

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Drayer, :
Inc., Notice of Apparent :
Violation and Intent To : Case No. 18-1436-TR-CVF
Assess Forfeiture. :

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PROCEEDINGS

before Patricia A. Schabo, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room D, Columbus, Ohio, called at 10:06 a.m.
on Thursday, November 14, 2019.

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On behalf of the Staff of the Public
 Utilities Commission of Ohio.

Michael Yemc, Jr.
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On behalf of the Respondent Drayer, Inc.

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Thursday Morning Session,
November 14, 2019.

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THE EXAMINER: The Public Utilities
Commission of Ohio is assigned for hearing at this
time and place Case No. 18-1436-TR-CVF, being In the
Matter of Drayer, Inc., Notice of Apparent Violation
and Intent to Assess Forfeiture.

My name is Patricia Schabo, and I'm the
Attorney-Examiner assigned by the Commission to hear
this case. I'll begin by taking appearances starting
with the Staff.

MR. MARGARD: Thank you, your Honor. On
behalf of the Transportation Staff of the Public
Utilities Commission of Ohio, Dave Yost, Ohio
Attorney General; John Jones, Section Chief, Public
Utilities Section; by Assistant Attorney General
Werner L. Margard, 30 East Broad Street, 16th floor,
Columbus, Ohio.

MR. YEMC: Thank you, your Honor, Michael
Yemc on behalf of the Respondent Drayer, Inc., 600
South Pearl Street, Columbus, Ohio, 43026.

THE EXAMINER: Thank you. There being no
preliminaries to discuss, I'll just hand things over
to you, Mr. Margard.

MR. MARGARD: Thank you, your Honor. I'd like to begin by calling Mr. Tom Forbes to the stand, please.

(Witness placed under oath.)

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THOMAS FORBES

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Margard:

Q. Sir, would you please state your name and your business address.

A. Tom Forbes, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio, 43215.

Q. And are you employed by the Public Utilities Commission?

A. Yes, sir.

Q. In what capacity, sir?

A. I'm the Assistant Chief of the Motor Carrier and Rail Enforcement Division.

Q. What are your duties and responsibilities in that position, please?

A. I manage the day-to-day operations of the motor carrier side of the Division, directly

1 supervise four field supervisors, assist with
2 preparation of budgets and planning, Performance
3 Evaluations, time sheets, the general administration
4 of the Division, as well as I maintain my inspection
5 certifications and do inspections, assist with
6 Compliance Reviews.

7 Q. How long have you been in your current
8 position?

9 A. 11 months.

10 Q. And prior to that?

11 A. The five years prior to that, I was a
12 Field Supervisor for the Transportation Department
13 over either the western or the southwestern portion
14 of Ohio.

15 Q. And prior to that?

16 A. Prior to that, I was a Compliance Officer
17 for eight years with the Public Utilities Commission
18 of Ohio's Compliance Division.

19 Q. Now, you indicate that you do perform
20 inspections and Compliance Reviews currently; is that
21 correct?

22 A. I perform inspections. I'm not certified
23 to do Compliance Reviews, but I assist officers that
24 are certified.

25 Q. But you do have some sort of

1 certifications?

2 A. Yes, I do.

3 Q. What are your certifications, please?

4 A. I'm certified in what is referred to as
5 North American Standard Level 1 Vehicle and Driver
6 inspections, Hazardous Materials inspections, Cargo
7 Tank inspections, Other Bulk Package inspections.

8 I've attended the Compliance Review
9 class. I'm certified in Level 6 Radioactive
10 inspections. I'm a certified instructor for the
11 Federal Motor Carrier Safety Administration in
12 Hazardous Materials and Cargo Tank.

13 Q. Sir, I want to direct your attention to
14 the date of June 7th of 2018. Were you on duty on
15 that date?

16 A. Yes, sir.

17 Q. Do you recall what your job assignment
18 and duties and responsibilities were on that date?

19 A. Yes, that was during what's referred to
20 as road check which is a 72-hour blitz in North
21 America on conducting truck inspections of motor
22 carriers. And that was the third day of that blitz,
23 and I was working in Fayette County and southwest
24 Ohio. We were working in low inspection number
25 counties. Fayette was one of those, and I was

1 inspecting trucks around the Jeffersonville, Ohio
2 area.

3 Q. On that date in the course of your
4 responsibilities, did you have the opportunity to
5 inspect a vehicle that was being operated by Drayer?

6 A. I did.

7 Q. Do you have an independent recollection
8 today of that inspection?

9 A. I do.

10 Q. And as a result of your inspection, did
11 you prepare a report?

12 A. I did.

13 MR. MARGARD: Your Honor, may I approach?

14 THE EXAMINER: You may.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Margard) Sir, I've handed you a
17 document that's been marked for purposes of
18 identification as Staff Exhibit No. 1. Have you seen
19 this document before?

20 A. Yes, sir.

21 Q. And is this the report that you generated
22 on June 7th, 2018?

23 A. It is.

24 Q. This was prepared by you, correct?

25 A. Yes, sir.

1 Q. I'm actually going to direct your
2 attention, if you would, please, to the Inspection
3 Notes portion of this report; do you see that?

4 A. Yes, sir.

5 Q. And it says here that "Paper lost." Why
6 did you make that note?

7 A. We document the type of hours of service
8 for inspections, whether they be ELD, AOBRD, paper
9 logs or 100 air mile driver, so for other states that
10 have contact with them, they know on this day this is
11 how they were operating. In this particular case, I
12 noted that he was using paper logs and the reason
13 that they claim they were using paper logs.

14 Q. Now, before we go on, you used some
15 abbreviations. I want to make sure the record is
16 clear about those. You said ELD; what is that?

17 A. Electronic Logging Device.

18 Q. And what is that?

19 A. It is a device that records your hours of
20 service based off of engine information, movement of
21 the vehicle and information that the driver manually
22 enters into the device.

23 Q. You also mentioned something called a
24 AOBRD?

25 A. An Automatic On Board Recorder which is

1 an older version of Electronic Logging that is
2 allowed until December 16th of this year as a
3 grandfathering once the Electronic Logging Device
4 mandate came into play.

5 Q. Then you mentioned the paper log, and you
6 also mentioned something about a 100 mile driver;
7 what's that?

8 A. There are 100 air mile drivers that are
9 CDL drivers that can operate on timecards and they
10 don't have to have anything in the truck with them if
11 they meet the 100 air mile exemption which is stay
12 within a 100 air mile radius and work less than 12
13 hours a day.

14 Q. Are there any other restrictions on the
15 air mile?

16 A. The company must maintain true and
17 accurate time records for six months that shows start
18 time/end time and total hours on it.

19 Q. Thank you. In this instance this driver
20 used paper logs, did not have an ELD or an AOBRD?

21 A. That is correct, sir.

22 Q. It says, "Claims glider kit older than
23 '99 engine." What does that mean?

24 A. A glider kit is an unpowered chassis that
25 you can purchase that comes typically with the front

1 axles and tires, no engine, no transmission and no
2 rear wheels/tires. That's an unpowered glider kit.

3 They also make rolling glider kits that
4 have more parts, and they make powered glider kits
5 where the manufacturer puts an older engine in a
6 newer body and sells it as a complete truck with an
7 older engine, but the cab itself is whatever model
8 year we're currently in.

9 Q. These are just various pieces and parts
10 that are assembled to make a working power unit?

11 A. Yes.

12 Q. Now, you also note that they claimed an
13 older than '99 engine. What is a '99 engine?

14 A. If the engine is older than 2000, meaning
15 '99 or older, there is an exemption that you do not
16 have to have an Electronic Logging Device. Those
17 engines were not built with the electronic technology
18 to support all the requirements of the ELD mandate or
19 the Electronic Logging Device mandate, so there was a
20 line in the sand drawn by the federal government that
21 starting with model year 2000 going forward, ELDs are
22 required.

23 Q. And when you say model year 2000, this is
24 model year of chassis? The truck? Which part of
25 these trucks are we talking about?

1 A. If either the truck or the engine is
2 older than 2000, an ELD is not required.

3 Q. Okay, thank you. You indicate that you
4 spoke with a mechanic?

5 A. Yes.

6 Q. Do you know who you spoke with?

7 A. Going back and looking at notes today,
8 the name that I entered in some notes was Jay.

9 Q. Is this a mechanic for Drayer?

10 A. The driver called the Drayer shop on his
11 cell phone to get information, and he asked me to
12 talk to the person he was talking to which he told me
13 was Jay. And I spoke with Jay and told him I was
14 doing an inspection and was trying to determine the
15 engine year of the truck I had stopped and asked him
16 if he knew where the tags were on the engine that
17 would give me the engine serial number.

18 Q. In the vehicle identification portion,
19 the truck is identified as being a 2017 manufacture;
20 is that correct?

21 A. Yes, 2017 Freightliner.

22 Q. And that's why it's important to know
23 when the engine was manufactured?

24 A. That's correct.

25 Q. But he had no information on when the

1 engine was manufactured?

2 A. He told me he didn't have the
3 information, and to the best of his knowledge, there
4 was not tags on the engine that had the serial
5 number.

6 Q. Now, you indicate further that you did
7 find a serial number for that engine; is that
8 correct?

9 A. That is correct.

10 Q. And how did you find that serial number?

11 A. The driver and I looked at the engine for
12 a somewhat extended amount of time and found the tag
13 that has the engine serial number on it.

14 Q. You say you were unable to determine the
15 engine year. Were you eventually able to determine
16 the year?

17 A. Yes, that day we had a contact at Western
18 Reserve Diesel that we could call with a serial
19 number and he would tell us the manufacture year of
20 the engine. I attempted to contact him and was
21 unable to contact him.

22 The following day I drove to W.W.
23 Williams, who's a diesel engine reseller service shop
24 here in the Columbus area, and asked them if they --
25 based on this model year, if they could tell me the

1 manufacture date of the engine.

2 Q. What were you able to conclude after that
3 conversation?

4 A. They printed a sheet that told the
5 manufacture year of the engine and it was
6 manufactured after 2000.

7 Q. Okay. By the way, when you went to W.W.
8 Williams, did you identify yourself as a PUCO
9 inspector?

10 A. I did not that particular day. I was in
11 a Polo shirt and I just walked in with a serial
12 number that I had wrote down and said could they
13 provide me the manufacture year of this engine. They
14 went to their computer, typed it in, printed the
15 sheet and handed it to me and I left.

16 Q. So without more -- anyone with the serial
17 number could get that information?

18 A. I believe so, yes.

19 Q. Now, sir, you're aware that we're here
20 today with respect to a Compliance Review, correct?

21 A. Yes, sir.

22 Q. You didn't conduct this Compliance
23 Review, did you?

24 A. I did not.

25 Q. Did you have anything to do with the

1 Compliance Review?

2 A. Other than letting Chris May, who was the
3 head of our CR program at the time, he was the CR
4 Program Manager, know that I had stopped a Drayer
5 truck and this is what I discovered and the fact that
6 at that time Chris Douglas worked for me and we were
7 in the same building, so I was aware of what was
8 going on. I had no involvement at all in the actual
9 on-site part of the Compliance Review.

10 Q. You were aware that a Compliance Review
11 was scheduled or about to begin or was ongoing?

12 A. Yes.

13 Q. Were you subsequently asked to assist in
14 in any way with the Compliance Review?

15 A. Yes, Chris May contacted me and asked me
16 if I could go back to the supplier W.W. Williams and
17 get manufacture dates for additional engines based on
18 serial numbers.

19 Q. He gave you a list of serial numbers?

20 A. He did.

21 Q. You took that to W.W. Williams like you
22 did before?

23 A. Yes.

24 Q. And provided them with the serial
25 numbers?

1 A. Yes.

2 Q. And they provided you with printouts for
3 each of those serial numbers?

4 A. All but one. One of them they could not
5 find the printout on the engine.

6 Q. Did you at that visit identify yourself
7 as a PUCO inspector?

8 A. At that visit I was in uniform, so it was
9 obvious to the person behind the counter who I was,
10 but I don't know whether I stated who I was.

11 Q. I see. Thank you.

12 MR. MARGARD: Your Honor, may I approach?

13 THE EXAMINER: You may.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Margard) Mr. Forbes, I hand you a
16 multi-page document that's been marked for purposes
17 of identification as Staff Exhibit 2. Take a moment,
18 please, and look that over.

19 THE EXAMINER: While you're looking that
20 over, I will just affirmatively mark Staff Exhibit 1
21 and 2 for the record.

22 MR. MARGARD: Thank you.

23 A. Okay.

24 Q. Have you had a chance to review this
25 document?

1 A. I have.

2 Q. Have you seen this document before today?

3 A. Yes.

4 Q. In fact, are these the sheets that W.W.
5 Williams printed out for you with respect to the
6 numbers that you received from Mr. Douglas?

7 A. Mr. May, yes.

8 Q. From Mr. May, excuse me, thank you.
9 These are the sheets you received?

10 A. These are.

11 Q. There is some handwriting on some of
12 these sheets. Is that your handwriting?

13 A. It is not.

14 Q. Do you know whose handwriting that is?

15 A. I do not.

16 Q. Was that on the pages when you originally
17 received them?

18 A. It was not.

19 Q. I do want to ask you a little bit about
20 manufacture dates. We've been talking about the
21 significance of the 2000 year and you also indicated
22 that Western Reserve I believe you said was a
23 reseller?

24 A. Yes.

25 Q. What does manufacture date mean?

1 A. The date the engine comes off the
2 assembly line.

3 Q. Okay. So on Staff Exhibit No. 2, there
4 is, for example, on the first page about halfway down
5 on that left column a build date. Do you see that?

