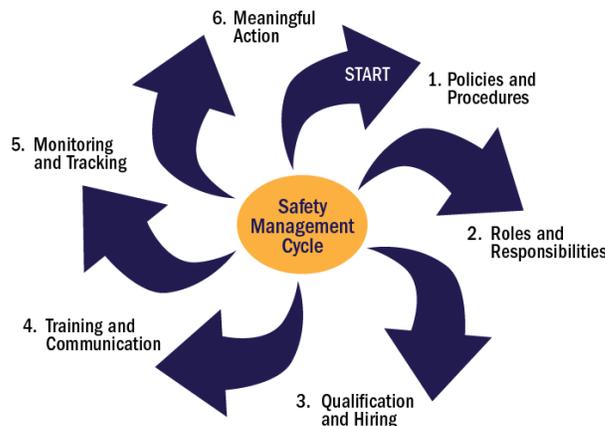
<b>5. Monitoring and Tracking</b>	
<b>General Questions</b>	<b>Carrier Response</b>
• How do you <b>monitor driver behavior</b> ?	
• How can you tell if your drivers are driving safely?	
• How do you <b>track or communicate with your drivers during their trips</b> ? Do you have real-time tracking of driver location?	
• <b>How do you check a driver's driving record and log books?</b>	
• What <b>documentation do you use to verify the accuracy of logs</b> ?	
• How often do you review your drivers' driving records and log books?	
• Does anybody review driver RODS?	
• What tools do you use for route planning?	
• Does dispatch monitor driver hours?	
• How are driver hours used by dispatch?	
• How do you ensure that a driver has enough hours prior to dispatch for a planned route?	
• How do you know if your drivers are moonlighting?	
• Do you monitor experienced drivers for medical conditions that put them at increased risk for fatigue, sleep disorders, or excessive daytime sleepiness?	
• Can you verify the training programs your drivers have received since your company has employed them? <ul style="list-style-type: none"> <li>○ Request documentation.</li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
• How do you ensure that drivers' available hours account for rest periods, separate operations within-company, intermittent and relief drivers, and "extended day"? <ul style="list-style-type: none"> <li>○ Do you check in with drivers at pre-designated intervals?</li> <li>○ Is this information tracked? <ul style="list-style-type: none"> <li>· Request the tracking document.</li> </ul> </li> <li>○ Who does this?</li> <li>○ How often is it done?</li> </ul>	
• How do you monitor part-time, intermittent, and relief drivers, and abuse of the "extended day"?	
• What is your system for monitoring the accuracy of RODS? <ul style="list-style-type: none"> <li>○ What is the disciplinary process for drivers who</li> </ul>	

5. Monitoring and Tracking	
violate RODS? <ul style="list-style-type: none"> <li>○ What documents would you look at to verify the accuracy of RODS?</li> <li>○ Do you require drivers to report hours worked in secondary employment?</li> </ul>	

6. Meaningful Action	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>● How do <b>managers and employees typically react when they see coworkers not fulfilling their responsibilities?</b> <ul style="list-style-type: none"> <li>○ Do they give immediate and direct feedback?</li> <li>○ Do they ignore the problem?</li> <li>○ Do they inform their supervisor?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you have a <b>driver disciplinary program?</b> If so, <b>how has it been implemented?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>provide incentives to employees for on-time delivery?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>specifically discipline drivers for exceeding HOS? If yes, explain the process.</b> Give examples of recent cases.</li> </ul>	

## Appendix Q: Unsafe Driving Probing Questions

This job aid provides a list of Investigative Probing Questions for the Unsafe Driving Behavior Analysis and Safety Improvement Category. This job aid can be used to engage the carrier in a collaborative exchange designed to review the Safety Management Cycle and identify where a breakdown has occurred in the Safety Management Process (Process Breakdown), understand the reasons why the Process Breakdown(s) occurred and its consequences (e.g., violations), and develop a plan for improvement. Prior to beginning the discussion, the Safety Investigator should review the questions and identify those that may be most relevant to his or her discussion. Additional information on how the job aid can be used is provided below.



*The Safety Management Cycle*

*How can I use this job aid?* The probing questions can be used to:

- Start the discussion with the carrier;
- Develop an appropriate line of questioning; and
- Spark additional questions.

*What should I keep in mind when using this job aid?* Keep in mind the following guiding principles while engaging the carrier during the investigative questioning and remedy development process:

- Frame the questions so that the exchange moves toward determining the Process Breakdown(s);
- Stay focused on the goal of the exchange; steer away from discussions that stray from the goal;
- Engage the carrier so that he or she plays a role in diagnosing the issue and developing the remedy for improvement;
- Remember that participation in this self-assessment increases the likelihood that the carrier will change his or her behavior and is a key factor in gaining ‘buy-in’ to implement remedies; and
- Once the breakdowns are identified, ask the carrier why he or she believes these breakdowns are occurring and consider this information when selecting appropriate remedies for the carrier.

1. Policies and Procedures	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What is your <b>unsafe driving policy</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>policy on driver traffic citations</b>?</li> <li>• Are <b>drivers required to report moving violations, on and off the job</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>require driver training on topics specific to your operations</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>company policies promote safe driving</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What policies exist for <b>drivers to report unsafe conditions</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>guidelines for scheduling</b>? What variables are considered? (Time of day? How tight are schedules? How much slack is factored into scheduling? How are delays/weather conditions, etc., factored in?)</li> <li>• Do you have <b>other potential scheduling constraints</b> (e.g., morning-only deliveries, loading problems, problematic shippers, etc.) that have to be considered in scheduling drivers/routes?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is the <b>process for a driver to communicate with dispatchers when they are not able to follow the assigned route</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>dispatch policies/processes</b>? How are they maintained? Who is responsible? How are they communicated?</li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>does your dispatcher assign work</b>? (For example, what factors/criteria are considered?)</li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>• What are <b>your current policies/practices regarding employee incentives and reward/recognition programs?</b> (For example, how is compensation calculated – by hour, by load, by mile, by timeliness of delivery, etc. How are people promoted? How are bonuses calculated?)</li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Do you have <b>standards for safe driving and special procedures for specific types of loads and equipment</b> on different roadways and in varying conditions?                             <ul style="list-style-type: none"> <li>○ If so, are they written or verbal?                                     <ul style="list-style-type: none"> <li>· <i>If written, request the documents.</i></li> <li>· <i>If verbal, request description.</i></li> </ul> </li> <li>○ If you don't have such standards/procedures, why not?</li> </ul> </li> </ul>	

<b>2. Roles and Responsibilities</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Who is <b>responsible for monitoring and maintaining driving records, including moving violations, on and off the job?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for dispatch policies/processes?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for communicating with drivers or taking action after citations or other evidence of unsafe driving?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for checking moving violation history prior to hiring or a new operating assignment?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>dispatch systems/operations? If so, how are they organized? Who performs these tasks?</b></li> </ul>	

<b>3. Qualification and Hiring</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• What are <b>your hiring procedures?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>hire/select and promote drivers?</b> What are your processes and criteria?</li> </ul>	
<ul style="list-style-type: none"> <li>• What <b>background/reference checks do you perform to validate the information provided by potential new hires?</b> What is your process?                             <ul style="list-style-type: none"> <li>○ <i>Request sample documents verifying process (e.g., company policy on hiring, previous employer checks, dispatch records).</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are <b>the driving-record standards for your company?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>query applicants and previous employers to see if</b></li> </ul>	

<b>3. Qualification and Hiring</b>	
<p><b>physical and stress demands led to fatigue and/or reckless-driving violations</b> in the past?</p> <ul style="list-style-type: none"> <li>○ <b>In what other ways do you screen</b> to see if physical and stress demands might lead to fatigue and/or reckless-driving violations in order to help identify high-risk applicants?</li> </ul>	
<ul style="list-style-type: none"> <li>● Before <b>hiring your drivers, do you require them to take a road test in your vehicles?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● How do you <b>validate a driver's "on-road skills"</b>? (For example, when is it done? How is it done? Who does it?)</li> </ul>	
<ul style="list-style-type: none"> <li>● What <b>background/reference checks do you perform to validate the information provided by potential new hires?</b> What is your process?                             <ul style="list-style-type: none"> <li>○ <i>Request sample verification documents (e.g., company policy on hiring, previous employer checks, dispatch records).</i></li> </ul> </li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>● How <b>many years of cargo-tank-operating experience must a driver have to operate a tank truck?</b></li> </ul>	

<b>4. Training and Communication</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>● How do you make <b>drivers aware of unsafe driving regulations?</b> What means of communication and/or training are used?</li> </ul>	
<ul style="list-style-type: none"> <li>● What is your <b>view of driver training?</b> New hire? Refresher?</li> </ul>	
<ul style="list-style-type: none"> <li>● What is your <b>view of dispatcher training?</b> New hire? Refresher? Specialties?</li> </ul>	
<ul style="list-style-type: none"> <li>● How are <b>dispatch policies/processes communicated?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Who <b>besides drivers are required to receive training?</b> <ul style="list-style-type: none"> <li>○ Purchasing agents?</li> <li>○ Mechanics/technicians?</li> <li>○ Parts/inventory personnel?</li> <li>○ Dispatchers?</li> <li>○ Managers?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>offer training on specific regulation subject areas (e.g., moving violations; failure to stop; improper use of signals; obeying local laws; parking commercial motor vehicles)?</b> If so, which ones, when, and how?                             <ul style="list-style-type: none"> <li>○ <i>Request sample documents to verify type, content, attendees, etc., of training.</i></li> </ul> </li> </ul>	

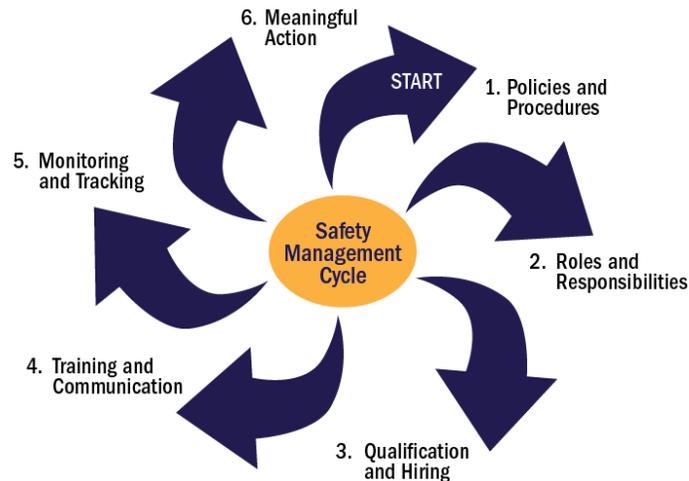
<b>4. Training and Communication</b>	
<ul style="list-style-type: none"> <li>• Do you <b>prepare drivers for new routes</b>? If so, how?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you require your <b>dispatchers to attend/pass training</b>? If so, when, why, and how?</li> </ul>	
<ul style="list-style-type: none"> <li>• How much <b>information does a dispatcher know about a particular driver’s level of experience and/or skills</b>? How is this communicated?</li> </ul>	
<ul style="list-style-type: none"> <li>• What <b>tools/resources support/assist your dispatchers with driver/route planning</b>?</li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How <b>are passenger complaints generally handled</b>?                             <ul style="list-style-type: none"> <li>○ Is senior management involved?</li> <li>○ If so, when and how?</li> <li>○ What is your communications program with senior company leaders to address passenger complaints that have safety implications?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide driver education that includes function-specific training, for example</b>, on customer communications, breakdown procedures, evacuation, and route diversion? If so:                             <ul style="list-style-type: none"> <li>○ Who gets this training?</li> <li>○ Does it include checking the prior seven-day duty statement?</li> <li>○ How often is it given?</li> <li>○ What triggers its delivery?</li> <li>○ Do you have job aids to help drivers learn the material?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide training on pedestrian awareness for drivers in inner cities</b>? If so:                             <ul style="list-style-type: none"> <li>○ Who gets this training?</li> <li>○ How often is it given?</li> <li>○ What triggers its delivery?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide training to drivers on how to safely load and unload passengers</b>? If so:                             <ul style="list-style-type: none"> <li>○ Who gets this training?</li> <li>○ How often is it given?</li> <li>○ What triggers its delivery?</li> </ul> </li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• Does your <b>company have safety meetings</b>? What topics are discussed?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>drivers have the ability to report perceived problems with equipment to management</b>?                             <ul style="list-style-type: none"> <li>○ Is this done verbally or in writing?</li> <li>○ Does the company have a written policy?                                     <ul style="list-style-type: none"> <li>· <i>If so, request a copy.</i></li> </ul> </li> </ul> </li> </ul>	

