



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER	
OPR: 60	
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SUBJECT: CSA INVESTIGATIONS

1.0 PURPOSE

The purpose of this policy is to provide officers with proper procedures for conducting CSA investigations, enforcement cases, issuing safety ratings, and out of service orders.

2.0 POLICY

It is the policy of the Department of Public Safety for commissioned officers assigned to the Commercial Vehicle Enforcement (CVE) Bureau to conduct CSA investigations on motor carriers to determine their safety fitness. It is also the agency’s policy to issue safety ratings to these carriers and to issue out of service orders to unsafe motor carriers. It is the policy of the Department of Public Safety for officers to initiate enforcement cases on carriers when needed.

3.0 APPLICABILITY

This policy is applicable to all Commercial Vehicle Enforcement Bureau personnel that are certified to conduct CSA investigations.

4.0 REFERENCES

- A. Chapter 66, Articles 2, 5, & 8, NMSA 1978
- B. CSA Implementation Policies
- C. Federal Motor Carrier Safety Administration Electronic Field Operations Training Manual
- D. New Mexico Administrative Code, NMAC Title 18.2.3
- E. US Code of Federal Regulations, 49 CFR, Part 385

5.0 DEFINITIONS

- A. **A&I** – FMCSA Analysis and Information website
- B. **BASICs** – Behavioral Analysis Safety Improvement Categories.
- C. **Cabinet Secretary** – Secretary of the Department of Public Safety or his/her designated official.
- D. **CAPRI** – Most current version of the Federal Motor Carrier Safety Administration’s investigation software; Compliance Analysis & Performance Review Information system.
- E. **Commercial Motor Vehicle** – Commercial Motor Vehicle (CMV) means the definition of Commercial Motor Vehicle in NMAC 18.2.3, for intrastate operations and as defined in 49 CFR part 390.5, for interstate operations.

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- F. **CSA** – Comprehensive Safety Accountability as used by the Federal Motor Carrier Safety Administration.
- G. **CSA Investigation** – On-site examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A CSA Investigation may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations or rules by motor carriers, or to investigate complaints or other evidence of safety violations. The CSA Investigation may result in the initiation of an enforcement action. A CSA Investigation may be conducted on an intrastate or interstate motor carrier.
- H. **Comprehensive investigation** – An investigation where the officer will check all parts of the regulations that the carrier is subject to.
- I. **CVE** – Commercial Vehicle Enforcement
- J. **Driver** – Any person who operates any commercial motor vehicle on the public highways in New Mexico.
- K. **EFOTM** – The most current version of the Federal Motor Carrier Safety Administration Electronic Field Operations Training Manual.
- L. **Employer** – Any person engaged in a business affecting interstate or intrastate commerce that owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it.
- M. **Focused Investigation** – An investigation where the officer will investigate the BASICS in which a carrier is over the allowed thresholds.
- N. **Investigation** – A CSA Investigation.
- O. **MCMIS** – Federal Motor Carrier Safety Administration Motor Carrier Management Information System.
- P. **MCSAP** – Motor Carrier Safety Assistance Program.
- Q. **Motor Carrier** – A “for hire” motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. This definition includes the term employer.
- R. **SMS** – Federal Motor Carrier Safety Administration Motor Carrier Safety Measurement System.

6.0 PROCEDURE

A. Investigation Procedures for Intrastate Carriers

1. CSA Investigations on a motor carrier will be assigned to each officer by the compliance review sergeant.
2. Selection of carriers will be conducted by using vehicle and driver inspection information from the SMS intrastate report on the A & I or Federal Motor Carrier Safety Administration websites. Intrastate Mandatory carriers will be done first,

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when possible. Carriers that have three (3) or more BASICs that are over the threshold shall receive a comprehensive investigation.

