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Specialists
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Tracking Ultimate Responsibility for a Truck Crash

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Traffic crash *reporting* indicates the; *who, what, when, where* of a crash (for example: driver, vehicle, and insurance information). Traffic crash *investigation* indicates the *how*, of a crash (for example: vehicle #1 skidded into the rear of vehicle #2). Crash *reconstruction* should indicate the *why*, of a crash (for example: following-too-closely or defective brakes). As detailed as they might be, none of these investigations track *responsibility* for the crash, beyond the driver of the at-fault vehicle.

In the case of crashes that involve commercial motor vehicles (CMV) conducting interstate commerce, the Federal Motor Carrier Safety Regulations (FMCSR) detail specific requirements, responsibilities, and document retention (Ohio has adopted most of the FMCSR for its intrastate motor carrier safety regulation, listed in OAC 4901:2-5-03). As with recovering physical evidence at a crash scene, inspection of the vehicles involved, and preserving useful documentation generated by a motor carrier is most effective if done as soon as possible. The best way to ensure this is to have a wide-ranging spoliation letter on hand, to send as soon as possible after retention on a case. The letter we provide to clients refers to the United States Code (USC) which requires each document so there can be no ambiguity that the carrier is required to maintain the document, and for how long.

49CFR390 holds the motor carrier responsible for ensuring the proper vetting and training of each driver. It also plainly defines the motor carrier as the employer, and drivers (including independent contractors) as the employees. Additionally, it places responsibility with the motor carrier for vehicles (both owned and leased) to be maintained in compliance with FMCSR.

COMMERCIAL VEHICLE SAFETY ALLIANCE (CVSA)

While the FMCSA establishes safety regulations for interstate commerce, the CVSA proposes the Out-of-Service (OOS) Criteria. The CVSA is the United Nations of interstate/international commerce in North America. Comprised of government and industry representatives, this body works to establish inspection technique and standards, as well as the OOS Criteria. The OOS Criteria contains the list of violations/defects considered to be so hazardous that the driver/vehicle is not permitted to continue the trip until the condition is corrected.

How common are OOS violations? FMCSA's "SAFER Web" provides the OOS rate for motor carriers and compares them to the national average, which is not admirable. For decades, the national average for CMVs being placed OOS for serious defects has hovered around 20%. Fully half of those are placed OOS for brake defects.



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DRIVERS Nationwide, 5% of drivers are placed OOS during roadside inspections.

A driver is not considered to be qualified to operate a CMV unless he/she meets all of the following:

1. Is at least 21 years old
2. Can read and speak English sufficiently to converse with the general public, understand signs/signals, respond to official inquiries, and make entries on reports and records
3. Can safely operate the type of CMV he/she operates
4. Is physically qualified to operate a CMV (medical certification)
5. Holds a valid license for the type of vehicle being operated
6. Has furnished the motor carrier with a list of violations committed in the past year
7. Has not been disqualified
8. Has successfully completed a driver's road test or equivalent

The Driver's Qualification File (391.51) requires specific documents:

- Driver's application as defined in 391.21
- A copy of the motor vehicle record (MVR) from each state where the driver held a license for the previous 3-years
- The certificate of driver's road test or copy of the CDL accepted as equivalent
- Each annual state MVR check
- A note relating to management's annual review of the driver's MVR
- The annual driver's certificate relating to violations of motor vehicle laws
- The medical examiner's certificate or CDLIS entry showing medical certification compliance

Driver Investigation History File (391.53) requires specific documents to ensure that the motor carrier checked with previous employers for the driver's safety history and drug/alcohol compliance.

DRIVER'S LOGS

Since December of 2017, the overwhelming majority of interstate carriers have been required to adopt an approved electronic logging system. Although structured to reduce fatigue-causing hours of service (HOS) violations, falsification may still occur. Motor carriers should have a method of auditing the electronic records, and disciplinary policies to ensure compliance. Driver's logs (and supporting documents), whether paper or electronic, have a 6-month retention requirement.

MOTOR CARRIER POLICIES

FMCSA considers a motor carrier's policies/procedures essential to a safety management system. Motor carriers' policies vary from a book of hundreds of pages to verbal. Key to these policies is whether documented enforcement of policy violations is present in drivers' files.

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EQUIPMENT RECORDS

Motor carriers must retain maintenance/repair records for each tractor and each trailer for at least the prior year. If a vehicle is released, the file must be retained for 6-months thereafter. Records should display a systematic method of maintenance. Periodic (annual) inspections must be retained for 14 months. Mechanics who perform periodic inspection and those who conduct brake work must be qualified. Motor carriers must provide proof of their qualifications.

Driver's daily post-trip inspections must generate Driver-Vehicle Inspection Reports (DVIRs) when defects are noted. Those must be retained for 90 days.

RESOURCES

The most exhaustive resource for a motor carrier's safety performance is through a Freedom of Information Act (FOIA) request to FMCSA <https://www.fmcsa.dot.gov/foia/foia-requests>. It can be submitted via fax, mail, or email, and should be completed as soon as possible, since responses average 8-12 months and longer.

The SAFER Web <https://safer.fmcsa.dot.gov> and the Safety Measurement System (SMS) <https://ai.fmcsa.dot.gov> may be accessed via the FMCSA web site. Although safety scores have been removed from public access, they are available to the motor carrier for their own use and should be included when requesting carrier records.

At STARS Consulting, we have decades of experience in CMV crash reconstruction, CMV inspection, motor carrier audits and data acquisition from vehicle "black boxes", infotainment systems, and cell phones.



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