

Understanding the FMCSA Comprehensive Review

Presented by | Justin Smoot
April 15, 2016



Cottingham & Butler

Cottingham & Butler
Dubuque, IA 52001 | 800.793.5235
www.CottinghamButler.com

Training Topics

CSA Intervention Levels

Part 387 – Financial Responsibility, MCS 90

Part 390 - General Requirements

Part 391 – Qualification of Drivers

Part 393 & 396 – Maintenance/Inspections

Part 382 – Drug & Alcohol Testing

Part 395 – Hours of Service

Recommendations for organizing documents, overseeing the intervention process, etc.

CSA Interventions

Warning Letter

Sent to carriers place of business

Identifies BASIC above the threshold

Instructions for accessing carrier safety data

<http://ai.fmcsa.dot.gov/SMS>

CSA Interventions

Off-Site Focused Review

- Carrier directed to send records
- Carrier could be subject to on-site investigation if records are not supplied

CSA Interventions

On-site Focused Review

- Investigators come on-site
- Conducting review of records relating to specific area(s)
- Generally two BASICs in alert status

CSA Interventions

On-site Comprehensive Review

- On-site comprehensive review
- Basically the equivalent of previous Compliance Reviews
- Review includes all areas of carrier's operations

The FMCSA Has Contacted Our Company

How Did We Get Selected?

- Two or more BASICS
- Two or more consecutive months
- CSA mandatory
- Will evaluate trends



Sample Carrier Percentile Rank

BASIC Status (Public View)

Behavior Analysis & Safety Improvement Categories (BASICS)

How does SMS relate to crashes?

Based on a 24-month record ending August 22, 2014



Click to select a BASIC icon above to get details, or view your [Complete SMS Profile](#).



Denotes this carrier exceeds the FMCSA intervention [threshold](#) relative to its safety event grouping based upon roadside data and/or has been cited with one or more serious violations within the past 12 months during an investigation. Therefore, this carrier may be prioritized for an intervention action and roadside inspection.

	Mar 28 2014	Apr 25 2014	May 30 2014	Jun 20 2014	Jul 25 2014	Aug 22 2014
SMS Version	3.0.1	3.0.1	3.0.2	3.0.2	3.0.2	3.0.2
Unsafe Driving						
On-Road Performance Investigation Results	53%	50%	49%	55%	48%	49%
Crash Indicator						
On-Road Performance Investigation Results	Not Public	Not Public	Not Public	Not Public	Not Public	Not Public
HOS Compliance						
On-Road Performance Investigation Results	44%	49%	49%	48%	47%	47%
Vehicle Maint.						
On-Road Performance Investigation Results	56%	56%	56%	52%	55%	58%
Drugs/Alcohol						
On-Road Performance Investigation Results	0%	0%	0%	0%	0%	0%
HM Compliance						
On-Road Performance Investigation Results	Not Public	Not Public	Not Public	Not Public	Not Public	Not Public
Cargo-Related						
On-Road Performance Investigation Results	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Driver Fitness						
On-Road Performance Investigation Results	Less than 5 driver inspections with violations	Less than 5 driver inspections with violations	Less than 5 driver inspections with violations	75%	88%	78%

The DOT Is Coming! The DOT Is Coming!

What Do We Do Now???

- First off, don't panic!
- Review letter, which is usually sent
- Which agency?
- Specific instructions – documents

On-Site Comprehensive Records

Records Reviewed

- Proof of financial responsibility
- Driver Qualification Files
- Drug and alcohol testing records
- Records of duty status and supporting documents
- Driver vehicle inspection reports and maintenance records
- FMCSA accident register
- Hazardous materials records (if applicable)

Regulatory Factors Based Upon FMCSR

- General – Parts 387, 390
- Driver – Parts 382, 383, 391
- Operational – Parts 392, 395
- Vehicle – Parts 393, 396
- Hazardous Materials – Parts 397, 177, 180, and 171(if applicable)
- Accident Factor

Acute Regulations

Single acute = serious violation

One point will be assessed to safety rating factor

Critical Regulations

Non-compliance relates to a breakdown in carrier's management controls

Generally pattern = 10% or greater



Safety Factors Rated

Each factor then rated:

- Satisfactory: If the acute and/or critical = 0 points
- Conditional: If the acute and/or critical = 1 point
- Unsatisfactory: If the acute and/or critical = 2 points

Safety Rating Table

Number of Unsatisfactory Factor Ratings	Number of Conditional Factor Ratings	Overall Rating
0	2 or less	Satisfactory
0	More than 2	Conditional
1	2 or less	Conditional
1	More than 2	Unsatisfactory
2 or more	0 or more	Unsatisfactory

Ratings of Safety Management Controls

Satisfactory: Adequate controls to ensure safety compliance are in place

Conditional: Adequate controls are not in place and violations could result

Unsatisfactory: Adequate controls not in place and violations have occurred

Opening Conference with Auditor

Recommend top management involvement

Be organized, interested, and indicate desire to learn from the process

Determine where auditor will work

Factor 1 – General Parts 387 & 390

Part 387 – Financial Responsibility

Form MCS 90B

Proof of financial responsibility

Part 390 – Accident Reports

Maintain copies of all accident reports required by state entities or insurers

Factor 2 – Driver

Carriers will need to ensure that drivers are:

- Fully qualified with an up-to-date DQ file
- Participating in a FMCSA random testing program
- Properly licensed



Driver Qualifications 391.11

21 years old

Read and speak English

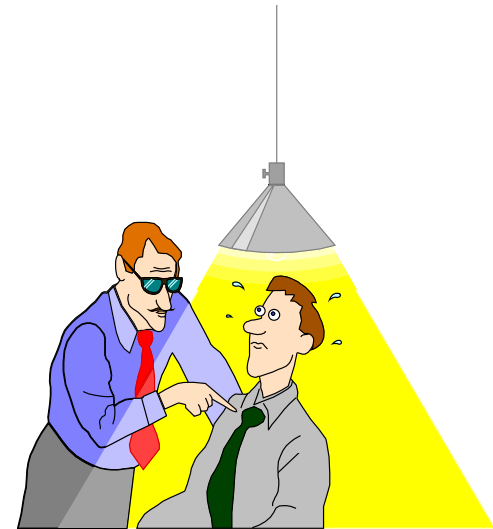
Can operate type of vehicle assigned

Physically qualified

Current CDL license

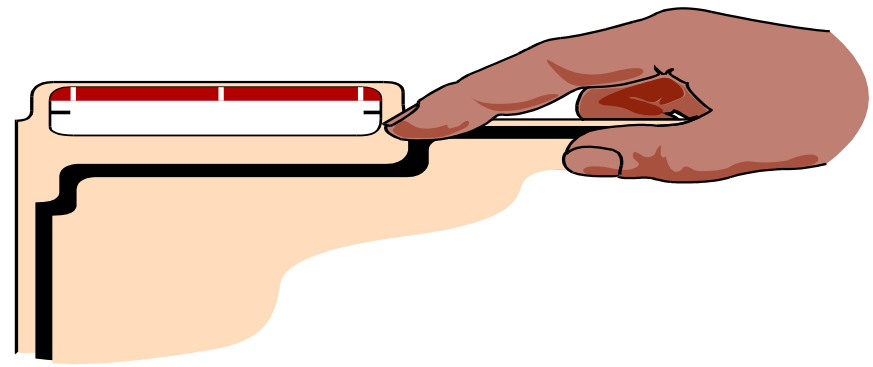
Annual certificate of violation

Not disqualified



Driver Qualification File Contents 391.51

- Application for employment
- Past employment checks
- Initial Driving record(s) from state
- Road test and certificate (CDL)
- Annual driving record check
- Annual review
- Annual Certificate of Violations
- Medical Examiners Certificate
- Pre-employment drug results



Application for Employment – Key Areas

License: state, number and expiration

Driving experience

Accident Record—3 years

List of MV violations—3 years

License suspension statements

Employment history—3 to 7 years

Certification by applicant

Investigations and Inquiries

§391.23(c)(2) The written record must contain:

- The name and address of each DOT-regulated employer
- The date the previous employer was contacted
- The date of attempted contact (if no reply/response)
- All safety performance information received