3. Written complaints, determined to be non-frivolous, shall generate a CSA Investigation of a motor carriers' operation. Officers that generate a complaint will do so on an approved IDC and it will include a DOT number if available, the alleged violations, and any supporting documents/or witness statements. If the complaint is received from an outside source, a written statement from the complainant will be included. Complaints will be emailed through the chain of command to the captain of the MCSAP.
4. Carriers requesting a follow up investigation will be assigned.
5. A carrier involved in a fatal crash may generate an investigation.
6. Unsatisfactory and Conditional carriers may generate an investigation.
7. Passenger motor carriers may be selected for an investigation.
8. Carriers that have safety related defects or violations on inspections, which indicate the carrier might not have adequate safety management controls in place which function to effectively ensure acceptable compliance with state laws and rules, may generate an investigation.
9. Carriers that have repeated safety related defects or violations on inspection reports may generate an investigation.
10. Carriers that have three (3) or fewer inspections may generate an investigation.
11. Prior to the start of the investigation, the officer shall verify that the carrier is operating only in intrastate commerce.
12. If while conducting an investigation, the officer determines that the carrier is involved in interstate commerce, the officer shall immediately advise the compliance review sergeant. The compliance review sergeant will then inform the Federal Motor Carrier Safety Administration and will get authorization to continue with the investigation.
13. The officer will log into CAPRI by using his or her own Safety Investigator, SI Code.

B. Investigation Procedures for Interstate Carriers

1. Selection of carriers will be done by the Federal Motor Carrier Safety Administration.
2. The officer will log into CAPRI by using the Safety Investigator, SI Code "US0999" and use the password "trucks." Once in CAPRI, the officer will go to the "Misc" tab in Part A and enter their correct Safety Investigator Information.

C. Investigation – General

1. Investigations shall be announced, except in cases where announcement could compromise the investigation. The investigation is to be conducted at the motor carrier's principal place of business. In some instances, upon approval of the compliance review sergeant, the carrier may bring records to a CVE office to conduct the investigation.

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2. In the situation of an announced investigation, the officer shall provide the carrier with *Attachment B. Carrier Compliance Review Notice Letter* using the current DPS letterhead.
3. An investigation shall not be done if a carrier has indicated that they are no longer in business. The officer will do an inactivation request in CAPRI.
4. Investigations will be generated on laptop computers using the most current Federal version of CAPRI software. The EFOTM procedures will be used in conducting interstate and intrastate investigations, except as indicated in this policy. CSA implementation policies will also be used.
5. The officer will check the A&I website to get the most up to date information on a carrier's BASICS information as close to the start of the investigation as practical. If a carrier has three (3) or more BASICS that are over the threshold, the officer will conduct a comprehensive investigation. If there are two (2) or less BASICS that are over the threshold, the officer will conduct a focused investigation. If the type of investigation changes from the original assignment, the officer will inform the compliance review sergeant of the change.
6. If the carrier profile (xml version) is available in MCMIS, the officer shall import it into CAPRI to start a new investigation.
7. Part B violation descriptions shall, at a minimum, include the following for each violation:
 - a. Drivers name, trip date, trip origin and trip destination, the unit number, year, make, license plate, and the gross vehicle weight rating of the vehicle being operated. For Sec. 382 and 391, include hire dates. Random testing violations should include the calendar year.
 - b. The information required by CAPRI.
 - c. Part 395:
 - i. 395.8(k)(2) shall be used if the carrier fails to require a driver to make a record of duty status, unless a statement is obtained from the driver(s).
 - ii. 395.8(a) may be used if the carrier fails to comply with the requirements of the 100/150 air mile radius exemption (i.e. time started, total hours worked, time ended, working over twelve [12] hours) and you have copies of the time records.
8. Evidence collected shall be at least what is required in the EFOTM enforcement section.
9. If each piece of evidence does not identify the vehicle that was driven and the driver that operated it, the officer shall ask the motor carrier to indicate this information on the evidence.

Note: Evidence should always be similar in each count. Evidence of transportation includes, but is not limited to, RODS (records of duty status), bills of lading, payroll records, dispatch sheets, trip records, copies of evidence of GVWR or GCWR, and registrations of all vehicles used.
10. When criminal activity is discovered outside the scope of the investigation, the officer shall notify the compliance review sergeant who will refer the case to the Investigations Bureau. The CSA investigation will be completed in a normal manner.