<b>5. Monitoring and Tracking</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>Do you <b>monitor driver behavior</b>? If so, how?</li> </ul>	
<ul style="list-style-type: none"> <li>How do you <b>ensure that all drivers, purchasing/parts-inventory agents, dispatchers, and managers receive training as required by regulations and/or company policy/procedures</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>How do you <b>track your drivers while they are on a trip</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>How often do you <b>review the driving records of your drivers</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>What documentation do you <b>keep regarding drivers and driving records</b>?               <ul style="list-style-type: none"> <li><i>Request descriptions and/or samples.</i></li> </ul> </li> </ul>	

<b>6. Meaningful Action</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>Is <b>safe driving a component of your company values</b>? If so, how?</li> </ul>	
<ul style="list-style-type: none"> <li>Is <b>safe driving recognized with respect to employee incentives and/or reward/recognition programs</b>? If so, how?</li> </ul>	
<ul style="list-style-type: none"> <li>Is <b>driver behavior included in performance reviews</b>? If so, how?</li> </ul>	
<ul style="list-style-type: none"> <li>How do <b>managers and employees typically react when they see coworkers not fulfilling their responsibilities</b>?               <ul style="list-style-type: none"> <li>Do they give immediate and direct feedback?</li> <li>Do they ignore the problem?</li> <li>Do they inform their supervisor?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>What is your <b>business model for pricing? Customer service</b>?</li> </ul>	
<b>Hazmat Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>Do you <b>discipline drivers who fail to drive safely with hazardous loads, according to company policy</b>?               <ul style="list-style-type: none"> <li>If so, what are your measures? <i>Request a written copy of them.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>Do you discuss the <b>possible consequences of an unintentional release of HAZMAT</b> during safety meetings?</li> </ul>	

## Appendix Q: Vehicle Maintenance Probing Questions

This job aid provides a list of Investigative Probing Questions for the Vehicle Maintenance Behavior Analysis and Safety Improvement Category. This job aid can be used to engage the carrier in a collaborative exchange designed to review the Safety Management Cycle and identify where a breakdown has occurred in the Safety Management Process (Process Breakdown), understand the reasons the Process Breakdown(s) occurred and its consequences (e.g., violations), and develop a plan for improvement. Prior to beginning the discussion, the Safety Investigator should review the questions and identify those that may be most relevant to his or her discussion. Additional information on how the job aid can be used is provided below.



*The Safety Management Cycle*

*How can I use this job aid?* The probing questions can be used to:

- Start the discussion with the carrier;
- Develop an appropriate line of questioning;
- Spark additional questions.

*What should I keep in mind when using this job aid?* Keep in mind the following guiding principles while engaging the carrier during the investigative questioning and remedy development process:

- Frame the questions so that the exchange moves toward determining the Process Breakdown(s);
- Stay focused on the goal of the exchange; steer away from discussions that stray from the goal;
- Engage the carrier so that he or she plays a role in diagnosing the issue and developing the remedy for improvement;
- Remember that participation in this self-assessment increases the likelihood that the carrier will change his or her behavior and is a key factor in gaining ‘buy-in’ to implement remedies; and
- Once the breakdowns are identified, ask the carrier why he or she believes these breakdowns are occurring and consider this information when selecting appropriate remedies for the carrier.

1. Policies and Procedures	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What are your maintenance <b>procedures</b>? What is your <b>periodic maintenance and inspection program</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>policy/process/program for fleet maintenance and/or logistics planning</b> (e.g., parts supply, fleet size, etc.)? <ul style="list-style-type: none"> <li>○ If you <b>don't have a policy, why not</b>?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• When a <b>vehicle is being serviced for maintenance, how does this affect your operations</b>? Do you have enough equipment to maintain operations while performing maintenance?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>standards and policy to determine when components should be repaired or replaced</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>How do you set your maintenance intervals</b>? By warranty? By regulatory requirements? Based on performance experience?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>guidelines for placing vehicles out of service</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>standards and policy for indicating out-of-service conditions</b> for brake components, tire wear and deterioration, wheel and rim deterioration, and steering wheel play and deterioration?</li> </ul>	
<ul style="list-style-type: none"> <li>• How <b>frequently are your company's maintenance and repair records reviewed</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>use an automated equipment maintenance system</b>? If so, which Management Information System (MIS) do you use?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are your <b>records cross-referenced with other logistics</b> (e.g., parts supply) and transport operations?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>drivers and mechanics follow standard procedures for hitching and coupling equipment</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• How do your <b>mechanics/technicians and drivers communicate and/or share equipment knowledge and information with each other</b> (e.g., reports, emails telephone calls, etc.)? How frequently?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is <b>the process to maintain your vehicles</b>? <ul style="list-style-type: none"> <li>○ Do you have the necessary specialized facilities and/or diagnostic equipment – e.g., inspection lane for brake adjustments – to support maintaining your vehicles?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is <b>the process to find, buy, and/or pay for compatible equipment to service your vehicles</b>? Have you had any problems in this area when it's been used? <i>If so, request an</i></li> </ul>	

1. Policies and Procedures	
<i>explanation.</i>	
<ul style="list-style-type: none"> <li>• Do you <b>lease your vehicles</b>?                             <ul style="list-style-type: none"> <li>○ Who is responsible for maintenance?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is the process for <b>selecting equipment purchases and controlling inventory</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your policy for having <b>drivers communicate with dispatch when "planned" procedures</b> go awry?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>emergency maintenance plan</b> when vehicles break down on the road?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your policy on requiring all <b>drivers to submit copies of all roadside inspections to carrier management</b> within a designated timeframe?                             <ul style="list-style-type: none"> <li>○ Is it written or verbal?      ○ <i>If verbal, request a description.</i></li> <li>○ <i>If written, request a copy.</i>                              ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your policy to ensure that <b>purchasing agents supply, verify, and communicate requirements for adequate securement devices, equipment, and spare parts</b>?                             <ul style="list-style-type: none"> <li>○ Is it written or verbal?      ○ <i>If verbal, request a description.</i></li> <li>○ <i>If written, request a copy.</i>                              ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Is it clear how and when to <b>resupply equipment and securement devices</b> and to <b>verify equipment requirements</b> (e.g., working load limits)?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>schedule constraints</b> such as morning-delivery only, problems waiting for the shipper, or problems loading/unloading?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are you aware of any <b>relationship between the commodities that you carry and any particular type of maintenance and/or repair issues, cargo-loading or securement issues</b> (e.g., flatbed-load securement, container failures, and, passenger egress)?</li> </ul>	
<b>Cargo-Related Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• What is your company policy to address <b>cargo-loading/securement regulations</b>? Is it clearly stated?                             <ul style="list-style-type: none"> <li>○ <i>Request a copy of the policy.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How does the <b>policy adhere to the North American Cargo Securement Standard</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your policy to ensure that <b>drivers are able to perform procedures according to regulations</b> for:</li> </ul>	

<b>1. Policies and Procedures</b>	
<ul style="list-style-type: none"> <li>○ Load-limit verification?</li> <li>○ Securement?</li> <li>○ Loading/unloading?</li> <li>○ En route inspections?</li> <li>○ Is it written or verbal?      ○ <i>If verbal, request a description.</i></li> <li>○ <i>If written, request a copy.</i>                              ○ <i>If there is no policy, why not?</i></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you provide <b>purchasing agents with specific tie-downs or other securement-equipment requirements</b>, and how are these <b>requirements coordinated with dispatchers</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● What is your <b>policy that clarifies shipper and receiver expectations</b> for timely delivery and condition of cargo, and procedures for <b>handling unmet expectations</b>?                             <ul style="list-style-type: none"> <li>○ Is it written or verbal?      ○ <i>If verbal, request a description.</i></li> <li>○ <i>If written, request a copy.</i>                              ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● What is the <b>process to correct out-of-service defects</b> when a vehicle is placed out of service for load-securement violations?</li> </ul>	
<ul style="list-style-type: none"> <li>● Are you <b>familiar with the regulations related to securement devices and equipment</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>carry anything for which proper cargo loading or securement is a problem</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● How do cargo <b>loading and securement impact your road-safety risk</b> in terms of your accident and/or breakdown records?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do <b>cargo-loading or securement tasks affect your bottom line</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● What is your policy for <b>training and retraining drivers on cargo securement</b>?                             <ul style="list-style-type: none"> <li>○ Is it written or verbal?      ○ <i>If verbal, request a description.</i></li> <li>○ <i>If written, request a copy.</i>                              ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● What is your policy for <b>tracking cargo securement violations and administering appropriate discipline</b> when necessary?</li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>● Do you <b>perform and document emergency-exit testing every 90 days</b>?                             <ul style="list-style-type: none"> <li>○ Is this area covered in pre-trip and post-trip</li> </ul> </li> </ul>	

