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**COMPLIANCE
NETWORK**

QUARTERLY SPECIAL REPORT

TRANSPORTATION 101: *IMPLEMENTING AN EFFECTIVE SAFETY PROGRAM*



TRANSPORTATION



If you're new to the trucking industry, or you've just been assigned the position of Safety Manager responsible for the company's compliance with the Federal Motor Carrier Safety Regulations (FMCSRs), you will need to get up to speed on how this industry works and what you must do, at the bare minimum, to meet the requirements of the Federal Motor Carrier Safety Administration (FMCSA). If you've been in the position for a while, you may need or want to improve your operational practices. Whatever the reason for your involvement with the FMCSRs, a strong base of knowledge is the first step.

The FMCSRs bring together all the safety rules adopted by the FMCSA in an effort to make the highways safer to travel for all. As an agency within the Department of Transportation (DOT), the FMCSA makes every effort to clearly communicate your responsibilities as a trucking company or as a passenger-carrying company, whether it's private, for-hire, or both, and what you must do to meet these responsibilities. The regulations do not tell you exactly how to do the job, but rather, that the job must be done. And there are penalties for not meeting these safety requirements, ranging from monetary fines for violations, to driver or vehicle out-of-service orders, to a complete shutdown of the business.

The driver of the vehicle will need either a commercial driver's license (CDL) or just a regular operator's license. A CDL Class A is required for any combination of vehicles with a gross combination weight rating or actual gross weight over 26,000 pounds, provided the vehicle being towed has a gross vehicle weight rating or actual gross weight in excess of 10,000 pounds. A driver with a Class A CDL can also drive vehicles in any other class. We'll go into greater detail about license classes later.

Another key consideration is whether your drivers operate in interstate commerce or are able to operate under a state's regulations, which are often more flexible. The definitions of interstate and intrastate are found in §390.5. Interstate is defined as "trade, traffic, or transportation in the United States between a place in a state and a place outside of the state (including a place outside of the United States); or between two places in a state through another state or a place outside of the United States; or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the State or the United States."

Even if a movement is entirely completed inside of a state's borders, a shipment can be considered interstate commerce. FMCSA determines interstate commerce also by the essential character and circumstances of the movement, including the shipper's intent at the time of shipment.

In order to operate commercial vehicles in commerce, you have to have qualified drivers and vehicles to travel the public highways.



AN EXAMPLE OF A MORE COMPLICATED INTERSTATE SHIPMENT IS AS FOLLOWS:

A shipment moves from one state and is temporarily warehoused in another state. The final leg of the shipment from the warehouse takes place entirely in one state. However, all legs of the movement from origin to destination can be considered interstate commerce.

Any leg of a movement of goods, even when the route is within the boundaries of a single state, the driver and CMV are subject to the FMCSRs if it was the shipper's intent for the goods to travel from the origin in one state or country to another state or country. Lastly, if placardable hazardous materials are hauled, then the federal rules apply.

Intrastate commerce "means any trade, traffic, or transportation in any State which is not described in the term "interstate commerce"." Before assuming you can use more flexible intrastate-only regulations, talk with an expert, such as J. J. Keller and Associates, Inc. to avoid violations.

We will assume for the purpose of this whitepaper that your vehicles do operate in interstate commerce. If you're operating (or will be operating) "commercial motor vehicles" as defined under Section 390.5, including vehicles over 10,000 pounds operating anywhere the public can travel in interstate commerce, most of the Federal Motor Carrier Safety Regulations will apply, as found in 49 CFR Parts 350-399. If your vehicles are over 26,000 pounds, any size vehicle hauling hazardous materials requiring placards, or are designed to transport 16 or more people (including the driver), then this will include the CDL rules in Part 383 and the drug and alcohol testing rules in Part 382.



SIX FACTORS OF COMPLIANCE

Rather than create an anxiety-producing experience with all these variables, let's look at this topic with a DOT compliance review (audit) in mind. There are six “factors” that the DOT will examine to determine if your company is in compliance with the required regulations of the transportation industry. This approach will allow you to conduct a self-audit of company records; or if you are a new operation, provide a foundation for implementing a safety compliance program.

The six factors focus on compliance with what the DOT has identified as “acute” and “critical” regulations. These regulations are what the DOT considers to be essential for compliance and therefore are those that DOT keys in on most closely when determining a motor carrier's safety rating. The DOT can and will cite your company, and/or your driver, for noncompliance with any regulation, making no one exempt from fines and penalties. For our purposes, we will focus on the acute and critical regulations in each factor.