6 A. Yes.

7 Q. Is that what you're referring to when you
8 refer to a manufacture date?

9 A. It is.

10 Q. Now, it's possible for engines to be
11 altered or modified after they've been manufactured,
12 correct?

13 A. Absolutely.

14 Q. Are you familiar with the terms rebuilt
15 and remanufactured?

16 A. Yes.

17 Q. What is your understanding of what those
18 terms mean?

19 A. Rebuilt is an engine that a mechanic has
20 done repair work on because of damage to the engine,
21 using the original components and replacing specific
22 components on the engine that were damaged. That is
23 a rebuilt engine.

24 A remanufactured engine is sent back to
25 the manufacturer, in this case Detroit Diesel, and

1 the block is reused but the rest of the engine is
2 built to today's standards.

3 Q. Is there any significance to those
4 distinctions for purposes of the ELD regulation?

5 A. Yes.

6 Q. And what is that?

7 A. A rebuilt engine maintains its original
8 serial number, its original build date, manufacture
9 date. So if it was pre-'99 as a rebuilt engine, it's
10 going to continue to be a '99 or older rebuilt
11 engine.

12 On a remanufactured date, the date that
13 that remanufactured engine comes off the line, it's a
14 new engine for ELD requirements.

15 Q. Does it receive a new serial number?

16 A. It does.

17 Q. Completely different than the old one?

18 A. It will be -- in Detroit Diesel's case,
19 it will have an RE in it for remanufactured engine.

20 Q. Let me ask you to turn to Page 5 of Staff
21 Exhibit 2, if you would, please.

22 A. Okay.

23 Q. This is the one that has the handwritten
24 2014 on top; do you see that?

25 A. I do.

1 Q. I wanted to make sure we're on the same
2 page. The first line is a serial number, and that
3 serial number has an RE in it; do you see that?

4 A. I do.

5 Q. Is that what you were referring to with
6 respect to the change in serial number?

7 A. Yes, it will have RE, meaning
8 remanufactured engine.

9 Q. If you were to compare that with, say,
10 the first page, the first page appears to be an R0?

11 A. Yes.

12 Q. And R0 would be an original?

13 A. That engine has not been remanufactured.

14 Q. Thank you so much. Turning back to Page
15 5, it has a build date of 2015 and then on the line
16 above it, it has a Detroit Diesel reman. There
17 appears to be some portion of that missing for
18 whatever reason. But do you understand reman to be
19 remanufactured?

20 A. Yes.

21 Q. Let me have you come back a page to Page
22 4 to the page that has the 2021 handwritten at the
23 top.

24 A. Yes.

25 Q. It has a VIN, Vehicle Identification

1 Number. Is that what you understand VIN to be?

2 A. I'm looking for it on here. Yes, VIN,
3 yes, sir.

4 Q. It has a VIN in-service date that is
5 different than the unit in-service date; do you see
6 that?

7 A. I do.

8 Q. Do you know what the reason for that
9 would be?

10 A. I do not.

11 Q. And then on the right-hand side, there's
12 an indication that the equipment model was a glider.
13 Is that significant for purposes of this engine?

14 A. Where is that?

15 Q. I'm sorry, on the right-hand side, there
16 are a number of categories: Equipment make,
17 equipment model, equipment VIN, domicile; do you see
18 that?

19 A. I see the equipment model says it was a
20 glider.

21 Q. Is that of any significance with respect
22 to this engine?

23 A. I would feel that this was delivered
24 without an engine or was built without an engine.
25 The glider kit was built without an engine and an

1 engine was added to it either prior to delivery or
2 after delivery from the donor vehicle.

3 MR. MARGARD: That's all the questions I
4 have for Mr. Forbes. Thank you.

5 THE EXAMINER: Mr. Yemc.

6 MR. YEMC: Yes, thank you.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Yemc:

10 Q. Now, on your Staff's Exhibit 1, looking
11 at your inspection notes, you indicated on those
12 notes you were unable to determine the engine year;
13 is that accurate?

14 A. That is correct.

15 Q. And now you've testified that you have a
16 serial number off of the engine. Do you recall
17 whenever you got that serial number that day if you
18 had it off of a tag or did you get it off of the
19 block itself?

20 A. Off of a tag.

21 Q. And now you also testified that whenever
22 an engine is remanufactured, it's remanufactured to
23 today's standards with all the equipment that's
24 required for a current new engine?

25 A. I did.

1 Q. Do you recall if on your inspection that
2 you did with this vehicle whether or not it had an
3 EGR valve?

4 A. Do not.

5 Q. Do you know what an EGR valve is?

6 A. Yes.

7 Q. Could you describe for the court what it
8 is.

9 A. It is an electronic connection to hook
10 the diagnostic equipment up to. It could also be
11 used to hook up ELD devices.

12 Q. You don't know if this particular engine
13 had that?

14 A. I do not.

15 Q. I'll take you to Staff's Exhibit 2 and
16 we'll go back to that Page 4. You testified --

17 A. Is this the one with 2021 on it, sir?

18 Q. Yes, it is.

19 A. Go ahead.

20 Q. Since the pages aren't numbered, yes.
21 You testified that you did not know the reason for
22 the discrepancy in the VIN service date and the unit
23 in-service date; is that correct?

24 A. That's correct.

25 Q. Just throwing it out there, could it be

1 that the unit in-service date relates to the engine
2 and the VIN service date actually relates to when the
3 glider was built?

4 A. I don't know what the two mean, so... I
5 would answer that with anything's possible.

6 MR. YEMC: I have nothing further.

7 THE EXAMINER: Mr. Margard, any redirect?

8 MR. MARGARD: Thank you, your Honor, if I
9 may.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Margard:

13 Q. You were asked questions about an EGR
14 valve.

15 A. Yes, sir.

16 Q. What is that valve?

17 A. It is the connection port to hook
18 diagnostic equipment up to. It's also used to hook
19 the ELD up to.

20 Q. Is the EGR used primarily for emissions
21 diagnostics?

22 A. I do not know the answer to that.

23 Q. Do you know if the ELD can be connected
24 to the engine by any means other than the EGR valve?

25 A. I do not know the answer to that. There

1 is a Frequently Asked Question that states that if a
2 truck is built without an EGR, does it still require
3 an ELD, and the answer is yes.

4 MR. MARGARD: Thank you, sir. No further
5 questions, your Honor.

6 THE EXAMINER: Mr. Forbes, you may
7 step-down.

8 THE WITNESS: Thank you.

9 MR. MARGARD: Your Honor, I would go
10 ahead and move for admission of Staff Exhibits 1 and
11 2.

12 THE EXAMINER: Any objections, Mr. Yemc?

13 MR. YEMC: I would have an objection to 2
14 in that we don't have anybody here from the company
15 that produced this document to testify with regards
16 to its authenticity and the accuracy of the document.

17 MR. MARGARD: Your Honor, this is a
18 document that's maintained in the Commission's
19 records as part of the investigation in this case.
20 The witness indicated that he obtained these
21 documents in this form from the entity that produced
22 them. I think they're relevant to this case and
23 should be admitted.

24 THE EXAMINER: Anything further?

25 MR. YEMC: Well, they may be relevant to

1 the case, but we have nobody to authenticate the
2 actual document and how they produced it, how their
3 records were kept, that this is kept in the normal
4 course of business from them. So I would just object
5 to their admission.

6 THE EXAMINER: I'll note your objection,
7 but I'll overrule it. Staff Exhibit 1 and 2 will be
8 admitted.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 MR. MARGARD: Your Honor, I call
11 Mr. Christopher Douglas, please.

12 (Witness placed under oath.)

13 - - -

14 CHRISTOPHER DOUGLAS
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Margard:

19 Q. Sir, would your please state your name
20 and your business address.

21 A. My name is Chris Douglas. My business
22 address is 180 East Broad Street, Columbus, Ohio,
23 43215.

24 Q. By whom are you employed?

25 A. The Public Utilities Commission of Ohio.

1 Q. And in what capacity, please?

2 A. I am the State Programs Manager.

3 Q. And what does that mean? What are your
4 duties and responsibilities, please?

5 A. So I oversee the Compliance Review and
6 Safety Audit Program. So I administer those programs
7 and make sure that we're meeting our numbers and that
8 we are in compliance with the rules and regulations
9 of the Federal Motor Carrier Safety Administration.

10 Q. How long have you been in that position?

11 A. Six months.

12 Q. Prior to that position, what job did you
13 perform?

14 A. I was a safety investigator doing
15 compliance investigations and safety audits and
16 roadside inspections.

17 Q. With the Commission?

18 A. Yes.

19 Q. How long did you hold that position?

20 A. Almost three years -- nine months
21 actually.

22 Q. Thank you.

23 A. One year -- I'm sorry, two years and nine
24 months.

25 Q. Thank you. Did you have any

1 certifications or training to perform your previous
2 position?

3 A. Yes. I was and I'm still certified in
4 what we call investigative safety analysis which is
5 the compliance investigations. I'm also certified to
6 conduct safety audits which is for new entrant motor
7 carriers just coming into the program.

8 I'm also certified in the same as
9 Mr. Forbes mentioned which is the North American
10 Standard Level I Roadside Inspection certification.
11 I also have my general Haz Mat certification, along
12 with Other Bulk Package Materials and I'm certified
13 to inspect Passenger vehicles as well.

14 Q. Thank you. Sir, did you conduct a
15 Compliance Review of the Respondent in this case on
16 or about June of 2018?

17 A. Yes, I did.

18 Q. Do you have an independent recollection
19 of that review?

20 A. Yes.

21 Q. Could you tell me how that review was
22 assigned to you, sir?

23 A. It was assigned the same as any other
24 review, by the State Programs Manager, and it's
25 assigned through what we call the portal. And it's

1 electronic into our inbox. And when we see it, we
2 prioritize our assignments. And once it becomes the
3 top priority, we notify the carrier and schedule an
4 investigation.

5 Q. Now, you indicate that it was assigned by
6 the Program Manager. Who was your Program Manager at
7 that time?

8 A. Christopher May.

9 Q. Thank you. When you were assigned this
10 review, are you given a scope or is that up to you to
11 determine?

12 A. No, it's assigned with the scope already
13 determined.

14 Q. And what was the scope that was assigned
15 for this review?

16 A. This assignment was initially a focused
17 review versus a full review.

18 Q. And distinguish that. Explain that
19 distinction, please.

20 A. So there's six different categories that
21 can be in Alert status. Depending on how many of
22 those categories are in Alert determines the type of
23 investigation or the scope.

24 Q. Now, when you talk about Alert, how do
25 you determine that something's in Alert status?

1 A. So, we review the carrier's profile which
2 is found in the Federal Motor Carrier Safety
3 Administration's online portal, and that will show us
4 what is in Alert. And also another system we use, we
5 refer to it as the SMS system. It's the Safety
6 Measurement System, also part of the same portal, and
7 it also shows which basic categories are in Alert.

8 Q. Thank you.

9 MR. MARGARD: Your Honor, may I approach?

10 THE EXAMINER: You may.

11 MR. MARGARD: Your Honor, let the record
12 reflect I've handed the witness a multi-page document
13 marked Staff Exhibit No. 3.

14 THE EXAMINER: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Margard) Mr. Douglas, have you
17 seen this document before?

18 A. Not this particular one, but I've seen
19 the profile, yes.

20 Q. What is this document?

21 A. This is the Company Safety Profile for
22 Drayer, Incorporated. It's dated June 20th, 2016.

23 Q. This would have been generated prior to
24 conducting your review; is that correct?

25 A. Actually, we do generate one prior to the

1 review and then depending on the length of the
2 review, we may or may not have to generate a second
3 or even a third profile. As long as the profile has
4 been generated within seven days of our final
5 close-out with the carrier, then we are good to go
6 with that particular copy or version.

7 Q. When did you begin your review of this
8 company?

9 A. The review was assigned on June 1st, 2018
10 and, let's see, I scheduled it on June 8th of '18 and
11 that's also the start date of the investigation as
12 well.

13 Q. When did you conclude your investigation?

14 A. The close-out date was June 18th -- no,
15 June 22nd. I'm sorry, June 22nd, 2018 is when we
16 closed out motor carrier officials.

17 Q. I refer you back to Staff Exhibit 3, if
18 this was generated on the 20th, and this would have
19 been generated near the end of your review?

20 A. Yes.

21 Q. Have you reviewed this document prior to
22 taking the stand today?

23 A. The Exhibit?

24 Q. Yes.

25 A. Yes.

1 Q. Can you tell us what this is, what it
2 shows.

3 A. Yes. As I mentioned, it shows several
4 different things. The main things that we look at
5 when we're doing our pre-investigation is the number
6 of BASICS that are in Alert. We just want to verify
7 that nothing has changed since the time the case was
8 assigned to us, so if you turn to Page 5....

9 Q. The pages are numbered at the bottom,
10 correct, sir?

11 A. Yes, 5 of 109. You'll see there that
12 Hours of Service is in the 95th percentile. Anything
13 above -- anything 65 percent or higher is in Alert
14 status, so that was confirmed to still be in Alert.
15 And then also you'll see there Crash Indicator, it
16 says 83 percent.

17 Again, if you look all the way to the
18 right-hand column where it says Safety Assessment, it
19 specifies that it's in Alert, but 83 percent is,
20 again, well above the 65 percent threshold.

21 Q. Let's talk about some of the elements of
22 this page here. First of all, you said BASICS, if
23 BASICS are in Alert. Is BASIC an acronym for
24 something?

25 A. Yes.

1 Q. Do you know what that's an acronym for?

2 A. The acronym stands for Behavioral
3 Analysis and Safety Improvement Categories, and those
4 are the categories you see in the first column there
5 under BASIC.

6 Q. Okay, thank you. And then there's a
7 column for Percentile and how was this percentile
8 determined; do you know?

9 A. It was based on a multitude of things,
10 but it mainly hinges on the roadside inspection
11 activity and violations that occur during those
12 inspections. So, for example, with Hours of Service
13 to be in the 95th percentile, you would have had to
14 have an accumulation of Hours of Service violations
15 during roadside inspections during the past two
16 years.

