

Transport Safety Pro Advisor



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Operation Roadcheck is coming!

The annual inspection blitz conducted by the Commercial Vehicle Safety Alliance (CVSA) is scheduled this year for June 2 to 4, 2015. This year, rather than being referred to as “Operation Roadcheck,” CVSA is referring to the inspection blitz as “International Roadcheck.” This better reflects the project as it now includes commercial vehicle inspectors in Canada and Mexico, as well as in the United States.

CVSA states that during the 72-hour period, over 10,000 commercial vehicle inspectors will be conducting as many inspections as possible. On average, 17 vehicles

will be inspected every minute of the 72-hour period.

The emphasis will be on conducting complete driver and vehicle inspections. These inspections involve a 37-step inspection of the driver and the vehicle. As far as the driver is concerned, the officer, will ask for (and inspect) the drivers:

- License,
- Medical card (if a non-CDL driver, if a CDL driver the officer will verify the medical qualification information on the driver’s MVR), and
- Hours-of-service records (logs).

see **Roadcheck**, pg. 4

Common hours-of-service violations and what you can do about them

According to data compiled by the Federal Motor Carrier Safety Administration (FMCSA), during 2014 the most commonly violated driver regulations were the hours-of-service (HOS) regulations found in Part 395. Interestingly, this is nothing new. For many years, HOS violations have been the most commonly written driver violations during roadside inspections. Here are the top 10 driver violations written during roadside inspections conducted in 2014:

1. Log, general form and manner
2. Non-English speaking driver
3. Driving after reaching the 8-hour limit

4. Driver’s log not current
5. Speeding, 6 to 10 over the limit
6. Failing to use seat belt
7. Driving after reaching the 14-hour limit
8. Driving without a valid medical certificate (property-carrying driver)
9. Failure to obey a traffic control device
10. False log

As far as the numbers, here is how they break down when it comes to the HOS violations:

- There were 1,106,228 driver violations written in 2014. Out of

those, 541,728 (or 48.9%) were HOS related.

- Form and manner, and log not current accounted for 259,012 of the driver violations written (23.4% of all driver violations and 47.8% of the HOS violations written were for these two violations alone).
- All HOS limits violations accounted for 183,628 of the violations (or 16.6% of all driver violations and 33.8% of the HOS violations written).
- The 30-minute break was the most commonly violated limit,

see **Violations**, pg. 6



Safety and Risk Management

Factor 2: Drivers

In this series of articles we are taking a detailed look at the processes involved in an “audit” (correctly known as a “compliance review” or “comprehensive investigation”). The overall process follows a format called the “Six Factors.” The six factors and the regulation areas that are checked in each factor are:

- Factor 1 — General: Part 387 Financial Responsibility and Part 390 General Compliance
- Factor 2 — Driver: Part 382 Drug and Alcohol, Part 383 CDL, and 391 Driver Qualifications
- Factor 3 — Operational: Part 392 Safe Operation and Part 395 Hours of Service
- Factor 4 — Vehicle: Part 393 Parts and Accessories and Part 396 Inspection and Maintenance
- Factor 5 — Hazardous Materials: Parts 171, 177, 180, and 397
- Factor 6 — Accident: Recordable accident rate per million miles (no regulations involved)

In the last article in this series we looked at Factor 1, the “General” factor. In this article, we will look at the second factor, the “Driver” factor.

In this factor, your driver qualification files (DQ files), drug and alcohol testing program (if required), and compliance with the requirements in Part 383 (the CDL-specific regulations) will be checked.

Not every driver will be checked

The FMCSA will target the files of drivers that they have

“identified” from accidents, inspections, citations, or other reports that they have on file. The investigator will ask for drivers that were:

- Involved in accidents,
- Placed out of service,
- Cited for violations related to the area being checked during roadside inspections or traffic stops,
- Your “top performers” (had the most hours and/or miles), and/or
- Hired in the last year.

There are two reasons the investigator will want to see these drivers’ records. First, they know these drivers are yours, either based on on-road data or on your admission. Second, the investigators believe that these drivers are more likely to have violated the regulations.

If this selection process does not yield enough drivers (the investigator will need to check a minimum number of files to make it a valid audit), the investigator will ask you to select a certain number of files randomly.