The **6** factors are:

✓ **Factor 1 – General**

- Part 387, Financial Responsibility
- Part 390, General Compliance

✓ **Factor 2 – Driver**

- Part 382, Drug and Alcohol
- Part 383, CDL Requirements
- Part 391, Driver Qualifications

✓ **Factor 3 – Operational**

- Part 392, Safe Operations
- Part 395, Hours of Service

✓ **Factor 4 – Vehicle**

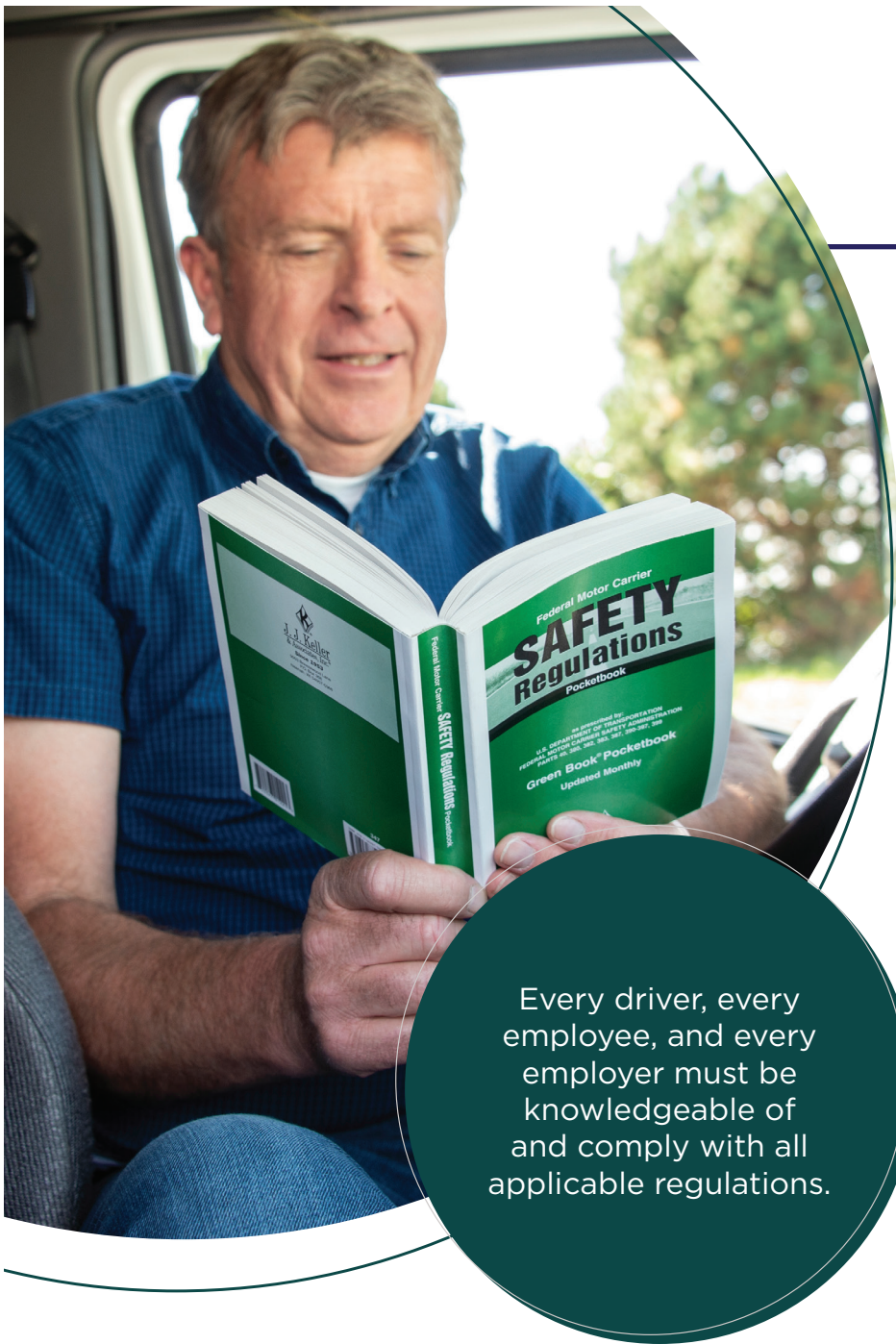
- Part 393, Parts and Accessories
- Part 396, Inspections and Maintenance

✓ **Factor 5 – Hazardous Materials**

- Parts 171, 177, 180 of the Hazardous Material Regulations (HMRs) and Part 397

✓ **Factor 6 – Accidents**

- Recordable accident rate per million miles



Every driver, every employee, and every employer must be knowledgeable of and comply with all applicable regulations.

