

clientbulletin

TRANSPORTATION LAW UPDATE

Changes to Ontario's CVOR System - Effective April 2, 2007

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If you hold a CVOR, you need to be aware of important changes to the CVOR system which came into effect on April 2, 2007.

Under the *Canadian Motor Vehicle Transport Act* ("MVTA"), each province is responsible for monitoring the safety record of its own carriers across Canada. Effective January 1, 2006, only those carriers with Ontario base-plated vehicles, and U.S. carriers operating in Ontario, were required to have a CVOR.

On April 2, 2007, Ontario introduced changes to its CVOR system so that the Ministry of Transportation ("MTO") can effectively monitor a carrier's safety record all across Canada.

The significant changes are:

1. Your CVOR violation rate will no longer be based on your "adjusted fleet size", but will now be based on the kilometres you travel across Canada.
2. The CVOR will reflect events across Canada, not just in Ontario. For U.S. carriers, the CVOR will continue to reflect Ontario events only.
3. Accidents, now called collisions, will be assigned points based only on severity and on preventability, which is determined by the investigating police officer. Culpability, based on whether or not a charge is laid, is no longer considered. Collisions in other jurisdictions will only be assigned points if the other jurisdiction has provided information on preventability. All collisions reported to Collision Reporting Centres will now be assigned points if there is sufficient information available to determine preventability.
4. The number of conviction points assigned to offences has been changed so that the Ontario system is in harmony with those in other Canadian jurisdictions. In addition, the number of points assigned to an offence will be higher for those driver-related offences which MTO has determined to be strong indicators of future collisions. One of the significant effects of this change is that all moving violations, including careless driving, unsafe move, improper lane change, and disobey red light, will carry 5 CVOR points, removing the benefit of a plea bargain for the carrier.

5. All levels of inspections are now included on the CVOR. Points are assigned for out-of-service (OOS) defects and for driver defects. One point is assigned for each category of OOS defect. A surcharge of one point is assigned for each additional category after the first category. There is no longer a 2 point cap per unit. Driver defects, such as not carrying a driver's licence or a log book violation, are also assigned points.
6. Under the old system, the overall violation rate was based on the accident, conviction and inspection violation rates, with accidents being double-weighted. Under the new system, the overall violation rate is still based on the collision, conviction and inspection violation rates, but now both collisions and convictions are double-weighted.
7. Changes to the Carrier Safety Rating System and to the Facility Audit Program are expected to take effect within the coming months. The threshold for the determination of a carrier's Safety Rating, and how the Safety Rating can be changed, are being revised. For example, a Conditional Safety Rating will now be assigned when a carrier exceeds 70% of the overall violation rate, instead of 65% under the old system. Facility Audits will only be conducted for carriers over 50% of the overall violation rate or after a serious event, a follow up Facility Audit will be conducted after a failed Facility Audit, and compliance reviews, which are focussed audits without the ability to lay charges, may be conducted if MTO has concerns about a carrier's safety record.
8. MTO will continue to sanction those carriers with a poor CVOR record.

Your CVOR will be evaluated by way of a "blended" approach until April 2, 2009. Events which occurred before April 2, 2007 will be assessed under the old rules, and the new rules apply to events occurring on April 2, 2007 onwards. As a result of the new rules your CVOR abstract will be in a different format. You will likely notice a slight decrease in your collision points and conviction points and it is difficult to predict what will happen with inspection points. However, the standard you will be measured against will change, based on kilometres travelled, and so there may in fact be an increase in your overall violation rate, depending on distance travelled.

What you should do as a result of these changes:

1. Educate your drivers - they need to understand that they will now be subject to points during MTO inspections and that their failure to carry all required documents, or accurately complete their logs, will lead to driver inspection points, in addition to charges. They must also understand that any moving violation

will now carry 5 CVOR conviction points, and that this will have a dramatic impact on your CVOR record and on their CVOR driver abstract.

2. Review your policies and procedures including those for driver training, driver discipline and bonus/incentive programs, to ensure that these policies reflect the changes to the CVOR system.
3. Review your preventative maintenance policies and procedures. Now that there is no cap on the number of OOS points in an inspection, you must ensure that you are not exposed to a significant increase in inspection points.
4. Undertake a regular review and analysis of your CVOR Level II Abstract both under the old and new CVOR systems. Do not be misled by what might appear to be an improvement in your record. You must understand how your violation rates are calculated under both the old and new CVOR systems.

It remains to be seen what the real impact of these changes will be to your CVOR and safety record, and this will only become apparent once we have some experience working within the new system. Whatever the impact, you need to continue to manage your CVOR to ensure that you are not a candidate for sanction. Failure to do so may lead to higher insurance costs, the loss of your CVOR, and ultimately the loss of your ability to operate your business.

For assistance in analyzing your CVOR record, assessing your safety and compliance systems to ensure they address the new rules, and for assistance in developing safety and compliance systems, please contact us.



Carole McAfee Wallace practises civil litigation and focuses on transportation law. She represents some of Canada's largest bus and trucking companies on a wide variety of transportation issues including disciplinary matters and compliance with legislative requirements. Carole defends her clients in Provincial Offences Courts across the province and appears on their behalf before administrative tribunals. She works with her clients

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