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Fines begin early next year for CBSA eManifest

An entry in the *Canada Gazette, Part II*, on May 6, 2015, made the eManifest requirements under the Canada Border Services Agency (CBSA) legally binding for highway carriers, rail carriers, and freight forwarders.

As a result, specific to motor carriers, CBSA has provided three key dates for its mandatory eManifest program for cargo entering Canada via highway.

eManifest background

The Canadian eManifest program is similar to the Automated Commercial Environment (ACE) electronic manifest required by the U.S. Customs and Border Protection (CBP) for freight entering the United States. The CBSA program is a part of a much larger security initiative, the Advance Commercial Information (ACI) program, that requires electronic transmission of shipments from all modes entering Canada.

The concept behind the requirement is to ensure that all cargo is properly vetted before it reaches the Canadian border in order to more thoroughly screen those that appear to pose the greatest health,

see CBSA, pg. 2

Make sure your EAP holds water during hurricane season

Hurricanes and tropical storms are prevalent in the United States from June 1 through November 30. Unlike tornadoes, earthquakes, and other natural disasters, residents and businesses are given some advanced warning when a tropical storm or hurricane is about to make landfall.

Although it still may seem to be a limited amount of time to prepare, this forewarning allows you the opportunity to put your Emergency Action Plan (EAP) into place. An EAP will address specific actions that employers and employees need to take to ensure everyone's safety during the crisis.

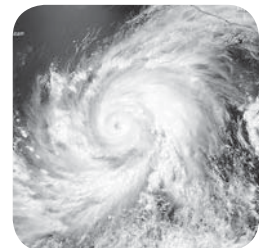
Anatomy of an EAP

Anyone who has gone through a tropical storm or hurricane knows the chaos that takes place. It is vital

that the EAP acts as a guide to safeguard a company's assets and people. It needs to address chain of command, communications, closure, evacuation, supplies, first aid items, and the like.

Well in advance of any catastrophe, companies need to address the preservation of business records. Having copies — electronic or hardcopy — stored safely off-site as a matter of practice at a secondary location may help get the operation back in business sooner.

It may prove beneficial to routinely audit and update the EAP. In the event individuals in the organization leave the company,



see EAP, pg. 2

CBSA, from pg. 1

safety, and/or security risk, while expediting those conveyances that pose the least risk.

As a result, highway carriers must submit the electronic cargo and conveyance data to CBSA and receive validation at least one hour before the cargo arrives at the border.

Key dates to remember

CBSA enforcement of the eManifest is broken down into three time periods:

- **Transition period.** From May 6, 2015, to July 10, 2015, CBSA will not issue penalties for noncompliance. Instead, the agency reports that it will work with highway carriers to ensure future compliance with the mandate.
- **Zero-rated penalties.** From July 10, 2015, to January 10, 2016, those carriers that fail to comply with the eManifest requirement will be issued a non-monetary (zero-rated) penalty under the agency's Administrative Monetary Penalty System (AMPS).
- **Monetary penalties.** Beginning January 10, 2016, highway carriers will be expected to be in full compliance with the eManifest requirements or face monetary AMPS penalties.

CBSA offers tips to prepare

According to information appearing on CBSA's website (cbsa.gc.ca), stakeholders should ready themselves for full compliance by having the following in place:

- A valid CBSA-issued carrier code
- Current contact information provided to CBSA
- An arranged data transmission method to provide the eManifest to CBSA. The options available include:
 - Internet-based eManifest Portal (used by small to mid-sized companies); and
 - Electronic Data Interchange (EDI) method that has been approved by CBSA. A list of previously approved software and service providers appears on the agency's website.

To become familiar with the requirements, the agency has free online webinars relating to the topic available upon request via email. For general eManifest questions, contact CBSA's Border Information Service at:

- Within Canada: (800) 461-9999
- Outside Canada: (204) 983-3500 or (506) 636-5064
- TTY within Canada: (866) 335-3237

Stakeholders may also contact the agency with general questions at: eManifest@cbsa-asfc.gc.ca. ♦

EAP, from pg. 1

make sure the plan is updated to reflect new names and job titles. Every new employee should be instructed on its contents and his or her role.