FACTOR 1 — GENERAL (PARTS 387 & 390)

Referred to as the “general” factor, these regulations require your company to have a minimum level of insurance (financial responsibility) as specified under Part 387, and the general requirements for operating as a motor carrier under Part 390.

Proof of financial responsibility is issued in the form of an MCS-90 or MCS-82 for motor carriers by their insurance company. Passenger carriers are issued a form MCS-90B or MCS- 82B by their insurance carrier. This proof of insurance must be kept at the carrier’s principal place of business as stated in §387.7(d) and §383.31(d).

Part 390 addresses the general requirements for operating as a motor carrier. One of the most important components in this part, and one of the first things an auditor will ask for in an audit, is the carrier’s Accident Register, including all files and documents relating to an accident. This critical audit point makes it imperative that anyone associated with “safety” at a motor carrier be especially aware of the Accident Register, since this has much to say about the carrier’s compliance efforts. This is not to downplay other important operating matters in Part 390, such as USDOT registration, vehicle markings, medical examiner requirements, intermodal equipment provider responsibilities, and much more.

The bottom line is that every driver, every employee, and every employer must be knowledgeable of and comply with Subchapter B, which includes Part 350 through Part 399, as required by §390.3(e).

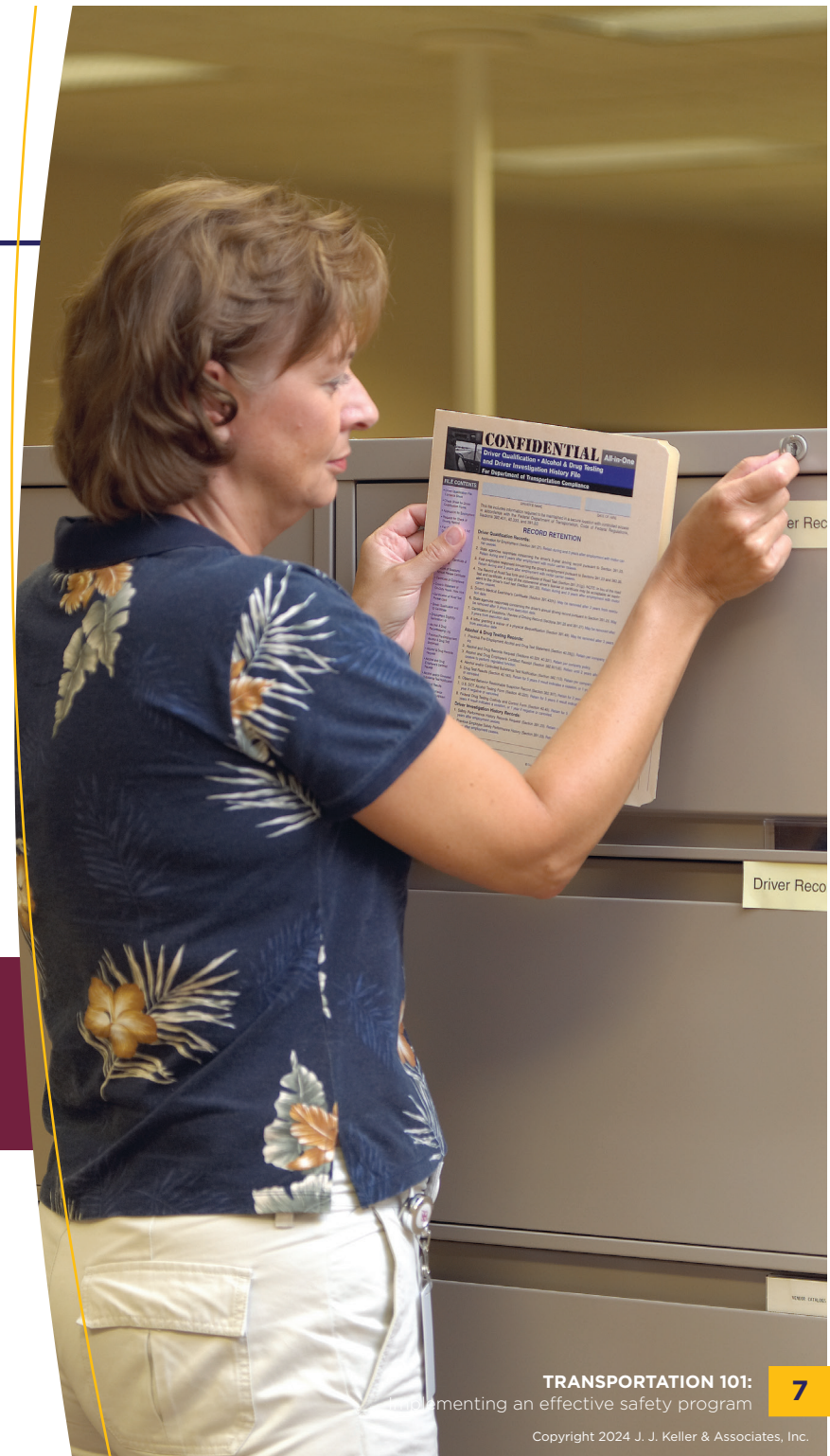
FACTOR 2 — DRIVER (PARTS 380, 382, 383, & 391)