All failures to contact or provide must be documented

Investigations and Inquiries

§391.23(d) At a minimum and for the past 3 years, carrier must obtain from each previous DOT-regulated employer:

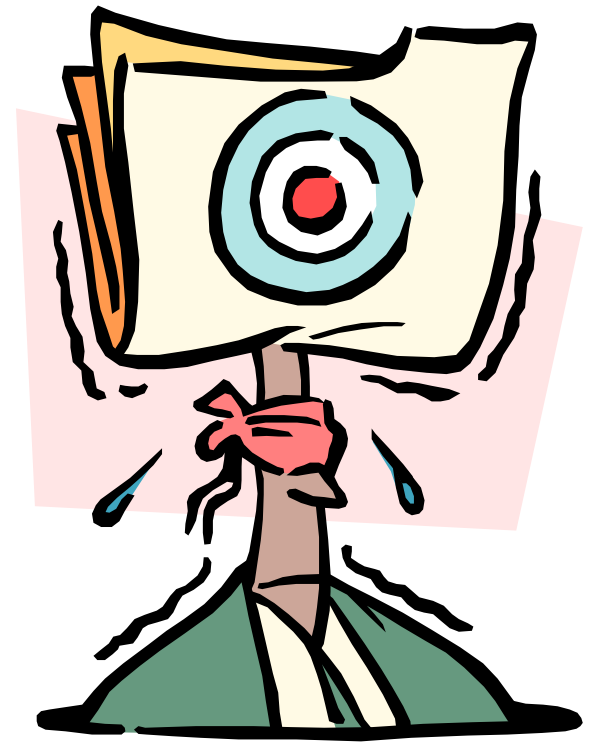
- Driver identification/employment verification information
- Data regarding any DOT-recordable accident involving the driver
- Any violations regarding the prohibitions of part 382
- Information regarding a failure to complete a SAP as required

Carrier must also provide the driver's written consent to each previous employer

Driver Investigation History File

§391.53(a)(1)&(2) The motor carrier must ensure that:

- Access to these records is limited only to those involved in the hiring process and its insurer
- The information is used only for the purposes of making a hiring decision



Part 40.25 - Inquiries

Request positives, refusals, other violations for previous 3 years from employers where applicant was subject to testing

Ask applicant if she/he has ever tested positive or refused to test on pre-employment, and as a result, did not get the job

Medical Examiner's Certificate 391.41 (a)

Medical examiner's certificate on his/her person (original or photocopy) per 391.41 (within 15 days of when it was issued).

Recommend maintaining a copy of the certificate and long form



Examples of Physical Requirements Section 391.41

Has no loss of a foot, a leg a hand, or an arm

Has no established medical history or clinical diagnosis of diabetes requiring insulin for control

Has no clinical diagnosis of any disqualifying heart disease

Has no clinical diagnosis of high blood pressure in accordance with new guidelines

Has no clinical diagnosis of epilepsy

Has 20/40 vision or better with corrected lenses

Has distant binocular acuity of at least 20/40 in both eyes

Has the ability to recognize the colors of traffic signals

Has hearing to perceive a forced whisper

Has no history of drug (Schedule 1) use or any other substance identified in Appendix D

Has no clinical diagnosis of alcoholism

FMCSA Physicals

When getting CDL, must certify your medical certificate with the DMV

As of May 2014, medical certificates can only be issued by certified medical professionals

National Registry of Certified Medical Examiners

<https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam>

§ 391.41: Physical Qualifications for Drivers

(2) CDL exception. (i) Beginning January 30, 2014, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy for more than 15 days after the date it was issued as valid proof of medical certification.