1. Policies and Procedures	
inspections?	
<ul style="list-style-type: none"> <li>• What are your <b>systematic procedures for critical maintenance items, such as</b> checking wheel-hub-lubrication levels according to the manufacturer’s recommended inspection intervals and regular inspection of wiring and electrical systems, passenger seats, and emergency exits?                             <ul style="list-style-type: none"> <li>○ Is it written or verbal?      ○ <i>If verbal, request a description.</i></li> <li>○ <i>If written, request a copy.</i>                              ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>adhere to the manufacturer’s recommended maintenance inspection intervals on wheel hubs</b>?                             <ul style="list-style-type: none"> <li>○ Is this area covered in pre-trip and post-trip inspections?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>regularly inspect vehicle wheel-hub-lubrication levels, electrical components, passenger seats, and emergency exits</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>installed fire-detection-and-suppression systems on your current fleet</b>?                             <ul style="list-style-type: none"> <li>○ If not, why not?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you had any <b>fires or near-fires on your coaches</b>?                             <ul style="list-style-type: none"> <li>○ Are you aware of the increasingly recognized occurrence of bus fires?</li> <li>○ Do you account for the risks of a fire on your coaches in terms of monetary loss as well as passenger casualties?</li> <li>○ Has your insurance company raised these risk issues?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>purchased or leased motor coaches built since 2004</b>?                             <ul style="list-style-type: none"> <li>○ Did the supplier offer an option for fire-detection or suppression equipment?</li> <li>○ Are you aware of the effectiveness of these systems?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How would you <b>handle a passenger asking to stow luggage or other items that would block</b> an emergency exit?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>policy to ensure that drivers establish procedures for loading and securement</b> of oxygen canisters and for preventing obstruction of emergency exits?                             <ul style="list-style-type: none"> <li>○ Is it written or verbal?      ○ <i>If verbal, request a description.</i></li> <li>○ <i>If written, request a copy.</i>                              ○ <i>If there is no policy, why not?</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>policy to ensure that drivers adhere to procedures for loading and securement</b> of oxygen canisters/cylinders and for preventing obstruction of</li> </ul>	

1. Policies and Procedures	
emergency exits? ○ Is it written or verbal?      ○ <i>If verbal, request a description.</i> ○ <i>If written, request the documents.</i> ○ <i>If there is no policy, why not?</i>	
<ul style="list-style-type: none"> <li>• Have you conducted a trip where you <b>transported oxygen cylinders</b> for your passengers?                             <ul style="list-style-type: none"> <li>○ How many passengers with canisters/cylinders were there?</li> <li>○ How were the canisters/cylinders stored?</li> <li>○ Where were they stored?</li> <li>○ How were they secured?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Does the passenger carrier allow the transportation of other hazardous materials (hazmat), such as ammunition, propane, gasoline-powered equipment, etc.?                             <ul style="list-style-type: none"> <li>○ If so, do you have written policies and procedures on accepting from passengers and transporting these materials?                                     <ul style="list-style-type: none"> <li>· <i>If so, request a copy of these procedures.</i></li> <li>· <i>If not, why not?</i></li> </ul> </li> </ul> </li> </ul>	

2. Roles and Responsibilities	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>• What are your <b>performance standards for equipment maintenance tasks and roles</b>? To whom do the standards apply (e.g., mechanics, technicians, drivers, etc.)?</li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for ensuring that your maintenance procedures</b> are followed?</li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for reviewing your company's maintenance and repair records</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are your <b>performance standards for maintenance tasks and roles addressed in performance reviews</b>? If so, how?</li> <li>• What are the incentives for meeting or exceeding standards, and the consequences for failure to meet standards?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are there <b>circumstances when job demands will take priority over equipment maintenance tasks</b>?</li> <li>• <b>What are these situations and how are they managed?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for equipment purchases and inventory</b>? Is that <b>person qualified</b> to select proper equipment?</li> </ul>	
<ul style="list-style-type: none"> <li>• Who is <b>responsible for monitoring and training newer drivers and purchasing/parts-inventory agents</b> on a daily</li> </ul>	

<p>basis until these employees have mastered their jobs?</p>	
<ul style="list-style-type: none"> <li>• <b>How do dispatch and safety management work together?</b> <ul style="list-style-type: none"> <li>○ Who does the dispatching?</li> <li>○ To whom in your organization does the dispatcher report?</li> <li>○ Do you have dispatch systems/operations?</li> <li>○ If so, how are they organized?</li> <li>○ Who performs which tasks?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• If you lease your vehicles, to what extent do you <b>hold the leasing company responsible for compliance with cargo-loading and securement and maintenance regulations?</b></li> </ul>	
<p><b>Cargo-Related Questions</b></p>	<p><b>Carrier Response</b></p>
<ul style="list-style-type: none"> <li>• Who <b>oversees the securement/compliance function?</b> <ul style="list-style-type: none"> <li>○ What are that individual’s responsibilities for specific loads or securement in general?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Who are the cargo-seurement roles and responsibilities for:</b> <ul style="list-style-type: none"> <li>○ The driver?</li> <li>○ The dispatcher?</li> <li>○ Managers (e.g., operations, safety, and terminal)?</li> <li>○ The purchasing/parts-inventory agent?</li> </ul> </li> <li>• Are these roles <b>documented?</b> <ul style="list-style-type: none"> <li>○ <i>If so, request the documents.</i></li> </ul> </li> <li>• How do you ensure that the roles are aligned with company policy and regulations?                     <ul style="list-style-type: none"> <li>○ <i>Request the company’s written policies and procedures. (Check to see if they align with the roles.)</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>performance standards for equipment maintenance and cargo-loading and securement tasks and roles?</b> <ul style="list-style-type: none"> <li>○ To whom do the standards apply (e.g., mechanics, technicians, drivers, purchase/supply agents, drivers, etc.)?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Who is responsible for <b>monitoring the driver’s performance regarding cargo-seurement violations?</b> <ul style="list-style-type: none"> <li>○ Do you routinely inspect securement equipment and devices on the vehicles?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do your <b>drivers have copies of the North American Cargo Securement Standards’ Driver’s Handbook?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• What is the <b>process that senior managers use to monitor compliance</b> with cargo-loading and securement regulations?                     <ul style="list-style-type: none"> <li>○ Is this process documented?                             <ul style="list-style-type: none"> <li>· <i>If so, request the documentation.</i></li> </ul> </li> </ul> </li> </ul>	

<b>3. Qualification and Hiring</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• What <b>vehicles do you have in your fleet?</b> <ul style="list-style-type: none"> <li>○ What are the makes, models, and ages of your vehicles?</li> <li>○ How do your existing and prospective mechanics keep up with technology?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>problems finding and/or retaining qualified mechanics, technicians, repair-savvy drivers, and/or trustworthy outsourced personnel?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that your safety director has sufficient skills</b> and credentials to oversee maintenance programs and tasks?</li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>process and criteria for hiring and promoting employees?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• What are your <b>process and criteria for hiring and promoting drivers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>find and attract qualified</b> applicants? <ul style="list-style-type: none"> <li>○ How do you advertise openings?</li> <li>○ What is the network of people you talk to in order to find an applicant?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you look for applicants with <b>experience directly applicable to your operations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>prospective employees fill out employment applications?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Does the employment application include questions about <b>qualifications for transporting</b> the company's loads?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you get <b>copies of driver Motor Vehicle Records?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>check references?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>check with previous employers?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• What is your <b>rate of turnover?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>have trouble attracting and retaining an adequate supply of drivers qualified</b> to adequately perform cargo-securement procedures?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>What is your process to ensure that the mechanics and technicians that you hire have sufficient skills and credentials</b> to perform maintenance- and cargo-related tasks?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is your process to ensure that the <b>drivers that you hire have sufficient skills and credentials to perform maintenance- and cargo-related tasks?</b></li> </ul>	

<b>3. Qualification and Hiring</b>	
<ul style="list-style-type: none"> <li>• Do you <b>look at driver violations as part of the hiring process</b>? Do you check to see if the driver has had previous securement violations?                             <ul style="list-style-type: none"> <li>○ If not, why?</li> <li>○ If so, what are your methods?</li> </ul>                             Do you obtain information from:                             <ul style="list-style-type: none"> <li>○ The driver?</li> <li>○ Previous employers?</li> <li>○ The insurance company?</li> <li>○ Others?</li> </ul> </li> </ul>	
<b>Cargo-Related Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• What is your process to <b>ensure that your dispatchers and purchasing/parts-inventory agents have sufficient skills and credentials</b> to support cargo-seurement tasks?</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>What is your process to ensure that your drivers have sufficient skills and credentials to perform loading and cargo-seurement tasks?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>verify if the driver can secure your cargo?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have <b>applicants secure cargo during the interview process?</b></li> </ul>	
<b>Passenger Carrier Only Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• During the hiring process, <b>how do you ensure that your mechanics and technicians have up-to-date bus technology training and experience?</b></li> </ul>	

<b>4. Training and Communication</b>	
<b>General Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How do you <b>ensure that your safety director receives appropriate training to oversee maintenance programs and tasks?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that your drivers have sufficient skills and credentials to perform maintenance tasks?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>ensure that your mechanics and technicians have sufficient skills and credentials to perform maintenance tasks?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>offer/provide training to maintenance personnel?</b> If so, what kind (e.g., new hire, refresher, specialty, etc.)? How is the training delivered? How do maintenance personnel keep their certifications up to date?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do your <b>performance standards for mechanics and</b></li> </ul>	

<b>4. Training and Communication</b>	
<b>technicians include continuing professional training?</b>	
<ul style="list-style-type: none"> <li>• How is <b>training on your policy/process/program for fleet maintenance and/or logistics planning delivered</b>? Is training customized and/or directed to specific levels or job functions? How so?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is <b>company management trained on maintenance requirements and performance standards</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>provide training on equipment parts, accessories, and maintenance and repair regulations</b>?               <ul style="list-style-type: none"> <li>○ If so, who receives this training: office managers, safety managers, drivers, and/or technicians?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Are there any <b>barriers that might affect the communications between your mechanics, technicians and drivers regarding vehicle maintenance</b>? If so, what (e.g., geography, functional reporting, competition, rewards, recognition)?</li> </ul>	
<ul style="list-style-type: none"> <li>• What is the <b>process that you use to consistently communicate expectations regarding policies and procedures</b> to drivers, purchasing/parts-inventory agents, dispatchers, and managers so that senior managers can feel confident that the policies/procedures are understood by employees?               <ul style="list-style-type: none"> <li>○ How is this done for new and existing employees?</li> <li>○ How is this done when new policies and procedures are implemented?</li> <li>○ What are all of the formal and informal methods?</li> <li>○ What sort of documentation is used to support this communication?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>offer driver training</b> in general:               <ul style="list-style-type: none"> <li>○ To new hires?</li> <li>○ As a refresher?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>require your drivers to attend/pass training</b>?               <ul style="list-style-type: none"> <li>○ If so, why, when, and how?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>require your dispatchers to attend/pass training</b>?               <ul style="list-style-type: none"> <li>○ If so, why, when, and how?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you <b>require your parts-supply and inventory agents to attend/pass training</b>?               <ul style="list-style-type: none"> <li>○ If so, why, when, and how?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>check on drivers' performance</b>?               <ul style="list-style-type: none"> <li>○ How is this factored into training programs?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>provided specialized training or counseling to drivers on the basis of roadside inspections</b>?</li> </ul>	