DQ files

All carriers will have their DQ files checked during the audit as the DQ file requirements are universal (they apply to all commercial drivers, CDL and non-CDL). Just a reminder, you must be able to present a current and complete DQ file for all drivers who operate a commercial vehicle for you, including your full-time, part-time, casual, leased, temporary, and occasional drivers.

The investigator will check that the following documents are in

the DQ file, were completed at the right time, and are correct:

- The driver’s application (completed before operating a CMV for the company, see §391.21).
- MVRs covering all states the driver was licensed in over the three years prior to hire (completed within 30 days of hire, except for CDL drivers, see §391.23).
- Safety performance history checks for all DOT-regulated previous employers over the previous three years (completed within 30 days of hire, §391.23).
- Certificate of road test or equivalent (completed before operating a CMV for the company, §391.31 or .33).
- Proof of medical qualification (a copy of the medical card for a non-CDL driver or an MVR showing medical qualification for a CDL driver) spanning the last three years (completed before operating a CMV for the company, §391.43).
- Verification that the examiner was on the NRCME for any medical exam after May 21, 2014 (completed every time the driver undergoes a medical exam, §391.51).
- Annual reviews (annual MVRs, annual Certificates of Violations, and manager’s notes) for the previous three years (when the review is completed, each document must be completed within one year of the last one, see §391.25 and .27).

If the driver has any medical variances (such as a waiver or

skills performance evaluation), that paperwork must be in the DQ file as well.

The investigator will also be checking to make sure that the driver was and remained fully qualified (see §391.11) and that he/she was not disqualified at any time (see §391.15 and §383.51).

Drugs and alcohol

Next, the investigator will look into the company's DOT drug and alcohol program, if it is required to have one. If the carrier has vehicles that require a CDL to operate, all drivers operating those vehicles must be in the program. This applies even if the driver is just a part-time, casual, or occasional driver.

To enter the program, the driver must be given, and sign for, a written policy covering the program. The driver must then pass a pre-employment drug test before being allowed to perform any safety-sensitive function. The auditor will be checking your records, such as testing reports, results, and other documents to verify that you are complying with the pre-employment results requirement.

During the audit, the investigator is going to make sure you are randomly testing the correct percentage of drivers. For alcohol and drugs, it is presently 10 and 50 percent, respectively. The investigator will also make sure that the processes for selecting and notifying the drivers are in compliance. The auditor will be making sure that all drivers are in the random-drawing pool and that drivers are selected from the pool using a scientific method. Two other key points that will be checked: the drivers must be tested in the period they were drawn, and once notified that they must go directly to the test location.

The investigator will also be checking that your supervisors

have been trained in the reasonable suspicion processes and that you immediately remove drivers that fail or refuse a drug or alcohol test from service. If you employ a driver that has failed or refused a test in the past, the auditor will verify that the driver has completed the return-to-duty process specified in Part 40.

Finally, the auditor will verify that drivers involved in accidents were tested for drugs and alcohol, if the post-accident test was required.

CDL-specific

As part of the audit, the investigator will verify that your CDL drivers:

- Had a valid CDL with the correct endorsement(s) for the vehicle being operated,
- Had only one CDL,
- Have reported all convictions to you in a timely manner,
- Were not disqualified when operating a CDL-required vehicle for you, and
- Completed the required entry-level driver training if required.

Scoring Factor 2

As with any of the factors, violations are scored to determine the carrier's "rating." The fewer violations that are discovered, the better chance the carrier has of passing this factor.

Violations of "acute" regulations — such as using a physically unqualified driver — will automatically lead to the carrier being assigned one point. A pattern of violations related to a "critical" regulation — such as using a driver after his/her physical expired — will also lead to one point being assigned. A "pattern" is defined as 10 percent or more of the records checked were not in compliance.

