



QUARTERLY SPECIAL REPORT

SURVIVING AN FMCSA AUDIT



TRANS

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The Federal Motor Carrier Safety Administration (FMCSA) conducts thousands of audits each year to enforce the motor carrier safety and hazardous materials regulations. The targets of these audits are interstate motor carriers as well as in-state-only carriers that transport hazardous materials. Surviving an FMCSA audit depends on knowing the types of audits being conducted, knowing what to expect during the audit — and preparing for it — and having all required documentation in place.

AUDITS 101

FMCSA audits, sometimes called “DOT audits” or “investigations,” come in three main varieties:

- ▶ **Offsite focused investigations** target a specific area of compliance, such as hours of service. The motor carrier sends its compliance records to the FMCSA regional office for review. This type of investigation does not result in a safety rating.
- ▶ **Onsite focused investigations** also target a specific area of compliance, but enforcement personnel will perform the audit at the motor carrier’s principal place of business (as identified on the USDOT registration). Like offsite focused investigations, onsite focused investigations do not result in a safety rating.
- ▶ **Onsite comprehensive investigations** address all aspects of a motor carrier’s operation and take place at the motor carrier’s principal place of business. This type of investigation results in a safety rating.



In **2021**,
the FMCSA performed

4,874
offsite focused
investigations

5,009
onsite focused
investigations

2,345
onsite comprehensive
investigations



SAFETY RATINGS

The FMCSA will only assign a safety rating to a motor carrier after performing an onsite comprehensive investigation. The onsite comprehensive investigation follows the compliance review model. Appendix B to Part 385 details the method used in the compliance review to arrive at one of the following three possible safety ratings:



SATISFACTORY.

The motor carrier's safety management controls are considered functioning and adequate.



CONDITIONAL.

The motor carrier does not have adequate safety management controls in place to ensure compliance, and the motor carrier has to make some changes to show it is working on the problem areas.



UNSATISFACTORY.

The motor carrier does not have adequate safety management controls in place to ensure compliance, and its violations are to such a degree that the motor carrier is prohibited from operating commercial motor vehicles.

Note that the FMCSA has proposed changing the way it issues safety ratings. Rather than relying solely on comprehensive reviews, the agency would like to use roadside inspection data, data collected during investigations (of any type), or a combination of the two to arrive at a rating. Under this proposed system, carriers would be rated as either "fit" or "unfit".

NEW ENTRANT SAFETY AUDITS

In addition to the investigations noted earlier, the FMCSA reviews the compliance of new entrants through a safety audit. A “new entrant” is a motor carrier that applies for United States Department of Transportation registration (i.e., a USDOT number) in order to operate in interstate commerce.

New entrants:

- ▶ Are given a “new entrant registration” status,
- ▶ Will be audited by FMCSA within 12 months if they are a property carrier and 3 months if they are a passenger carrier,
- ▶ Have their safety management practices monitored for 18 months,
- ▶ Are audited using the same compliance documents and processes used for existing companies, and
- ▶ Do not receive a safety rating based on the results of the audit.

If a new entrant safety audit reveals inadequate basic safety management, the new entrant will be unable to continue operating in interstate commerce.



COMPLIANCE REVIEW MODEL

If a motor carrier is selected for a safety audit:

- ▶ An FMCSA auditor will come to the carrier's principal place of business to sort through the carrier's required records and possibly perform an onsite inspection of some of its commercial motor vehicles.
- ▶ The company will generally be contacted a week to a month in advance of the audit. This notification is not mandated but ensures someone will be at the audit location and the carrier has a chance to round up all of the required records — keeping the auditor's wait time to a minimum.
- ▶ The auditor will expect to see onsite records as quickly as the motor carrier representative is able to retrieve or print them. If documents are kept at another company facility, the motor carrier will have 48 business hours to provide the documents once notified that the auditor wishes to examine them.

Qualified motor vehicles do not include recreational vehicles. Vehicles operating strictly intrastate are not required to register under IFTA in most cases, but some jurisdictions might require them to be reported or may have intrastate fuel reporting requirements.

In certain circumstances the auditor will simply appear at the motor carrier's door. If this should happen, it would normally be due to a crash investigation, a serious complaint filed against the carrier, or a special audit program.





Records requested during an investigation include:

- 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)
- An accident register and copies of all accident reports required by state or other governmental entities or insurers

When performing the traditional compliance review, the following categories of compliance — known as “factors” — are audited:

- ▶ **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
- ▶ **Factor 6: Accident Factor**
Recordable Rate

BASICS

FMCSA's Compliance, Safety, Accountability (CSA) model divides up compliance areas a little differently than the compliance review. CSA uses BASICS (Behavior Analysis and Safety Improvement Categories) rather than factors.