Drills playing out scenarios using assigned roles and responsibilities will assist your staff when a real disaster happens. Often role playing will bring details to recollection faster than reading a "dry" EAP document. Be sure to communicate assigned recovery roles as well.

In addition to training, offer emergency preparedness tips for your employees' homes and families. This investment in the personal lives of your employees not only shows the human side of management, it will offer the least disruption to the organization once the catastrophe is over. If the employee is struggling to recover at home, he or she will be unable to assist in his or her full capacity at work.

Resuming operations

Once the water recedes and the clean up begins, a company needs a business continuity plan, or disaster recovery plan. The EAP is referenced during the storm, while the disaster recovery plan includes the roles and procedures after. Just like the EAP, this plan should be generated well in advance of needing it. It is not something that can be created "on the fly" as you scramble to get back into business.

A disaster recovery team should have put together a Business Impact Analysis (BIA) as the recovery plan was being written. The BIA identifies the company's critical systems, processes, and functions. Since you are in business to make money, the BIA should look at the economic impact of a shut down or limited operation for different time periods. The team should have also examined how long the company could survive if, for example, access to regular systems, services, or facilities were cut off.

The action plan should look at securing the site, limiting access, using a backup power source, using alternate locations, relocating employees to temporary locations, outsourcing if necessary to maintain customer service, and recovery of data. ♦

Risk Management **TIP**

Do you have a tip to share?

Submit your transport-related tips to:

Transport Safety Risk Management & Security

c/o Kathy Close,
fax: (920) 727-7519
e-mail: kclose@JKKeller.com

Food safety should be a priority when transporting perishables

As food transporters continue to wait on the Food and Drug Administration's (FDA's) final rule on food safety while enroute, motor carriers may wish to examine their procedures and train personnel in advance of any mandate. This is especially true as the summer temperatures begin to heat up.

Shipping temperatures

Perishables must be kept at the desired temperature continuously throughout the trip.

When the load is picked up, the customer or company needs to communicate the correct shipping temperature to the driver. In addition, your driver should be told if the reefer unit should be run in stop/start or continuous mode.

The cooling unit should be checked to make sure it is working properly before loading. For example, are compartment door seals intact?

Other suggested practices for your drivers at the shipper include:

- Precooling the trailer to the desired temperature before loading.
- Minimizing the loading time, unless backed up to a cold storage dock. Keep in mind, especially as temperatures ramp up, that the meat, poultry, and eggs cannot exceed 40° F before loading and frozen foods must be 0° F or colder.
- Using spacers on the sidewalls and at the ends of the trailers — as well as the pallets on the floor — for proper air flow around the cargo.
- Closing the doors immediately after the truck/trailer has pulled away from the dock.

While on the road, the driver should be trained to:

- Inspect the outside of the trailer for damage or tampering;
- Check for leakage of fluids or other problems with the reefer unit; and
- Monitor the temperature function of the refrigeration unit every time he or she stops — or at least every four hours.

In-transit time needs to be kept to a minimum to reduce opportunity for spoilage. When the driver reaches his or her final destination, he or she should be instruct-

ed to check and document the overall condition of the product (i.e., damage, quality, and temperature). Temperature readings may be noted on the paperwork, including pulp or core temperature (cargo itself) and box or trailer temperature.

The product should be moved from the loading docks into storage immediately.

Cleanliness of equipment

Cleanliness is also a factor in food safety. In many instances, the driver just picks up a sealed load from a shipper and has no control over the condition of the trailer. If the trailer is managed by the motor carrier, its interior must be regularly cleaned, free of debris and dirt. Residues from previous cargo must be removed. Pallets, load-securing devices, and loading equipment (e.g., hand trucks, forklifts) must be sanitary.