Once all of the violations are scored, the Factor 2 will be

assigned a "rating." The ratings (and what leads to them) are:

- Satisfactory — if the acute and/or critical equals 0 points
- Conditional — if the acute and/or critical equals 1 point
- Unsatisfactory — if the acute and/or critical equals 2 or more points

Surviving Factor 2

The keys to surviving Factor 2 include:

- Making sure your hiring and qualification process is compliant.
- Completing the steps involved in the DQ file in a timely manner.
- Keeping the DQ file current — this requires a "tickler" system to let you know when something is expiring.
- Making sure the drivers remain qualified and do not let their license or medical qualification expire — this will also require a "tickler" system.
- Making sure you have a compliant drug and alcohol program — you are allowed to use a third-party administrator to manage most of the program for you, if you are not sure what all is involved.
- Not using a driver until you have verified negative results in hand when hiring the driver.
- Making sure that all drivers are in the random pool, that they proceed directly to the test location when notified, that they are tested during the draw period (if not that you document why not!), and that you are testing the correct percentage of your drivers.
- Making sure that post-accident alcohol and drug tests are done when required.

see **Drivers**, pg. 4

Roadcheck, from pg. 1

The officers will also verify that the driver:

- Is not under the influence of drugs or alcohol
- Is not ill or fatigued
- Is using his/her seatbelt

As far as the vehicle is concerned, the vehicle inspection will check all items required by the safety regulations, including:

- Lights
- Brakes
- Windows/windshield
- Fuel system
- Coupling devices
- Tires, rims, and hubs
- Defroster
- Windshield wipers and washer
- Mirrors
- Horn
- Bumpers
- Emergency equipment (extinguisher, warning devices, and spare fuses if required)
- Cargo securement
- Frame
- Suspension
- Steering

The officer will also verify the vehicle's credentials (registration and fuel permitting, if fuel permitting is required) and the company's credentials (type of carrier, operating status, etc.).

If any vehicle components, driver document, or company credential are in a condition that does not comply with the regulations, the officer will document it

as a violation. The officer will then compare the violation to the Out-of-Service Criteria (published by CVSA) to determine if the vehicle or driver should be placed out of service. If the vehicle or driver is placed out of service, corrections must be made before the vehicle or driver can operate again.

Emphasis this year: Cargo securement

Each year, the officers are asked to emphasize certain safety regulations. This year, the emphasis will be on cargo securement. As well as emphasizing the securement regulations during inspections, officers will also be checking that drivers are conducting the required enroute inspections.

As a reminder, the driver is required to check cargo securement, regardless of the type of vehicle he/she is operating, within the first 50 miles of loading, at every duty change, and every 150 miles or 3 hours of driving time, whichever comes first. If any problems are seen with the securement, the driver is expected to correct the issue before continuing.

The only exception is if the cargo area is inaccessible to the driver for some reason, or if it is impractical to check the securement. An example would be a sealed van or refrigerated trailer and a load that completely fills the trailer (floor to ceiling, front to back). In this case, the enroute cargo checks are not required. This has been an area of confusion for many van and refrigerated drivers.

Some tend to believe that because they "do not have a flatbed" the required cargo inspections do not apply to them. However, it is required unless the cargo is sealed into the trailer or it is otherwise impractical to check securement.

Documenting cargo inspections

The regulations do not require that the driver document the enroute cargo inspections. Officers will typically ask the driver when and where he/she did the checks. If the driver states he/she has not done any, that is when the driver will be cited.

To help drivers to remember to do the required checks, and to make it easier for officers and carrier safety/compliance personnel to see that they have been done, many companies require their drivers to show "load check," "L/C," or "cargo check" on their logs. This practice involves simply placing a flag at the appropriate time and noting the inspection (no on-duty time required) during extended driving times, and adding a comment to the flag for all duty changes.

Forewarned is forearmed

Knowing when Roadcheck is happening (and what is being emphasized) allows carriers the opportunity to verify that all vehicles are current on their maintenance, that all drivers are up to speed on the driver and logging requirements, and that all company and vehicle credentials are current.

A

Drivers, from pg. 3

- Removing any driver that fails or refuses a drug or alcohol test from driving, immediately.
- Making sure that the drivers have the correct license and endorsements for the vehicles they operate.
- Not using a driver that has multiple licenses, or a suspended or disqualified license.
- Making sure that you do not use a driver that has been disqualified.

Basically, the key to surviving this factor is having solid policies and practices in place, and being prepared. **A**

Another 30-minute break exception added

The Federal Motor Carrier Safety Administration (FMCSA) has added another exception to the 30-minute break rule.

Drivers operating ready-mix delivery trucks will be allowed to

use 30 minutes of waiting time as their 30-minute break, provided they do not perform any work during the break.