17 Q. Now, there are a number of pages,
18 actually about 90 or so pages for a variety of
19 different months over a period of years all in
20 basically the same form. Most of these appear to be
21 toward the end of the month. These are monthly
22 summaries; is that correct?

23 A. Correct. They are generated at the
24 end -- well, the beginning of the month for the
25 previous month, usually around -- we usually get them

1 anywhere between the third and fifth, but, yeah, as
2 you can see, it's every month going back until the
3 company began operations.

4 Q. And is this generated from some sort of
5 federal database; is that your understanding?

6 A. Yes.

7 Q. And so these percentiles are
8 automatically generated?

9 A. Yes.

10 Q. Do you know for what period of time this
11 percentile reflects?

12 A. It reflects a two-year rolling -- rolling
13 two-year period.

14 Q. The next two columns relate to
15 investigations, there's an investigation deficient,
16 investigation deficient date. Do you know what those
17 refer to?

18 A. Yes, there's also other factors that can
19 contribute to the percentage and, for example, under
20 those columns, it could be if there had been another
21 investigation at an earlier time in which there were
22 what we call serious violations discovered which are
23 either Acute or Critical violations, those would show
24 up there and cause that BASIC to also be an Alert.

25 Q. Sir, for illustration purposes, let me

1 ask you to turn to Page 19 of 109.

2 A. Okay.

3 Q. Do you see a notation in those columns
4 for that page?

5 A. Yes.

6 Q. And this is an indication of the serious
7 violations you just described; is that correct?

8 A. Exactly.

9 Q. I'll have you turn back to Page 5, if you
10 would, please. The next column refers to On-Road
11 Performance. What is this column for?

12 A. There again, as I mentioned previously,
13 the bulk of this percentage is made up by On-Road
14 Performance and that comes from inspectors doing
15 roadside inspections, documenting violations on the
16 report, the report's uploaded in the MCMIS system and
17 then it's based on algorithms, it's calculated,
18 percentile is generated and then it's applied to the
19 profile.

20 Q. Then the last column you indicated is a
21 notation if there is an Alert in one of these
22 categories, correct?

23 A. Correct.

24 Q. Do you receive any notices of Safety
25 Alerts other than just receiving a monthly report?

1 A. No.

2 Q. There's no kind of flag system, no
3 special notification process?

4 A. No, we have to actively seek that out.
5 It doesn't come to each investigator.

6 Q. I see. So although you would not have
7 reviewed this document, you would have reviewed a
8 similar document prior to beginning your review,
9 correct?

10 A. Yes.

11 Q. And what did your review of the safety
12 profile tell you prior to conducting your review?
13 How did that inform your review?

14 A. Main thing was that it reinforced that
15 the BASICS -- that the assignment that indicated
16 we're in Alert were actually still in Alert at that
17 time.

18 Q. Okay, thank you. As we go through the
19 report, I'm going to ask you to turn briefly if you
20 would to Page 96.

21 MR. MARGARD: And not a specific question
22 for the witness, your Honor, but I merely wanted to
23 note we have redacted personally identifying
24 information from this document. Those redactions are
25 not part of the original. They were done for

1 purposes of public record.

2 And I just want to note that we have
3 attempted to do that throughout in this proceeding
4 and ask the parties, if they would, please, if they
5 note any personally identifying information that
6 should be redacted, to ensure that we do so prior to
7 submitting it to the public record.

8 THE EXAMINER: It's submitted.

9 Q. (By Mr. Margard) Let me ask you to turn
10 to Page 98, please. It's labeled Inspections
11 Summary; do you see that?

12 A. Yes, sir.

13 Q. What's the purpose of this section of the
14 report?

15 A. This lays out how many roadside
16 inspections the particular carrier was involved in
17 over the past two-year period.

18 Q. And the next couple of pages are labeled
19 Inspection Characteristics.

20 A. Yes.

21 Q. Why are these pages important? I'm
22 talking about Page 99 and 100.

23 A. If you turn to Page 103 which is the
24 breakdown of the individual roadside inspections.

25 Q. I see.

1 A. And if you go to where it says, take the
2 first one, for example, that was on 6-13 of '18, in
3 the last row where it says Total, that's making
4 reference to the violations discovered. So Page 99
5 and beyond has the codes that they're referencing
6 there in case you need to refresh your memory as far
7 as what -- because some of the codes aren't spelled
8 out.

9 So if you look at most of these are
10 pretty easy to understand, but the third one down,
11 you can see where speeding is just SPEDNG, so you
12 would refer back to this sheet under Vehicle -- or
13 no, it's under Driver on Page 99, you go down to
14 speeding there, actually this shows you the value.

15 More importantly, it shows you the value
16 of violation. I don't use this page because to me,
17 the percentages are already generated, but I guess if
18 you were curious as to what a certain violation
19 contributed to that overall percentage, this would
20 give you an answer to that.

21 Q. Does this relate back to the Alerts in
22 any way?

23 A. Yes.

24 Q. Was this your first contact with Drayer?

25 A. Yes.

1 Q. Were you aware of any previous Compliance
2 Reviews that were conducted for Drayer?

3 A. Yes.

4 Q. In fact, Compliance Reviews were
5 conducted annually for the previous three years,
6 correct?

7 A. Yes.

8 Q. Did you have occasion to review the
9 reports of any of those Compliance Reviews prior to
10 conducting your review in this case?

11 A. I did.

12 Q. Do you know when you did that?

13 A. During the pre-investigation phase.

14 Q. So you would have reviewed the Safety
15 Profile, you would have reviewed prior reviews. Did
16 you have discussions with anyone else prior to
17 contacting the company or beginning your review?

18 A. Yes, we typically will talk to the
19 Program Manager about the assignment just to kind of
20 see if there's any additional information that needs
21 to be passed along. We also talk to our immediate
22 supervisors to make sure they understand that we are
23 getting ready to start the investigation and that
24 they're in agreement with that being our priority and
25 so on.

1 Q. You were present during Mr. Forbes's
2 testimony?

3 A. Yes.

4 Q. Did you have any discussion with
5 Mr. Forbes about the engine serial number issue that
6 he identified?

7 A. I was aware of it. I was included on
8 some of the e-mail -- e-mails going back and forth
9 between him and the Program Manager.

10 Q. Were you aware of any other issues in
11 your discussions with anyone else at the Staff
12 regarding concerns for this company?

13 A. Yes, it was brought to my attention that
14 there were complaints that were filed in addition to
15 the categories that were in Alert that we previously
16 spoke about, and so those complaints were something
17 that I talked to Chris May about before I began the
18 investigation.

19 Q. How did you learn about this complaint?

20 A. When I was doing my pre-investigation, I
21 was -- I'm able to view complaints that are received
22 in the federal database, again, the same database or
23 portal that I referred to earlier. So I pulled that
24 complaint up and reviewed the details of it from the
25 portal.

1 MR. MARGARD: May I approach, your Honor?

2 THE EXAMINER: You may.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Douglas, I've handed you a document
5 that's been marked for purposes of identification as
6 Staff Exhibit No. 4.

7 THE EXAMINER: So marked.

8 Q. Have you seen this document before?

9 A. Yes.

10 Q. Is this, in fact, the complaint that you
11 were just referring to?

12 A. Yes, it is.

13 Q. What did you learn in reviewing this
14 complaint report?

15 A. So we're trained to evaluate which one of
16 the categories that the complaint pertains to. And
17 in this case it pertains to the hours of service
18 BASIC category. And so that's where my focus was
19 when I looked at this complaint.

20 Q. And, again, this is from a federal
21 database that the staff routinely relies on in
22 performing its Compliance Reviews?

23 A. Yes.

24 MR. MARGARD: Your Honor, I'll note for
25 the record that, once again, personally identifying

1 information has been redacted from this document.

2 And those redactions were not part of the original
3 document that you saw, correct?

4 A. The assignment you mean?

5 Q. No, this complaint document did not have
6 these redactions on it?

7 A. Oh, no, correct, it did not.

8 Q. What arrangements did you make with the
9 company to conduct your Compliance Review?

10 A. I visited the motor carrier at their
11 principal place of business and provided them with an
12 appointment letter describing documents that we would
13 be interested in looking at and discussed a schedule
14 of when that might take place.

15 Q. What types of documents did you request
16 if you recall?

17 A. Okay, so based on which BASICS we are
18 investigating, we have a set list of documents that
19 we request. And in this case since the Crash BASIC
20 was in Alert, we requested the accident register, any
21 associated files which could mean police reports,
22 insurance claims, things of that nature.

23 It's always standard to request proof of
24 insurance. And for an Ohio carrier, that would be in
25 the form of an MCS-90. There was an additional

1 complaint that we had not made reference to yet that
2 brought the category of drug and alcohol into the
3 picture, so we requested that data as well.

4 We also request a drivers list, an active
5 drivers list. And since Hours of Service was part of
6 the focus, I requested them to have available all
7 records of duties or logs for the past six months and
8 then any associated supporting documents, as well as
9 a current equipment list and fleet miles, along with
10 a list of corporate officials and gross revenue for
11 the past fiscal year.

12 Q. Let me just ask you as a general matter,
13 was the Respondent cooperative in providing the
14 information you requested?

15 A. Could you repeat that?

16 Q. In general --

17 A. In general.

18 Q. -- was the Respondent cooperative in
19 providing the information that you requested?

20 A. Yes.

21 Q. Now, because you mentioned it, you
22 indicated that you requested a list of the drivers
23 from the company; is that correct?

24 A. That's correct.

25 Q. And the company provided you with such a

1 list?

2 A. Yes.

3 MR. MARGARD: Your Honor, may I approach?

4 THE EXAMINER: You may.

5 MR. MARGARD: Your Honor, the record will
6 reflect that I've handed the witness a document
7 marked for purposes of identification as Staff
8 Exhibit 5.

9 THE EXAMINER: Once we have that
10 identified, you can go ahead and mark it for the
11 record.

12 Q. Have you seen this document before,
13 Mr. Douglas?

14 A. Yes, I have.

15 Q. Is this the list of drivers that was
16 provided to you by the company?

17 A. It appears to be, yes.

18 MR. MARGARD: Once again, your Honor,
19 I'll note that the personally identifying information
20 has been redacted from this document.

21 Q. Those redactions were made subsequent to
22 your review, correct, Mr. Douglas?

23 A. Correct.

24 THE EXAMINER: We'll go ahead and mark
25 this drivers list as Exhibit 5.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. MARGARD: Thank you.

3 Q. (By Mr. Margard) Now, how do you actually
4 conduct your review?

5 Do you sit down with a stack of papers?
6 Do you sit down with an individual? Do you take
7 notes? Do you use a computer? Walk us through the
8 process of how you actually conduct your review.

9 A. Yes, I can do that. It would be best to
10 preface that this would be in general terms because
11 each and every case has its differences, but in
12 general, yes, we try to establish a contact who is
13 available to work with us throughout the
14 investigation, not necessarily to sit with us through
15 the entire investigation but just to be available to
16 provide documents as needed, to answer questions,
17 things of that nature.

18 And so once we establish that person,
19 then we'll establish an area of the business where we
20 can conduct the investigation usually like a spare
21 office, maybe a board room, areas like that.

22 So we'll set up, we'll take the documents
23 that they provide us, and we'll begin reviewing them,
24 you know, BASIC by BASIC and just looking for, you
25 know, areas of noncompliance.

1 Q. You mentioned establishing a contact.
2 Did, in fact, the company provide you with a contact?

3 A. Yes.

4 Q. And was that contact available and
5 cooperative?

6 A. Yes.

7 Q. And did the company, in fact, provide you
8 with a space and area for business in which you could
9 perform your duties?

10 A. Yes, they did.

11 Q. Did you use printers, scanners? Did you
12 use a computer? What type of tools did you use to
13 conduct your review?

14 A. All of our field investigators are
15 equipped with a laptop computer, a printer, a
16 scanner. So we're pretty self-sufficient. We don't
17 need to use any of the carrier's equipment, and so I
18 had all that with me during this investigation and
19 used it when needed.

20 Q. So if the company provided you with a
21 document that you thought was useful or important in
22 documenting your findings, you were able to make a
23 copy of that at the site of your inspection, correct,
24 sir?

25 A. Yes, sir.

1 Q. In addition to reviewing the documents,
2 did you conduct any interviews with company
3 employees?

4 A. Yes, the person who we worked with, I did
5 speak with him every day about where we were at with
6 the investigation, where we were headed, what we
7 needed, what we didn't have, so, yeah, there was
8 ongoing interviews that took place. And we also
9 spoke to their shop mechanic and especially when we
10 were looking at the vehicle maintenance category just
11 to get a better understanding of their procedures and
12 policies.

13 Q. Were there individuals that you requested
14 to interview that you were not given access to?

15 A. We did want to speak to the owner of the
16 company which is standard procedure. We always like
17 to try to make an effort to work with the highest
18 motor carrier official that's available, but during
19 the entire investigation, we never did have any
20 cooperation from the owner himself.

21 Q. Thank you. Did you have conversations
22 with anyone outside of the company with respect to
23 the company operations as part of your review?

24 A. Yes. I mean, as standard practice, we
25 have conversations with other parties that the

1 carrier is involved with. In this case, we had to
2 contact the drug and alcohol consortium that the
3 carrier's enrolled with during the Hours of Service
4 investigation. We had contacted a shop in the
5 Columbus area that was mentioned previously to get
6 some clarification on a few things. And outside of
7 that, it was pretty much just working with the
8 carrier officials for the most part.

9 Q. Thank you. Now, as a result of your
10 review, did you generate a final report?

11 A. Yes, I did.

12 MR. MARGARD: May I approach, your Honor?

13 THE EXAMINER: You may.

14 MR. MARGARD: Your Honor, may the record
15 reflect that I've handed the witness a multi-page
16 document marked for purposes of identification as
17 Staff Exhibit 6.

