

Safety Inspections and Compliance Reviews: Intersection with the Title VI Program Training

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[Commerce and Compliance Division \(CCD\)](#)

Title VI Program Introduction

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities of any entity that receive federal assistance.

The law provides that:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance."

Program Requirements

- All FMCSA Grantees/Sub-Grantees are required to develop and implement a Title VI Program.
- The FMCSA has approved the ODOT's Title VI Program Compliance Plan.
- FMCSA requires each Grant Applicant to submit an updated Plan for approval each FFY.
- The approved Plan includes a signed and dated Title VI Program Assurance.
- All ODOT activities are covered by the requirements of Title VI as the ODOT is a Recipient of Federal funds.

Title VI Program Assurance

Chris Strickler has signed the FMCSA Title VI Program Assurance on behalf of ODOT.

The FMCSA Title VI Program includes not only Title VI of the Civil Rights Act of 1964, but also related Nondiscrimination authorities such as:

- Prohibits discrimination on the basis of race, color, and national origin.
- Section 504 of the Rehabilitation Act of 1973, as amended: Prohibits discrimination on the basis of disability.
- The Age Discrimination Act of 1975, as amended: Prohibits discrimination on the basis of age.
- Americans with Disabilities Act of 1990, as amended: Prohibits discrimination on the basis of disability.
- Executive Order #12898 (Environmental Justice): Ensure Nondiscrimination against Minority and Low-Income Populations.
- Executive Order #13166 (Limited English Proficiency): Provide Reasonable Accommodation to persons who do not speak English as their primary language. * See FMCSA Enforcement Memorandum dated June 15, 2016.



The Public Notice of Title VI Program Rights is available on our [ODOT Office of Civil Rights : Nondiscrimination Programs](#) web page. ODOT has also posted the Public Notice of Title VI Program Rights at facilities accessed by members of the public.

[Commerce and Compliance Division \(CCD\)](#) web site.

Resources

[FMCSA Title VI Program Compliance Plan Requirements](#)

[Nondiscrimination Assurances - Civil Rights- Federal-aid Essentials for Local Public Agencies](#)

[U.S. Department of Transportation Title VI Program](#)

Safety Inspections

Violations generally, and Out-of-Service (OOS) Violations specifically, are to be issued without regard to a driver's race, color, national origin, sex, age, disability, income-level, or limited English proficiency (LEP).

Safety Inspections are to be conducted without regard to a driver's race, color, national origin, sex, age, disability, income-level, or LEP.

LEP: Review FMCSA Enforcement Memorandum [MC-ECE-2016-006](#) dated June 15, 2016.

Note: As of April 1, 2015, the Commercial Vehicle Safety Alliance (CVSA) removed English Language Proficiency as an OOS violation from its OOS Criteria.

ODOT Inspection Selection Policy MCS-21-01

Purpose

The Oregon Department of Transportation (ODOT) Commerce and Compliance Division (CCD) personnel are committed to enhancing public safety through the consistent and objective enforcement of laws, rules, and regulations relating to commercial motor vehicles (CMV). The purpose of this policy is to establish uniform guidelines for the selection of CMVs for inspection.

Background

ODOT Complies with Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities.

These authorities prohibit discrimination based on race, color, national origin, sex, age, disability, low income and limited English proficiency. All standard operating procedures enacted by enforcement authorities are conducted in a nondiscriminatory manner, including the selection of CMVs for inspection.

Policy

The Division and its law enforcement partners will concentrate inspection efforts on CMV's that have a negative impact on traffic safety. Only Commercial Vehicle Safety Alliance (CVSA) certified employees utilizing the North American Standard inspection process set forth by the CVSA will conduct inspections. Inspections will be conducted in a nondiscriminatory manner, including the selection of CMVs.

ODOT Employees

All ODOT employees who are certified inspectors are required to follow [Inspection Selection Policy MCS-21-01](#).