This gives these drivers the same exception that is provided

to drivers transporting explosives, highly radioactive materials for the Department of Energy, and drivers transporting munitions under contract to the Department of Defense.

A



HR Focus

Mini MVRs

In a recently published interpretation to the Federal Motor Carrier Safety Administration (FMCSA) regulations (dated March 12, 2015), FMCSA announced that the use of a “mini-MVR” from an employer notification system (ENS), for the purposes of the annual review process, is acceptable.

What is an ‘ENS’?

An ENS is a program that carriers can use to access or be provided with basic information related to a driver’s MVR. There are two basic types of ENS. There is the “push” type of program, which notifies the employing carrier if there is any activity on the driver’s license. This type of ENS does not send information on a regular schedule. It only sends information to the carrier when there is a change.

The second type of ENS is the “pull” system. These systems allow a carrier to “pull” a record of recent changes upon request. This type of system is where the term “mini-MVR” actually comes from. Many of these pull systems only list recent activities on their report, not the full information that is on a regular MVR.

Both types of ENS require that the carrier sign up for the program and most involve some type of fee, either a “per pull” or “subscription

fee.” Most of these systems are run by the state involved, or they are operated by a third party that has direct access to the state’s driver records database. Many of these systems also require that the employing carrier notify them of the drivers it employs (this is critical in the case of a push type ENS).

Proof the driver is enrolled

In the interpretation, it states that if the carrier is enrolled in a push-type ENS, the carrier does not have to run an annual MVR on the drivers that are enrolled. This means that the annual review process for these drivers would involve getting a Certificate of Violations from the driver and doing the management review. Basically, running the annual MVR is not required if the carrier and driver are in a push-type ENS.

However, if audited, the carrier will need to have proof that they are using a push-type ENS and that the driver involved is assigned to them in the ENS, so they would receive any notifications related to the driver. This proof can be a copy of the enrollment, a roster provided by the ENS showing all drivers the carrier has involved in it, or a notice that was received in the past.

Pull systems are different

If the carrier is involved in a pull-type ENS, the carrier will need to do a “pull” as part of the annual review process. Under the interpretation, this pull can then be used in place of the annual MVR. Also, just like when using a push-type ENS, the carrier will still be responsible for getting an annual Certificate of Violations from the driver and doing the management review.

Only applies to annual reviews

One key point about this interpretation is that the FMCSA specifically states that it applies to the MVR required as part of the annual review. The FMCSA has NOT released anything official saying that these mini-MVRs can be used to satisfy the requirement that a carrier get MVRs from all states the driver was licensed in for the three years prior to being hired. Also, using these to verify the driver’s medical status, as required under the new CDL federal medical card merger regulations, is not discussed. There is also nothing official that states a carrier can use a “push” type of ENS system that would alert a carrier to a “downgrade” to comply with the CDL/medical qualification recordkeeping requirement.

In both of these cases — getting MVRs at time of hire and to verify a CDL driver’s medical status — a full MVR is still required. This is because there are no exceptions provided in the regulations or interpretations at this time. **A**

Violations, from pg. 1

with 95,539 violations written (8.6% of all driver violations written and 17.6% of the HOS violations).

- Operating past the 14-hour limit was the next most common limit violated, accounting for 53,018 of the violations written (4.8% of all driver violations written and 9.7% of the HOS violations).

The bottom line to this data is if an average carrier can get HOS compliance under control, it could see a drop of close to 50% in driver violations. It would also see an improvement under the CSA program, which has one entire BASIC dedicated to HOS compliance.

How to make improvements

There are several avenues a Safety Pro can take to try to improve HOS compliance. Here are some common suggestions:

- Improve policies and procedures related to HOS compliance
- Improve training and communication related to HOS compliance
- Improve auditing procedures
- Improve counselling and correcting procedures
- Reward drivers for “good” roadside inspections
- Use an electronic logging system

Improve policies and procedures

This avenue involves reviewing your policies and procedures related to HOS compliance. Key issues to look for are:

- Having “ambiguity” in the policy that might lead others in the company to believe that HOS compliance is not a key goal for the entire company.
- Having conflicting policies that might need updating. An example might be an “on-time” policy

that requires drivers to deliver on time, no matter what.