18 THE EXAMINER: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. Margard) Mr. Douglas, have you
21 seen this document before?

22 A. Yes, sir.

23 Q. Is this a copy of your final report of
24 this Compliance Review?

25 A. Yes, it appears to be.

1 Q. Is this prepared by you or at your
2 direction? And please take the time to look through
3 it if you're uncertain.

4 A. Yeah, it appears at face value to be the
5 report that I generated.

6 Q. Have you reviewed this document prior to
7 taking the stand today?

8 A. Yes, I have.

9 Q. Is it a true and accurate reproduction of
10 the report that you produced at the time of the
11 Compliance Review?

12 A. Yes, it is.

13 Q. Is it complete other than the supporting
14 documentation?

15 A. Yes, it appears to be complete.

16 Q. Is this the standard format for
17 Compliance Review reports?

18 A. At that time, yes.

19 Q. It's changed since?

20 A. Yes.

21 Q. On the first page of this report, it's
22 noted that the Review Type was a Compliance Review.
23 Would there be other designations that could have
24 gone in there?

25 A. There are, but they're rarely used. It's

1 primarily the Review Type is as you see it here.

2 Q. Thank you. Below that are the operation
3 types. Can you briefly describe this company's
4 operations.

5 A. Yes. We're focusing on the row that says
6 Carrier and the first column is Interstate which this
7 company does operate in interstate commerce which
8 means crossing state lines; however, they do not, as
9 far as we know, transport hazardous materials, so
10 that's why it says non-Haz Mat.

11 Then he also operates Intrastate which is
12 solely within the state boundaries and, again, as far
13 as we know, they don't transport hazardous materials,
14 hence the indication of non-Haz Mat.

15 Q. Thank you. The company's physical
16 address, it notes here your contact name was Jay
17 Owens. Was this, in fact, the contact you
18 established specifically with you?

19 A. Yes, it was.

20 Q. Carrier Classification, it says Authorize
21 for Hire. What's the significance of that?

22 A. There's two classifications that we focus
23 on: Authorize for Hire means they transport goods
24 for other people or other businesses entities; the
25 other classification could be a private carrier that

1 hauls their own goods, transports their own goods but
2 does not transport other people's goods.

3 Q. You have Cargo Classification, Coal/Coke
4 and Commodity Dry Bulk, do you see that reference?

5 A. I do.

6 Q. Let me ask you to turn, if you would,
7 please, to Page 2 of 7 of part C of your report.

8 A. Okay.

9 Q. Do you have that reference?

10 A. Yes.

11 Q. If I ask you to look toward the bottom of
12 the page, paragraph beginning "Carrier hauls...", do
13 you see that reference?

14 A. Yes, I do.

15 Q. And the paragraph following, is that your
16 summary of this company's operations?

17 A. Yes, it is.

18 Q. Is that an accurate summary of your
19 understanding of the company's operations?

20 A. Yes.

21 Q. Thank you. Let's turn back to the first
22 page, please, and under Equipment, the company lists
23 a number of power units. It lists a truck and 18
24 truck tractors; is that correct?

25 A. Yes, sir.

1 Q. And it's a truck. What type of truck; do
2 you know?

3 A. It's on the equipment list. I don't
4 recall off the top of my head, but I could find it if
5 you need me to.

6 Q. I'm just curious if you knew off the top
7 of your head. That's fine. Driver information, you
8 indicate there are 13 total drivers, correct?

9 A. Yes.

10 Q. And all of these drivers operate in
11 interstate commerce?

12 A. No -- Well, yeah, they do all operate in
13 interstate commerce as far as we could tell based on
14 what we were provided at that time. That doesn't
15 mean what they do every day. It just means that they
16 are available or that they occasionally might do an
17 interstate trip even though some of these drivers
18 were primarily local drivers that stayed within Ohio.

19 Q. Thank you for the clarification. Let me
20 ask you to turn to Part B of your report, Page 1.

21 A. Okay.

22 Q. Now, I'm going to ask you about the
23 format of this section, if we can. There are a
24 number of different violations that are listed,
25 correct?

1 A. Correct.

2 Q. And they're listed separately by
3 essentially the rule that you claim was violated,
4 correct?

5 A. Correct.

6 Q. And each rule violation has a header
7 table. So let's start with this first column, and I
8 note that there are six violations, and they all have
9 the word Federal in them. Do you see that?

10 A. Yes.

11 Q. Could it say State?

12 A. Yes.

13 Q. But these were all in your determination
14 federal violations?

15 A. Exactly.

16 Q. I note in the first and the second box
17 that the word Critical also appears?

18 A. Yes.

19 Q. What does that mean?

20 A. That means that more than one violation
21 occurred creating what we consider a pattern
22 violation, and that also more than ten percent of the
23 sample that I reviewed was in violation. And those
24 two factors result in the violation being classified
25 as a critical violation.

1 Q. What significance does that have for the
2 carrier?

3 A. For the most part, that means that those
4 violations will impact the carrier's safety rating
5 and likely would result in civil forfeitures.

6 Q. Thank you. The next box has Primary and
7 then a series of numbers. These are Code of Federal
8 Regulation numbers, correct?

9 A. Yes, sir.

10 Q. Do you put this information in or is this
11 automatically generated somehow?

12 A. We have a list of all the violations that
13 exist, and we have to select the violation that we
14 want to have populated on the report.

15 Q. Thank you. Discovered and Checked, can
16 you explain those boxes for us, please.

17 A. Yeah, so depending on the size of the
18 carrier, we have a sample chart, and we refer to the
19 sample chart. And in this case, the sample chart
20 pointed us to a total of five drivers to look at in
21 our sample for Hours of Service.

22 And so for each driver, we must look at a
23 30-day sample of their logs. So if you take 30 logs
24 times five drivers, it will give you a total of 150
25 checked. So that number Checked is referring to the

1 number of logs that we actually viewed. And then
2 Discovered is the number of those logs that were
3 found to be in violation of that particular code.

4 Q. So with respect to each of these
5 violations, to the extent that there's a sample size,
6 that's specified for you and determines what sample
7 size you look at; is that correct?

8 A. That's correct.

9 Q. Who determines that? Is that just a
10 standard list of sample sizes that the Commission
11 uses?

12 A. That's used across the nation.

13 Q. That's a federally specified --

14 A. Yes.

15 Q. Then the next box has Driver/Vehicles, In
16 Violation and Checked.

17 A. Yes.

18 Q. So you indicated for us for the first box
19 what that indicates, and let me have you look at, for
20 example, violation No. 5, where you indicate 30
21 checks but one driver, one vehicle?

22 A. Uh-huh.

23 Q. So you would have checked presumably 30
24 days?

25 MR. YEMC: Your Honor, at this point, I'm

1 going to ask the Staff actually to let the witness
2 testify. It seems like there's a lot of testimony
3 going on here and reading. If the witness could
4 actually testify to the report as opposed to counsel.

5 THE EXAMINER: You got to give him some
6 leeway --

7 MR. YEMC: I have been.

8 THE EXAMINER: -- to guide him through
9 what the report means. That said....

10 MR. MARGARD: In this specific instance,
11 your Honor, I recognize, and I'll be happy to
12 rephrase.

13 THE EXAMINER: Thank you.

14 Q. (By Mr. Margard) With respect to
15 violation 30, it indicates one driver, one vehicle
16 but 30 checked. Why the difference in this case?

17 A. This case was....

18 Q. My real question is what did you check?

19 A. We checked his logs. And only one driver
20 was found to have a 14-hour violation.

21 Q. And with respect to violation No. 6,
22 similarly, one driver?

23 A. Yes.

24 Q. The 30 similarly referred to logs
25 checked?

1 A. Uh-huh.

2 Q. And two violations discovered?

3 A. Correct.

4 Q. If we go back to Page 1 of Part B, again,
5 in looking in that first box, you have a description
6 and an example. Do you enter the description or is
7 that done automatically when you select the
8 violation?

9 A. Automatically.

10 Q. And the example, is that something that
11 you include?

12 A. Yes.

13 Q. Do you include all violations found in
14 each instance?

15 A. No, we usually -- or nine times out of
16 ten, we select the most egregious violation and use
17 it as the example.

18 Q. In your review process, do you
19 nonetheless document all of the violations?

20 A. Yes.

21 Q. Go to Page 2 of 2 of Part B.

22 A. Okay.

23 Q. There's a series of four boxes here in
24 the middle of the page. The first is a Safety
25 Fitness Rating Information?

1 A. Yes.

2 Q. And there are some numbers in here. Is
3 this over a specific period of time?

4 A. We are referring to which box again?

5 Q. The one labeled Safety Fitness Rating
6 Information. Do you see that box?

7 A. Yes.

8 Q. There are Miles, Recordable Accidents.
9 Is this over a specified period of time?

10 A. Yes.

11 Q. And over what period of time?

12 A. So the recordable accidents is looked at
13 over a two-year period. Same as the SMS system that
14 monitors. So we just go off of that profile, and
15 then the miles is what's reported to us during the
16 investigation by the carrier official, and that would
17 be for the preceding 12-month period.

18 Q. You mentioned a two-year period and a
19 12-month period. What period of time was your
20 Compliance Review intended to cover?

21 A. Generally they cover the previous
22 12-month period, but in this case since there was a
23 previous investigation, that was within that
24 timeframe. We only go back to the last
25 investigation.

1 Q. Thank you. The box in the upper right
2 that's labeled OOS vehicle, is this information that
3 you input or is this automatically generated?

4 A. No, that's information that I inputted.

5 Q. And where did you obtain the information?

6 A. It would be back on the profile mainly is
7 where we refer to to get that information when we
8 looked at the inspections. It will tell us if there
9 were any where there were violations found that
10 placed either the vehicle or the driver out of
11 service. That's the out of service vehicle right
12 there, so that would just be vehicle, not driver out
13 of service violations.

14 Q. This is the Safety Profile that we
15 referred to earlier?

16 A. Yes.

17 Q. On the lower right that has Rating
18 Factors, do you see that?

19 A. Uh-huh.

20 Q. What are these factors?

21 A. Those are connected with the BASIC
22 categories again. And so it lets us know after the
23 investigation is complete based on the violations and
24 the Crash factor whether or not each factor is either
25 satisfactory, conditional or unsatisfactory, so

1 that's what the letters stand for.

2 Q. That's what the S for satisfactory and U
3 for unsatisfactory and C for conditional?

4 A. Yes.

5 Q. And there's an N for factor five?

6 A. Yes.

7 Q. Do you know what N means?

8 A. N is Not Applicable.

9 Q. Is that the factor related to hazardous
10 materials?

11 A. Yes.

12 Q. This company doesn't use --

13 A. Correct.

14 Q. The bottom left boxes, the proposed
15 safety rating, in this case it says Conditional.

16 A. Yes.

17 Q. What significance is that safety rating?

18 A. Well, it's less than satisfactory. So it
19 means that there are areas that the carrier can
20 improve in.

21 Q. Does this have any implications for you?
22 Do you have to do any follow-up as a result of a
23 Conditional rating?

24 A. No.

25 Q. This is strictly for the company's

1 benefit and information?

2 A. Yes.

3 Q. I ask you to turn to the next page,
4 please, Page 1 of 7 labeled Part B, Requirements
5 and/or Recommendations.

6 A. Okay.

7 Q. How much of this is in general
8 boilerplate and how much of this is information you
9 input yourself?

10 A. The description is typically something
11 that we will customize to the investigation results
12 and the remedies or the bullet points are most often
13 boilerplated.

14 Q. If recommendations had been made as part
15 of a prior complaint, do you have any responsibility
16 with following up with those recommendations with
17 this Compliance Review?

18 A. Yes, we try to ensure that we follow up
19 to make sure that there's -- deficiencies have been
20 rectified, is no longer occurring.

21 Q. If you had noted any such, they would be
22 in this section or some other section?

23 A. Normally it would be in the Part C
24 section.

25 Q. Let's turn to the Part C section, if you

1 would, please.

2 A. On Page 1 down towards the bottom, it
3 says Recurring Violations. So what we're looking at
4 there is to see not necessarily -- that's not saying
5 that there were not any violations during the
6 previous investigations. What it's saying is there
7 were none discovered that were the same.

8 Q. Very good. Thank you. Now, is Part C
9 part of the report that you provide to the carrier at
10 the conclusion of your review?

11 A. No, it's not.

12 Q. When is Part C completed?

13 A. At the same time as Part A and Part B, at
14 the conclusion of the investigation. I mean, it
15 varies. Some investigators do it as they're doing
16 the investigation and some wait until the end and
17 then do it all at one time at the end.

18 Q. Is all of the information that was
19 contained in Part C information that you wrote
20 yourself?

21 A. Except for the headers on the -- like the
22 capital letters, most of those are a template, so I
23 go in and add my information beneath the headers,
24 yes.

25 Q. What do you do with your report when

1 you're done with it?

2 A. So it gets turned in to headquarters here
3 in this building, and someone in the CR program will
4 review the report to make sure that there's no
5 glaring errors or things that still need to be
6 completed.

7 And then once that review is done, it
8 will be uploaded to the federal database and another
9 reviewer at the federal level typically will take a
10 look at it and then it will be in their hands from
11 that point.

12 Q. So the entirety of this report is
13 uploaded to the Commission's records and also to the
14 federal records; is that correct?

15 A. Yes.

16 Q. Let me ask you to turn to Page 2 of 7 of
17 Part C.

18 A. Okay.

19 Q. I just want to focus on the Scope of
20 Investigation paragraph. Do you see that?

21 A. Yes.

22 Q. And it says that "The original assignment
23 was an on-site focus investigation without a D&A
24 Supplemental review and without an HM Supplemental
25 review based on D&A and HOS complaints." I'm

1 wondering if you could break that down for us and
2 explain what that means.