If the trailer or equipment needs to be cleaned, wash water should be at least 180° F with an approved sanitizer. Make sure that residue from the cleaning solutions do not remain to create a contaminant.

The motor carrier may be called upon by customers to reserve food-use-only trailers to reduce the risk of cross contamination. ♦

Training TIP



How would you respond to an active shooter at your company?

How an individual reacts during the first few minutes of an emergency situation can make a world of difference. This is especially true if a business finds itself at the mercy of an active shooter.

An active shooter, based on the U.S. Department of Homeland Security (DHS), is defined as an individual who is engaged in killing or attempting to kill people in a confined or populated area. In most cases, according to DHS, active shooters have no pattern or method when selecting victims.

According to DHS, you have one of three options when responding to the threat: run, hide, or fight.

Developing a plan

A company's Emergency Action Plan (EAP) and training exercises together may assist employees to effectively respond and aid in minimizing loss of life.

DHS suggests that several stakeholders collaborate in order to have the greatest impact in the event a gunman targets your organization. For example, at a motor carrier, it may be the following departments: Safety, Operations, Human Resources, Training (if one exists), Facilities, and Maintenance. In addition, local law enforcement and/or emergency responders may offer input as you develop your plan.

The plan should address:

- A preferred method for reporting emergencies;

- An evacuation policy and procedure;
- Emergency escape procedures and route assignment. Be sure to provide floor plans and safe areas;
- Points of contact; and
- An emergency notification system to warn those on the premises of the threat and to contact law enforcement and local hospitals.

The facility should have at least two well-posted evacuation routes.

SECURITY Training exercises

One of the best lines of defense against an armed intruder is to have mock shooter exercises. This role playing may aid your staff during a real emergency situation. Law enforcement may help with the design of the program.

DHS recommends that businesses include the following points in their training:

- Recognizing the sound of gunshots;
- Reacting quickly once the threat is identified as gunshots (run, hide, or fight the shooter as a last resort);
- Calling 911;
- Responding to law enforcement's arrival; and
- Using a survival mindset.

see **Shooter**, pg. 5

No vacation for you: summer driving risks

Summer driving poses its own set of safety risks. As a result, you may need to remind drivers possibly through posters, paycheck stuffers, and emails to be vigilant over the next couple of months.



'Happy campers' on the roads

Let's begin with the challenges associated with others on the road. Even though fellow motorists pose a challenge all year long, the chances of being in a crash may increase as some highways become more congested due to vacations.

In some cases, it may be more of a matter of "when" a driver enters a specific geographic location than "where." In the summer, the traffic exiting major metropolitan areas will be heavy on Friday nights/Saturday mornings. The opposite is also true. Your drivers may see a steady stream of vacationers returning from rural resort areas on Sunday afternoons and evenings. Trip planning needs to take into consideration the possibility of bottlenecks.

In addition to the congestion, many members of the general public may be operating large recreational vehicles and/or combinations with which they are not accustomed. Your drivers may see personal vehicles and trailers improperly loaded and secured and contents blocking the other driver's field of vision.

Construction frustrations

Highway maintenance projects and detours are also prevalent this time of year. Additional vehicles on the road plus construction projects is the perfect formula for an accident, road rage, or just delays resulting in the loss of precious hours of service.

Dispatchers and drivers should check state DOT websites to learn where road construction is underway and potential delays. While enroute, drivers need to be alert to electronic signs along the highways that indicate delays or road closures. Drivers need to communicate these postings to dispatch for possible guidance on alternate routes. ♦

Shooter, from pg. 4

Workplace violence incidents

Although a perpetrator may have no connection with your organization at all, you may find that an active shooter is, or has a tie to, a current or former employee.