Annual Inquiry & Review 391.25

Every 12 months get an MVR

Review driver's driving record with the
Certificate of Violations

Copies maintained in DQ file



Road Test Equivalent 391.33

Motor Carrier may accept:

- Valid CDL
- Valid Road Test Certificate (3 yrs)
- Copies to be in DQ file

Motor Carrier May Test Regardless

Copy to be kept in DQ file forever

****This is acceptable but NOT RECOMMENDED.**

Entry-Level Driver Training Requirements

Part 380.500/513 Federal Motor Carrier Safety

Employer Responsibilities 380.509

Employer must ensure each entry-level driver is trained in accordance with part 380.503

Make training records available to FMCSA auditor upon request

Keep training records on file as long as driver is employed, plus one year

Definition: Entry-level Driver Training 380.502

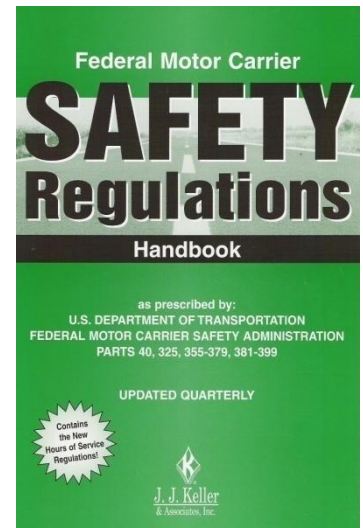
Driver qualification

Hours of service

Driver wellness

Whistleblower protection

(Note: these are required in addition to the required CDL testing)



Training Certificate 380.513

Employer must provide certificate

- Date
- Name and address of training provider
- Name of driver
- Statement: *I certify _____ has completed training requirements set forth in the FMCSR for entry-level driver training in accordance with 49CFR 380.503*
- Printed and signed name of trainer

Drug and Alcohol Testing Regulations

49 CFR, Part 382 governs motor carriers

49 CFR, Part 40 covers duties of lab, MRO, collection site

Rules apply to all CDL holders

Six types of tests may be required



Alcohol and Drug Test Required 382.301 - .311

Pre-employment (.301)

Post accident (.303)

Random (.305)

Reasonable suspicion (.307)

Return to duty (.309)

Follow - up (.311)

Safety Sensitive Function

Waiting to be dispatched

Inspecting, servicing or conditioning equipment

At the driving controls of CMV in operation

In CMV but not driving (and not in sleeper)

Loading, unloading, attending, waiting, giving or receiving receipts

Responsible for disabled vehicle

Positive Tests; Refusal to Test

- Positive test or refusal to test disqualifies employee from performing safety sensitive functions
- Company must decide consequences, i.e. terminate, suspend, etc.



Pre-employment Test 382.301

Test for controlled substances only

Must have negative result before driver performs any safety sensitive functions

Post Accident Testing 382.303

Following an accident involving a CMV, employer shall test each surviving driver for alcohol and controlled substances when either:

The accident involved a fatality; *or*

The accident involves an injury or tow-away, and the driver receives a citation for a moving violation

Post Accident Testing

Require alcohol test within two (2) hours;

Cease attempts to alcohol test driver after eight (8) hours;

Require driver to submit to a controlled substance test within 32 hours following the accident.

If test not completed, drivers may be contacted by the auditor during a review

Consider using documentation template

Random Testing 382.305

Test for controlled substance at annual rate of 25% (starting 2016) of the average number of driver positions;

Test for alcohol at annual rate of 10 percent of average number of driver positions

Random Alcohol Testing

Random alcohol tests shall be administered during, immediately prior, or immediately after the performance of safety-sensitive functions

Driver must immediately proceed to take test



Reasonable Suspicion Testing 382.307

Reasonable suspicion testing may be administered any time while the driver is on duty

Maintain written record of observations leading to the test

Reasonable Suspicion Testing

Observations must be made by at least one trained supervisor or company official (382.603)

- 60 minutes on Alcohol misuse
- 60 minutes on Controlled substances misuse
- Address the physical, behavioral, speech, and performance indicators of probable alcohol misuse and the use of controlled substances

Once in a lifetime documentation of training must be maintained

Be aware of fraudulent letters being sent to carriers

Drug and Alcohol Statistical Summaries

Appendix B – Part 40

Semi-annual statistical summaries should be provided to the motor carrier

If in a consortium, the carrier must still obtain a statistical summary to prove the consortium was in compliance with testing requirements

Non-Regulated Tests

Only FMCSA regulated tests can be recorded on Federal testing paperwork

Non-regulated tests must be completed using non-federal drug and/or alcohol paperwork/chain of custody forms