3 A. When the assignment shows up in our
4 portal, it will indicate whether or not there's a
5 Supplemental attached to the investigation. There's
6 only two types of Supplementals. One is a Drug and
7 Alcohol which is what the D&A stands for and the
8 other is an HM Supplemental which is what the HM
9 stands for.

10 Q. HM?

11 A. Haz Mat, Hazardous Materials, I'm sorry.
12 In this particular case, neither of those
13 Supplementals were attached to the assignment, so
14 that's why it says without a supplemental review.

15 Q. Also refers to HOS complaints. HOS is?

16 A. Hours of Service.

17 Q. It further says, "The investigation
18 changed to an on-site comprehensive investigation due
19 to violations discovered during the Crash BASIC
20 Investigation." What's this mean?

21 A. It's not uncommon for brokers to be
22 expanded to a comprehensive or a full investigation.
23 After you begin, you may find violations that require
24 expanding into other categories, and that was the
25 case in this particular investigation.

1 Q. And finally, you note at the end of that
2 paragraph that Chris May, Programs Manager, assisted
3 with the review, correct?

4 A. Correct.

5 Q. During what portions of the review did he
6 assist you?

7 A. He primarily was there the entire time.
8 We worked together on different aspects of the case,
9 but we were in the same quarters, and we shared the
10 workload and were co-investigators.

11 Q. Thank you. I'm going to turn you back
12 now to Part B, Violations, Page 1, and I'm
13 actually -- are you there, sir? Let me know when you
14 are.

15 A. Yes.

16 Q. We're going to take these out of
17 sequence. I'm going to start with the Violation No.
18 2. The description is "Commercial vehicle not
19 periodically inspected," correct?

20 A. Yes.

21 Q. What does that mean?

22 A. A periodical inspection is required once
23 a year, once every 12 months, and in this case, the
24 carrier had four vehicles that we looked at that did
25 not have proof of a periodic annual inspection.

1 Q. Now, I want to be clear, when you say
2 vehicles, does that include all of the different
3 units, both power units and non-powered units?

4 A. It does. That includes trailers as well.

5 Q. So do I understand you to say that the
6 requirement is that each vehicle be inspected at
7 least every 12 months?

8 A. Yes, by a qualified inspector and the
9 carrier will receive a hard copy of the inspection
10 which is a standardized form. And we request that
11 form and document whether or not it's within the
12 date. It has a date on it, so we review it and make
13 sure it's not expired. And if it is expired, we look
14 to see if the vehicle was utilized after the
15 expiration date.

16 Q. And if it has been used after the
17 expiration date, that would, in your opinion,
18 constitute a violation?

19 A. Yes.

20 Q. And the report indicates that you checked
21 eight. That was the specified sample size; is that
22 correct?

23 A. That's correct.

24 Q. Were those randomly determined?

25 A. No, they're -- sometimes they're random

1 but our first choice is to find in this case vehicles
2 that were involved in roadside inspections during the
3 period of time that we're evaluating that had defects
4 that were documented on the inspection reports.

5 And we're looking to see if those defects
6 have been corrected based on documents provided to us
7 or whether or not they still exist and the vehicle is
8 still being operated in that condition.

9 MR. MARGARD: May I approach, your Honor?

10 THE EXAMINER: You may.

11 MR. MARGARD: Your Honor, may the record
12 reflect I handed the witness a multi-page document
13 marked for purposes of identification as Staff
14 Exhibit 7.

15 THE EXAMINER: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Mr. Margard) Mr. Douglas, if you'd
18 take a moment to review this document.

19 A. I've reviewed it.

20 Q. What is generally contained in this
21 document, please?

22 A. Copies of the Annual Inspection Reports
23 that we were provided during this investigation.

24 Q. These were provided to you by the
25 company, correct?

1 A. Correct.

2 Q. And these documents are as provided by
3 the company?

4 There are no additional markings or
5 anything on any of these; is that correct?

6 A. Just the Staff Exhibit at the top on Page
7 1. Outside of that, I don't see any other markings.

8 Q. Okay, thank you. Let's start with the
9 very first page then. You had mentioned earlier that
10 the inspection reports are done on a standard form,
11 correct?

12 A. Correct.

13 Q. Is this the standard form that you were
14 describing then?

15 A. It is.

16 MR. YEMC: Your Honor, if I may interject
17 and just have a brief conversation with counsel
18 because there could be a stipulation to some of these
19 things so we don't have to go over every single
20 violation.

21 THE EXAMINER: Let's go off the record
22 for five minutes. You guys can chat and we'll come
23 back.

24 MR. YEMC: Sounds good.

25 (Recess taken.)

1 THE EXAMINER: Let's go back on the
2 record, and I will turn it back over to you,
3 Mr. Margard.

4 MR. MARGARD: Thank you, your Honor.
5 Prior to the break, as I was about to begin to start
6 looking at the second violation in the Compliance
7 Reviews report, counsel for the Respondent indicated
8 that they would be willing to stipulate to the
9 violations noted in Part B with respect to violations
10 2, 3, 4, 5 and 6. And if that is the stipulation,
11 Staff would the agree to that stipulation and I'll
12 just ask my colleague to so represent.

13 MR. YEMC: That is correct.

14 THE EXAMINER: Okay. So we are
15 stipulating -- just so I'm clear, we're stipulating
16 those violations occurred?

17 MR. MARGARD: Yes, your Honor.

18 MR. YEMC: Yes.

19 THE EXAMINER: Thank you. With that
20 stipulation, your next move.

21 MR. MARGARD: Thank you, your Honor.

22 Q. (By Mr. Margard) So that then brings us
23 back to Part B Violations, Page 1. The first
24 violation which is failing to require a driver to
25 prepare a Record of Duty Status using the appropriate

1 method, correct?

2 A. Correct.

3 Q. What does the regulation require?

4 A. The regulation requires that a truck that
5 is built -- a truck that is built or the engine is
6 built after 2000 or later is required to have an
7 Electronic Logging Device installed for Hours of
8 Service purposes.

9 Q. So it requires a driver to use that
10 Electronic Logging Device?

11 A. Yes, unless they meet an exemption like
12 Mr. Forbes referenced earlier. The 100 air mile
13 exemption would be one example of that.

14 Q. You were present for Mr. Forbes's
15 testimony, correct?

16 A. Correct.

17 Q. Let's kind of walk through those, if you
18 will, please. What is an Electronic Logging Device?
19 What is it? How does it function?

20 A. So it's an electronic device that can be
21 in different forms. For example, it could be
22 anything from a device that's exclusively for logging
23 Hours of Service, and it can be a tablet that is only
24 used partially for logging Hours of Service. It
25 could even be on a cell phone, but it is connected as

1 Mr. Forbes said to the vehicle and monitors the
2 activity of the vehicle along with inputs from the
3 driver.

4 Q. You say connected to the vehicle. Is it
5 connected to a specific part of the vehicle?

6 A. It's a little more complicated than that.
7 There's different options. It can either be directly
8 or it can be Bluetooth to the vehicle, but either
9 way, something is connected to the vehicle that is
10 linked to the device that allows them to communicate
11 with one another and document or record when the
12 tires are moving.

13 Q. Did you find that the Respondent had ELD
14 devices for any of its vehicles?

15 A. No, we did not. There was mention of a
16 couple -- let me refer to the report here. It's on
17 Page 4 of Part C, the very last sentence, and then it
18 goes on to Page 5. I'll just read it. It says Jay
19 Owens, who is the contact person at the carrier,
20 indicated that both Mack trucks, which were part of
21 their fleet, were equipped with AOBDRs from a vendor
22 called One20, but neither truck was available to
23 verify this claim.

24 And also Jay stated that the devices are
25 only if in the event that one of the trucks is needed

1 to travel beyond 100 air miles. Jay Owens stated
2 that he has not yet been trained on how to transfer
3 data from these AOBRDs to the back office nor does he
4 believe that the AOBRDs are powered on.

5 I did try to reach out to the complainant
6 for additional information, was unable to get a
7 response, but my point there is, you asked if they
8 had any ELDs, and that is the only evidence that we
9 had that the company had ELDs in any of the trucks.

10 Q. And the portion that you read
11 specifically with reference to the AOBRD, that's a
12 slightly different device than an ELD, correct?

13 A. Yes, it is. It's the first form of an
14 Electronic Logging Device that has been in existence
15 now for quite some time, probably going back five to
16 eight years, maybe even longer, but you had to have
17 these devices installed and in operation in the
18 trucks prior to the rule going into effect in
19 December of 2017 in order to be grandfathered up to
20 this point with those devices.

21 And in this case obviously that wasn't --
22 even if they had been working, they hadn't been
23 installed prior to that inception date.

24 Q. Do you know what happens to the data
25 that's recorded by these devices?

1 A. Are you referring to AOBRDs?

2 Q. Either one. Since they mention the
3 AOBRDs, let's talk about that one first. It's part
4 of the Compliance Review. If you were reviewing a
5 carrier that was using AOBRDs, how would you review
6 that data?

7 A. Basically they would print out the
8 electronic version of the logs, and we will just
9 review it manually the same as we do paper logs.
10 Without getting too much further into it, I mean,
11 there's software available and required to be used
12 for a true Electronic Logging Device in which the
13 data is transferred to that software and then it's
14 reviewed in the software, but that's not possible
15 with an AOBRD.

16 Q. Is your answer the same with respect to
17 the ELDs or is it different for an ELD?

18 A. Yes, we would review the data in the
19 software program called E-Logs if it was a registered
20 ELD. So my answer is no, you would look at them
21 differently.

22 Q. Did the Respondent provide you with any
23 printouts from any electronic recording devices as
24 part of your review?

25 A. No, sir.

1 Q. Did they provide you with any software
2 available way to view logging data for any of their
3 vehicles --

4 A. No, sir.

5 Q. -- as part of your review?

6 Now, you were present, again, during
7 Mr. Forbes's testimony, correct?

8 A. Yes.

9 Q. And there are some circumstances in which
10 manual logging is still permitted; is that correct?

11 A. Correct.

12 Q. Do you know in what circumstances it's
13 permitted?

14 A. Well, there's numerous exceptions. Just
15 to keep this in perspective, with this investigation,
16 we were mainly wanting to make sure that this carrier
17 didn't fall into the category of the vehicles or
18 engines being older than model year 2000 at which
19 point they would be exempt from the Electronic
20 Logging Device rule.

21 And then secondly, with this carrier, if
22 it was a situation where the drivers operated within
23 a 100 air mile radius of the reporting location,
24 there again, they would be exempt from the Electronic
25 Logging Device rule and could... The first exception

1 I mentioned, they still have to log but they can use
2 paper logs. The second one I mentioned, they don't
3 even have to log. The carrier is just required to
4 maintain time sheets.

5 Q. Now, we've been talking about engines and
6 vehicles. The regulation says, does it not, that the
7 Electronic Logging Device is required if a driver is
8 operating a vehicle that was manufactured after model
9 year 2000; is that correct?

10 A. Correct.

11 Q. As shown on the vehicle's registration?

12 A. I mean, it could either be the
13 registration, it could be the VIN plate on the truck
14 itself. So I'm not -- I don't recall off the top of
15 my head if it specifies that the only place to verify
16 that is the registration, but that is one of the ways
17 that we verify it.

18 Q. Okay. Has FMCSA -- and that means what?
19 Do you recall?

20 A. Federal Motor Carrier Safety
21 Administration.

22 Q. Has FMCSA provided any guidance about
23 what their regulation means?

24 A. They have. They have provided
25 interpretations since the rule first came out, so,

1 yeah, there's been follow-up interpretations from
2 FMCSA.

3 Q. What is Staff's understanding of those
4 interpretations?

5 A. FMCSA expanded the rule to also include
6 engine model year. So that's the main take that we
7 have from those interpretations, is that it doesn't
8 just pertain to the truck model year, it also
9 includes the engine model year.

10 Q. So that if either the vehicle or the
11 engine was manufactured in the model year 2000 or
12 later, a driver using it would be required to use an
13 ELD; is that what you're saying?

14 A. Yes.

15 Q. You've heard the testimony that
16 Mr. Forbes gave regarding the difference between
17 build dates and rebuilds and remanufactured engines?

18 A. Yes.

19 Q. In your understanding, was that a correct
20 description of those distinctions?

21 A. Yes, it was correct.

22 Q. Now, Mr. Forbes testified that he used an
23 engine serial number to determine when it was
24 manufactured. Did you use the serial numbers to
25 determine when the engines in your Compliance Review

1 were manufactured?

2 A. Yes.

3 Q. How did you acquire those serial numbers?

4 A. First of all, we acquired serial numbers
5 from the carrier officials and they provided us with
6 a medium sized notebook, spiral bound, that I took a
7 photograph of because that was the only document that
8 they had with those records in it. So I didn't want
9 to take that from them, so I just took a picture of
10 it. I didn't want to tear it out, try to scan it, so
11 I photographed it. And that was the initial document
12 that we went off of to establish what their serial
13 numbers were.

14 MR. MARGARD: May I approach, your Honor?

15 THE EXAMINER: You may.

16 MR. MARGARD: Your Honor, let the record
17 reflect that I've handed the witness a single page
18 document marked for purposes of identification as
19 Staff Exhibit 8.

20 THE EXAMINER: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Margard) Mr. Douglas, is this a
23 true and accurate reproduction of the photograph that
24 you just described?

25 A. Yes, it is.

1 Q. What does this show?

2 A. This shows the rendition of the picture
3 that I took of the spiral bound notebook that was
4 provided to me by the carrier officials containing
5 the serial numbers of the engines in their trucks.