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11. Prior to closing out the investigation, the investigating officer must get the report approved by the compliance review sergeant. If the investigation is interstate, the compliance review sergeant may request that the FMCSA State Programs Manager approve it.
12. If the carriers' proposed safety rating is conditional or unsatisfactory, the officer will provide the carrier with the "Fitness Rating Explanation" page from CAPRI. The officer will also provide the motor carrier with *Attachment A: Form NMSPCVE 385.17* (on current DPS letterhead or as a recommendation in CAPRI), for an intrastate investigation or the FMCSA New Mexico Division approved form for an interstate investigation.
13. Educational materials to help the carrier get into compliance will be provided.

D. Post Investigation Procedures

1. Prior to uploading the investigation, the officer shall email part C to the compliance review sergeant for approval. The part C that is distributed by the compliance review sergeant shall be used.
2. The investigating officer shall upload the investigation into MCMIS within seven (7) days, unless otherwise directed by the compliance review sergeant.
3. After uploading the investigation, the investigating officer shall email the completed electronic version of the document to the compliance review sergeant. The compliance review sergeant will place the investigation onto the Department of Public Safety's network "L" drive, for storage. If the investigation is on an interstate carrier, the compliance review sergeant will also email it to the FMCSA State Programs Manager.

A. Issuance of Safety Ratings for Intrastate Motor Carriers

1. The Department of Public Safety CVE Bureau will issue a proposed safety rating to motor carriers on the date of an investigation closeout. The proposed safety rating generated by CAPRI shall be used.
 - a. If the proposed safety rating is "satisfactory" it is final and becomes effective on the investigation closeout date.
 - b. In all other cases, a notice of a proposed safety rating will be issued on the investigation closeout date. It becomes the final safety rating after the following time periods:
 - i. Forty-five (45) days after the date of the notice for motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV.
 - ii. Sixty (60) days after the date of the notice for all other motor carriers operating CMVs.
2. A proposed safety rating of "unsatisfactory" is a notice to the motor carrier that the Department of Public Safety has made a preliminary determination that the motor carrier is "unfit" to continue operating in intrastate commerce, and that the prohibitions in Paragraph G will be imposed after forty-five (45) or sixty (60) days if necessary safety improvements are not made.

3. A motor carrier may request the Department of Public Safety to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in Sec. 385.15.
4. A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in Sec. 385.17.

F. Intrastate Unsatisfactory Rated Motor Carriers, Prohibition on Transportation

1. An intrastate motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current intrastate safety rating, is available from the Department of Public Safety on the Internet at <http://www.dps.nm.org> or by telephone at (505) 827-0645.
2. Motor carriers transporting hazardous materials in quantities requiring placarding and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the forty-sixth (46th) day after the date of the Department of Public Safety's notice of a proposed "unsatisfactory" rating.
3. All other motor carriers are prohibited from operating a CMV beginning on the sixty-first (61st) day after the date of the Department of Public Safety's notice of a proposed "unsatisfactory" rating. If the Department of Public Safety determines that the motor carrier is making a good-faith effort to improve its safety fitness, the Department of Public Safety may allow the motor carrier to operate for up to an additional sixty (60) days.
4. If a proposed "unsatisfactory" safety rating becomes final, the Department of Public Safety will issue an order placing the motor carrier's intrastate operations out of service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in 66-2-9 NMSA 1978, 66-5-71 NMSA 1978, 66-5-58 NMSA 1978, and 66-8-7 NMSA 1978.

G. Administrative Review for Intrastate Motor Carriers

1. A motor carrier may request the Department of Public Safety to conduct an administrative review if it believes the Department of Public Safety has committed an error in assigning its proposed safety rating, in accordance with Sec. 385.15.
2. The CVE Bureau shall adhere to Sec. 385.15 when an administrative review has been requested.