Factor 3: Operational

Part 395 - Hours of Service

Part 392 – Driving of CMV



Hours of Service (395)

Three areas of Compliance

- Form and Manner (395.8d)
- Hours of Service (395.3)
- Falsification (395.8e)
(390.35)

Violation of HOS

FMCSA may levy civil penalties on drivers and carriers, ranging from \$550 to \$11,000 per violation

Carrier's safety rating can be downgraded for a pattern of violations

Federal criminal penalties can be brought against carriers who knowingly and willfully allow or require HOS violations

100 Mile Exemption

No Need to Keep Logs

- Operate within 100 air mile radius
- Return and release from duty within 12 hours
- Have 10 consecutive hours off duty
- Can't exceed 11 hours maximum driving time

Keep 6 month file

- Start time each day
- Total on duty time each day
- End time each day

On Duty - 395.2

Waiting to be dispatched

Inspecting equipment

Driving time

Other time in/on vehicle

Unloading/loading, sup/attend/assist, remain ready, give/receive receipts

Attend disabled vehicle

Alcohol/Drug testing/travel time

Perform any work in employ of common, contract, private carrier

Perform any compensated work for any non-motor carrier entity

11-Hour Driving Limit

During 14-consecutive-hour period, you are only allowed to driver for up to 11 hours.

Driving is not permitted if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth periods of 30 minutes

14-Hour Rule

14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours.

Driving time is limited

Example: If you start your day at 6 a.m., what time must you be done driving?

Rest Break

May drive only if 8 hours or less have passed since end of driver's last off-duty or sleeper berth period of at least 30 minutes. Does not apply to drivers using either of the short-haul exceptions in 395.1(e). [49 CFR 397.5 mandatory "in attendance" time may be included in break if no other duties performed]

On Duty Work Period

No driver may drive after the 14th consecutive hour after going on duty.

Non-driving work may be performed after the 14th hour.

Split sleeper berth operations allow driver to drive after 14th hour, as long as driver has not exceeded 11 hours' driving.

60/70 Hour Duty Limit

Rolling or floating 7/8 day period

If you operate on a 70 hr/8-day schedule, the current day would be the newest of your 8-day period. Hours you worked on day 9 would fall off.

DAY	HOURS
1. Sunday	0
2. Monday	10
3. Tuesday	8.5
4. Wednesday	12.5
5. Thursday	9
6. Friday	10
7. Saturday	12
8. Sunday	5
TOTAL	67 hours

34-Hour Restart

34 consecutive hours off-duty

168 hours

Minimum period of 34 hours

Periods of 1 a.m. and 5 a.m. no longer required.



Existing Exemptions

States can establish “intrastate” exemptions

All existing “interstate” exemptions remain:

- Adverse driving
- 100 air mile radius
- Agricultural, utility service, well drilling, construction materials, etc.

Indicators of Log Falsification

Information cross-checked with fleet records, fuel purchase, tolls, GPS data, etc.

Mileage figures always neatly rounded

Exact legal pattern

Too many miles in a given day

Too short a time distance between two points

Qualcomm units being disabled?