6 Q. Is all of the writing that we see in this
7 photograph writing that was on the page that you
8 photographed?

9 A. It is.

10 Q. Nothing's been added since?

11 A. No, sir.

12 Q. There are a number of numbers on the
13 side, 2010, 2011. Do you see those numbers?

14 A. Yes, I do.

15 Q. What is your understanding of what those
16 numbers refer to?

17 A. Those match up with the truck unit
18 numbers, not the truck model year numbers.

19 Q. Is this a designation that the company
20 has given to its own power units?

21 A. Yes, exactly. I take that back, I
22 correct the record on that. These are the year --
23 the model year of the truck.

24 Q. Is it your understanding that the company
25 refers to the vehicles in its fleet by this number?

1 A. Yes -- well, no, they refer to it -- give
2 me one moment here. I've got to double check
3 something. I don't want to misspeak because this is
4 important. Sorry. This list... Yes, so what I said
5 in the first place, and this is probably the most
6 complicated part of this case, is the way they have
7 these trucks identified because the truck unit number
8 a lot of times is one number off from what the truck
9 year number is, so it gets -- it's hard to keep it
10 all straight.

11 But in my best estimate, the numbers in
12 the left-hand column represent the unit numbers that
13 are assigned to the carrier's trucks which is the
14 numbers that they typically refer to them by.

15 Q. Not necessarily the year in which that
16 unit was manufactured?

17 A. Correct. I apologize for that.

18 Q. No, I appreciate the clarification. Then
19 the next series of numbers, the 06RO, the 5EK and so
20 forth, what is your understanding of what these
21 numbers are?

22 A. They indicated that these were the serial
23 numbers off of the engines associated with the truck
24 unit numbers as best as they could obtain.

25 Q. There are a number of units that have no

1 serial number next to them. Do you know why?

2 A. I'd be speculating if I spoke about that.

3 Q. I don't want you to speculate. Did you
4 ask?

5 A. I don't recall. I mean, I would imagine
6 I did, and that's all I can say about that.

7 Q. Is this the only record that the company
8 was able to produce with respect to the engines in
9 its power units?

10 A. Yes.

11 Q. They had no other records?

12 A. No. We asked for other records. If I
13 may explain....

14 Q. Please.

15 A. Because we were aware that they had
16 indicated there were glider trucks involved. And so
17 when you purchase a glider truck from a glider
18 manufacturer, they're supposed to supply you with
19 evidence of what engine is in the truck if it had an
20 engine.

21 And so since they didn't have any
22 paperwork, we were left to conclude that these were
23 either gliders that were built and sold with no
24 paperwork or the other alternative would be they were
25 gliders without an engine that they purchased and

1 then they put their own engines in. So they didn't
2 have paperwork for these engines if they put in the
3 gliders, so....

4 Q. At least with respect to the items that
5 are blank, these are not units on which you found
6 violations; is that correct?

7 A. Correct.

8 Q. Did the company provide you with a list
9 of their trucks, their power units?

10 A. Yes, they did.

11 MR. MARGARD: May I approach, your Honor?

12 THE EXAMINER: You may.

13 MR. MARGARD: Let the record reflect that
14 I've handed the witness a single page document marked
15 for purposes of identification as Staff Exhibit 9.

16 THE EXAMINER: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. Margard) Mr. Douglas, have you
19 seen this document before?

20 A. Yes, I have.

21 Q. Was this document provided to you by the
22 company?

23 A. Yes, it was.

24 Q. Was it provided in response to a list of
25 their trucks?

1 A. Yes, sir.

2 Q. Now, there's a considerable amount of
3 handwriting on this document. Was this handwriting
4 on the document that you were provided by the
5 company?

6 A. No, sir.

7 Q. Is this your handwriting?

8 A. No, sir.

9 Q. Do you know whose handwriting it is?

10 A. It's Chris May's handwriting.

11 Q. Do you know why these notations are on
12 this document?

13 A. We were doing our best to associate the
14 engine serial numbers with the appropriate truck and
15 that's what those represent, are the engine serial
16 numbers.

17 Q. So if I were to compare the unit number
18 on Staff Exhibit 8 with the truck number on Staff
19 Exhibit 9, the handwritten serial numbers to the
20 right should correspond to the numbers that appear on
21 Staff Exhibit 8?

22 A. With the exception of one.

23 Q. Well, which one?

24 A. It would be Truck Unit No. 2016.

25 Q. What's different about that unit?

1 A. Upon further investigation, we determined
2 that that was an incorrect serial number off by just
3 one digit, and so I don't want to say that these
4 match 100 percent because that would be incorrect.

5 Q. Is the incorrect serial number carried
6 over onto Staff Exhibit 9?

7 A. Yes.

8 Q. So Staff Exhibit --

9 A. That's the one I'm referring to.

10 Q. So Staff Exhibit 9 represents a
11 transcription if you will of Staff Exhibit 8 onto the
12 list of power units, correct?

13 A. Yes.

14 Q. Once you had these serial numbers, how
15 did you determine when these engines were
16 manufactured?

17 A. We, or I should say Chris May, provided
18 the numbers to Tom Forbes who in turn visited the
19 W.W. Williams distributorship that he mentioned and
20 obtained the printouts from the staff there.

21 Q. Those are the printouts we previously
22 identified as Staff Exhibit 2?

23 A. Yes.

24 Q. Do you know whether any other efforts
25 were made to identify those units?

1 A. Yes, there were other efforts made to
2 identify those units and confirm and support what the
3 printouts demonstrated.

4 MR. MARGARD: May I approach, your Honor?

5 THE EXAMINER: You may.

6 MR. MARGARD: Let the record reflect I
7 have provided a multi-page document marked for
8 purposes of identification as Staff Exhibit 10 to the
9 witness.

10 THE EXAMINER: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Margard) Do you recognize this
13 document, Mr. Douglas?

14 A. I do.

15 Q. What is this, please?

16 A. This is an e-mail string that I was cc'd
17 on, it was actually to me, involving myself and Chris
18 May and Tom Forbes, discussions back and forth about
19 taking additional steps to confirm that the build
20 date of these engines were accurate and that we could
21 base a case on them because we were... if I may
22 expand?

23 Q. Please.

24 A. When we presented this information to
25 Mr. Owens, their response was that even though -- and

1 I'm mainly referring to the remanufactured engines at
2 this point, but their response was that that serial
3 number was not indicative of the true year of that
4 engine.

5 And, you know, just to be fair, we felt
6 like we would go the extra step and contact Detroit
7 Diesel because all of these engines in question were
8 Detroit Diesel Series 60s and so that's what this
9 Exhibit 10 takes us to.

10 Q. Now, you mentioned remanufactured.

11 A. Yes.

12 Q. And I believe earlier Mr. Forbes
13 indicated that remanufactured was indicated by an E
14 in the serial number?

15 A. Yes.

16 Q. Is that your understanding as well?

17 A. RE.

18 Q. Yes, sir.

19 A. Yes.

20 Q. And if I'm looking at the first page of
21 Staff Exhibit 10 anyway, there is a series of 8 then
22 that have R0 or R0 in the serial number and then
23 three that have RE in the number; is that correct?

24 A. Yes.

25 Q. So those three are the remanufactured

1 ones to which you were referring?

2 A. Yes.

3 Q. I note at least on the first page, the
4 the remanufactured one noted as No. 2 says "Not found
5 in our system."

6 A. Correct, that's the one that I referenced
7 earlier that was incorrect we discovered on the
8 initial spiral bound notebook that we were provided
9 with.

10 Q. How did you ascertain what the correct
11 number of that engine was?

12 A. In that case, Chris May inspected the
13 truck that we believed it was in and visibly located
14 the serial number and determined that the numbers --
15 the second No. 6 in that serial number, the one that
16 comes after the 4, was actually an 8.

17 Q. Once you had what you believed to be the
18 correct serial number of that engine, what did you
19 then do to determine the date of its manufacture?

20 A. We reached out again to the same
21 distributor, W.W. Williams, and provided them with
22 the serial number that Chris May obtained off the
23 engine and received a printout from them, I did, to
24 accompany the other printouts.

25 MR. MARGARD: Can I approach, your Honor?

1 THE EXAMINER: You may.

2 MR. MARGARD: Your Honor, may the record
3 reflect that I've handed the witness a single page
4 document marked for purposes of identification as
5 Staff Exhibit 11.

6 THE EXAMINER: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Margard) Is this the printout to
9 which you were just referring?

10 A. Yes, sir.

11 Q. Is it a true and accurate copy of the
12 printout that you received?

13 A. Yes, sir.

14 Q. There appears to be some handwriting on
15 this document other than the Staff Exhibit notation.
16 Was that on the document when you received it?

17 A. No.

18 Q. Are those your notations?

19 A. Yes.

20 Q. This document contains the serial number
21 that matches the one that was identified by Mr. May
22 on the engine?

23 A. Yes.

24 MR. MARGARD: May I approach, your Honor?

25 THE EXAMINER: You may.

1 MR. MARGARD: Your Honor, may the record
2 reflect that I've handed the witness a single page
3 document marked for purposes of identification as
4 Staff Exhibit 12.

5 THE EXAMINER: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Mr. Margard) Do you recognize this
8 document, Mr. Douglas?

9 A. I do.

10 Q. What is this document?

11 A. This was a typed up document by Chris May
12 finalizing the match of the engine serial numbers
13 with the correct truck identification numbers so that
14 we would have that to refer to. It was -- it's just
15 taken from the e-mail that goes back and forth with
16 the representative from Daimler and just Chris May
17 had the truck ID numbers in front of the serial
18 numbers.

19 Q. So this is a document that was produced
20 by Staff?

21 A. Yes.

22 Q. That reflects a summary of the engine
23 serial number identification that you did matching it
24 with the power units?

25 A. Exactly.

1 Q. There are two sections of this. One says
2 ELD Exempt and one says ELD Required, correct?

3 A. Yes.

4 Q. What are the units listed as ELD Exempt?
5 What does that mean?

6 A. Going back to what I testified to
7 earlier, if those trucks travel beyond 100 air miles,
8 they're required to still record their Hours of
9 Service, but they do not have to do it on Electronic
10 Logging Device. They can do it on the paper logs
11 that previously were the format that was used.

12 Q. And the units that are indicated as ELD
13 required?

14 A. Yes, those fall into the category of
15 trucks that if they operate beyond that 100 air mile
16 radius, then they would be required to be equipped
17 with an Electronic Logging Device to record their
18 Hours of Service of the driver.

19 Q. This is a document that you used to
20 determine whether violations existed; is that my
21 understanding?

22 A. This is one of the documents.

23 Q. So now what did you do to check and see
24 whether or not violations occurred? What was your
25 next step?

1 A. Well, we requested the evidence from the
2 carrier if they had any to either support or dispute
3 that they had Electronic Logging Devices and there
4 was nothing provided to indicate that they did. So
5 then our next step was to find out if they at least
6 had Record of Duty Statuses in another form which
7 they did provide us paper logs for the drivers that
8 we were sampling.

9 Q. Again, these drivers were selected by
10 your sampling method?

11 A. Well, the number of drivers is determined
12 by the sampling chart. And then each driver is
13 selected based on other criteria that's not on the
14 chart. It's things that are in our investigative
15 manual as far as when you're looking at a list of
16 drivers, say, 18 I believe in this case, whatever the
17 number of drivers that were reported, how do you
18 determine which ones to sample.

19 And we have a criteria that we refer to
20 and I have it listed in my report why they were
21 selected for the sampling. They had 13 drivers, so
22 we had to choose out of those 13 a sample of 5.

23 Q. Would you mind, please, taking a look at
24 your report and finding that section of it that
25 indicates how you determined which five drivers to

1 review.

2 A. Yes, sir, it's on Page 4 of Part C under
3 the Hours of Service header where the numbers are, 1
4 through 5. And then in parenthesis, every
5 investigator has their own style, but I typically put
6 in parenthesis the reason why they were selected or
7 one of the reasons. It's not necessarily the main
8 reason.

9 For example, Barry Pingle was involved in
10 a roadside inspection within that same period of time
11 that we were doing an investigation. So we wanted to
12 look into that closer because that proves that he,
13 number one, is a driver, active driver for the
14 carrier within the timeframe of what we're
15 investigating, and, you know, that he needed to be
16 recording on an Electronic Logging Device. And then
17 do you need me to go through the rest of them?
18 That's an example of how we select them.

19 Q. Thank you. You've mentioned a couple of
20 times a 100 air mile exemption. How do you determine
21 whether or not that exemption applies?

22 A. There's several ways we determine that.
23 Number one is just through interviews. And secondly,
24 we look at any evidence that we have of trips such as
25 these roadside inspections, such as paperwork that we

1 are looking at during the investigation such as bill
2 of ladings, you know, dispatch records, you name it.

3 If we can establish that a truck was
4 beyond that radius, then we are expecting to see
5 electronic logs, but if we have no proof of that,
6 then we basically go with what we have and give the
7 carrier the benefit of the doubt and just accept
8 whatever they give us. If they give us time records,
9 then that's what we're looking at in that case.

10 Q. Were you able to confirm these five
11 drivers did not fall within that 100 mile exception?

12 A. Yes.

13 MR. MARGARD: May I approach, your Honor?

14 THE EXAMINER: You may.

15 MR. MARGARD: Your Honor, I've handed the
16 witness a multi-page document marked for purposes of
17 identification as Staff Exhibit No. 13.

18 THE EXAMINER: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. Margard) Do you recognize this
21 document, Mr. Douglas?

22 A. Yes.

23 Q. What is this document?

24 A. These are the paper logs that the carrier
25 provided to us during the investigation for the

1 drivers that we were sampling.

2 Q. Are these accurate copies of the logs
3 that you were provided?

4 A. Yes.

5 Q. You had an opportunity to review this
6 prior to taking the stand today?

7 A. Yes.

8 Q. Can you briefly describe what's contained
9 in this packet, please.

10 A. As I mentioned, drivers who travel or
11 transport freight beyond that 100 air mile radius are
12 required to document their Hours of Service on a log
13 and these are the logs that their drivers documented
14 on. They're not electronic logs, they're paper logs.