This factor primarily involves the driver qualification requirements in Part 391 and the drug and alcohol program compliance and processes in Part 382.

Starting with driver qualification (DQ), an interstate motor carrier must have specific forms in each DQ file as proof that the driver is fully qualified to operate a CMV. These forms include a driver application, motor vehicle records, road test, background checks including a safety performance history, medical certification and any medical variances (if applicable), along with the pre-employment drug screen result, and more, depending on the vehicle being operated. (Be aware that some of these records must be kept in a secure location with controlled access.)

A complete DQ file is required on all commercial drivers. The file demonstrates the carrier's commitment to employ only fully qualified, trained professionals.

DQ files are an essential element of a well-managed carrier's compliance program and offer legitimacy to safety and skilled performance.



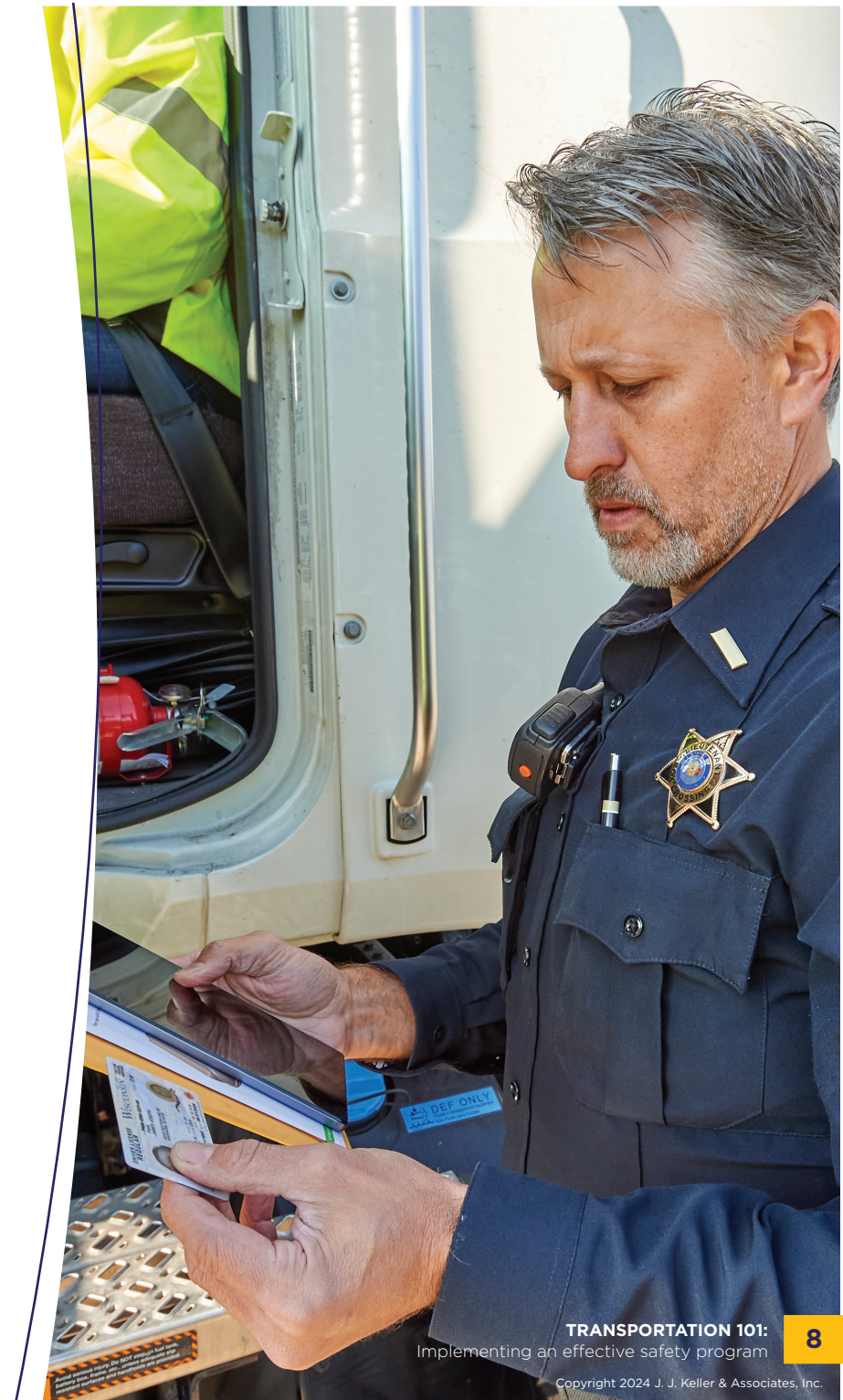
Those required to have a Class A CDL will operate vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more, provided the gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of 10,000 pounds.