4. Training and Communication	
<ul style="list-style-type: none"> <li>• How do you <b>address drivers</b> who need new skills?                             <ul style="list-style-type: none"> <li>○ Is skill upgrading done in-house?</li> <li>○ What combination of methods do you use (e.g., coaching, training, and/or mentoring)?</li> <li>○ Is your training interactive?</li> <li>○ Does it include hands-on demonstration?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Are there <b>any business-related barriers that might affect communications between your mechanics/technicians and/or drivers regarding vehicle maintenance</b>?                             <ul style="list-style-type: none"> <li>○ If so, do these barriers pertain to:                                     <ul style="list-style-type: none"> <li>• Geography?</li> <li>• Rewards/recognition?</li> <li>• Functional reporting?</li> <li>• Incentives?</li> <li>• Competition?</li> <li>• Other?</li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How much <b>information does a dispatcher know about a particular driver’s level of experience and/or skills</b>?                             <ul style="list-style-type: none"> <li>○ How is this communicated?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you use <b>an automated logistics MIS</b>?                             <ul style="list-style-type: none"> <li>○ If so, which one?</li> <li>○ Are managers and dispatchers trained on this system?                                     <ul style="list-style-type: none"> <li>• <i>Request training materials and records of attendance.</i></li> </ul> </li> </ul> </li> </ul>	
Cargo-Related Questions	Carrier Response
<ul style="list-style-type: none"> <li>• Do you <b>have a training/retraining program specific to load-securement procedures</b>?                             <ul style="list-style-type: none"> <li>○ What does it involve? How often do you provide it?</li> <li>○ When was the last time you provided it?</li> <li>○ Is training provided to all drivers?</li> <li>○ If not, how are drivers chosen?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Has <b>training in cargo-loading and securement regulations been provided to your drivers</b>? To your office, safety, and terminal managers? To your purchasing and parts-supply/inventory agents?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does your <b>cargo loading and securement policy include a policy for training and retraining</b> drivers?</li> </ul>	
<ul style="list-style-type: none"> <li>• How is <b>training on cargo loading and securement reinforced in the field</b>?                             <ul style="list-style-type: none"> <li>○ Do you use job aids, communication, coaching, and/or mentoring?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do you <b>communicate with senior leaders about cargo-loading and securement issues</b> on a regular basis?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>drivers have direct access to the safety director or owner/company executives</b> about cargo-loading and</li> </ul>	

4. Training and Communication	
securement issues? <ul style="list-style-type: none"> <li>○ Do they hash them out first with the terminal manager, dispatcher, and/or parts/inventory person(s)?</li> <li>○ How do all parties interface with each other?</li> </ul>	
<ul style="list-style-type: none"> <li>● Are <b>your drivers trained to perform basic maintenance and repairs to securement equipment</b>?                             <ul style="list-style-type: none"> <li>○ If so, how?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>have the necessary specialized facilities and/or diagnostic equipment</b> (e.g., an inspection lane for brake adjustments) to support securing your loads?</li> </ul>	
Passenger Carrier Only Question	Carrier Response
<ul style="list-style-type: none"> <li>● Do you provide <b>training on procedures to check wheel-hub-lubrication levels according to the manufacturer's recommended inspection intervals and for regular inspection of wiring and electrical systems, passenger seats, and emergency exits</b>? If so:                             <ul style="list-style-type: none"> <li>○ How often is it given?</li> <li>○ What triggers its delivery?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you provide <b>training on performing and documenting emergency-exit testing</b>?                             <ul style="list-style-type: none"> <li>○ Is this area covered in pre-trip and post-trip inspections?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● How are <b>passenger complaints</b> generally handled?                             <ul style="list-style-type: none"> <li>○ Is senior management involved?</li> <li>○ If so, when and how?</li> <li>○ What is your communications program with senior company leaders to address passenger complaints that have safety implications?</li> </ul> </li> </ul>	

5. Monitoring and Tracking	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>● Are <b>maintenance and repair records reviewed on a regular basis</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>"gauge" or measure the effectiveness of your maintenance procedures</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● How do <b>vehicle maintenance tasks affect your "bottom line"</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>test your personnel on maintenance policy and program knowledge</b>?</li> </ul>	
<ul style="list-style-type: none"> <li>● How do you <b>ensure that you are meeting periodic inspection and recordkeeping requirements</b>?</li> </ul>	

<b>5. Monitoring and Tracking</b>	
○ <i>Request samples of reports and records.</i>	
<ul style="list-style-type: none"> <li>• Do you <b>use your records</b>:               <ul style="list-style-type: none"> <li>○ <b>To calculate the average service life per component?</b></li> <li>○ To adjust replacement intervals?</li> </ul> </li> </ul>	
• How do you <b>follow up on reported problems and defects?</b>	
• What <b>maintenance and repair statistics</b> do you track?	
• Do you <b>track breakdowns?</b>	
• Do you know to what <b>extent maintenance was a contributing factor in crashes and/or breakdowns?</b>	
• How many <b>field changes were performed on different vehicles over the past two years?</b>	
• How <b>many repairs were performed on different vehicles over the past two years?</b>	
• How many <b>retrofits were performed on different vehicles over the past two years?</b>	
• Does a <b>company official review roadside inspection reports?</b>	
<ul style="list-style-type: none"> <li>• Do you <b>review your roadside inspection results via the Internet?</b> <ul style="list-style-type: none"> <li>○ If so, how often?</li> <li>○ Who does this?</li> <li>○ How is this information disseminated throughout the organization, and who receives it?</li> <li>○ How is the information used in the organization?</li> </ul> </li> </ul>	
• Do you <b>track how well you meet periodic inspection and recordkeeping requirements?</b>	
• How do you <b>check on the driver's performance?</b>	
<ul style="list-style-type: none"> <li>• Do you <b>track and document all employees' training needs and training received?</b> <ul style="list-style-type: none"> <li>○ If so, how do you do this?</li> <li>○ Who does this?</li> <li>○ What is the process that is used?</li> <li>○ How is this information used?</li> </ul> </li> </ul> <p style="padding-left: 40px;"><i>Request the documentation.</i></p>	
• Do you <b>routinely obtain a copy of the carrier profile?</b>	
• If you lease your <b>vehicles and hold the leasing company responsible for regulatory compliance, how do you monitor its compliance?</b>	
• Does your <b>maintenance program recognize the wear of</b>	

<b>5. Monitoring and Tracking</b>	
<p><b>consumables?</b></p> <ul style="list-style-type: none"> <li>○ Does it use indicators of deterioration?</li> <li>○ Does it account for conditions that cannot be detected by drivers?</li> </ul>	
<ul style="list-style-type: none"> <li>● How do you <b>monitor and track tasks, schedules, and costs for maintenance, repair, inspection, cargo loading and securement?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>track compliance with regulations related to:</b> <ul style="list-style-type: none"> <li>○ Accessories?</li> <li>○ Equipment parts?</li> <li>○ Maintenance and repairs?</li> <li>○ <b>Cargo loading and securement?</b></li> <li>○ <b>Securement equipment and devices?</b></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>routinely inspect equipment and securement devices</b> on the vehicles?</li> </ul>	
<b>Cargo-Related Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>● Do you monitor <b>driver cargo-securement violations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>● Do you <b>regularly review and evaluate records of cargo loading and securement methods, procedures, equipment, and devices used?</b> <ul style="list-style-type: none"> <li>○ If so, how often?</li> <li>○ Who is involved?</li> <li>○ What are some recent reviews and the corresponding changes that were made as a result?</li> <li>○ Is this process documented? <ul style="list-style-type: none"> <li>· <i>If so, request the documentation.</i></li> </ul> </li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● How do you know that <b>your cargo-securement training</b> is effective?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you receive <b>complaints about the condition of cargo</b> when it arrives at a destination?</li> </ul>	
<ul style="list-style-type: none"> <li>● How do <b>senior and middle management monitor and document staff compliance with cargo-loading and securement regulations and address complaints of shippers and receivers?</b> <ul style="list-style-type: none"> <li>○ Where is the documentation kept? <ul style="list-style-type: none"> <li>· <i>Request a copy of it.</i></li> </ul> </li> <li>○ Do you keep a log as to whether complaints have been received and handled appropriately?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>● How frequently are <b>your company's securement and related inventory records</b> reviewed?</li> </ul>	
<ul style="list-style-type: none"> <li>● Do you track <b>near-misses of crashes, delays, and/or breakdowns caused by cargo shifting, failure of securement equipment or devices, etc.?</b></li> </ul>	

5. Monitoring and Tracking	
<ul style="list-style-type: none"> <li>How do you <b>ensure that loads on your leased vehicles are properly secured?</b></li> </ul>	
<ul style="list-style-type: none"> <li>Do you use your <b>records to calculate the average service life per securement device or equipment component?</b></li> <li>Do you use this information to adjust replacement intervals?</li> </ul>	
Passenger Carrier Only Questions	Carrier Response
<ul style="list-style-type: none"> <li>How do you <b>monitor industry recalls and field changes for proactive maintenance, especially with pre-owned buses?</b> <ul style="list-style-type: none"> <li>Is this information tracked?                             <ul style="list-style-type: none"> <li><i>Request the tracking document.</i></li> </ul> </li> <li>Who does this?</li> <li>How often is it done?</li> </ul> </li> </ul>	

6. Meaningful Action	
General Questions	Carrier Response
<ul style="list-style-type: none"> <li>What happens when your <b>maintenance procedures are not followed?</b></li> </ul>	
<ul style="list-style-type: none"> <li>How do you <b>follow up on reported problems and defects?</b></li> </ul>	
<ul style="list-style-type: none"> <li>Do you have <b>performance standards for equipment maintenance tasks and roles?</b> To whom do the standards apply (e.g., mechanics, technicians, drivers, etc.)?</li> </ul>	
<ul style="list-style-type: none"> <li>Are your <b>performance standards for maintenance tasks and roles addressed in performance reviews?</b> If so, how?</li> <li>What are the incentives for meeting or exceeding standards, and the consequences for failure to meet standards?</li> </ul>	
<ul style="list-style-type: none"> <li>If you <b>lease your vehicles, to what extent do you hold the leasing company responsible</b> for regulatory compliance?</li> </ul>	
<ul style="list-style-type: none"> <li>What is your <b>response to the noted violations?</b></li> </ul>	
<ul style="list-style-type: none"> <li>Have you <b>taken any action(s) to address the violations discussed and reviewed in your previous investigation?</b></li> </ul>	
<ul style="list-style-type: none"> <li>What action(s) <b>have you taken to address the violations noted in your warning letter?</b></li> </ul>	
<ul style="list-style-type: none"> <li>Have you <b>aligned your incentive programs so that they motivate the behaviors needed to achieve employee roles and responsibilities?</b> <ul style="list-style-type: none"> <li>Does anybody check on a regular basis to make sure that this alignment is actually occurring, especially when the job or incentives change?</li> <li>If so, how do you complete this alignment process?</li> <li>Who does it?</li> </ul> </li> </ul>	

