

Surviving an FMCSA Audit



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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). This type of investigation also does 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 2020, the FMCSA performed 5,761 offsite focused investigations, 3,605 onsite focused investigations, and 1,970 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 contains 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 to change 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” to continue operating.

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 and their safety management practices are monitored for an 18-month period. The FMCSA will perform a new entrant safety audit within 12 months for a property carrier and 3 months for a passenger carrier. The compliance documents and processes examined for new entrants are the same as for those companies that have been in business for years. The safety audit is used to monitor and assist the new carrier in establishing a sound safety program from the onset. It is for educational purposes and will not result in a safety rating. However, if inadequate basic safety management controls are found during a safety audit, the new entrant will be unable to continue operating in interstate commerce. The FMCSA reports it performed over 40,654 new entrant safety audits in 2020.

Compliance Review Model

A compliance review involves an FMCSA auditor coming to the carrier’s principal place of business to sort through a carrier’s required records, and possibly performing an onsite inspection of some of its commercial motor vehicles.

Generally, the auditor will contact the company a week to a month in advance. There is no regulation that specifies any advance notice period, but the auditor typically will want the carrier to know he or she is coming. This notification 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 waiting time to a minimum.

However, 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.

If the records are kept onsite, the auditor will expect to see them 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.



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); and
- 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: Part 382 and 392
- Vehicle Maintenance: Parts 393, 396, and 393 Subpart I
- Hazardous Materials (HM) Compliance: 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 its proposed changes to the safety rating process.

Acute and Critical Violations

When an auditor examines a motor carrier's safety program, he or she uses the list of potential violations appearing in Appendix B to Part 385 to score the company.

The two categories of violations are:

- **Acute.** Noncompliance with an acute regulation only requires one violation. It is considered that serious! It requires immediate corrective actions by a motor carrier.
- **Critical.** Noncompliance with a critical regulation occurs when an auditor identifies a breakdown in a carrier's management controls through a pattern of noncompliance for the regulation.

Let's illustrate how this works. Suppose an interstate motor carrier was cited for missing Driver's Qualification (DQ) files. According to Appendix A to Part 385, Section 391.51(a), failing to maintain a driver qualification file on each driver employed, 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.

Let's look at an acute regulation example. Suppose a motor carrier sends a driver for a DOT random test, and the Medical Review Officer (MRO) informs the Designated Employer Representative (DER) that it came back positive. The FMCSA requires that the DER immediately remove the driver from a safety-sensitive function. The driver cannot return to operating any kind of commercial motor vehicle until the necessary steps in the DOT return-to-duty process are completed, including the Substance Abuse Professional evaluation and treatment plan and return-to-duty testing. However, the driver is out on the road, and the carrier doesn't want to upset the customer with a late shipment. Complying with the regulations would involve arranging a substitute driver to pick up the load, and there is no one available to do this. The DER 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 were purged after six months, vehicle mileage reports and payroll records show the driver was operating under the motor carrier's authority. In addition, the DOT drug and alcohol records show a positive test result dated by the 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.

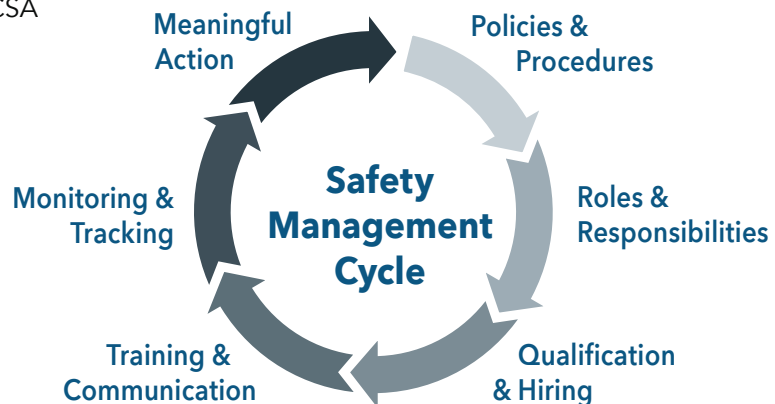


Safety Management Controls

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.

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.

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 same model for self-auditing



The Safety Management Cycle is broken into six components:

- **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.
- **Roles and responsibilities** assist the motor carrier in clearly defining what each employee should do to successfully implement the policies and procedures.
- **Qualification and hiring** processes aid the motor carrier in recruiting and screening applicants to fulfill the roles and responsibilities for positions.