- Having a policy that does not address supervisors’ actions when assigning trips.
- Assigning all responsibility for HOS compliance to the drivers and none to the supervisors.

Improving training and communication

This involves including HOS compliance in all training avenues (initial, ongoing, and remedial) and keeping the compliance message in front of the drivers in any company communications, such as driver meetings, the company newsletter, and payroll stuffers.

Using information such as the data in this article, your own company’s on-road performance data, and the results of your in-house log auditing in this effort can help with its effectiveness.

Improving audit procedures

Human nature is such that “If no one is watching, I am going to do what I want, not what you want.” This is why log auditing is so important. Be sure that you have a robust log auditing mechanism that can catch a driver that is making errors or is falsifying.

Improve counselling and correcting

Once a problem is found, either through internal auditing or a roadside inspection, act on it quickly. If you do not correct a driver’s errors quickly, they will continue longer than is necessary. If you have a driver that is routinely violating, the same is true. The longer it takes you to get the driver to stop, the more violations he/she will be generating. The bottom line here is to make sure you have a solid counselling and correcting program in place that gets the desired results.

Also, do not forget to counsel and correct a supervisor that is making errors or causing violations. One driver can do a lot of damage in this area, but imagine what damage one supervisor with 40 drivers can do if he/she is making errors or forcing drivers into violations!

Reward good behavior

One tool that many carriers use is to reward drivers for good results in the area of HOS compliance. This includes attaching HOS compliance to any performance bonus, creating a program that gives a small gift certificate to drivers that pass roadside inspections with no violations, and celebrating “violation-free” drivers (drivers that never get violations on roadside inspections and are not on the company’s “log list”).

Use electronic logs

Switching to an electronic logging system can greatly reduce the roadside inspection violations a carrier sees. In a study released by the FMCSA, fleets that were equipped with electronic logs experienced a:

- 53% lower driving-related HOS violation rate
- 49% lower non-driving-related HOS violation rate (such as form and manner)

The reasons for the reductions are fairly straight forward. First, most reputable systems warn the driver when he/she is approaching a limit, providing the driver with the opportunity to stop before going into violation.

Second, the systems are always current, automatically populate the driver’s device with most of the required information, and prompt the driver for entries that he/she needs to make. The result is that form and manner, and log not current, two of the most common

see **Violations**, pg. 8



Did You Know...

FMCSA updates penalties (fines)!

In a *Federal Register* entry dated April 3, 2015, the Federal Motor Carrier Safety Administration has announced that they will be increasing the penalties (fines) issued to carriers for violations of

the safety regulations. This is being done to make sure the penalties keep pace with inflation.

The last time the penalties were adjusted was 2007. However, in 2007 not all penalties were adjusted.

Some had not been updated since 2003. Also, various changes to the statutes enacted by Congress (such as through MAP-21) caused some of the penalty amounts to be increased.

To determine the adjustment, the FMCSA looked at the change in the consumer price index (CPI).

The change in the CPI was then applied to the penalties. Penalties that had been updated in 2007 were multiplied by 1.14, and ones that had not been updated since 2003 were multiplied by 1.3. Once the multiplication was done, the total was rounded to the nearest \$100 or \$1,000.

However, the statute requires that any penalty being adjusted for the first time not exceed a 10 percent increase. Therefore, for these penalties if the multiplication netted an increase of more than 10

see **FMCSA**, pg. 8



Safety Tip

You're the captain

This month's safety tip has to do with something that every driver should know: The driver is the captain of his/her truck or bus. Much like the captain of a ship, who is responsible for everything involving the ship, the driver is ultimately responsible for everything involving the vehicle. However, this responsibility does come with authority. The driver has the authority to not do something if the activity is against the regulations or is unsafe.

Safety Tip

As a driver, you have the final say on how and when your vehicle is operated!

The other part of this is "giving the driver an out." If the driver has a customer, dispatcher, or broker trying to force him/her into violation, the driver should know who to contact at the company. This person then should have the responsibility and authority to support the driver if the situation is truly illegal or unsafe.

Providing the drivers with this contact needs to be done during orientation, and then as part of the ongoing training and communications.

Dealing with the situation

Having a specific process to deal with these issues is critical in avoiding claims of retaliating against whistleblowers. If the driver does bring a safety complaint forward and/or refuses to operate the vehicle, certain steps must be followed and certain activities must be avoided. The complaint must be investigated, and if situation is indeed unsafe or in violation of the regulations, the company must correct the situation.