BASICS include:

- Unsafe Driving: Part 392, 397, and Part 392
- Hours-of-Service Compliance: Parts 392 and 395
- Driver Fitness: Parts 383 and 391
- Controlled Substances/Alcohol: Parts 382 and 392
- Vehicle Maintenance: Parts 393, 396, and 393 Subpart I
- Hazardous Materials (HM) Compliance: Parts 171-173, 177-180, and 397
- Crash Indicator

Note that the FMCSA intends to eliminate the factors — and replace them with the seven BASICS — once the compliance review model is eliminated under FMCSA's proposed changes to the safety rating process.



ACUTE AND CRITICAL VIOLATIONS

Auditors use the list of potential violations appearing in Appendix B to Part 385 to score a motor carrier's safety program.

There are two categories of violations: acute and critical.

Noncompliance with an **acute regulation** only requires one violation. It is considered that serious! It requires immediate corrective actions by a motor carrier.

Example:

Suppose a motor carrier sends a driver for a DOT random test, and the carrier learns that the driver tested positive. The FMCSA requires that the designated employer representative (DER) immediately remove the driver from a safety-sensitive function. However, the driver is out on the road, and the carrier doesn't want to upset the customer with a late shipment. The carrier decides to remove the driver when he comes back to the terminal in a couple of days. All is well, right? Wrong!

Even though the driver's records of duty status are purged after six months, vehicle mileage reports and payroll records show the driver was operating under the motor carrier's authority. In addition, DOT drug and alcohol records show a positive test result dated by the medical review officer (MRO) two days earlier. There is now proof the carrier violated the acute regulation Section 382.215, using a driver known to have tested positive for a controlled substance, subjecting them to fines and penalties.



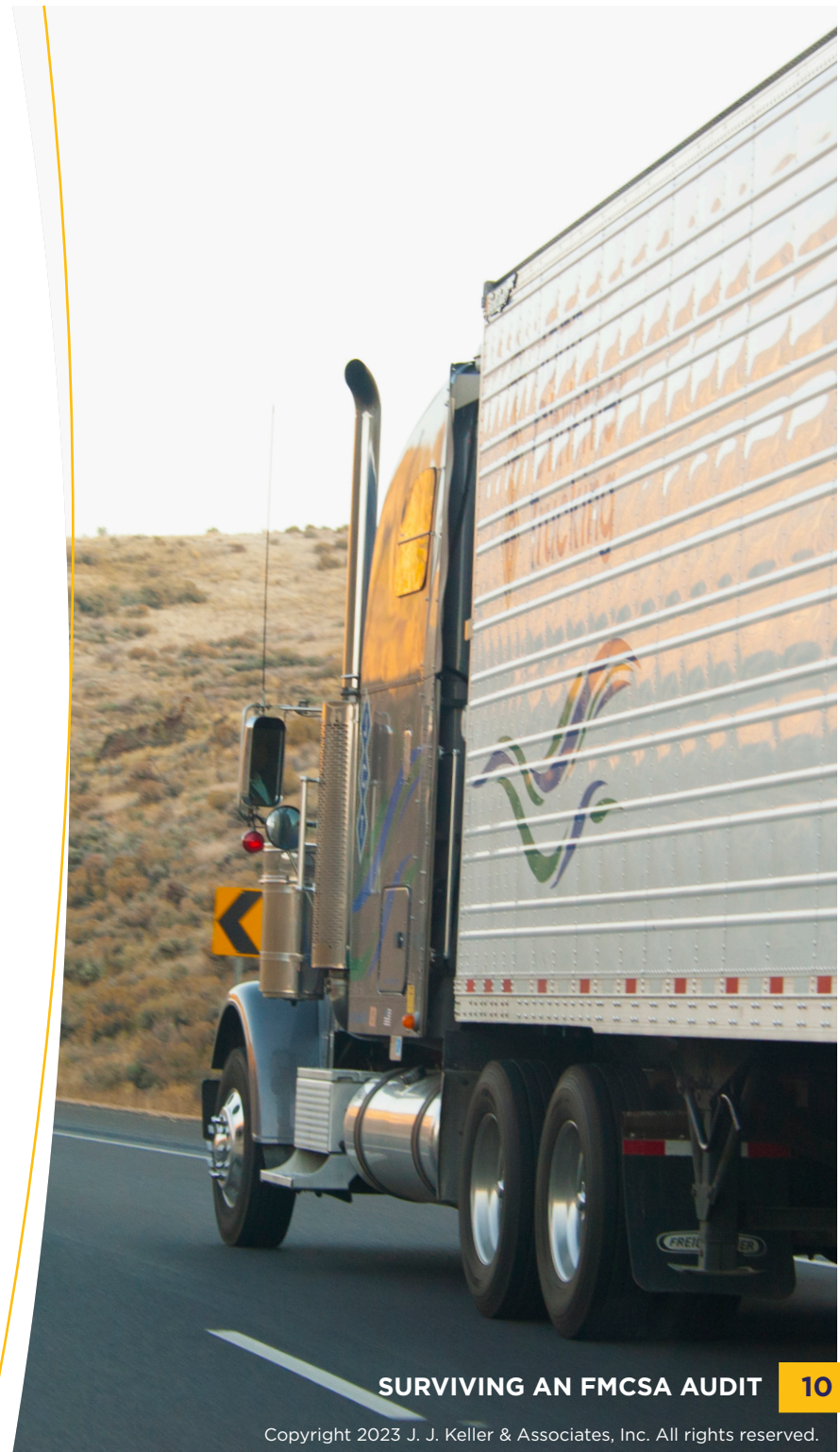
Noncompliance with a **critical regulation** occurs when an auditor identifies a breakdown in a carrier's management controls through a pattern of noncompliance with the regulation.