<b>6. Meaningful Action</b>	
<ul style="list-style-type: none"> <li>• <i>Request a written copy of these incentives and/or reward/recognition programs.</i> <ul style="list-style-type: none"> <li>○ <i>If not documented, request a verbal description.</i></li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• How do <b>managers and employees typically react when they see coworkers not fulfilling their responsibilities?</b> <ul style="list-style-type: none"> <li>○ Do they give immediate and direct feedback?</li> <li>○ Do they ignore the problem?</li> <li>○ Do they inform their supervisor?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• Do you have a <b>progressive disciplinary program ultimately leading to termination, which focuses</b> on taking corrective action to ensure that drivers comply with regulations and company policy? If yes: <ul style="list-style-type: none"> <li>○ <i>Request a copy of it.</i></li> <li>○ Describe the program and some instances in which it was used.</li> <li>○ Who is responsible for implementing it?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• What are the <b>incentives and reward/recognition programs</b> for each employee (or Employee X)?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do <b>drivers execute securement procedures under difficult conditions?</b> <ul style="list-style-type: none"> <li>○ Do you reward drivers for time spent learning and/or completing procedures, especially under difficult conditions?</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• When it is <b>clear that regulations and company policy are not well understood, do you have mandatory refresher training</b> that helps employees understand the necessary information in a timely manner?</li> </ul>	
<ul style="list-style-type: none"> <li>• What <b>triggers referral to mandatory refresher training?</b> <ul style="list-style-type: none"> <li>○ Who makes these decisions?</li> <li>○ Describe some instances when you have made such a referral.</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Request documentation of some instances when refresher training was required, in the form of training materials, and a list of people who received the training.</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Have you <b>provided specialized training or counseling to drivers on the basis of roadside inspections?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Is there a <b>disciplinary and/or recognition program for performance on the basis of roadside inspections?</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Are you <b>concerned about your ongoing maintenance and cargo-loading and securement issues?</b></li> </ul>	
<b>Cargo-Related Questions</b>	<b>Carrier Response</b>
<ul style="list-style-type: none"> <li>• How <b>important do you think that cargo securement is in</b></li> </ul>	

<b>6. Meaningful Action</b>	
<b>ensuring highway safety?</b>	
<ul style="list-style-type: none"><li>• How do <b>cargo loading and securement</b> impact your <b>operations</b>?</li></ul>	
<ul style="list-style-type: none"><li>• Do you test your <b>personnel on their knowledge of cargo-loading and securement policy and procedures</b>?</li></ul>	
<ul style="list-style-type: none"><li>• How do you <b>respond to drivers who have cargo-securment problems (violations, complaints, etc.)</b>?<ul style="list-style-type: none"><li>○ Do you provide specific training to address these problems?</li></ul></li></ul>	

# Appendix SACN

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## Illustration SACN-1: Part C - Comments

### REQUIRED

1. What specific supporting documents were requested and when (was the carrier given 48 hours to produce records not located at the PPOB?)
2. What specific supporting documents were produced and when?
3. What is the name and title of the person from whom you requested the documents?
4. Where are the supporting documents located and how are they maintained (by driver, by trip, in trip envelopes filed by date, etc.)?
5. If supporting documentation was available and/or presented that did not contain valid or vital information, that could be used to check the accuracy of the RODS, explain how and why.
6. Explain why sampling is expanded beyond minimum amount.
7. Explain why a CDLIS licensing check was not conducted or that other methods were used to verify licenses.
8. Explain why vehicles were not inspected IF three or more inspections were not on profile.
9. Note inspections in the motor carriers possession, but not on the profile that were used to calculate the OOS rate.
10. Explain reason for NOT taking enforcement action for acute violations.
11. Explain if gross revenue figure was refused and how the amount you entered was figured.
12. Show names of household goods agents of motor carriers, when applicable.
13. Note if there is more than one reason for initiating compliance review (i.e., complaint and Case Follow-up)
14. Enter the following language if investigation was initiated due to a complaint: "This investigation was initiated as the result of a letter alleging violations of (appropriate 49 CFR section)." The identity and occupation of the complainant should not be mentioned.
15. 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).
16. Explain inter-/intra- operation and how it affects the numbers on the CR.
17. Problems discovered with consortium.
18. If extremely difficult to locate motor carrier, explain how motor carrier was contacted.

19. The SI or Auditor must record the name, title, carrier/shipper name, date and telephone number (if different from the information in MCMIS) of the motor carrier/shipper official or designated representative who received a copy of the Investigative Report (CR, SA or intervention).
20. Note if a HM Supplemental Review was completed.
21. Expansion of a stand-alone SCR to a comprehensive review.
22. Note if an SSV was completed and the Security Talking Points provided.
23. Anything unusual about the carrier, representatives, operations, routes or any other information you feel should be noted in the Part C.

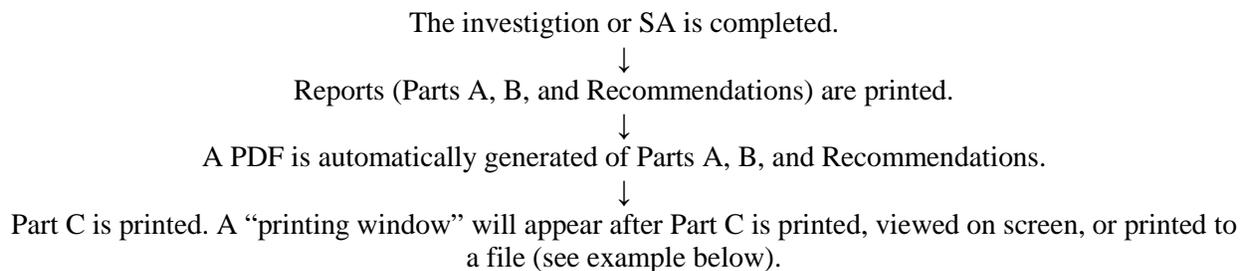
## Illustration SACN-2: Automatic Rendering

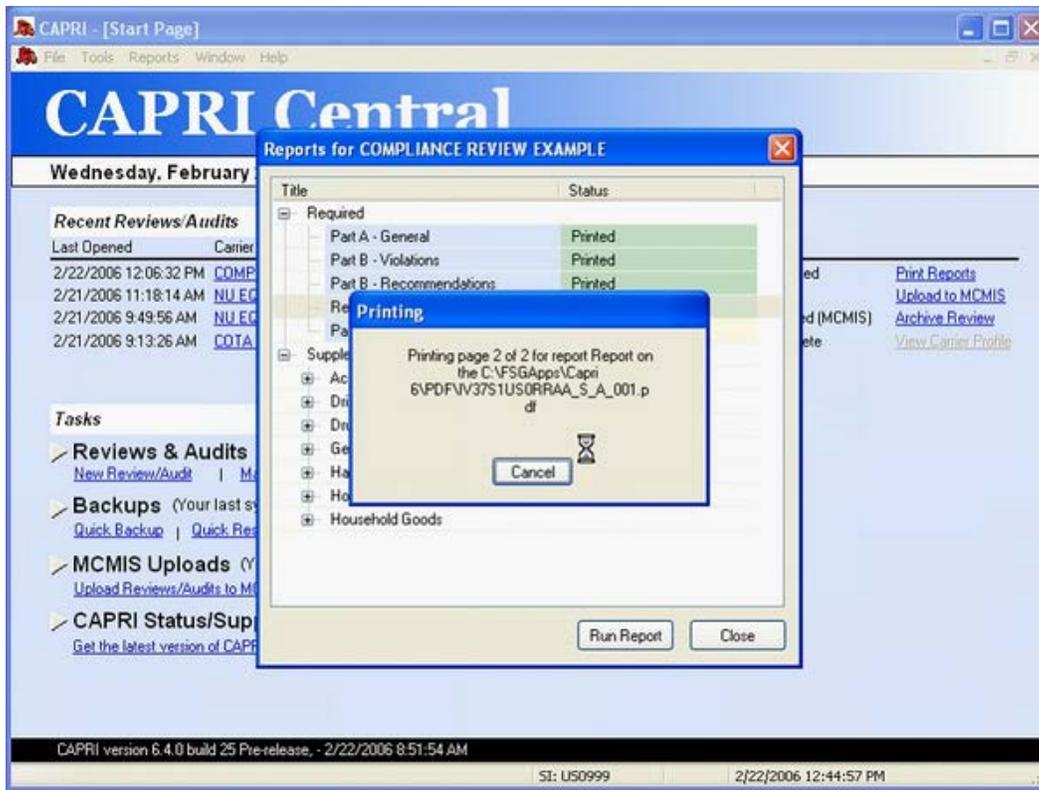
This handy guide outlines the procedures to be used to automatically render a PDF version of an investigation or SA to EDMS. It will cover the following steps in the automatic rendering process:

- Rendering a PDF version of an investigation report or SA to EDMS
- Making a change to an investigation report or SA after it has been uploaded to MCMIS
- Making a change to an investigation report or SA after it has been approved in MCMIS and automatically rendered to EDMS
- Printing, viewing on screen, or printing to a file an investigation report or SA and the data in the investigation report or SA has not changed
- Uploading an investigation report or SA to MCMIS
- Retaining paper originals of the documents stored in EDMS

### How do I render a PDF version of an investigation report or SA to EDMS?

The process to render a PDF version of an investigation or SA to EDMS follows.

