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## The Use of Mock DOT Audits

Client Bulletins

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**A Department of Transportation (“DOT”) audit [1] is something that all motor carriers dread. The potential for a Federal Motor Carrier Safety Administration (“FMCSA”) investigator can often have adverse consequences. Violations found during a Department of Transportation (“DOT”) audit can result in fines, adverse safety ratings and out of service orders that can negatively affect a carrier’s business. However, a motor carrier can utilize an internal mock DOT audit to not only prepare for any potential actual DOT audit but can also create significant peace of mind in doing so.**

### **What is a Mock DOT Audit?**

A mock Department of Transportation (“DOT”) audit is a tool used to determine how a motor carrier complies with the Federal Motor Carrier Safety Regulations (“FMCSRs”) and would fare in the case of an actual DOT audit. The audit consists of a review of your company policies, procedures and records. Mock audits assist a motor carrier in identifying compliance gaps and correcting any deficiencies found in their safety program. A mock DOT is conducted in the same manner as an actual DOT audit. This includes the same areas, documents, files and sampling quotas a DOT safety investigator (“SI”) would examine. The mock audit can mirror an FMCSA focused review or comprehensive review, depending on the carrier’s preference and safety history. A focused mock audit should concentrate on areas of concern while a comprehensive mock audit will examine a full review of the carrier’s safety and compliance program. To maximize effectiveness, it is important that both types of mock DOT audit follow a process similar to an actual FMCSA SI.

### **Who Performs a MOCK DOT Audit?**

**Internal personnel.** A motor carrier’s own personnel can perform a mock DOT audit. To be effective, any such personnel should have an intimate knowledge of the FMCSRs, and the procedures used during an actual DOT audit. This process can also be a burden on the operations of a motor carrier that does not have the resources available to conduct a time-consuming internal investigation outside their day-to-day compliance commitments.

**Outside DOT consultants.** There is a large number of outside DOT consultants that offer mock DOT audits services. Many are very skilled and competent in performing the mock DOT audits. They range in size, resources and experience. Often these consultants are former motor carrier safety managers or law enforcement officers with DOT experience. The consultants will perform the mock DOT audit for a flat or hourly fee based on the type of audit and size of the motor carrier.

**DOT attorneys.** DOT attorneys specialize in providing FMCSRs compliance expertise to their clients. Often their practice includes performing mock DOT audits. They too will usually base their fee on the size of the motor carrier and the scope of the audit. One important distinction between a DOT attorney and consultant is that any mock DOT audit performed by a DOT attorney will be privileged work product. Therefore, the mock DOT audit findings, including any deficiencies discovered, would be protected from disclosure to third parties in case of any litigation discovery procedures.

## **Goals of a Mock DOT Audit**

**Identify gaps in a carrier's safety and compliance program.** As with any type of gap analysis, a mock DOT audit's main purpose is to identify areas of deficiencies for correction. The deficiencies found can in any compliance area examined and also range in significance. Simple recordkeeping deficiencies, like a missing document in a driver's qualification file, can be corrected immediately. More significant deficiencies, such as systemic operational issues involving hours of service violations, will be much more difficult to address.

**Correct deficiencies found.** As discussed, a mock DOT audit identifies deficiencies in a motor carrier's safety and compliance programs. This provides the carrier with sufficient time to correct any deficiencies before an actual audit occurs. It also allows a carrier to determine the effectiveness of its current policies and procedures. The correction of any issues identified will also reduce the odds of an actual DOT audit because they will result in a lower number of roadside violations and DOT crashes.

**Assess policies and procedures.** A mock DOT audit will often be an eye-opening experience for a motor carrier. It can not only show deficiencies in current policies and procedures, but also find where none exist to address deficiencies found.

