

Yes, You Can Challenge Inspection Results. Here's How.

By: Evan Lockridge

If an enforcement officer finds a violation with one of your trucks and you feel it's unwarranted, or you are cited for an item not required by regulations, it's possible to challenge the inspection. Although it may seem time-consuming to formally dispute a finding on an inspection, doing so could have benefits that go beyond simply removing a bad mark from your company's record.

That's because violations on your record can affect your fleet's score with the Federal Motor Carrier Safety Administration (FMCSA) in two significant ways.

One is under the agency's Compliance, Safety and Accountability program, commonly known as CSA, which ranks a trucking company's safety performance compared to a pre-determined "peer group" and how likely its trucks are to be selected for intervention or closer examination by inspection personnel.

The other is a fleet's Inspection Selection System (ISS) score, a decision-aid developed by FMCSA and recommended as a guideline to help determine which trucks to select for commercial vehicle roadside driver/vehicle safety inspections. Trucks using weigh station/truck inspection bypass services depend on good ISS scores in order to keep the status that allows them into the program.

To dispute the findings of an inspection that impacts your safety score, the FMCSA's DataQs system is a useful tool. DataQs allows you to request review of a violation or inspection report with which you don't agree, as well as federal and state data issued by FMCSA that you feel may be inadvertently incomplete or incorrect. The system automatically forwards your request for data review to the appropriate office for resolution and collects updates and responses.

Lt. Tracy Barker, an enforcement officer with the Iowa Department of Transportation's Motor Vehicle Enforcement Division, spoke with freelance trucking journalist Evan Lockridge about why these scores are important and proper actions to take to ensure they are accurate. The conversation has been edited for clarity and length.

Evan: Lt. Barker, under what circumstances will there be something that a fleet can challenge under the DataQs system? Is it when there is a citation, or does it have to be when an inspection is performed on a truck?

Lt. Barker: If you have an inspection done on a truck and violations are found and indicated on the inspection report, when that information is transferred to the federal system and goes through all of their web services, it will become part of the CSA calculation.

Evan: How is an ISS score affected by violations?

Lt. Barker: Your ISS score is, in big part, generated by numbers of inspections. If you're a new carrier that hasn't had a whole lot of inspections, you're going to have a higher ISS score just because you haven't had the better safety inspections. Clean inspections help bring down your ISS score over time, because the lower it is, the better. Violations can create a higher score, meaning enforcement will consider you a more at-risk carrier.

Evan: And of course, the higher the ISS score, the less likely you are to get a green light for a truck bypass.

Lt. Barker: Exactly. If a carrier wants to utilize the PrePass service, for example, it needs to have a certain safety rating to qualify.

Evan: So if you received just a citation and no inspection, how would that affect your CSA score?

Lt. Barker: For example, say I stop a truck for speeding. If I write him a citation for speeding but don't perform a vehicle inspection, that speeding citation will not be calculated into CSA. However, if I do an inspection and indicate that speed violation on there, it will then be calculated into the CSA score. CSA does not care whether a law enforcement agency writes a citation or not. If it's on an inspection as a violation, it gets calculated in.

Evan: If a truck is stopped, say for speeding, and an officer decides, "While I'm here, I'm going to go ahead and do a roadside inspection," is there a chance the citation may not be noted on the inspection report?

Lt. Barker: In the state of Iowa, if we do an inspection, we report those violations. If a driver is issued a citation, it would be indicated on the inspection report. I'm not sure how they handle it in other

states. If I perform an inspection and write you a speed violation, it's going to show up on the inspection and then the citation would be supplemental.

The DataQs system is there for a carrier to challenge things and get further explanation.



Evan: Under what circumstances should a fleet or driver challenge the results of the inspection report using the DataQs system? Are there cases when it's best to not use it?

Lt. Barker: If I find a violation on a truck, I would think that as soon as that truck gets back into a terminal, the carrier would fix the problem. For instance, say it's a taillight. They fix the taillight. They know that the violation occurred because that taillight was out and they had to repair it. In that circumstance, if a company understands the system, they probably won't challenge that violation. However, if you've got a logbook violation and if there's some discrepancy and the carrier says, "Our guy was right and the officer misread the log book or miscalculated the hours," in that case you absolutely should challenge it. The DataQs system is there for a carrier to challenge things and get further explanation from the agency of why their officer made the decision to issue that violation. Then, if both sides agree that the officer made an error, the violation would be removed and wouldn't affect the carrier's CSA score. On the other hand, if the agency describes the violation, and the carrier can clearly see the reasons why the violation was issued, the violation stands. Everybody moves on.