A Class B CDL driver's license is for any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle of 10,000 pounds GVWR or less.

A Class C CDL license is for any single vehicle, or combination of vehicles, that meets neither the definition of Class A or Class B, but that either is designed to transport 16 or more passengers (including the driver), or is used in the transportation of hazardous materials requiring placards.

CDL drivers must be in a drug and alcohol testing program. A CDL is required to operate:

- ✓ A vehicle weighing 26,001 pounds or more
- ✓ Any size vehicle transporting hazardous material
- ✓ A vehicle designed to transport 16 people or more



To confirm that a driver is not in “Prohibited” status, the Drug and Alcohol Clearinghouse rules require employers to obtain consent from any prospective CDL-vehicle driver to run a Full query before a driver participates in any safety-sensitive functions. Employers must also obtain written consent from CDL-vehicle drivers to run a Limited query at least once per year to check for drug or alcohol violations. CDL-vehicle drivers are required to be a part of the employer’s DOT random drug and alcohol testing program. Part 382 has all the details on this critical regulation.

Drivers who operate CMVs that do not require a CDL — generally drivers who operate vehicles that are 10,001 to 26,000 pounds GVWR, GVW, GCWR, GCW, do not transport an amount of hazardous material requiring placarding, and vehicles designed or used to transport 9 to 15 passengers (including the driver) — are not required to be a part of a DOT drug and alcohol testing program.

An easy way to determine which regulatory requirements in Factor 2 apply to which vehicles is that whenever the vehicle(s) reaches 26,001 pounds or more, or transports hazardous materials requiring placards, or is designed to transport 16 or more people (including the driver), the driver needs a CDL and must be part of the DOT drug and alcohol testing and Clearinghouse requirements in addition to complying with driver qualification requirements.





FACTOR 3 — OPERATIONAL (PARTS 392 & 395)

One area Factor 3 deals with is safe driving operations, which are outlined in Part 392. This addresses driver restrictions such as speeding, texting, alcohol, drugs, using a seat belt, cargo securement devices, or anything having a negative effect on the safe driving of a commercial motor vehicle.


Factor 3 also deals with the hours-of-service regulations in Part 395 and includes not only the limits on the hours a driver can drive, but also the accuracy of the logs and any supporting documents accompanying the logs to verify their correctness. For carriers using electronic logs, there is still a need to assemble and retain supporting documents such as fuel receipts, toll receipts (required while on paper logs only), bills of lading and delivery receipts, and more in support of the drivers' activities.

The carrier must self-audit to ensure driver logs are true and correct, hold supervisors accountable for assigning runs that can be completed legally, and maintain all logs and supporting documents for six months.

Common violations discovered during the auditing of this factor include: failure to require drivers to complete logs or time records when required, not retaining the logs and supporting documents for six months, false logs, drivers not submitting logs within 13 days, and operating over hours.

To avoid problems in Factor 3, a motor carrier will need to have solid hours-of-service policies that are understood and enforced. Forming policies and procedures that address the hours-of-service rules and regulations including electronic logging requirements where applicable, providing training for both drivers and supervisors, and utilizing tracking mechanisms to verify that safety management controls are in place to manage this factor will lead your company to compliance in this area.