Employees that “snap” usually offer warning signs that a workplace violence incident is pending. Consider the following list of possible behaviors, but keep in mind that the list is not comprehensive and not all employees exhibiting these signs will resort to violence:

- Drug and/or alcohol abuse
- Absenteeism
- Recent lack of attention to appearance and hygiene

- Depression/withdrawal
- Mood swings/unstable emotional responses/rage
- Violations of company policies
- Suicidal comments
- Paranoia
- Problems at home
- Domestic problems entering the workplace
- Financial problems
- Relates to others committing violent acts
- Fights changes in company policies and procedures

Managers and coworkers that notice potentially violent tendencies in an employee should report it to Human Resources for follow-up. ♦

Comments due for HHS drug testing proposal

The U.S. Department of Transportation (USDOT) is required to follow the Health and Human Services (HHS) “Mandatory Guidelines for Federal Workplace Drug Testing” (Guidelines) as a basis for its drug testing procedures in 49 CFR Part 40.

As a result, any proposed changes to the scientific and technical guidelines will have an impact on the management of a DOT testing program. HHS recently published two proposed rules on May 15, 2015, with comments collected through July 14, 2015. USDOT would have to make its own rulemaking if the HHS rules are finalized.

In addition, HHS published a Request for Information on hair specimens as a testing alternative. This Notice appeared in the *Federal Register* on May 29, 2015, with comments due by June 29, 2015.

Proposed testing method

One of the two proposed rules would establish scientific and technical guidelines for the inclusion of oral fluid specimens to detect drug use. The only currently acceptable federal testing method is urine.

According to information provided by HHS, oral fluid mandatory guidelines (OFMG) would address oral fluid collection devices, initial and confirmatory testing method, and forensic acceptability of oral fluid testing. With the advancement in other reliable testing methods, HHS states that OFMG affords employers subject to federal testing requirements another collection method other than urine.

Urine specimens

The other HHS proposed rulemaking addresses the procedures used by HHS labs as they process urine

samples under federal programs. Specifically, labs would:

- Have different initial and confirmatory drug test analytes; and
- Use a different cutoff for reporting a specimen as adulterated based on low pH.

The proposed Guidelines would expand the testing panel for both oral and urine specimens to include the following four additional Schedule II prescription medications:

- Hydrocodone
- Hydromorphone
- Oxycodone
- Oxymorphone

Medical Review Officers (MROs) that review the laboratory findings for urine collections would be given a requalification requirement of every five years under the proposed rule. The rationale behind this change is that the role of MRO is becoming more complex with the inclusion of Schedule II prescription medications and the ever-changing field of drug testing.

Discussion stage on hair samples

To assist the Drug Testing Advisory Board (DTAB) in its role of advising HHS on the Guidelines for drug testing, a Notice was published soliciting feedback from industry stakeholders on a variety of issues related to hair specimen drug testing. They asked parties to comment on the specimen itself, the collection process, collector training, specimen preparation, testing technologies, analytes and cutoffs, and specimen validity. ♦

Safety NEWS

Keeping your safety rating as ‘satisfactory’

A common question that often arises following an audit by the Federal Motor Carrier Safety Administration (FMCSA) is “What can we do now to change our safety rating?” Before addressing possible remedies to the problem, let’s begin by looking at the compliance review model that determines a carrier’s safety rating.

Compliance Review 101

FMCSA may only issue a safety rating if it audits a motor carrier’s entire safety program within the confines of a compliance review. The current focused investigations (i.e., a slice of compliance) available to the agency under the Compliance, Safety, Accountability (CSA) enforcement model do not score safety violations for a safety rating even though they may result in a fine or penalty.

The compliance review is based on Part 385. The model groups parts of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) having similar characteristics together into five regulatory factors and an accident factor. The factors are:

- 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 Hazmat: Parts 397, 171, 177, and 180; and
- Factor 6 Accident Factor: Recordable Rate.

Certain regulations within Factors 1 through 5 are considered acute with others considered critical.

Noncompliance with a single acute regulation is considered a serious violation. Noncompliance is so severe that it requires immediate corrective actions by a motor carrier.

Critical regulations are identified as those where non-compliance relates to a breakdown in a carrier’s management controls. The FMCSA looks for a pattern of noncompliance with a critical regulation during a compliance review. When a number of documents are reviewed, the number of violations required to meet a pattern of noncompliance is equal to at least ten percent of those examined.