Inspection Selection Law Enforcement Partners

Law Enforcement Partners, as stipulated by all Intergovernmental Agreements (IGA's) shall comply with general obligations including those that ensure unbiased enforcement and inspection selection.

- Ensure that all personnel who engage in the inspection of commercial motor vehicles and their drivers are trained and certified by ODOT pursuant to ORS 810.560. • Inspections may be initiated only after a traffic stop, size and weight enforcement stop, or when an out-of-service defect is detected during the normal duty activities of a certified inspector.
- Roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.
- Law Enforcement Partners shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 2798.220, 2798.225, 2798.230, 2798.235 and 2798.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, (Agency) expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to

the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- Law Enforcement Partners will adhere to the same CMV inspection selection procedures provided in Inspection Selection Policy MCS-21-01 as applicable when using ODOT facilities. See our [Roadside Inspector Resources](#) web page for more information.
- Inspection priority is given to an observed violation of law or regulations related to the driver or the vehicle, including equipment, size, weight and load violations.
- Vehicles displaying a valid CVSA decal will not be subject to re-inspection unless an equipment violation is observed or a driver violation is suspected.
- Inspectors shall not interrupt or otherwise disturb any driver of a CMV in an off duty or sleeper berth status, when the CMV is legally parked, for the sole purpose of conducting a random inspection.

Compliance Reviews

Compliance Reviews of Motor Carriers are to be conducted without regard to an owner's race, color, national origin, sex, age, disability, income-level, or LEP.

Violations generally and OOS Violations specifically are to be issued without regard to an owner's race, color, national origin, sex, age, disability, income-level, or LEP.

Case Studies

Investigation

In April of 2015, FMCSA issued an "Unsatisfactory" motor carrier safety rating to a motor carrier. One of the violations identified was that the co-owners "re-incarnated" companies. The co-owners had owned/operated four companies between 2006 and 2015.

One of the owners of the motor carrier company responded in writing (Administrative Review Petition for Review) in May of 2015 by alleging discrimination on the bases of race and sex and additionally stated that government representatives conducted "inappropriate procedures". Specifically, the allegation is as follows:

"I feel they conspired racially as my wife and I are both black. Sexual harassment as my wife is female and [W. Scott Davis] made it clear she felt my wife was incapable of owning her own business. When in fact the reason she shut her business down was to stay at home with 5 of our 7 kids and raise them as daycare is not available in our area...that we live in. It was strictly a financial and parenting issue.

"Upon notification of this complaint by the concerned FMCSA Service Center at the end of May, I requested a written response to address the allegation of discrimination on the bases of race and sex. Specifically, I requested a fact statement to address the following questions:

- How was this company chosen for a compliance review?
- How was the determination made to assign to this company an "Unsatisfactory" rating?

Additionally, I requested copies of supporting documentation. The response I received in June included a general written summary of the events leading up to the compliance review and the compliance review itself. I also received written statements from the two government representatives which conducted the initial compliance review interview at the carrier's headquarters. Finally, I was provided the Compliance Review Report and the FMCSA letter notifying the company of the reasons for the "Unsatisfactory" rating.

The purpose for my requests was to substantiate whether the same process was followed in this situation or were there differences. If there were differences, were these differences due to the race and sex of the owners. Based upon my review of these documents, I determined that there was no

merit to the allegation of discrimination on the bases of race and sex in the identification of this carrier for a compliance review and the subsequent “Unsatisfactory” rating assigned to the carrier.

As a follow-up to this case, FMCSA issued an Order To Show Cause in December of 2015 against this carrier requiring payment of a civil penalty or the company would be placed out-of-service. In the owner’s written response, the owner’s last sentence stated the following:

“I was racially Discriminated against by members of your agency.” I did a follow-up request for information regarding the steps taken between June and December of 2015 and any additional supporting documentation. Based upon the documentation I was provided and the summary of actions taken between June and December of 2015, I determined that there was no merit to the allegation. Finally, upon request, I did another review of this case in October of 2016 when the owner again alleged discrimination after a Motion for Final Order of Default was issued and determined that there was no merit to the allegation of discrimination.