H. Change to Safety Rating Based Upon Corrective Actions

1. 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, in accordance with Sec. 385.17. The carrier will adhere to the requirements outlined on *Attachment A. Form NMSPCVE 385.17*.
2. The CVE Bureau shall adhere to Sec. 385.17 when a rating change request has been made.
3. If an out-of-service carrier requests for, and receives, an upgraded conditional safety rating in accordance with Sec. 385.17, the CVE Bureau will have the option to conduct a follow up investigation within six (6) months. This will be in order to review the carrier's operation to ensure that recommendations are being adhered to, and to review records that may not have been available when the 385.17 investigation was conducted.

4. A passenger carrier that requests for an upgrade from a proposed "unsatisfactory" rating will not be given any type of an extension to the proposed "unsatisfactory" effective date.

I. Safety Fitness Information

1. Final intrastate ratings will be made available to other federal and state agencies in writing or telephonically.
2. The final intrastate safety rating assigned to a motor carrier shall be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the Department of Public Safety with the motor carrier's name, principal office address, and, if known, the New Mexico Safety Identification number or the USDOT number.
3. Requests should be addressed to the Department of Public Safety, Motor Transportation Bureau, P.O. Box 1628 Santa Fe, NM 87504.
4. The information can also be found at the Department of Public Safety website at: <http://www.dps.nm.org>.

J. Intrastate Out of Service Orders

1. If a proposed "unsatisfactory" safety rating becomes final, the Department of Public Safety shall issue an order placing the motor carrier's intrastate operations out of service.
2. The compliance review officer, administrator, or sergeant will prepare the out-of-service order. The order will then be forwarded through the chain of command to the Cabinet Secretary for signature.
3. Once the out-of-service order is signed, it will be returned back to the compliance review sergeant, who will assign it to an officer for service.
4. The assigned officer shall serve the out-of-service order on the carrier as soon as practicable and complete the certificate of service.
5. The certificate of service shall be returned to the compliance review sergeant. The CVE Bureau MCSAP section administrator shall file the certificate of service with the investigation and out-of-service order.
6. The out-of-service order shall be delivered to the Motor Vehicle Division, Commercial Vehicle Bureau, with a request to revoke the motor carrier's license plates, under the provisions of *66-2-9 NMSA 1978*.

K. Enforcement Action

1. Enforcement action will be taken on all acute and critical violations. Enforcement action will also be taken on serious violations that are indicated as either "one time occurrence" or "a pattern of occurrence", unless the officer has discussed it with the compliance review sergeant or the FMCSA State Programs Manager. Reasons for not taking enforcement will be indicated in part C.
2. Any person who violates the provisions of the Motor Carrier Safety Act (*65-3-1 to 65-3-13 NMSA 1978*) is guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500) or thirty (30) days in jail, or both.
3. When state enforcement action is determined for violations of the Motor Carrier Safety Act, on an investigation, the officer will prepare a criminal complaint in the appropriate metropolitan or magistrate court.

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4. The officer shall get a federal enforcement case approved by the compliance review sergeant before closing the investigation.
5. When enforcement action is determined on an interstate investigation, the officer will do federal enforcement on violations that fall under FMCSA jurisdiction.
6. If enforcement action is indicated, the motor carrier official shall be informed that enforcement action will be taken as a result of the investigation. The officer shall complete the table of violations page and give it to the carrier.
7. Violations and recommended corrective measures should be presented during the investigation closeout session.
8. The investigating officer shall e-mail part A to the compliance review sergeant and indicate which violations will be subjected to enforcement action. The compliance review sergeant shall then obtain a prosecution number for the investigating officer.
9. The motor carrier official shall be informed that a criminal complaint will be filed through the local magistrate or metropolitan court and/or that a federal enforcement case may result in administrative fines for violations of regulations that fall under FMCSA jurisdiction.

7.0 ATTACHMENTS

A. Form NMSPCVE 385.17

B. Carrier Compliance Review Notice Letter

8.0 APPROVAL

APPROVED BY: S/ Scott Weaver **DATE:** July 20, 2017
DPS Cabinet Secretary