What is expected of a carrier during an audit?

A carrier is expected to produce the following documents when undergoing an audit:

- Proof of financial responsibility;
- Driver qualification files (including all required forms);

- Drug and alcohol testing records (if applicable);
- Records of duty status and supporting documents;
- Driver vehicle inspection reports and maintenance records;
- Hazardous materials records (if applicable); and
- An accident register and copies of all accident reports required by state or other governmental entities or insurers.

MCS-151: the ‘official’ report

Following the compliance review, the agent will perform an exit interview with the motor carrier representative to alert him or her of the findings. However, FMCSA’s MCS-151 compliance review report may take up to 30 days to receive. The MCS-151 details the acute and critical violations discovered and cites examples of each, along with suggested remedies.

The report also contains a recommended safety rating. If fines are imposed, this also will be received within the first few weeks following the investigation.

The rating options are: Satisfactory, Conditional, or Unsatisfactory. An “unsatisfactory” rating is a determination that the motor carrier is “unfit” to continue operating in interstate commerce. A “satisfactory” safety rating is final and becomes effective on the date of the notice. In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after 60 days unless it is a hazardous materials or passengers carrier. In those two instances, it is 45 days after the date of the notice.

Requesting an administrative review

A motor carrier may request the FMCSA to perform an administrative review of a proposed or final safety rating (§385.15). The motor carrier must formally request an administrative review within 90 days, detailing why it believes the rating was in error.

A motor carrier may also request a change to a proposed or final safety rating based upon its corrective actions (§385.17). 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.

Fixing the problems with a strategy

During an FMCSA audit, the agent will use CSA’s Safety Management Cycle (SMC) to determine if adequate safety management controls are in place. If controls are not in place, the auditor will attempt to determine the root cause of a violation. The SMC

see **Safety rating**, pg. 7

REPUTATION
Control



model looks at the following areas: policies and procedures, roles and responsibilities, qualification and hiring, training and communication, monitoring and tracking, and meaningful action (i.e., acting on areas of deficiencies).

All SMC controls are expected to be in place for each category of compliance.

FMCSA encourages motor carriers to use the SMC model as a part of a continuous improvement process long before an audit. It will certainly expect motor carriers to find the root cause and apply remedies if it is requesting an administrative review.

Some “fixes” might be as simple as assembling required paperwork, for example, driver applications, even if after the fact. But FMCSA will want to see how this error will be eliminated going forward including the tracking mechanism to ensure this. This documented Corrective Action Plan must be detailed. In the missing driver applications example, it might be a formal policy and procedure for the safety department with assigned roles, followed up by an audit of the DQ file by an assigned individual before the driver

is dispatched for the first time, and a means of documenting that the audits are taking place.

‘Good faith efforts’ now rather than later

FMCSA suggests that a motor carrier use its Cooperative Safety Plan template as a management tool when it discovers violations and a breakdown of its safety management controls. This may be due to high CSA scores, poor roadside inspections, serious and/or multiple crashes, or violations found during a self-audit. It is better to address deficiencies now rather than later. This is a document you would present in the event of an audit to show you are working on continuous improvement of your safety program.

The Cooperative Safety Plan is similar to the Corrective Action Plan submitted during an administrative review. The motor carrier lists the violation description, why the deficiency occurred, and the corrective action. For example, suppose the problem was drivers that hold a Commercial Driver’s License were not submitting their medical examiner’s certificates to the state licensing office. The root cause was a lack of monitoring and tracking. The safety department failed to request a copy of the driving record after obtaining the medical card renewal from the driver. The suggested remedy would be to have a tickler file to request the driving record within 15 days of the exam and 10 days of the supposed submission to the state licensing office. ♦

MVRs for CDL drivers still generate a multitude of questions

It has been months since motor carriers were required to request a motor vehicle record (MVR) on drivers that hold a commercial driver’s license (CDL) as proof of medical certification. However, J. J. Keller & Associates, Inc. has continued to receive numerous questions on the topic. Following are a few of the more frequently asked questions:

Q: The MVR doesn’t show the driver’s medical information. What do we do next?