Evan: What if the driver or carrier decides to challenge a citation in court?

Lt. Barker: If the driver opts to go to the court system and dispute the citation, the judge could determine they're not guilty of that violation. If that's the case, no fees are assessed, then the driver compiles the DataQs request, and it comes to us. They show us proof of the disposition stating the driver was not guilty and no fees were assessed, which would be another case for a DataQs request. We'll remove that violation from the record. So in these cases it is obviously in the carrier and the driver's favor to take time to challenge citations.

There are no Federal guidelines regarding how many times you can challenge something.



Evan: Is there a downside to excessively challenging violations?

Lt. Barker: Some carriers will try to challenge every violation. They hope that maybe the employees handling violations at the state level are overloaded, and they might get a pass because somebody is busy and just removes the violation. Excessive challenges can overload some of the states. That's because every DataQs request that comes in requires our review. Carriers who send challenges just to see if there's a chance they can get that violation removed really bog down the system. Of course, each state has its own process regarding how they handle DataQs requests. In some, several people have to review them. In other states, the individual who

is the point of contact reviews it, and if there are further challenges or the carrier requests we escalate the issue for further review, it will then involve more individuals.

Evan: If a trucking company challenges each and every violation, does this create a red flag to the personnel viewing the DataQs requests?

Lt. Barker: Some carriers will do that. Again, speaking for Iowa, even if we get a carrier that challenges everything excessively, we still review each situation. We keep our standard as high as possible by treating each DataQs request as an individual case and go from there. There are no Federal guidelines regarding how many times you can challenge something. And I don't believe there's a penalty for a carrier challenging every data point or every violation through the DataQs system. The nice thing with the DataQs system is that it's a tracking system. That's why we push for any challenges to go through that system so that they can be tracked, properly reviewed, and if there are any criticisms against our agencies that we are not taking care of complaints, we can reply: "Here are 20 complaints you filed through the DataQs system; we addressed each and every individual issue."

Evan: If a citation is dismissed in court, do fleets need to file certain paperwork? It's not automatically dismissed from their record, correct?

Lt. Barker: When citations are dismissed or the individual goes to court and is found not guilty, nothing is sent directly to us at the DOT. That responsibility does fall on the carriers to take the disposition and notify us regarding what took place with this citation.

Evan: Why are dismissed citations not automatically removed, making it very important for fleets to take that step?

Lt. Barker: The court system and the state are two completely different systems. The state court system doesn't report back to the SAFETYNET system we use in each state to make the corrections. There's nothing that comes direct from the court to enforcement saying, "John Doe was found not guilty, please remove the violations from the federal system." That's why we have to rely on the carriers to provide the paperwork proving that a case was dismissed. Also, in some instances a case is not dismissed, but the charge is changed by the court so it's best for the carrier to notify us of the

outcome through DataQs. For example, one issue that could impede a true reflection of carrier's violations by the courts is known as "masking." The Judge may take a serious moving violation such as speeding and find the driver guilty of only a lesser charge in an act of leniency.

Evan: Explain a little more about this, please.

Lt. Barker: Depending on how states record your points system for your driver's license, a non-moving versus a moving violation can make a difference on your driver's license. Every state is a little different, but most people would rather have a non-moving violation than a moving violation, because the latter hits you with more points on your driver's license. And CSA is going to consider a moving violation more of a hazard than a non-moving one.

Evan: Please explain how doing everything we've talked about is going to influence an ISS score and whether someone's more likely to get a green light to bypass a weigh station and truck inspection site.

Lt. Barker: If you can get violations removed from your safety ratings, it's going to directly affect your carrier's safety rating and give you a better ISS score. This can lead to a much better chance of receiving green lights for weigh station bypass.

Evan: When you say safety rating, you're talking about getting violations removed from your CSA safety rating?

Lt. Barker: Yes. The feds look at a number of different things to calculate that CSA score, and if I have less violations and show clean inspections, I will have a better safety rating and a better ISS score. And I have a higher potential when I use a service like PrePass to get weigh station preclearance so I can continue to move my freight at a better pace but within a legal limit.

Evan: Can you share your experience in handling the DataQs system for the state of Iowa?

Lt. Barker: Another officer in our department handles all the initial DataQs, but I receive copies of all the emails and every DataQs request that comes in. I play backup to him, if he were to be gone for vacation or out of the office for an extended period of time. If a DataQs request is for something simple that he can address — for example, a driver may have lost his inspection report and needs another copy — he can send that copy of the

report to the carrier so they can review it, and life moves on for them. If something comes in that requires more questioning from the officer, he forwards that to the supervisor who will come back with a response. Then the officer will enter that response. They might agree with the carrier and approve the removal of that violation. Or they could deny the request to remove, saying, "we looked at photos, we looked at video camera, we looked at all the things on the officer's evidentiary record that he has out in the field, and the violation should stand."