Example:

Suppose an interstate motor carrier was cited for missing driver qualification (DQ) files. According to Appendix A to Part 385, failing to maintain a driver qualification file on each driver employed per section 391.51(a) is a critical violation. The motor carrier's safety rating is not affected unless there is a pattern of noncompliance — at least 10 percent of the documents that the auditor requested were missing. Even if the number of missing files is below the 10 percent threshold, the motor carrier may still be cited and penalized.

EVEN IF THE NUMBER OF MISSING FILES IS BELOW THE

10%
THRESHOLD, THE MOTOR CARRIER MAY STILL BE CITED AND PENALIZED



SAFETY MANAGEMENT CONTROLS

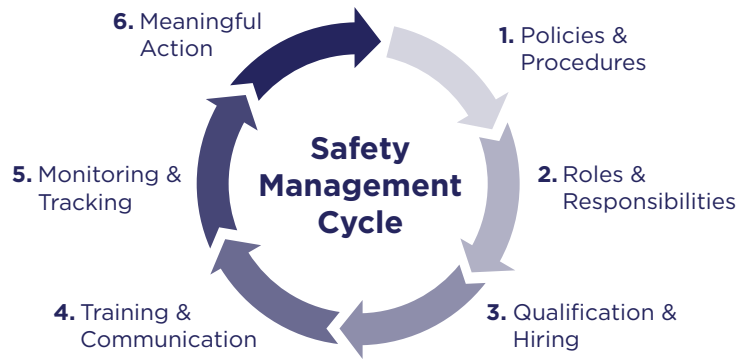
The FMCSA auditor will also ask to see a motor carrier's safety management controls. Safety management controls are systems, policies, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations. A safety management control, if working properly, reduces the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

When the FMCSA discovers a safety violation during an investigation, the auditor will use the CSA Safety Management Cycle to attempt to find out why a motor carrier's safety management controls failed. The model assists companies in developing a plan to improve upon weak areas discovered during an FMCSA investigation. Motor carriers are also encouraged to use this model for self-auditing.



Safety Management Controls typically include training records, policies and procedures, tracking mechanisms, and other best practices that show the carrier is running smoothly and legally.

The Safety Management Cycle is broken into six components:



- 1. Policies and procedures** allow the motor carrier to establish the guidelines for a given situation and provide an explanation of how to address it. The other five components focus on how to implement the policies and procedures.
- 2. Roles and responsibilities** assist the motor carrier in clearly defining what each employee should do to successfully implement the policies and procedures.
- 3. Qualification and hiring** processes aid the motor carrier in recruiting and screening applicants to fulfill the roles and responsibilities for positions.
- 4. Training and communication** processes outline a motor carrier's communication of its policies, procedures, roles, and responsibilities so that all parties understand the expectations and have adequate skills and knowledge to perform their assigned function.
- 5. Monitoring and tracking** mechanisms examine employee performance. They also provide companies with an awareness of their employees' safety performance, compliance with company policies and procedures, and manner of executing job roles and responsibilities.