Miles without hours on ELDs

Hours of Service Review

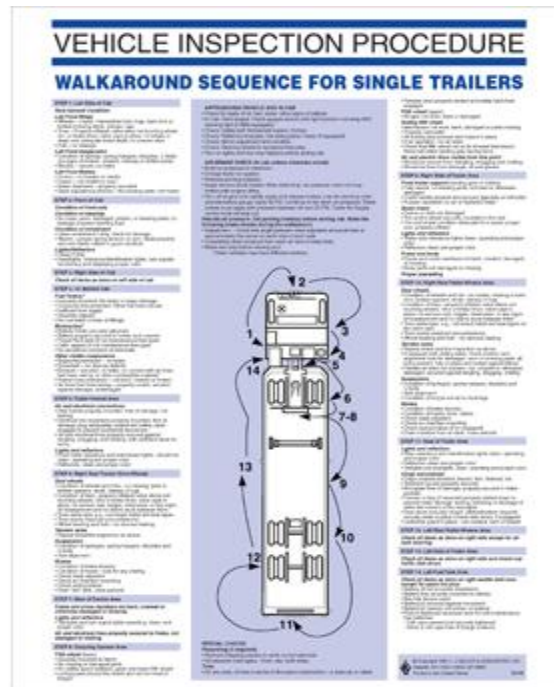
Electronic Logs' Process

- Majority of fleets with E-Logs will receive “Satisfactory” rating
- Review is focused on 11/14 and 60-70 hour rule violations as these violations can still be incurred
- No form and manner violations generally discovered
- Compare satellite locations to e-logs to look for any CMV movement and ensure e-log shows “driving”
- Another focus is placed on “unassigned driving” and “miles without hours”
 - Officer will ask fleet to assign miles as driving and if exceed any hour rules will hold fleet accountable for these violations
- Personal Conveyance
 - Cannot be used to improve position
 - Cannot be laden
 - If driver takes CMV home and is called by employing carrier for load, driver would be on-duty from the time they leave home.

Factor 4: Vehicle

Part 393 – Equipment

Part 396 – Inspection and Maintenance



DVIR Reports

DVIRs – Post-trip

Ensure they are completed fully

Check for violations

Ensure one for each day

3 months retention only for DVIRs
with defects noted

DRIVER'S INSPECTION REPORT 6018901

COMPLETION OF THIS REPORT REQUIRED BY FEDERAL LAW IN CFS 90.11.2.0011.

Vehicle: _____ Mileage: _____ Fuel: _____

Unit No. _____ Date: _____ Location: _____

474 SAFETY (General Condition) 475 SAFETY (Engine Compartment) 476 SAFETY (Power Unit) 477 SAFETY (Towed Unit(s))

GENERAL CONDITION	ENGINE COMPARTMENT	POWER UNIT	TOWED UNIT(S)
☐ 1 Cab/Doors/Windows	☐ 40 Oil Level	☐ 50 Gauges/Warning Indicators	☐ 17 Landing Gear
☐ 2 Body/Doors	☐ 41 Coolant Level	☐ 51 Windshield Wipers/Washers	☐ 18 King Pin/Upper Plate
☐ 3 Oil Leak	☐ 42 Fuel Leak	☐ 52 Hoses	☐ 19 Wheels/Rims/Lugs
☐ 4 Grease Leak	☐ 43 Other	☐ 53 Mirrors/Deflectors	☐ 20 Brakes
☐ 5 Coolant Leak		☐ 54 Steering	☐ 21 Exhaust
☐ 6 Fuel Leak		☐ 55 Clutch	☐ 22 Air Lines
☐ 7 Other		☐ 56 Service Brakes	☐ 23 Light Line
		☐ 57 Parking Brakes	☐ 24 Fifth Wheel
		☐ 58 Emergency Brakes	☐ 25 Other Coupling
		☐ 59 Triangles	☐ 26 Tie-Downs
		☐ 60 Fire Extinguisher	☐ 27 Rear-End Protection
		☐ 61 Other Safety Equipment	☐ 28 Other
		☐ 62 Speed Frame	
		☐ 63 Seat Belts	
		☐ 64 Other	

NO DEFECTS

REMARKS:

REPORTING DRIVER: _____ Date: _____

MAINTENANCE ACTION: _____ Date: _____

RECEIVED DRIVER: _____ Date: _____

RECEIVED DRIVER: _____ Date: _____

RECEIVED DRIVER: _____ Date: _____

RECEIVED DRIVER: _____ Date: _____

FMCSA Annual Vehicle Inspection

Conducted at least annually

Inspector must be qualified with certification on file

Brake inspector certification must also be on file if working on brakes

Vehicle Maintenance Files to Be Reviewed

Average 100 truck fleet – 20 maintenance files

Vehicles involved in accidents

Vehicles incurring out-of-service violations

Random selections

Motor carrier must ensure O/O equipment is properly maintained

Owner-Operator Maintenance Records

Monthly recap?

Copies of maintenance records?

Repairs done in your company shop?