A: Some have found the MVR they received from the state licensing office is not displaying the CDL holder’s current medical exam, even though the carrier knows for a fact that the driver submitted the required information to the state. Based on the Federal Motor Carrier Safety Administration (FMCSA), all state licensing offices are entering the information into CDLIS (Commercial Driver’s License Information System), making the information readily available to employers. Often third-party vendors request the MVRs on behalf of the motor carrier, but they are only obtaining a partial record and not the complete

MVR with the CDLIS data. If this is the case, the employer needs to dialog with the vendor so the appropriate report is requested. Similarly, if the motor carrier is requesting the report, it needs to ensure it is ordering the appropriate MVR if the state has more than one version of the driving report.

Q: Since the MVR shows the medical examiner’s (ME’s) National Registry number, that should serve as documentation that the ME is certified, right?

A: No, FMCSA clearly states that the motor carrier must document that it checked the actual National Registry of Certified Medical Examiner’s website to ensure the ME appears on the list. The states are not verifying this information.

Q: Is the ME contacting the state with my CDL holder’s renewal?

A: At this time, the driver must still submit his/her own medical certificate to the state of licensing. The role is not transferred to the ME until June 22, 2018. ♦

The **FILING** Cabinet

Do your homework before cleaning up the break room

Break rooms often display an array of posters and announcements, ranging from employee classifieds to company picnics to safety tips. With so much clutter in the common areas, it may be tempting to cover up or even remove some of the employment law posters that are displayed. The required posters are intended to keep your workplace safe and notify your employees of their rights.

Because of the important role the posters play, taking down the wrong poster could result in a fine based on employment or workplace safety laws. For example, refusing to post the “Employee Rights and Responsibilities Under the Family and Medical Leave Act” notice from the Wage and Hour Division of the U.S. Department of Labor (DOL) could cost a company \$100 for every offense, and taking down the “Job Safety and Health” poster from the Occupational Health and Safety Administration (OSHA) could bring a fine of up to \$7,000.

With limited wall and bulletin board space, how do you determine what must stay and what can be tossed? You will need to look at specific criteria for the individual posters.

How big is your staff?

The number of employees at your company may trigger the need to display certain federal posters. For example, companies with 15 or more workers need to post the “Equal Employment Opportunity is the Law” notice, and those with 50 or more employees must display the “Employee Rights and Responsibilities Under the Family and Medical Leave Act” posting.

Generally, *all employers* need to post notices covering:

- “The Employee Polygraph Protection Act”
- “Job Safety and Health: It’s the Law”
- “Employee Rights Under the Fair Labor Standards Act”

The laws behind these postings apply to a company as soon as it has one employee.

Employers also need to display the “Your Rights Under USERRA” poster, or can email or distribute the text of the posting to employees.

Federal contracts

Additional posting requirements apply to companies with certain federal contracts. The posters include:

- “Employee Rights on Government Contracts”
- “Employee Rights Under the Davis-Bacon Act”
- “Employee Rights Under the National Labor Relations Act”
- “Equal Opportunity is the Law”

Location of employees

Employees also need to be able to view postings that are required by the state in which they work. California employers may need to post a dozen postings, for example, while most employers in Mississippi only need to post two.

States may also require an employer in a certain industry to display a poster relating to work hours for minors, wage requirements, or another topic.

Where do you start?

If you’re still wondering if certain posting requirements apply to your business, the Department of Labor within your state can be a good resource.

HR Perspectives



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DIRECTOR OF EDITORIAL RESOURCES: Paul V. Arnold

EDITOR: Kathy L. Close

CONTRIBUTING EDITORS: Thomas E. Bray, Daren B. Hansen, Richard J. Malchow, Heather L. Ness, Robert J. Rose, Jill M. Schultz, Randall J. Skoog, Betty Bartel Weiland, Thomas J. Ziebell

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