- **Training and communication** processes outline a motor carrier's communication of its policies, procedures, roles, and responsibilities so that everyone understands the expectations and has adequate skills and knowledge to perform their assigned function.
- **Monitoring and tracking** mechanisms examine employee performance and enable companies to be aware of their employees' safety performance and compliance with its policies and procedures and how they execute their roles and responsibilities. This step should lead to meaningful action.
- **Meaningful action** is a step that gives the motor carrier the tools to correct or improve employee behavior, including, for example, 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 and responsibilities) or making sure it was done (roles and responsibilities and tracking). In turn, your new employees may not have the necessary knowledge or skills for the job (training and communication), and they may not know what is expected of them (roles and 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.

Fines

A common question about safety violations found during an audit is, "How much is this going to cost me?" The answer is, "It depends."

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:

- **Recordkeeping violations** — \$1,302 for each day the violation continues, up to \$13,072
- **Falsification of records** — Up to \$13,072 for each violation
- **Nonrecordkeeping violations** — Up to \$15,876 for each violation

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 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 your insurance carrier.

2020 Investigation Stats

Each year, the FMCSA compiles the top violations discovered during investigations. For 2020, 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. §382.115(a) – failing to implement an alcohol and/or drug testing program
4. §383.37(b) – allowing a driver with more than one CDL to drive a CMV
5. §382.305 – failing to implement a random drug or alcohol testing program

For 2020, the top five critical violations were:

1. §395.8(a)(1) – not using the appropriate method to record hours of service
2. record of duty status
3. §391.51(b)(2) – inquiries into driving record not kept in DQ file
4. §396.17(a) – using a commercial motor vehicle not periodically inspected
5. §382.301(a) – using a driver before receiving a pre-employment drug test result



As far as motor carrier safety ratings, in 2020 approximately:

- 32 percent were given a satisfactory rating;
- 32 percent were given a conditional rating;
- 4 percent were given an unsatisfactory rating; and
- 32 percent were not given a rating.

Conclusion

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

If you pass an audit with flying colors, you are demonstrating — to business partners, employees, and any other interested parties — that you have been proactive in your safety management.

If you perform poorly in an audit, you may experience monetary fines and be given either an unsatisfactory or conditional rating. An unsatisfactory safety rating can put your company out of business.

A conditional rating allows the carrier to continue in operation, but its reputation now has been tarnished. This may affect the ability to attract customers and quality drivers, dispatchers, and technicians. Since the safety rating is public knowledge, your insurance carrier will, no doubt, use this when determining your rates. And, finally, if your carrier is ever involved in a crash, a plaintiff's attorney will surely use your safety history to smear your carrier's name in front of a judge and jury.

But there is hope! By using the Safety Management Cycle during a self-audit, you may be able to identify areas to improve upon in your safety program. Correcting problems well before an audit — rather than after — will help in your overall safety rating in the event you are selected for an investigation.



About The Author

Kathy Close, J. J. Keller & Associates, Inc.

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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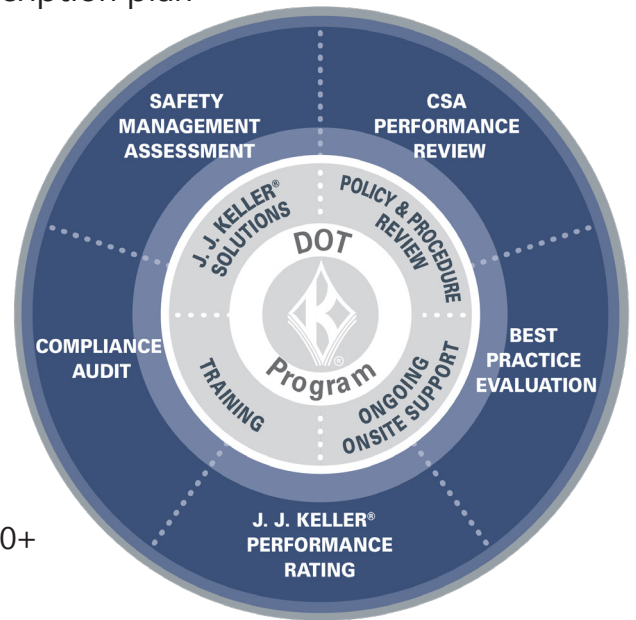


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