If the investigation determines that the situation is not unsafe or in violation of the regulations, someone must explain to the driver why the situation is not unsafe or in violation of the regulations. This must be done carefully, as you do not want the driver getting the impression that the company is "forcing" him/her to do something that he/she shouldn't be doing.

The main thing that cannot be done under any circumstances is taking action against the driver for bringing a safety concern forward. This is in clear violation of the

whistleblower protections provided to drivers in the Surface Transportation Assistance Act (federal law). Disciplining, changing work assignments, or firing a driver that is protected by the Act can lead to huge fines (a significant fine, and then damages and back wages added to it).

What are the protected activities? Bringing a safety concern forward, refusing to operate a vehicle in an unsafe situation or condition, refusing to operate a vehicle in violation of the regulations, and talking to investigators from one of the safety agencies (such as OSHA and the DOT).

Also, and more importantly, punishing drivers that raise safety concerns develops an adversarial environment between the company and its drivers, and it destroys the safety culture that most carriers want. **A**

Do you have a safety tip to share?

Submit your transport-related safety tips to:

Transport Safety Pro Advisor

c/o Thomas Bray,
fax: (920) 727-7519,
email: tbray@JJKeller.com

Violations, from pg. 6

violations discussed above, all but go away.

An interesting thought

If you know where a lot of your driver problems are (HOS compliance), and you know what you can

do to address them, why aren't you? There may be many reasons, some internal (such as operational pressure and drivers being pressured to run "extra miles") and some external (such as customer pressure).

If this is the case, your first step might need to be getting these other issues straightened out before starting to try to address the on-road HOS compliance problems. **A**

FMCSA, from pg. 7

percent, the penalty was increased by only 10 percent.

Some of the penalties were not changed. FMCSA is not adjusting penalties for inflation for any penalty established since 2011. This is because, given their comparatively recent establishment, the inflationary adjustments would have at most a minimal impact on these penalties.

Also, penalty references that were not in Part 386 (the part that contains the agency's rules of practice) have been removed. This way, all penalty details are located in one part of the regulations, specifically, the Appendixes to Part 386.

New amounts

One thought process that needs to be understood is that the FMCSA penalties are not based on the specific violation. Unlike the traffic codes, the situation surrounding the violation is what determines the fine, not the specific violation. Basically, the penalty is based on the "type" of violation, not the specific violation.

Here are the key changes to the penalty amounts:

- A recordkeeping violation (a mistake made when a record

was created) will lead to a fine of up to \$1,100 per day, per violation, up to a cap of \$11,000 per violation. Previously it was \$1,000 per day per violation, up to a cap of \$10,000.

- An outright violation of the regulations, called a "non-recordkeeping violation," (going over hours, not having DVIRs, etc.) can lead to a fine of up to \$16,000 per violation. Previously this was up to \$11,000 per violation.
- Drivers can now be fined up to \$3,750 per violation for each non-recordkeeping violation they commit. Previously, this was \$2,750.
- Knowingly falsifying can lead to a fine of up to \$11,000 per violation, in addition to the penalty for the violation the falsification was trying to hide. Previously, this had been up to \$10,000 per violation.
- Violating a 24-hour alcohol related out-of-service order can lead to a fine of up to \$4,125. Previously it had been up to \$3,750.
- Jumping an out-of-service order can result in a fine of up to \$27,500 for the carrier and "not

less than" \$2,750 for the driver involved. Previously these had been \$25,000 for the carrier and \$2,500 for the driver.

- Operating without insurance can now result in a fine of up to \$21,000 per day. Previously, the penalty for this violation had been \$16,000.

Just a reminder

These are the penalties that are normally issued following an audit or investigation. These are assigned on top of any fine the driver and/or carrier may have been issued due to a violation discovered during a roadside inspection or traffic stop.

Make sure your drivers know about these!

Many times, especially when it comes to logging, drivers believe if they were not caught on the road they have nothing to worry about. You can use this increase in the penalty amounts as an opportunity to point out to them that this is not the case. If the violations are discovered during an audit or investigation, the company will of course be fined. However — and this is the point to bring up to the drivers — so can the driver involved! **A**

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