Factor 5: Hazardous Materials

Employee training records 172.704

Will review a sampling of HM shipping papers

Security Plan - when needed

Registration as needed



Factor 6: Accidents

Accident history of the company

Recordable accident rate for prior 365 days

Auditor will review insurance loss runs

Accident register must be maintained

Accident Register 390.15(b)

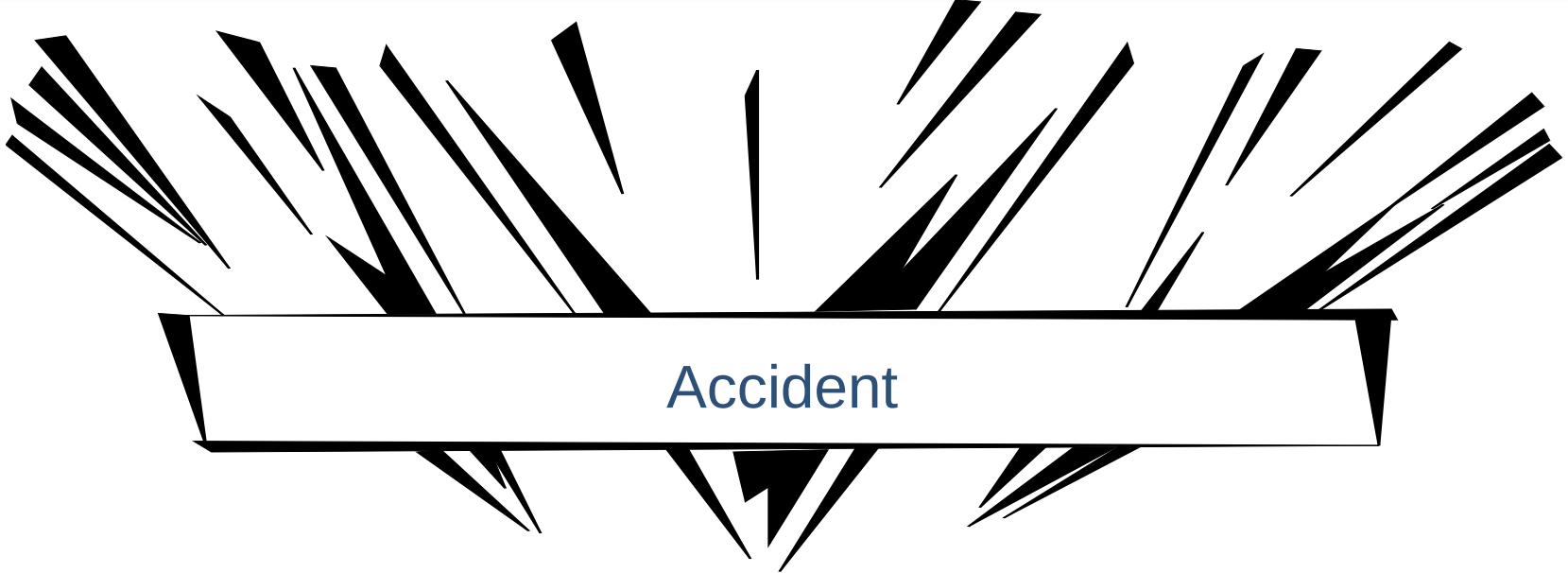
Keep for 3 years after accident

Corporate Office keeps official Accident Register

List of Accidents

- Date
- City, ST
- Driver
- # Injuries
- # Fatalities
- HM spilled

DATE	CITY, ST	DRIVER	# INJURIES?	FATALITIES?	HM



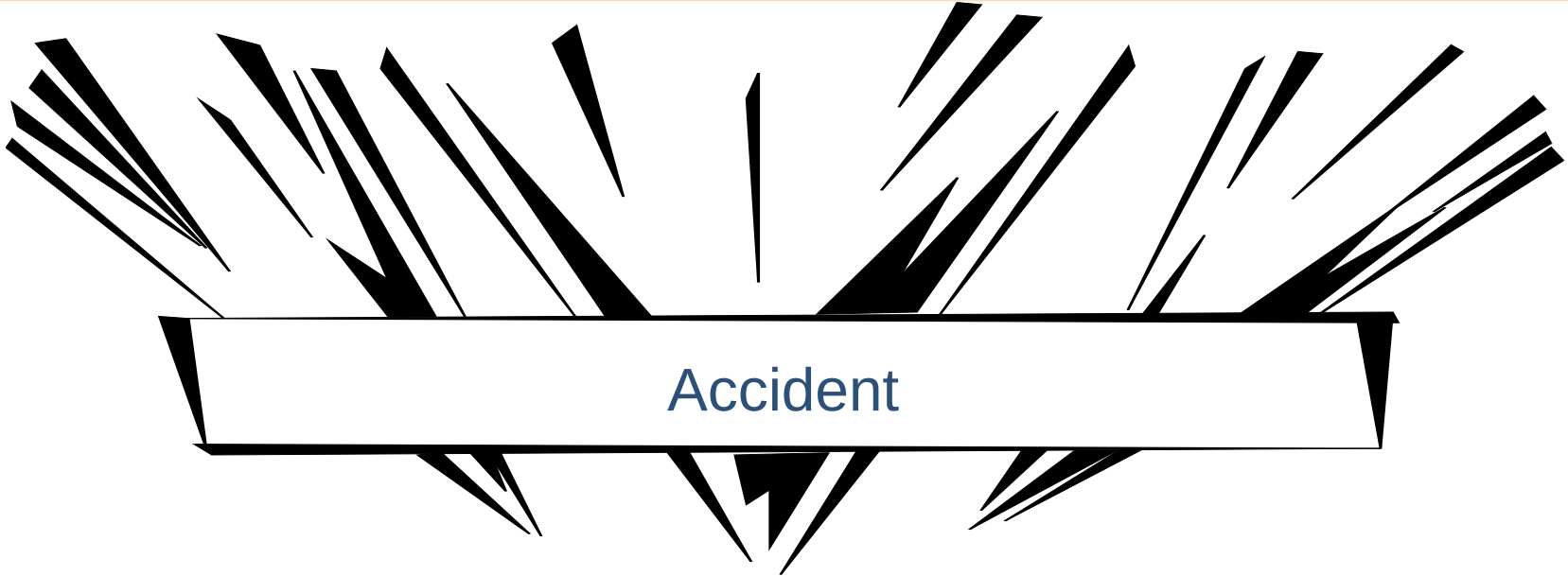
Accident

Fatality

Injury treated immediately away from the scene

One or more vehicles incurring **DISABLING DAMAGE**



A large, stylized explosion graphic with many black and white jagged lines radiating from a central point. In the center of the explosion is a white rectangular banner with the word "Accident" written in blue.

Accident

DISABLING DAMAGE

Damage to a motor vehicle which prohibits the vehicle from leaving the scene in its usual manner during daylight hours after simple repairs

Damage to a motor vehicle that could have been driven, but would have been further damaged if driven



Accident Frequency Factor

Frequency of DOT recordable accidents

- Satisfactory = 1.5 accidents per million miles or fewer