Evan: Do you have any other thoughts regarding the DataQs system?

Lt. Barker: For Iowa, we get a fair number of DataQs requests, but I think they're all manageable. I think if a state maintains and continues to direct the carriers to use the DataQs system, it's a great tracking method. It's a reliable and effective tracking system, so there is never a question of an issue not being received or addressed.

By paying attention to your trucking operation's CSA and ISS scores, as well as having a formal process set up for monitoring these scores, you're less likely to have your trucks inspected, either at roadside or at weigh stations, saving you time and money.

However, if you have reason to believe your trucking operation has a score that's not accurate in either the CSA or ISS programs, or if you would like copies of inspection reports submitted by law enforcement officers, visit the DataQs web site at <https://dataqs.fmcsa.dot.gov> where you can set up your account for no charge.

You can also get more information by visiting the FMCSA DataQs Help Center at <https://dataqs.fmcsa.dot.gov/HelpCenter/HelpCenter.aspx> where you will also find a list of the most frequently asked questions about the DataQs system.

For more information on safety scores and PrePass, call (800) 773-7277 or visit www.prepass.com.

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How to File a DataQs Request

Now you know that you can file a DataQs request, or challenge, in response to an inaccurate inspection report. But, how do you file a DataQs request?

Paul Sullivan, a 27-year veteran of the Massachusetts State Police and a regional director for HELP Inc., the provider of PrePass, said there are several best practices that both fleets and owner-operators must keep in mind when filing a DataQs challenge, which is formally known as a request for data review (RDR).

“A DataQs challenge can be filed under any circumstance where a vehicle was inspected and an inspection report was issued or if there was an accident involving a truck and a police report was filed,” he said.

DataQs challenges, Sullivan said, can also include when citations are issued, but only when an inspection report is also issued. In other words, if a citation was issued, but no inspection was made, there would be nothing to file a DataQs challenge over because the citation is not in the federal records.

According to Sullivan, when submitting a DataQs challenge you need to file as much documentation as possible. For instance, include proof if you know it wasn't you or someone in your operation, or whatever documents are needed to prove what was written on the inspection report is not accurate.

“If you are going to challenge something and you know you're right, you can't give them too much documentation to prove your case,” he said. “Throw as much evidence as you can at the DataQs request you're filing.”

Documentation can include bills of lading, toll and other receipts and even copies of logbooks or photographs, for example.

Another best practice Sullivan recommends fleets and owner-operators keep in mind is to have the discipline to check their DataQs records on a regular basis — for example, at the beginning of every month.

To check your records, go to the DataQs website at <https://dataqs.fmcsa.dot.gov> and log in using your credentials. Look at any inspections or

accidents on your record with the mindset that you're looking for things you didn't know were on your record. (Note: If you don't have credentials to log into the system, the DataQs website has instructions regarding how to obtain them.)

Once a DataQs RDR has been ordered, the amount of time before you hear back from authorities can vary depending on the state where an inspection or accident happened. Based on his personal experience, Sullivan said it's common for a fleet or owner operator to typically hear back about their RDR about a week and a half later.

Another thing to keep in mind when filing a DataQs RDR, Sullivan said, is that “it is useless to challenge opinions.”

For instance, a driver might be cited for a burned-out light. Submitting an RDR to say, “No, the light wasn't burned out. It was weak,” will be fruitless. Another example can be to quibble over how much a truck was speeding. The officer will report what he or she witnessed, and arguing the finer points of what defines a burned-out light or speeding will not be taken seriously.

It's also important, said Sullivan, to keep the RDR as professional as possible – no name calling or accusatory language — with a clear and detailed explanation of what you want reviewed.

Ultimately, according to Sullivan, this means that both carriers and owner-operators need to know the federal regulations of trucking.

“If a truck is cited for a nonexistent violation, the carrier has to know that,” he said. Otherwise, they could be not only be forced to pay a fine for something that's not illegal, but could see their safety records suffer as well.

For example, federal regulations call for very specific lamps on both the tractor and trailer. According to Sullivan, it's not uncommon for people, especially owner-operators, to add additional lights to the tractor or trailer that are not required. He pointed out that drivers may be cited for these additional lights if they are burnt out, which is not a violation.

All the more reason why it's not only important to know when to file and not to file a DataQs challenge, but how to make sure it's done correctly to get the best results.