**Determine a mock safety rating.** The ultimate outcome of any actual DOT audit is the proposed safety rating determined by the FMCSA investigation. A DOT audit can result in a rating of satisfactory, conditional, unsatisfactory or unrated. As the names suggest, satisfaction is the best outcome and unrated has no effect on a motor carrier. A conditional rating allows a carrier to operate but can increase insurance costs and impact customer relations and usage. An unsatisfactory safety rating will effectively shut down a motor carrier's operations. A mock DOT audit can simulate a safety rating if it follows the standards set forth in the FMCSRs and uses the same methods, sampling and scoring as an actual FMCSA SI. That is why it is so important that any person(s) who conducts a mock DOT audit is familiar with these guidelines.

## **How to Conduct Mock DOT Audit**

The goal of any mock DOT audit is to simulate an actual audit and determine any potential outcome with regard to gaps, violations and safety rating. In order to do so, the mock audit must look at the specific items and areas of a motor carrier operations that the FMCSA would in the case of an actual DOT audit.

**6 Factors examined.** During a comprehensive DOT audit, a FMCSA SI will look at six Factors that directly pertain to the FMCSRs. These six Factors, and the method used to determine a safety rating are contained in the FMCSRs' Appendix B to Part 385 – Explanation of Safety Rating Process ("Appendix B"). The Factors are:

- Factor 1: General — Parts 387 and 390 (e.g., MCS-90, accident register).
- Factor 2: Driver — Parts 382, 383, and 391 (e.g., driver qualification file, drug and alcohol testing).
- Factor 3: Operational — Parts 392 and 395 (e.g., hours of service).
- Factor 4: Vehicle — Parts 393 and 396 (e.g., preventive maintenance, vehicle out of service rate)
- Factor 5: Hazmat — Parts 397, 171, 177, and 180 (e.g., hazmat papers, security plans).
- Factor 6: Accident rate per million miles.

Each Factor is given a rating of "Satisfactory," "Conditional," or "Unsatisfactory," based on the number of acute or critical found. Based on these findings, the FMCSA uses a formula to determine a safety rating.

**Acute and critical violations.** A list of the various acute and critical violations is contained in Appendix B. Acute violations are those “where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.” An example is a violation of 49 C.F.R. §391.15(a) Using a disqualified driver. A critical violation is that “where noncompliance relates to management and/or operational controls.” An example would be a violation of 49 C.F.R. §395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

A single acute violation is enough to affect a motor carrier’s safety rating. However, a critical violation rate of at least 10 percent (a “pattern”) of the samples examined is required to affect a safety rating.

**Sampling.** Another key component of an effective mock DOT is to know the sampling methods used by the FMCSA. This methodology depends on factors such as a motor carriers’ size and also what Factor is being examined. Below is an example of sample size for driver qualification files for a motor carrier based on the number of drivers:

**Source:** FMCSA Electronic Field Operations Training Manual (“eFOTM”), Appendix N

The number of drivers a motor carrier uses subject to the FMCSRs directly corresponds to how many driver qualification files should be audited. Knowing the sample size to audit for various records examined plays a significant role in the integrity of a mock DOT audit’s result.

A mock DOT audit is a valuable tool used to determine where a motor carrier stands in their compliance program. It provides an opportunity to identify and correct gaps found in the program before an actual DOT audit occurs. It is very important that any mock DOT audit follows the actual process used by the FMCSA if the carrier wants to obtain a useful result. Carriers should conduct a mock DOT mock audit if they have reason to believe an FMCSA investigation may be imminent due to a major accident or high CSA scores. Even if this is not the case, a mock DOT is recommended at least once a year to gauge where a motor carrier’s safety compliance program stands. While it may seem like an expensive proposition, it’s hard to put a dollar figure on peace of mind.

**For more information, please contact a member of the firm’s Transportation & Logistics Practice Group.**

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**[1] For the purposes of this article, the term “DOT audit” will be used to refer to what is often more formally known as a Federal Motor Carrier Safety Administration (“FMCSA”) investigation or compliance review.**

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