- Unsatisfactory = greater than 1.5 accidents per million miles

Accident Rate = Accidents x 1,000,000

Past 12 month mileage



Record Keeping Requirements

Retention Schedule

Outlines FMCSA requirements



Corrective Action Plans and/or Safety Management Plans

- SMPs are required for all carriers who receive a proposed Unsatisfactory safety rating
- May be submitted by carriers who receive a proposed rating less than Satisfactory
- Focused CIs- Only carriers with a previous Satisfactory rating can be upgraded as a result of Focused CI. Otherwise the proposed rating will be “vacated”
- Must be submitted to the corresponding Division Office and Service Center

Corrective Action Plans and/or Safety Management Plans

- SMPs are not just about corrections; they must include an effective plan that will prevent future violations from occurring.
- Must address all violations; SMP for all acute/critical/serious violations.
- How can FMCSA help? See the recommendations section of your CI as well as CSA Outreach page. An upgrade request and guidance document is given to all carriers during closeout sessions.

Corrective Action Plans and/or Safety Management Plans

Common Errors

- Submissions with additional FMCSR violations.
- Incomplete documentation.
- Relying on a plan not yet implemented.
- Ineffective solutions (firing of drivers).
- Timeliness (60 days for property; 45 days for passengers and HM).
-
- Not asking for an upgrade.

Questions?