FACTOR 4 — VEHICLE (PARTS 393 & 396)

Factor 4 is all about the vehicle, which includes the necessary parts and accessories required for safe operation in Part 393 and the specific inspection, repair, and maintenance requirements in Part 396.

Motor carriers must systematically inspect, repair, and maintain all motor vehicles under their control, which is any vehicle that a carrier uses for 30-consecutive days or more. This also includes intermodal equipment and equipment being leased. In addition, the carrier is responsible to schedule an annual inspection of all equipment by a qualified technician and keep the inspection report on file for 14 months.

Drivers also have responsibility regarding the inspection, repair, and maintenance of the vehicle. A driver must be satisfied with the safe operating condition of the vehicle and specific components as required by §392.7, prior to a driver operating a vehicle for the first time on a workday. They must also inspect every vehicle they operated each day at the end of their day's work on specific parts and accessories listed in §396.11. Property-carrying and passenger-carrying vehicle drivers are only required to report any defect or deficiency discovered that would affect the safe operation of the vehicle or could lead to a mechanical breakdown on a Driver Vehicle Inspection Report (DVIR). This vehicle must not be operated until these defects are repaired and the driver feels comfortable with operating the vehicle. Recordkeeping of all maintenance and inspections, including roadside inspections, is essential for compliance with this factor.

Proper daily inspections and timely communication of defects fall within the driver's responsibility.

FACTOR 5 – HAZARDOUS MATERIALS (PARTS 397 & HMRS 171, 172, 177, & 180)

Carriers who are transporting hazardous materials must be well informed and knowledgeable of the regulations not only in Part 397 of the FMCSRs, but also in the Hazardous Materials Regulations (HMRs). Part 397 discusses driving and parking rules when hazardous materials are in transit. Parts 171, 177, and 180 of the HMRs cover many specific requirements, including training of all hazmat employees, bills of lading, and security plans. This factor in itself is extensive and is critical for compliance to ensure the safety of all travelers.



FACTOR 6 — ACCIDENT RATE

Factor 6 is possibly the simplest of all the factors, since it only looks at the carrier's accident performance. What this factor entails is the number of DOT accidents the carrier was involved in and the number of miles the carrier ran in the past 12 months. This calculation gives the carrier its accident rate per million miles and is then compared to the benchmark of 1.5 for most carriers and of 1.7 for urban carriers. Urban carriers are carriers that operate entirely within a 100-mile radius. If the carrier's score is at or above the benchmark, the carrier fails this factor. Below the benchmark, the carrier passes. During and after the audit the carrier can request that a non-preventable accident be excluded from the accident rate per million miles calculation as only preventable accidents are supposed to be used. However, the carrier needs to be ready to prove the case for the ones they believe are non-preventable. One key point: FMCSA uses their definition of preventable. Who was at fault has nothing to do with it. The key is proving the driver could not have realistically prevented his or her involvement in the accident.

The factors can change

As mentioned earlier, the factors include acute and critical regulations that the DOT considers essential for compliance. The complete list of acute and critical regulations can be found in the FMCSRs at the end of Part 385, in Appendix B. Here are examples of two regulations from the list:

- ✓ §383.23(a) Operating a commercial motor vehicle without valid commercial driver's license (critical).
- ✓ §391.15(a) Using a disqualified driver (acute).

A good business practice is to conduct a self-audit, or a third-party audit, using the most current version of the acute and critical violation list on an annual basis.





SUMMARY

Whether you are new to the motor carrier industry, recently promoted to the position of Safety Manager, or simply want to improve operational requirements, the knowledge you can gain from a self-audit will assist you in developing and promoting a strong safety management philosophy. What may turn out to be an even greater benefit to your company is that — through your efforts to continuously monitor the effectiveness of your program — you will be forming, or at least influencing, the basis of your company's safety culture.

ABOUT THE AUTHOR

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Mark Schedler joined J. J. Keller in June 2016, with 25 years of transportation experience in operations, logistics, and finance. As a Senior Editor in the Transportation Publishing Department of Editorial Resources, he is responsible for developing and updating content for existing materials. He is the Editor of the *Everyday Transportation Safety Management* publication, as well as contributes to new products and supporting customer solutions.

Mark's primary areas of expertise include transportation operations and safety, driver retention, passenger-carrier regulations, as well as the use of dashcams (video-event recorders) for coaching to reduce unsafe behaviors. Mark also presents to live audiences and helps customers with their regulatory issues.



ABOUT J. J. KELLER & ASSOCIATES, INC.

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