6. Meaningful action is a step that gives the motor carrier the tools to correct or improve employee behavior, including, refresher training and positive reinforcement such as rewards or bonuses, in order to improve the motor carrier's overall safety performance.

When one of the pieces in the Safety Management Cycle is not working, it affects the rest of the areas, and may result in a violation. For example, if you do not have a policy on new-hire training, it may result in no one organizing and carrying out the training (Roles & Responsibilities) or making sure it was done (Roles & Responsibilities and Monitoring & Tracking).

In turn, new employees may not have the necessary knowledge or skills for the job (Training & Communication), and they may not know what is expected of them (Roles & Responsibilities). And, because no one is even aware of the problem until there is an audit, the carrier will not initiate meaningful action for self improvement.

Using the Safety Management Cycle to perform self-audits can prepare a carrier to perform well on an official audit and may prevent or minimize fines.

FINES

As the FMCSA issues fines, it takes into consideration the type of violations that occurred and the minimum and maximum amounts set forth in Appendices A and B to Part 386.

Following are examples of the potential fines:



When calculating the exact fine, the investigator will look at other factors, including the nature, circumstances, extent, and gravity of the violation. The FMCSA also looks at the violator's degree of culpability, history of prior offenses, ability to pay, and the fine's effect on the carrier's ability to continue to do business.

Another cost that may be harder to quantify is a tarnished brand name. Settlement cases are a matter of public record, available to anyone with access to the internet, including customers, prospective employees, the competition, and insurance carriers.



2021 INVESTIGATION STATS

Each year, the FMCSA compiles the top violations discovered during investigations.

For 2021, the top five acute violations were:

- 1. §383.37(a)**
allowing a driver to operate with a suspended or revoked Commercial Driver's License (CDL)
- 2. §382.115(a)**
failing to implement an alcohol and/or drug testing program
- 3. §382.305(a)**
failing to implement a random drug or alcohol testing program
- 4. §387.7(b)**
failing to obtain and have in effect the minimum levels of financial responsibility
- 5. §382.215**
allowing a driver who has tested positive or has adulterated or substituted a test specimen for controlled substances to perform or continue to perform safety-sensitive functions

For 2021, the top five critical violations were:

- 1. §395.8(a)(1)**
not using the appropriate method to record hours of service
- 2. §395.8(e)(1)**
making a false report in connection with a duty status
- 3. §396.3(b)**
failing to maintain records for each motor vehicle for 30 consecutive days
- 4. §391.51(b)(2)**
failing to keep a copy of the motor vehicle record received from each driver's licensing authority in a driver qualification file
- 5. §382.301(a)**
using a driver before receiving a negative pre-employment drug test result

As far as motor carrier safety ratings, in 2021 approximately:



27%

were given a satisfactory rating



32%

were given a conditional rating



6%

were given an unsatisfactory rating



33%

were not given a rating

CONCLUSION

The results of any investigation will affect a company either positively or negatively, depending on the outcome.

Motor carriers who pass an audit with flying colors are demonstrating — to business partners, employees, and any other interested parties — that they have been proactive in their safety management.

Performing poorly in an audit may result in a motor carrier being fined and given an unsatisfactory or conditional rating. An unsatisfactory safety rating could put a motor carrier out of business.

Additionally, a conditional or unsatisfactory safety rating will negatively impact a motor carrier's:

- ▶ Reputation,
- ▶ Insurance rates,
- ▶ Customer and employee retention, and
- ▶ Ability to defend the company in case of a crash.

But there is hope! By using the Safety Management Cycle during a self-audit, motor carriers may be able to identify areas to improve in their safety programs. Correcting problems well before an audit — rather than after — will help carriers achieve and maintain satisfactory safety ratings in the event they are selected for an investigation.



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Kathy joined J. J. Keller & Associates, Inc. in 1999, serving as a driver's qualification file auditor, reviewing clients' compliance with 49 CFR Part 391, and as a third-party administrator of DOT drug and alcohol testing programs for motor carriers. Kathy is currently an editor in Transportation Publishing, Editorial Resources, with expertise in the Compliance, Safety, Accountability (CSA) enforcement model, transportation security, DOT drug and alcohol testing, and driver qualification. In addition to creating content for J. J. Keller publications, Kathy's work has been published in *Heavy Duty Trucking*, *Work Truck*, and *Chemical Distributor*, among others, and she also shares her expertise with association and satellite radio audiences.



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