15 They show their locations, point of
16 origin, point of delivery which you can run the
17 mileage and verify that it's more than 100 air miles
18 and they're also -- these contain truck numbers, the
19 driver signature and the company's name. So this is
20 what we reviewed for Hours of Service.

21 Q. Now, you indicated that you sampled five
22 drivers, correct?

23 A. Yes.

24 Q. Are these the roughly 30-day log sheets
25 for all five of those drivers?

1 A. Yes.

2 Q. Let's take a look at these, if you would,
3 please. And the pages are not numbered, and I
4 apologize for that. By my count, the first 15 or so
5 pages all relate to the same driver if you know which
6 driver this is.

7 A. Larry Pingle.

8 Q. For what period do these log sheets
9 cover?

10 A. April 1st through April 30th.

11 Q. You indicated that the sheets show the
12 unit that he was driving. Where is that indicated?

13 A. That's indicated in the top right-hand
14 corner where it says Vehicle Numbers.

15 Q. There are two numbers there. What do
16 those numbers refer to?

17 A. One is an actual truck tractor unit
18 number and the other is the trailer unit number.

19 Q. And the truck number on each of these
20 dates is the same, is that correct --

21 A. The truck number on each of these --

22 Q. -- for Mr. Pingle?

23 A. On all the pages you said?

24 Q. Or all of the log pages, yes.

25 A. Yes.

1 Q. Indicates that he was driving Unit 2018,
2 correct?

3 A. Yes.

4 Q. If I ask you to refer back to Staff
5 Exhibit 12, which is the Staff generated list of
6 engine serial numbers and build dates, when was the
7 engine in Unit 2018 manufactured?

8 A. July 18th, 2001.

9 Q. So that's a unit that should have
10 required an ELD in your opinion; is that correct?

11 A. That's correct.

12 Q. And you had no evidence of the electronic
13 recording status on any of these dates?

14 A. No, sir.

15 Q. In your opinion, is each day then a
16 separate violation?

17 A. Yes.

18 Q. Does it matter if the driver was off duty
19 on any given day?

20 A. No, sir.

21 Q. Why not?

22 A. Because they're required to maintain a
23 record of their activities for the prior seven days
24 leading up to an interstate trip. And in this case,
25 that was what we found with all of these drivers, is

1 that there was no situations where a driver had been
2 off more than that time period.

3 So, therefore, they need to keep records
4 of even their days off. And the way that's done in
5 an Electronic Logging Device is when you come back on
6 duty following days off, the driver is responsible to
7 input the days off so that they're recorded for
8 purposes of seeing a complete picture.

9 Q. And that's true of interstate and
10 intrastate?

11 A. Uh-huh.

12 Q. I'll have you take a look at what I
13 counted to be the next 17 pages. And if you could
14 identify the driver to which these logs pertain.

15 A. Give me just a moment. Scott Armstrong.

16 Q. For what period?

17 A. Same period, April 1st through
18 April 30th, sorry.

19 Q. In similar fashion, the unit being
20 operated is indicated on each log sheet; is that
21 correct?

22 A. That's correct.

23 Q. Is the unit number listed on each date?

24 A. Yes.

25 Q. That unit number is what, please?

1 A. 2014.

2 Q. If I ask you again to refer to Staff
3 Exhibit 12, the summary, can you tell me when the
4 engine in Unit 2014 was manufactured?

5 A. March 10th of 2015.

6 Q. I take your attention back to the Record
7 of Duty Status logs. By my count the next 16 pages
8 all refer to the same driver. Can you identify that
9 driver for me, please?

10 A. It would be nice if they had page
11 numbers. This would be Chris Jett.

12 Q. Thank you. And for what period of time
13 do these pages cover?

14 A. April 1st through April 30th, 2018.

15 Q. And do they also indicate which unit was
16 being operated?

17 A. Yes.

18 Q. And is that unit the same on each page?

19 A. Yes, it is.

20 Q. And which unit is that, please?

21 A. That is 2017.

22 Q. I refer you back to Staff Exhibit 12.
23 Can you tell me on what date the engine associated
24 with Unit 2017 was manufactured?

25 A. September 7th, 2016.

1 Q. I'll have you refer back to the Record of
2 Duty Status logs. By my count we're looking at the
3 next ten pages. Can you tell me which driver is
4 associated with these log sheets?

5 A. Mike Snider.

6 Q. For what period of time, please?

7 A. 12-18-17 through 1-16-18.

8 Q. And this also records the unit that was
9 being operated, correct?

10 A. That's correct.

11 Q. And is that unit the same on each sheet?

12 A. Yes, it is.

13 Q. And what unit is that, please?

14 A. 2016.

15 Q. I refer you again back to Staff Exhibit
16 No. 12. Can you tell me on what date the engine
17 associated with that unit was operated?

18 A. November 3rd, 2018.

19 Q. Finally, the last series of pages all
20 relate to the same driver. Which driver is that?

21 A. That would be Ernest Henthorne.

22 Q. And for what period of time, please?

23 A. May 1st through May 30th, 2018.

24 Q. And, again, the unit number being
25 operated is indicated on each page, correct?

1 A. That's correct.

2 Q. And I will represent that that unit is
3 not the same on each of the pages. We'll start on
4 the first page on May 1st. Which unit is identified
5 there, please?

6 A. 2012.

7 Q. Let me have you refer back to Duty Status
8 Exhibit No. 12, and if you could identify when the
9 engine associated with that unit was manufactured.

10 A. August 29th, 1995.

11 Q. So that particular unit did not require
12 the use of any ELD; is that correct?

13 A. That's correct.

14 Q. Let me direct your attention to the date
15 of May 11, 2018 for Mr. Henthorne. Can you identify
16 that unit for me, please.

17 A. 2006.

18 Q. Let me have you refer back to Staff
19 Exhibit 12. Do you see a manufacture date for that
20 unit, the engine associated with that unit?

21 A. No, sir.

22 Q. Because you do not have a date, do you
23 consider this to be a violation for failure to use an
24 ELD?

25 A. No, that one is not determined to be in

1 violation.

2 Q. Thank you. Let me ask you to take a look
3 at May 19th, 2018 for Mr. Henthorne.

4 A. Okay.

5 Q. What unit is identified there?

6 A. 2005.

7 Q. If you refer again back to Staff Exhibit
8 12.

9 A. Okay.

10 Q. And do you find an engine manufacture
11 date for that unit?

12 A. No, sir.

13 Q. So you did not find a violation for any
14 of the days indicated in the log sheets for
15 Mr. Henthorne; is that correct?

16 A. Not for that particular violation.

17 Q. Okay, thank you. Thank you for that
18 clarification. So you determined that there were 120
19 violations of the ELD regulation. How did you arrive
20 at that number?

21 A. So we just took the four drivers, the
22 first four drivers that we just discussed, and
23 multiplied their 30-day sample times for a total of
24 120 logs that were not in the appropriate method.

25 Q. So you didn't count each and every

1 individual day, you just took a general conclusion
2 about four out of five drivers, 30 days of Record of
3 Duty Status, is that how you arrived at that number?

4 A. Yes.

5 Q. If you had sampled additional months for
6 these drivers, would you expect to find additional
7 violations?

8 A. Yes, sir.

9 Q. If you had reviewed additional drivers
10 for the ELD required units that appear on Staff
11 Exhibit 12, would you have expected to find
12 additional violations?

13 A. Yes, sir.

14 Q. In fact, perhaps quite a few additional
15 violations?

16 A. That's correct.

17 Q. After you've completed your review and
18 you've entered all of your information into your
19 computer, what happens next? What do you do now?

20 Did you print out a copy of that report?

21 A. Yes. At the conclusion of our
22 investigation, we meet with the carrier officials who
23 were involved and go through the report with them
24 page by page making sure that they fully understand
25 everything that's in the report and provide them with

1 a copy minus the Part C because that typically is not
2 completed until after the close-out even though, as I
3 mentioned, some investigators will complete it as the
4 investigation unfolds.

5 Then the report is uploaded to ultimately
6 the Federal Motor Carrier Safety Administration, and
7 they -- we also obtain our copy at the Public
8 Utilities Commission. And that copy is forwarded to
9 the Compliance Division, and the Compliance Division
10 then assesses penalties based on the violations that
11 are in the report.

12 Q. Sir, is there anything else about your
13 review that we haven't discussed that you think is
14 relevant for the Commission to know in determining
15 whether these violations occurred?

16 A. I don't believe so, not at this time.

17 MR. MARGARD: Your Honor, that concludes
18 my examination of Mr. Douglas and I tender him for
19 cross-examination.

20 THE EXAMINER: Mr. Yemc.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Yemc:

24 Q. So if I've got this right, 120 violations
25 is a guess; is that correct?

1 A. No, that's not correct.

2 Q. Okay. Then did you personally see 120
3 violations? Because it sounded like you extrapolated
4 and didn't actually witness or view 120 violations.

5 A. So the carrier is required to provide a
6 sampling of 30 days per driver for the periods
7 requested, and those documents are required to be in
8 the form of electronic records. And in this case,
9 that was not what we received. And so each 30-day
10 sample is considered in violation for not being in
11 the appropriate method.

12 Q. What was your testimony with regard to
13 multiplying times four?

14 A. Because out of the five drivers, four of
15 them were in trucks that required Electronic Logging
16 Devices. One of them was not. So we did not include
17 that driver's 30-day sample in the calculation.

18 Q. But you personally witnessed the 120
19 violations?

20 A. We personally did not receive electronic
21 logs for any of the days that we requested.

22 Q. Okay. I'm going to go back to way early
23 on in your testimony, and let's look at Staff Exhibit
24 3.

25 A. Can you tell me what that document is

1 because I don't know.

2 Q. It's the Company's Safety Profile.

3 A. Oh, okay. I have that.

4 Q. Now, whenever you were testifying with
5 regards to the Alerts on Page 5, you made note of the
6 percentile, the importance of the percentile being
7 95, and that's on Page 5.

8 A. Yes, I have that.

9 Q. Now, I just want to go back and look at
10 Page -- look at two different pages. Let's start
11 with the Page 24 because it's the older. And on Page
12 24 it looks like that was October 28th of 2016; is
13 that accurate?

14 A. Yes, sir.

15 Q. And then Hours of Service compliance
16 under the Percentile category, there's nothing
17 indicated; is that correct?

18 A. That's correct.

19 Q. And the reason for that looks like
20 On-Road Performance, no violation within one year?

21 A. Exactly.

22 Q. So they were fine with Hours of Service
23 during that month?

24 A. It appears so, yes.

25 Q. So let's --

1 A. Oh, no, on the roadside inspection side
2 of things, that's all this really represents.

3 Q. Now, let's jump up to Page 23 and that
4 looks like that indicates November 25th of 2016.

5 A. Right.

6 Q. And we're looking at no percentile for
7 the Hours of Service compliance violation; is that
8 correct?

9 A. That's correct.

10 Q. So we've got a small carrier that had no
11 problems a little over a year, year-and-a-half before
12 this and then jumped up to a 95 percentile?

13 A. No, I would beg to differ with that.

14 Q. Well, there's no percentile in those --
15 that two-month period?

16 A. No, but if you look at the next month in
17 December of '16, they are at 79 percent.

18 Q. How did they come a big jump from zero to
19 79; do you know?

20 A. We can go back and figure that out, but
21 the explanation is that they had more than likely a
22 roadside inspection in which a driver was found to
23 have some Hours of Service violations and there may
24 have been more than one roadside inspection, but it
25 resulted in the percentile.

1 Q. With a small carrier, it could have just
2 been one issue; is that correct?

3 A. Typically to get a percentile, there has
4 to be more than one inspection. There again, we'd
5 have to go back and look at the inspection history to
6 verify that, but that's my point, is that they didn't
7 just go from zero to 95; they started at 79 and went
8 up from there.

9 Q. But they went from zero to 79 in a
10 one-month period?

11 A. Yes, true.

12 Q. Now, in your testimony, you referenced as
13 part of the reason for the Compliance Review
14 receiving complaints, plural. And the evidence that
15 was presented thus far is complaint, singular; is
16 that accurate?

17 A. I've referenced two complaints, one in
18 Drug and Alcohol and one is Hours of Service.

19 Q. So the violation we're dealing with is
20 Hours of Service, so there's one complaint; is that
21 accurate?

22 A. Yes, for Hours of Service, there's one
23 complaint.

24 Q. And now I think the crux of this whole
25 issue is the year the engine was manufactured. And

1 you had previously mentioned the FMCSA's guidance for
2 requirements for using an ELD. And initially counsel
3 indicated that it related to the vehicle. You
4 testified that the FMCSA came out with additional
5 guidance and related it to the engine model year, not
6 necessarily the chassis; is that correct?

7 A. Yes, that's correct.

8 Q. So if the engine is manufactured prior to
9 the year 2000, then it's exempt from the ELD
10 requirements; is that accurate?

11 A. That's accurate.

12 Q. And for the sampling that you testified
13 to earlier, you received all of the paper logs for
14 that period of time that you had requested from the
15 drivers?

16 A. Yeah, I mean, I would say that there is a
17 chance there may have been one or two that were not
18 provided, but all in all, yes, they were all....

19 Q. So it wasn't like the carrier wasn't
20 tracking Hours of Service, they were just tracking it
21 in a method that you didn't agree that they should
22 have been tracking it under; is that accurate?

23 A. It's not whether I agree with it. It's
24 that's what the regulation says that's required, so I
25 determined that they were not logging in the required

1 method.

2 Q. So not logging in the required method for
3 an engine that was manufactured 2000 and after, and
4 that would be the ELD requirement?

5 A. Yes.

6 Q. But they were still logging their Hours
7 of Service?

8 A. They were logging using paper logs,
9 correct.

10 Q. Okay. You testified that Staff Exhibit
11 12, that wasn't an Exhibit that you created that
12 related to the engines. You can take the time to
13 find that exhibit.