- Lester Finkle, FMCSA

Inspection

Case Study 1: Provided by Lester Finkle, FMCSA

The driver of a commercial motor vehicle (CMV) was pulled over by two Law Enforcement Agency representatives. During the stop, the Officers conducted a Phase 1 safety inspection of the CMV. As a result of the safety inspection, the Officers cited certain safety violations. Additionally, the driver of the CMV was cited with a moving violation for not stopping at an at-grade railroad crossing to look both ways prior to proceeding through the at-grade railroad crossing. The driver alleged that the moving violation and safety violations were cited due to his color. Additionally, he alleges that the Officers directed discriminatory language at him during the stop and safety inspection.

Upon receipt of the complaint, I requested a written response from the Law Enforcement Agency. Based upon the written response (including supporting documentation) and confirmation via the body cam recordings, there was no merit found to substantiate the allegation of discrimination.

Case Study #2: Provided by Lester Finkle, FMCSA

The driver of a CMV was pulled over by a law enforcement officer. The driver stated in the complaint that he observed the law enforcement vehicle travelling in the opposite direction and noted that the law enforcement officer did a U-turn after passing the driver’s CMV and quickly pulled up to the driver’s CMV and requested the driver to pull over. The driver stated that the law enforcement officer indicated that he had noticed that one of the taillights was not working on the CMV (even though the law enforcement officer allegedly was travelling in the opposite direction) and that this was the initial reason for pulling over the driver. The law enforcement officer also conducted a Phase 1 inspection and cited the CMV for additional safety violations.

The driver filed a complaint alleging that the reason the law enforcement officer pulled him over was because of the driver’s color (profiling) and not due to the stated reason of a light not working. It was daylight and the two sides of the highway were separated by a median. This complaint was filed with the FMCSA a few years prior to my joining FMCSA and by the time I reviewed the complaint (it was one of many backlogged complaints requiring action when I joined FMCSA), I was not able to locate the Complainant.

How to use these case studies:

These examples are intended for you to understand what goes into a FMCSA review of a discrimination complaint. The FMCSA, CVSA, and CCD all teach data driven selection for truck inspections. These practices are backed up by policies covered in this training.

ODOT Complaint Disposition Process

Members of the public (including CMV drivers and CMV companies' owners) may file complaints alleging discrimination on the basis of race, color, national origin, sex, age, disability, income-level and limited English proficiency (LEP).

ODOT has a standard operating procedure (SOP) to address complaints filed by members of the public with ODOT. The Complaint Disposition SOP includes the following steps:

- 1) Intake.
- 2) Dismiss or Investigate Complaint.
- 3) Report of Investigation.
- 4) Determination.
- 5) Notification to Complainant.

ODOT's Title VI Program Coordinator is responsible for ensuring that a complaint filed by a member of the Public is disposed of effectively.

Who to Call with Questions

For Questions, contact our:

- CCD Title VI Subject Matter Expert, Kenneth Oke by [email](mailto:CCDTitleVI@odot.oregon.gov) (CCDTitleVI@odot.oregon.gov) or phone: 503-378-5986.
- ODOT Title VI Program Coordinator, David Morrissey by [email](mailto:David.N.MORRISSEY@odot.oregon.gov) (David.N.MORRISSEY@odot.oregon.gov) or phone 503-986-3870.

Law Enforcement Partners: Please contact your agency's Title VI Coordinator or follow your established complaint policy.

CCD Program Questions?

For more information or questions, please contact Kenneth Oke, Technical Coordinator by [email](mailto:CCDTitleVI@odot.oregon.gov) (CCDTitleVI@odot.oregon.gov) or phone: 503-378-5986.