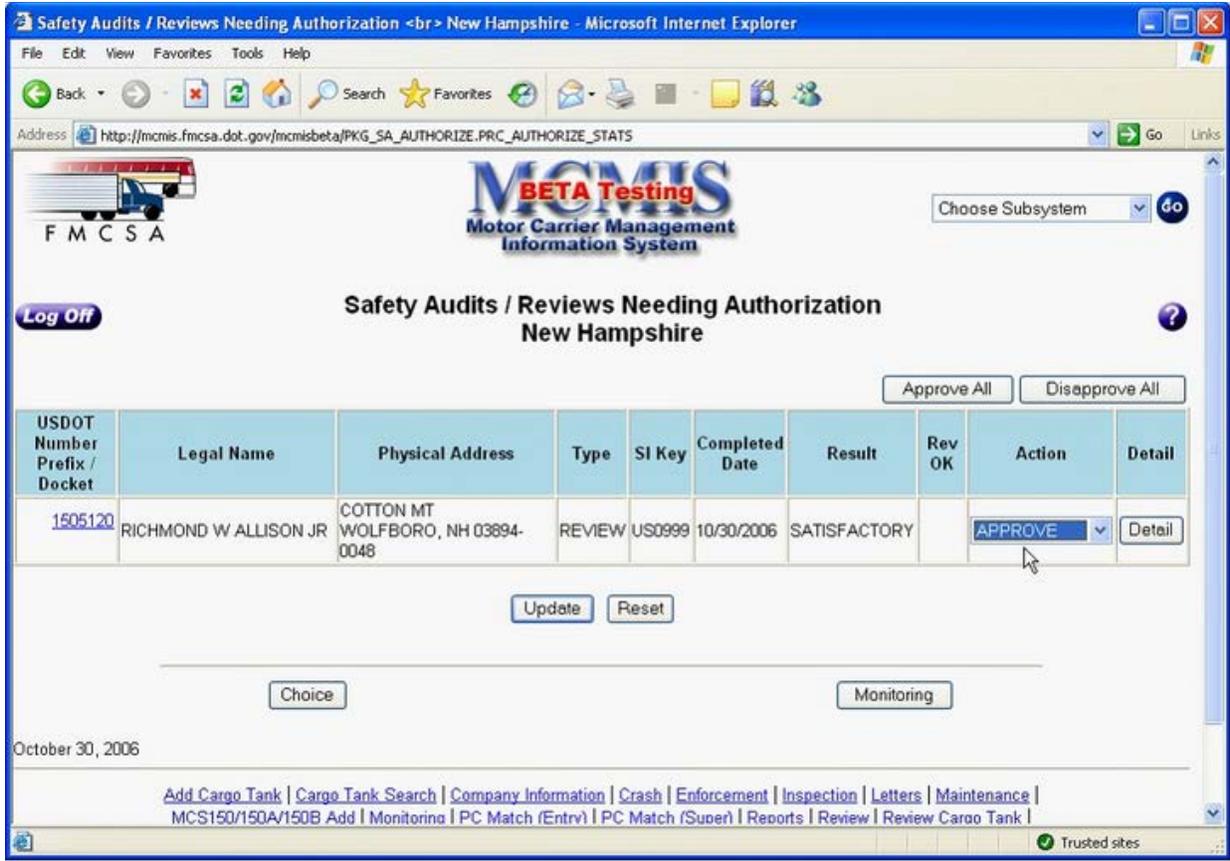




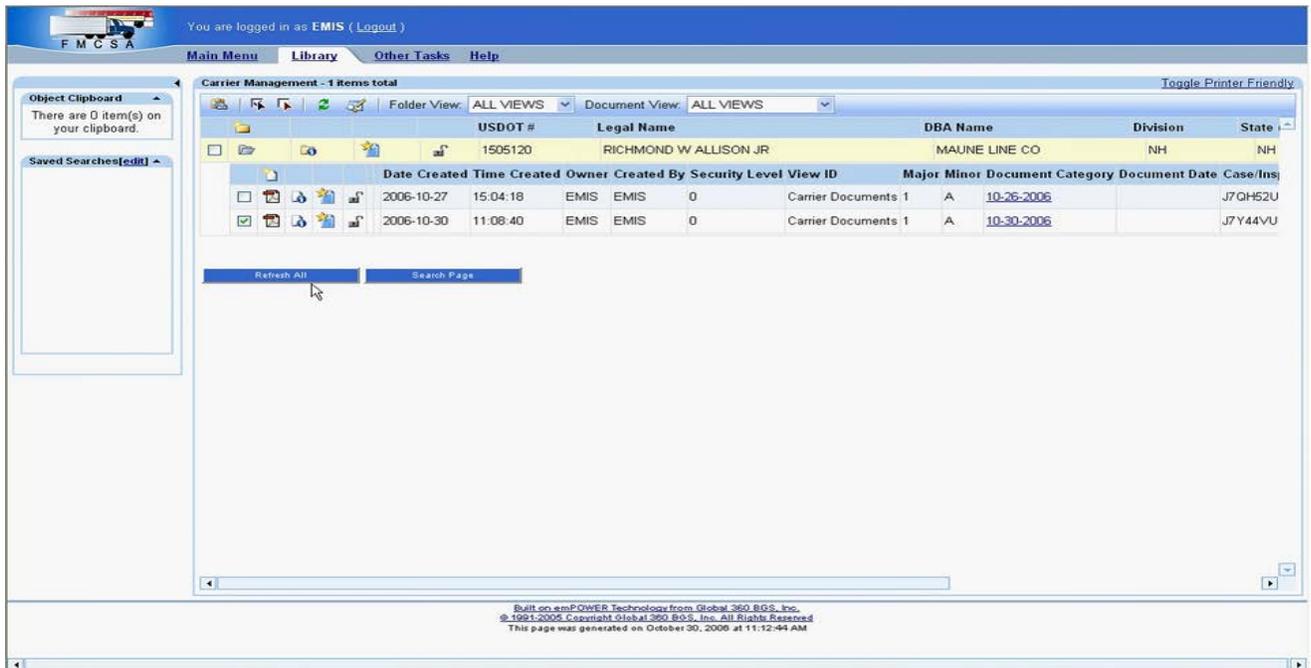
↓  
A PDF is automatically generated of Part C.

↓  
The PDF versions of Parts A, B, Recommendations, and C of the investigation report or SA are uploaded to MCMIS. This is an automatic process.

↓  
The investigation report or SA is approved in MCMIS (see example below).



↓  
The investigation report or SA is automatically sent to EDMS (see example below).



↓  
A link to the document is created in MCMIS (see example below).

**View Compliance Review**

USDOT Number:	1505120	Company Type:	CARRIER	Status:	ACTIVE
Legal Name / DBA Name:	RICHMOND W ALLISON JR / MAUNE LINE CO				
Physical Address:	COTTON MT, WOLFBORO, NH 03894-0048 US				

Registration		Review		Violations	
Review Date:	10/30/2006	Form No:	504376		
Created By:	BARBARA BAKER	Create Date:	10/30/2006		
Changed By:	BARBARA BAKER	Change Date:	10/30/2006		
Upload Date:	10/30/2006				

EDMS Document Link (504376): [CLICK HERE TO VIEW THE DOCUMENT](#)

Acknowledgements (person interviewed during this review)			
Name:	XX	Title:	XX
Received by:	XX	Title:	XX
SI Code:	US0999	Principal Safety Investigator:	.

↓

**What procedures should I follow if I need to make a change to an investigation or SA after it has been uploaded to MCMIS?**

Once an investigation or SA has been uploaded to MCMIS and you discover you need to make a change, you should adhere to the following procedures.

The SI or auditor makes the appropriate change(s) to the investigation or SA in CAPRI. The SI or auditor must provide a corrected copy of the investigation report or SA to the carrier.

↓

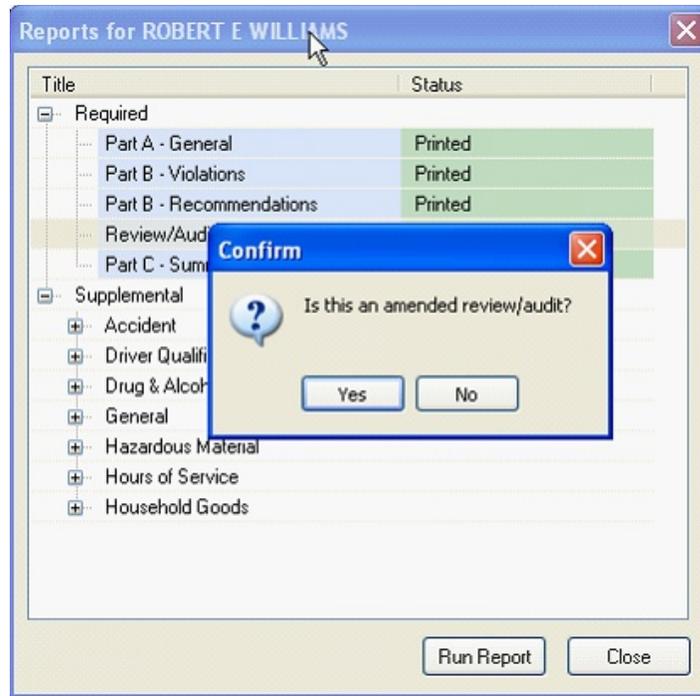
Reports (Parts A, B, and Recommendations, if they were changed) are printed.

↓

The message “Is this an amended review/audit?” will appear.

↓

You should answer “Yes” at this time (see example below). This will generate a new report.



↓  
A PDF is automatically generated of Parts A, B, and Recommendations.

↓  
Part C is printed.

↓  
A PDF is automatically generated of Part C.

↓  
The PDF versions of Parts A, B, Recommendations, and C of the investigation report or SA are uploaded to MCMIS. This is an automatic process.

↓  
The investigation report or SA is approved in MCMIS.

↓  
The investigation report or SA is automatically sent to EDMS.

↓  
Two documents are now in EDMS, the earlier version (the first document listed) and the later version (the second document listed). See example below.

You are logged in as EMIS (Logout)

F M C S A

Main Menu Library Other Tasks Help

Carrier Management - 1 Items total

Toggle Printer Friendly

USDOT #	Legal Name	DBA Name	HM Placard	Safestat Category	Safestat Date	Service Center	Division	State (Physical)	Business
402999	ROBERT E WILLIAMS	WILLIAMS TRUCKING N				EA	NH	NH	6175923

Date Created	Time Created	Owner	Created By	Security Level	View ID	Major	Minor	Document Category	Docum
2006-10-30	11:44:39	EMIS	EMIS	0	Carrier Documents 1	A		10-30-2006	
2006-10-30	11:46:40	EMIS	EMIS	0	Carrier Documents 1	A		10-30-2006	

Refresh All Search Page

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 This page was generated on October 30, 2006 at 12:01:25 PM

↓  
 One link to the document is created in MCMIS. The second version will open from this link (see example below).

F M C S A

**BETA Testing**  
 Motor Carrier Management Information System

Choose Subsystem 60

Log Off View Compliance Review ?

USDOT Number: 402999 Company Type: CARRIER Status: ACTIVE  
 Legal Name / DBA Name: ROBERT E WILLIAMS / WILLIAMS TRUCKING  
 Physical Address: 455 OCEAN BLVD, HAMPTON, NH 03842 US

Registration	Review	Violations
Review Date: 10/30/2006	Form No: 504379	
Created By: BARBARA BAKER	Create Date: 10/30/2006	
Changed By: BARBARA BAKER	Change Date: 10/30/2006	
Upload Date: 10/30/2006		

EDMS Document Link (504379): [CLICK HERE TO VIEW THE DOCUMENT](#)

Acknowledgements (person interviewed during this review)

Name: XX	Title: XX
Received by: XX	Title: XX
SI Code: US0999	Principal Safety

### What procedures should I follow if I need to make a change to a investigation report or SA after it has been approved in MCMIS and automatically rendered to EDMS?

Once an investigation report or SA has been approved in MCMIS and automatically rendered to EDMS and you discover you need to make a change, you should adhere to the following procedures for either modifying the investigation data (STEP 1) or deleting an investigation report or SA in order to upload the correct review or audit (STEP 2).

#### STEP 1 - MODIFICATIONS

The SI consults with his or her DA and/or his FA or his designee to determine whether the investigation should be modified or deleted. **NOTE:** SAs cannot be modified.

↓  
If it is determined that the investigation report should be modified, the SI makes the appropriate changes in CAPRI and provides a corrected copy of the investigation report to the motor carrier.

↓  
The corrected version of the investigation report or a detailed list of modifications is forwarded to the FA or his designee to modify the investigation report in MCMIS.

↓  
Once the changes are made in MCMIS, the SI must manually scan the investigation report into EDMS.

↓  
There will be two versions of the investigation report in EDMS (see below).

The screenshot displays the EDMS interface for a user logged in as EMIS. The main content area shows a table of documents for carrier 1505120, RICHMOND W ALLISON JR, MAUNE LINE CO, NH. The table lists two documents created on 2006-10-27 and 2006-10-30, both categorized as 'Carrier Documents' with a security level of 0. The interface also includes a navigation menu, a search bar, and a footer with copyright information.

Folder View:	ALL VIEWS	Document View:	ALL VIEWS							
USDOT #	Legal Name	DBA Name	Division	State						
1505120	RICHMOND W ALLISON JR	MAUNE LINE CO	NH	NH						
Date Created	Time Created	Owner	Created By	Security Level	View ID	Major	Minor	Document Category	Document Date	Case/Ins
2006-10-27	15:04:18	EMIS	EMIS	0	Carrier Documents 1	A		10-26-2006		J7QH52U
2006-10-30	11:08:40	EMIS	EMIS	0	Carrier Documents 1	A		10-30-2006		J7Y44VU

Refresh All      Search Page

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This page was generated on October 30, 2006 at 11:12:44 AM

Only one link to the document will be in MCMIS. The first version will open from this link (see example below). MCMIS only creates a link from EDMS if the investigation report or SA is automatically rendered. Links in MCMIS are not created from documents that are scanned into EDMS.

### **STEP 2 - DELETIONS**

The SI consults with his or her DA and/or his FA or his designee to determine whether the investigation should be modified or deleted.



If it is determined that investigation report or SA should be deleted, the SI or auditor forwards his or her data change request to his or her DA or his or her designee. The data change request should explain the error and indicate that the investigation report or SA needs to be deleted from MCMIS. If the data change request is for an SA, the auditor must complete a Data Change Request Form. Data Change Request Forms can be obtained from the KnowZone or Infosys website.



The DA approves the data change request or the Data Change Request Form and forwards to the FA or his designee for action.



The FA or his designee concurs with the DA's approval and initiates the deletion of the incorrect investigation report or SA from MCMIS.

↓ (for investigations)

The FA or his designee will delete the review from MCMIS. This will allow the SI to upload the corrected review.

**- OR -**

↓ (for SAs)

The FA or his designee forwards the Data Change Request Form to [FMCTechSup@volpe.dot.gov](mailto:FMCTechSup@volpe.dot.gov). Volpe will delete the SA from MCMIS, allowing the safety auditor to upload the corrected audit.



The SI or auditor should now follow the instructions under the "How do I render a PDF version of an investigation report or SA to EDMS" section to upload the corrected review. The SI or auditor must provide a corrected copy of the investigation report or SA to the carrier.

↓

**NOTE:** After the SI or auditor uploads the corrected review, there will be two versions of the investigation report or SA in EDMS.

**What procedures should I follow if I print, view on the screen, or print to a file an investigation report or SA and the data in the investigation report or SA has not changed?**

You should adhere to the following procedures if you print, view on the screen, or print to a file an investigation report or SA and the data has not changed.

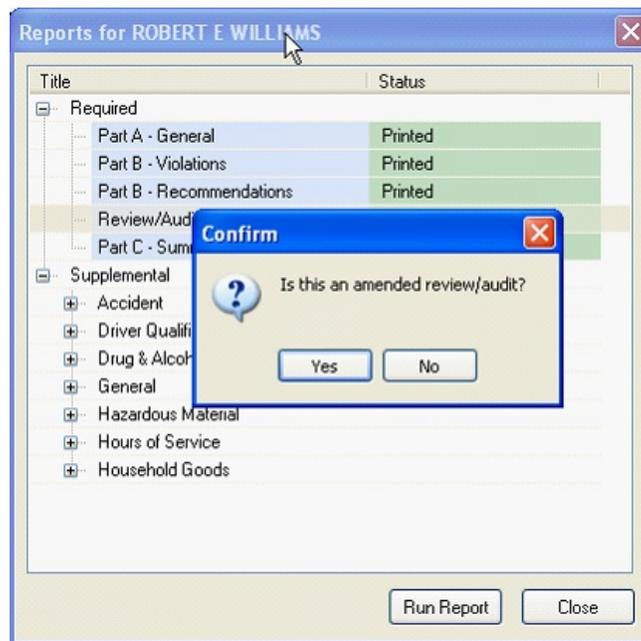
Reports (Parts A, B, and Recommendations, if they were changed) are printed, viewed on screen, or printed to a file.

↓

The message “Is this an amended review/audit?” will appear.

↓

You should answer “No” at this time (see example below). The previous rendered PDF file will be overwritten. This will not generate duplicate reviews in EDMS.



A PDF is automatically generated of Parts A, B, and Recommendations.

↓

Part C is printed.

↓

A PDF is automatically generated of Part C.

↓

The PDF versions of Parts A, B, Recommendations, and C of the investigation report or SA are uploaded to MCMIS. This is an automatic process.

↓

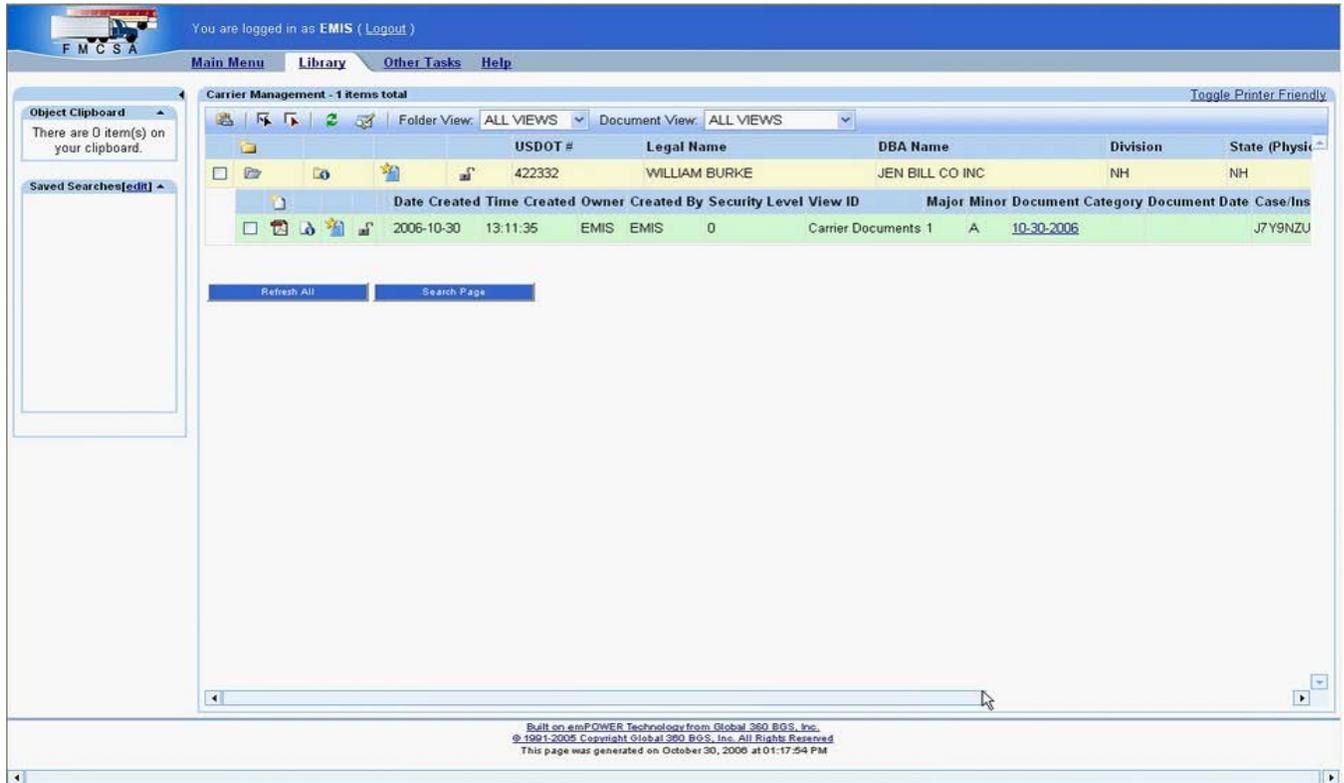
The investigation report or SA is approved in MCMIS.

↓

The investigation report or SA is automatically sent to EDMS.

↓

One version of the document will remain in EDMS (see example below).



### What steps should I follow if I am unable to upload an investigation report or SA to MCMIS?

There will be instances when you will not be able to upload an investigation report or SA to MCMIS because of your travel status, issues with the information system, error messages, etc. You should adhere to the following procedures in the event you encounter these problems.

The SI or auditor should contact Volpe for technical support.



**For investigations:** If Volpe is unable to assist because of network, system, communication, development issues, the SI will be required to send (e.g., fax, mail, email) a hard copy to his FA or his designee for manual entry.

**For SAs:** FMCSA does not have the ability to manually enter SAs into MCMIS. Therefore, the auditor will need to continue to work with technical support at Volpe until the issue is resolved. Once the issue is resolved, the auditor should follow the procedures under the "How do I render a PDF version of an investigation report or SA to EDMS?" section to complete the automatic rendering process.



Once the investigation report is manually entered, the SI must manually scan the investigation report into EDMS.

**How long should I retain paper originals of the documents stored in EDMS?**

Divisions should follow the Quality Assurance Procedures (Attachment C) of the EDMS Manual with regards to the retention of paper originals of documents stored in EDMS. The EDMS Manual states:

“It is imperative that paper originals of documents stored into EDMS are retained until a full backup cycle of EDMS has occurred. If no failure notification has been received by Wednesday afternoon, then the paper documents may be properly disposed.”

## **Illustration SACN-3: Quality Assurance Procedures**

### **I. PURPOSE**

An electronic document management system, when properly used, offers superior accessibility, storage, and retrieval of mission critical information.

This document outlines procedures to be used to safeguard the accuracy, quality and integrity of documents stored in the FMCSA's Electronic Document Management System (EDMS). These procedures will be used to defend the accuracy of documents utilized in regulatory and enforcement proceedings.

### **II. SCOPE**

This document will cover Quality Control and Assurance procedures for preparing, scanning and indexing of Review and Enforcement documentation.

### **III. OVERVIEW**

This document will cover the following steps in the document imaging process:

- Document Preparation
- Quality Control
- Document Indexing
- Quality Assurance
- Document Backups

An example of a typical scanning process will be outlined step by step.

#### **IV. DOCUMENT PREPARATION**

There will be two types of documents prepared for scanning into EDMS: those documents that are currently stored in paper format ("back-scanning") and documents prepared after implementation of EDMS.

- a. Back scanning of existing documents: Existing documents may utilize a variety of features that are not compatible with efficient document scanning- the documents were prepared without anticipation of the requirements for electronic scanning. Persons preparing existing documents for back-scanning should ensure the following:
  1. Remove all paper clips and other fastenings
  2. Place document pages into office standard sequential ordering
  3. Repair or recopy damaged pages
  4. Copy post-it notes containing pertinent information to full size sheets of paper and remove.
  5. Examine highlighted areas for scan-ability- any color other than yellow will most likely scan as completely black, obscuring the highlighted text. Pages with dark highlighting should be flagged for grey-scale scanning.
  6. Flag photos and color prints using temporary post-its or other means, for color scanning.
  7. Copy non-standard paper types and sizes onto 8.5 X 11 inch standard letter sized paper.
  
- b. Preparation of new documents, post-EDMS implementation -- Documents created after implementation of EDMS should take the needs of efficient scanning into consideration. Standard office procedures should be developed to minimize the amount of pre-processing required to scan a new document:
  1. Do not use staples- paper clips or other quick release fasteners may be used, or simply avoid fastener use altogether in smaller documents.
  2. Use standard sizes, weights, and type of paper only.
  3. Document a standard sequential order for pages within scanned documents. (For example- Enforcement cover page, then UFA, then NOC, etc.)
  4. Do not use post-it notes or highlighters on documents- in enforcement reports, such information should be outlined in exhibit abstracts. Light yellow highlighting may be used if compatible with your scanner.
  5. Photocopies that may be difficult to scan (ex- very light copies, color photos or printouts) should be flagged using tabs or temporary post it notes for the attention of the person scanning.
  6. The preferred method of imaging digital photos into the system is to store the images into the TIFF or other file directly, rather than printing and scanning the photos. For example, utilize the "virtual printer" capability available in some scanning packages to print digital camera images directly into TIFF files, and then insert the TIFF images into a scanned case.

- c. When to scan a document -- Most documents will be scanned after all Division level processing is completed- for example, enforcement reports should be scanned after the Notice of Claim is generated and mailed out, investigations and SAs after review and upload into MCMIS.

## **V. QUALITY CONTROL**

The quality control process begins during the scanning of the document. The document page count and image quality will be verified at this time.

### **Kofax Scanning Solution**

- a. Hardware and Software Standards - If scanning with the Kofax solution, the scanner needs to be compliant with the recommended scanners that are certified by Kofax to be utilized in connection with the Ascent Capture 6.0 or higher. All other settings will be the same.
- b. Page Count (to be done in the scanning phase) - Scan like documents (investigation reports, Inspection Reports, Cases, etc.) in batches of whatever number the document feeder can handle. The only limitation to this process is the hardware feeder limit. As each batch is scanned, verify the page count as it increments in the scanning software. Note the total page count and attach to the document (after scanning) via post-it note, or other temporary note. If there is a problem with the scanning count, correct by inserting missing pages, or by rescanning the affected pages, after deleting the faulty pages.
- c. Image Quality (to be done in the scanning phase) - To balance quality of images vs. file size, the scanner settings should be set to 300 DPI, black and white scanning (or "line-drawing"). Utilize grey-scale or color image scanning for pages flagged as potentially being a problem for standard black and white scanning. When possible, integrate digital camera images directly in the scanned document by using the virtual printer function.
- d. Quality Assurance of Documents (to be done in the Quality Assurance phase) -- To balance quality of images vs. the original document, the user will view the document in the QA phase of the scanning process. The user can verify the document content and image quality during this phase. The user will verify the readability and image quality of each document by visually checking each document. If any pages are found to be faulty, the user will correct any problem pages by rescanning and replacing bad scans, or rescan the entire document. If a page is faulty due to problems with the paper original, adjust scanner settings to allow faithful reproduction and rescan (utilize grey-scale or color settings). This is normally handled by the Virtual Rescanning option if available on the scanner purchased.
- e. Verification of Documents (to be done in Verification phase) - As each scanned image is indexed into EDMS, verify that the correct file is being attached into EDMS by checking the USDOT number and document date, enforcement case number, or other unique identifier as documented by the Division office. This needs to be done for each individual document in the batch.
- f. Accurate Index Values (to be done in Verification phase) - Scanned documents should be indexed by utilizing the original paper document as reference; as each set of index values is entered, use the paper original for key values, like USDOT number, Carrier Name, etc. As this step is now automated, the user must verify the information for each document before moving on to the next phase.

- g. Next Steps - Retain the paper documents for the Quality Assurance and the document backup steps.

### **Non-Kofax Scanning Solution**

- a. Hardware and Software Standards - At a minimum, scanning should be conducted on Twain compliant (scanner driver interface) scanner with a minimum scan image quality capability of 300 DPI. Scanner software should produce a standard multi-page TIFF format file with G4 compression, readable by standard graphics programs, including the Windows built in image viewer.
- b. Page Count - Scan documents in batches of 25 pages. As each batch is scanned, verify the page count as it increments in the scanning software. Note the total page count and attach to the document (after scanning) via post it note, or other temporary note. If there is a problem with the document count, correct by inserting missing pages, or by rescanning the last batch of 25 pages, after deleting the faulty batch.
- c. Image Quality - To balance quality of images vs. file size, the scanner settings should be set to 300 DPI, black and white scanning (or "line-drawing"). Utilize grey-scale or color image scanning for pages flagged as potentially being a problem for standard black and white scanning. When possible, integrate digital camera images directly in the scanned document by using the virtual printer function available in some scanning programs. After feeding the document through the scanner, verify the readability and image quality of the document by visually checking the first, last, and 10 percent of the middle of the document. (For example, in a 50-page enforcement report, randomly check 5 pages in the body of the document, in addition to the first and last pages). If any pages are found to be faulty, the entire document should be verified. Correct any problem pages by rescanning and replacing bad scans, or rescan the entire document. If a page is faulty due to problems with the paper original, adjust scanner settings to allow faithful reproduction and rescan (utilize grey-scale or color settings).

## **VI. DOCUMENT INDEXING**

EDMS utilizes a browser-based client that minimizes the amount of technical support necessary to enter and access scanned and electronic documents. The use of a browser client necessitates that documents are initially stored on a local or network disc, then later attached to a document index in EDMS. Steps must be taken to ensure that the correct document is attached to the corresponding index.

- a. **File Naming Convention** - All offices will adopt and document a standard directory structure and file name convention for temporary storage of scanned documents on local or shared network drives. For example, all investigation reports could be scanned to a directory named "EDMS\_REVIEWS", and all enforcement reports to "EDMS\_CASES". Investigation reports could be stored using a filename consisting of the Carrier USDOT number underscore Carrier Name underscore Review Date. (Ex-456998\_Smith Trucking\_09-09-2003.TIF) Enforcement reports would be saved using the full enforcement case number. (Ex: MI-2003-0128-US0405.TIF).

- b. **Verification of Documents** - As each scanned image is indexed into EDMS, verify that the correct file is being attached into EDMS by checking the USDOT number and document date, enforcement case number, or other unique identifier as documented by the Division office.
- c. **Accurate Index Values** - Scanned documents should be indexed by utilizing the original paper document as a reference- as each set of index values is entered, use the paper original for key values like USDOT number, Carrier Name, etc.
- d. **Next Steps** - Retain the paper documents for the Quality Assurance and document backup steps.

## **VII. QUALITY ASSURANCE**

The Quality Assurance (QA) process is a sampling procedure to verify the accuracy and completeness of the document scanning process. The QA review will ensure that the document retains the proper page count, image legibility, and document index accuracy.

- a. Utilize Paper Originals for Verification - After documents have been scanned into TIFF files and indexed into EDMS, the originals will now be verified in EDMS for QA.
  - o NOTE: The same individual that scanned the image and entered the document into EDMS can do this verification process. If the DA determines a second individual needs to perform this verification, the DA will assign an individual to do this.
- b. Sampling Procedure - The QA review will consist of a 25 percent sampling of investigation reports/SAs/other reviews and a 25 percent sampling of enforcement reports. (Example: If processing 6 completed investigations, the QA review will verify completeness, accuracy, and image quality for a minimum of  $6 \times .25 = 1.5$ , or 2 reviews.)
- c. Verify Accuracy of Index Values - Retrieve each sampled document from EDMS and compare the index values, as entered into EDMS, against the values on the original paper document.
- d. Page Count Verification - The reviewer will note the page count of the document [see IV (B) above] and compare that against the scanned document by opening the document and verifying that the counts match (page count as indicated by the scanning software).
- e. Image QA - The reviewer will review the first, last, and 10 percent of the middle of a document for image legibility and retention of information.
- f. Next Steps - The reviewer will retain all paper originals until a complete backup cycle has been completed.

## **VIII. DOCUMENT BACKUPS**

It is imperative that paper originals of documents stored into EDMS are retained until a full backup cycle of EDMS has occurred. EDMS will conduct incremental backups nightly, with a full backup cycle over the weekend. All documents scanned during a week should be kept until the following Wednesday. In the event of a backup system failure, notification will be sent out via email; hard copies of documents must be retained until such time as a full backup has been successfully achieved.

If no failure notification has been received by Wednesday afternoon, then the paper documents may be properly disposed.

### **IX. A TYPICAL SCANNING CYCLE**

The following is an example of process outlined above, as it would be conducted in a typical day-to-day operation.

1. An SI submits a paper enforcement report to the Federal Program Specialist (FPS).
2. The FPS reviews the report, and sends it back to the SI for a correction (1 dropped count).
3. The SI resubmits the corrected report.
4. The FPS approves the case report, prints a final NOC and Statement of Charges, and forwards the paper document to the DA for review and signature.
5. The DA signs the paper report, and forwards to the TA for mailing of the NOC.
6. The TA processes the report for scanning- removes paper clips, checks for any post-it notes or highlighting, and arranges the report in the correct order.
7. The TA counts off 25 pages, scans them, then 23 pages, and scans the remainder (of a 48 page report).
8. The TA checks the page count as reported by the scanning software and notes that it shows 48 pages, the correct page count.
9. The TA places a post-it on the paper report, and notes a page count of 48.
10. The TA opens up "Thumbnail" view and verifies that the first, last and 5 random middle pages (10 percent sampling) are clean scans, with no reproduction problems, by clicking and viewing each of the sampled pages.
11. The TA saves the report file to a shared network directory- H:\EDMS\_CASES, utilizing the filename MI-2004-0011-US405.TIF.
12. The TA processes several investigations and Cases, following the Document Preparation and Quality Control Procedures.
13. After completing a batch of investigations and Cases, the TA logs in to EDMS and begins indexing the scanned files into storage.
14. The TA refers to the stack of processed and scanned paper investigation reports and Cases- as he or she moves each paper document from the scanned-but-not-indexed to the scanned-and-indexed stack, he or she uses the USDOT number, carrier name, and case number etc., values from the paper documents to complete each EDMS index.
15. As the TA completes each set of indexing values, he or she hits the browse button in EDMS and navigates to the appropriate directory (in the case noted above, H:\EDMS\_CASES) and then finds the correct file by comparing the information on the paper report against the standard filename. (MI-2004-0011-US405.TIF)
16. After the TA has completed a batch of paper documents, the scanned-and-indexed paper documents are forwarded to the FPS for the QA review.
17. The FPS randomly selects and sets aside every 4th investigation report or SA and every 4th enforcement report for a QA review

18. For each selected paper investigation report and Case, the FPS searches EDMS and locates the stored scanned document. The FPS compares the paper document to the index values in EDMS to verify a match.
19. The FPS opens the document from EDMS, and compares the page count as noted on the paper original against the page count as indicated by the viewer program. For the case noted above, the software shows 48 pages.
20. The FPS then goes into "Thumbnail" view and verifies the legibility of the first, last, and 5 random middle pages.
21. After completing the QA review of all sampled paper documents, the FPS sets the reports into an outbox marked "Awaiting Backup." Other batches of scanned and quality checked documents are already in the box.
22. On Wednesday, the FPS notes that the Division has received no notice of an EDMS backup system failure. The FPS forwards the fully processed documents in the "Awaiting Backup" box to the TA for proper disposal.

NOTE: Although this is the typical process, the TA or the individual that originally scanned the document into EDMS, can also perform the EDMS verification process.