14 MR. MARGARD: If I can clarify by "you,"
15 are you meaning this witness specifically?

16 MR. YEMC: The witness. I'll rephrase it
17 once he finds it. I'll ask him again.

18 A. Here it is.

19 Q. Staff Exhibit 12, I believe you testified
20 that was something that was created by Christopher
21 May; is that correct?

22 A. Yes, this is a summary of our findings
23 with regard to the engine build dates and the
24 associated truck unit numbers --

25 Q. So this is --

1 A. -- for the Detroit Diesel engines only.

2 I'm sorry.

3 Q. This is a summary that Mr. May created?

4 A. Based on the evidence that we found, yes.

5 Q. And that evidence was provided to you by
6 Daimler?

7 A. That's one of the sources. The other
8 source was the W.W. Williams distributorship,
9 dealership, whatever you want to call them.

10 Q. Where are they located? Here in town?

11 A. Yeah, they're here in Hilliard here on
12 the west side.

13 Q. Were they unavailable to testify with
14 regards to what they provided you here today?

15 A. I cannot answer that, I'm sorry.

16 MR. YEMC: One moment. I have nothing
17 further.

18 THE EXAMINER: Mr. Margard?

19 MR. MARGARD: If I can have just a few
20 moments, your Honor, a few questions, thank you.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Margard:

24 Q. With respect to Staff Exhibit 3, the
25 Company Safety Profile, you were asked some questions

1 about the percentiles?

2 A. Yes.

3 Q. First of all, are these percentiles based
4 on the universe of all carriers?

5 A. No, carriers of -- grouped together by
6 size.

7 Q. So these would be comparable?

8 A. Yes, comparable would be a very good word
9 to use.

10 Q. Thank you. With respect to the Hours of
11 Service compliance, you were asked about that for a
12 couple different months, would any Hour of Service
13 violation trigger a percentile rating of some sort?

14 A. As opposed to... I mean, yeah, it would
15 trigger a percentage, but... I don't want to speak
16 out of place here, but there's times when you'll go
17 to the Safety Measurement System to obtain
18 percentages and it will indicate that there's no
19 percentage.

20 And it's not because there's no
21 violations; it's because there was not enough
22 activity. And so I don't know if one violation in
23 and of itself would be enough to put a percentage on
24 the profile. I can't answer that.

25 Q. Thank you. I appreciate that. When did

1 the ELD regulation go into effect?

2 A. It went into effect December 18th, 2017.

3 Q. Would you kindly review this document for
4 those months, for the months of December 2000 -- I'm
5 sorry, what year?

6 A. 2017.

7 Q. 2017, December 2017.

8 A. Okay.

9 Q. And I have that as Pages 5 through 10; is
10 that correct?

11 A. So you're referencing everything. Did
12 you want just the month when the rule went into
13 effect or the month after the rule went into effect?

14 Q. I was including the month that the rule
15 went into effect and subsequent, yes.

16 A. It's from Page 10 through, what did you
17 say, 5?

18 Q. Well, you tell me.

19 A. There's May -- Yeah, this just goes back
20 to it starts in May, the month just prior to the
21 investigation, and that starts on Page 5. And the
22 Hours of Service is at 95 percent. And then going
23 backwards, April, it's 94 percent; March, it's
24 95 percent; February, it's 93 percent; January,
25 96 percent; and December 29th, 2017, the Hours of

1 Service percentile was 96 percent. So that's the
2 month that the rule went into effect.

3 MR. MARGARD: Thank you. That's all I
4 have, your Honor.

5 THE EXAMINER: Thank you, Mr. Douglas,
6 you may step-down.

7 MR. MARGARD: I respectfully move for
8 admission of Staff Exhibits 3 through 13.

9 THE EXAMINER: Mr. Yemc, are there any
10 exhibits to which you do not object? I said that
11 wrong. I anticipate some specific objections. Are
12 there --

13 MR. YEMC: There are some specific
14 objections.

15 THE EXAMINER: Should we go with those or
16 should we --

17 MR. YEMC: My list is shorter on what I'm
18 objecting to.

19 THE EXAMINER: Okay. That seems
20 completely logical.

21 MR. YEMC: I'll raise an objection to
22 Staff's Exhibit 10, 11 and 12 in that the creator or
23 provider of that information, whether it be W.W.
24 Williams or a representative of Daimler, is not here
25 to testify as to the authenticity of that

1 information.

2 THE EXAMINER: Mr. Margard.

3 MR. MARGARD: Well, with respect to Staff
4 Exhibit No. 10, this is information that Mr. Douglas
5 was included on, part of dialogue that he was
6 involved with working with Mr. May who also was
7 looking for this information. I will be calling
8 Mr. May, your Honor, and if need be, I'm more than
9 willing to withdraw my request for this one at the
10 moment and reintroduce it with Mr. May.

11 As for Exhibit No. 11, this is a document
12 that was obtained by Staff in the course of its
13 investigation, maintained in the Commission records,
14 and for the same reason that Staff Exhibit 2 was
15 introduced, this one should be introduced as well.

16 Likewise, with respect to Staff Exhibit
17 12, all this is is a summary of information that
18 otherwise appears in the record. There's nothing new
19 here. If the issue is that the creator hasn't
20 authenticated it, I'm willing to withdraw that for
21 the moment and reintroduce it with Mr. May.

22 THE EXAMINER: Are you changing your
23 position on this, Mr. Yemc?

24 MR. YEMC: No, I'm not. My whole
25 argument is someone can summarize it, but the entity

1 that's providing that information is not here to
2 testify as to whether or not it's accurate. And
3 we're just going off of information that is provided
4 by someone else that we don't know if that
5 information is true and indeed accurate. I think
6 that's a problem with their case.

7 MR. DRAYER: I agree.

8 MR. YEMC: Thank you.

9 MR. DRAYER: I mean seriously, totally.

10 THE WITNESS: Do you want these back?

11 MR. MARGARD: Just leave them there for
12 now.

13 THE EXAMINER: Let's hold off on 10 and
14 12 until we hear from Mr. May. Again, I note your
15 objection, but I will overrule it and I will admit
16 Exhibit 11 at this time. So Mr. Yemc, you have no
17 objection to 3, 4, 5, 6, 7, 8 and 9 or 13; is that
18 correct?

19 MR. YEMC: I believe that's accurate. I
20 just want to flip the pages just to make sure I don't
21 have an objection right now anyway.

22 (Pause.)

23 MR. YEMC: No objection, your Honor.

24 THE EXAMINER: Those exhibits will be
25 admitted. Let's go off the record real quick.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 THE EXAMINER: At this time, we're going
3 to break for lunch. We'll come back on the record at
4 2:10.

5 (At 1:10 a lunch recess was taken until
6 2:10.)

7 THE EXAMINER: Let's go back on the
8 record. Mr. Margard, your next witness.

9 MR. MARGARD: Thank you, your Honor.
10 Staff calls Mr. Christopher May to the stand.

11 (Witness placed under oath.)

12 - - -

13 CHRISTOPHER MAY
14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Margard:

18 Q. Please state your name and your business
19 address.

20 A. Christopher May, 180 East Broad,
21 Columbus, Ohio, 43215.

22 Q. And by whom are you employed, sir?

23 A. Public Utilities Commission of Ohio.

24 Q. In what capacity?

25 A. The District 4 Field Supervisor. I

1 oversee the southeastern and central part of Ohio.
2 I'm an investigator of Haz Mat, a specialist in that
3 area.

4 Q. How long have you been performing that
5 job?

6 A. Ten months.

7 Q. And prior to that?

8 A. I was the State and Federal Programs
9 Manager starting in 2013, September of 2013 through
10 January of this year. It's the same capacity that
11 Mr. Douglas is in at this time.

12 Q. And that's the position that you were in
13 at the time of this review; is that correct?

14 A. That's correct.

15 Q. Do you have any sort of certifications or
16 trainings relative to your position?

17 A. I do. I hold the same certifications
18 that the past two gentlemen do, North American Parts
19 A and B inspections, general Haz Mat, Cargo Tank
20 inspection, Compliance Review and other Bulk Package
21 Haz Mat that would be relevant, I guess, yes.

22 Q. Thank you. Before we go any further,
23 you've been present throughout the hearing so far,
24 correct?

25 A. Yes.

1 Q. What was your involvement with this
2 Compliance Review?

3 A. Well, in my prior position, I was
4 responsible for the Compliance Review program. So
5 every now and then, I would go out just to keep fresh
6 on everything and work with some of our investigators
7 and assist them in any way possible. So I assisted
8 Mr. Douglas in that Compliance Review.

9 Q. Were you responsible for assigning this
10 review to him?

11 A. I was.

12 Q. Do you have an independent recollection
13 of that?

14 A. I do.

15 Q. Now, is there a regular process or
16 procedure for determining when to conduct a
17 Compliance Review?

18 A. We have various reasons why we may do a
19 Compliance Review. There's a list that the Federal
20 Motor Carriers Safety Administration gives us. We
21 assign based off of that. We also assign off of
22 complaints. We also assign off of special projects.
23 There's various reasons, but there are -- to this
24 case, the reasoning was due to the -- they were on
25 the list for a Compliance Review because of their

1 Crash rate and I believe Hours of Service which was
2 discussed in the last review -- or I'm sorry, the
3 last witness, but they also had two complaints that
4 came in, one from Federal Motor Carrier and another
5 came in by telephone.

6 Q. Telephone to the Public Utilities
7 Commission?

8 A. Yes.

9 Q. And you actually participated in the
10 review itself?

11 A. Yes, I assisted Mr. Douglas whatever he
12 needed.

13 Q. Were you there at all times while he was
14 conducting his review?

15 A. Yes.

16 Q. Now, Mr. Douglas testified that the scope
17 of the review changed from focused to comprehensive?

18 A. Correct.

19 Q. And briefly what's the difference between
20 those two types of review?

21 A. The focused review is where we look at
22 just certain portions, like the Hours of Service,
23 Crash and Drug and Alcohol. Those are three areas
24 that we were going in initially based off of the
25 complaints and their percentiles.

1 However, through the course of the
2 review, because of the Crash BASIC, we discovered
3 violations that made us expand into a full Vehicle
4 Maintenance BASIC as well. And whenever you have
5 four areas, you must conduct a full Compliance
6 Review. That's the federal policy.

7 Q. So that wasn't a determination you made,
8 that's a policy decision?

9 A. That's correct. And when I think
10 Mr. Douglas mentioned that he had, and I think it's
11 in his report that he consulted me, the procedure is
12 when an investigator runs across that, they must talk
13 to a supervisor to validate that that's the case, and
14 I just happened to be right there, so I did instruct
15 him that he had to expand to a full Compliance
16 Review.

17 Q. Now, did you have a responsibility after
18 the Compliance Review to review the report prepared
19 by Mr. Douglas?

20 A. I did.

21 Q. And did you, in fact, review that report?

22 A. I did.

23 Q. And did you find the report to be
24 accurate?

25 A. Yes.

1 Q. Based on your participation in the
2 review?

3 A. Right, and as well as I would look at 500
4 Compliance Reviews a year in that capacity, give or
5 take, and you're usually not there, so you're going
6 after the fact and checking. So I was there as well,
7 so I was able to have that little extra benefit when
8 checking his work.

9 Q. Did you contribute to any portion of that
10 final report?

11 A. Just assisting him with whatever he
12 needed gathering information, data, whatever.

13 Q. As far as the review is concerned, did
14 you author any part of the report?

15 A. Oh, the Part C report that was done
16 afterwards, is that what you're asking?

17 Q. I'm asking if you wrote any portion of
18 the report.

19 A. I did not.

20 Q. That's what I want to know. Thank you
21 very much. We produced a lot of documents today.
22 Are all of these documents contained as part of the
23 Commission's investigative file in this case?

24 A. Uh-huh, yes.

25 Q. Thank you. And did you have an

1 opportunity to review the Commission's file prior to
2 taking the stand today?

3 A. Yes.

4 Q. And to the best of your knowledge, all of
5 these documents are true and accurate copies of the
6 documents that you reviewed on site?

7 A. Yes.

8 Q. You've been present throughout the
9 testimony. Is there anything in the prior testimony
10 that you've heard that you believe was inaccurate or
11 requires correction at this time?

12 A. There was an issue with -- in
13 Mr. Forbes's testimony, they asked him about an ERG
14 valve and how you hook up an ELD to a truck. An ERG
15 valve is a valve that has -- it has to do with
16 emissions and exhaust. There's another acronym that
17 starts with E, ECM, which is the engine control
18 module, and that's where you hook up an ELD.

19 So I believe Mr. Forbes's testimony was
20 correct, but the acronym that was asked, I think it
21 came from the other side, so I'm not real sure
22 exactly who asked the question, but an ERG I believe
23 is not correct. I believe it's meant to be ECM.

24 Q. You've been present while both the
25 previous witnesses describe the difference between

1 manufacture, rebuild and remanufacture of engines,
2 correct?

3 A. Correct.

4 Q. In your own words, can you briefly
5 describe the difference between those two?

6 A. A rebuilt engine would be something where
7 there's something broken or just normal wear and tear
8 and a mechanic would take that engine, take it apart,
9 do whatever was needed, do whatever machining needed
10 to be done to that engine, reassemble it and then be
11 reinstalled in a vehicle.

12 A remanufactured engine is something that
13 only a manufacturer, like in this case Detroit
14 Diesel, when they do remanufacturing or whenever
15 anybody remanufactures an engine, it's not an engine
16 that goes into them and they take it apart like a
17 rebuild would be, it's just pieces and parts, kind of
18 like the glider kit that was discussed.

19 It's just buckets of metal basically, and
20 then they reassemble or assemble rather new engines,
21 and they sell them as remanufactured because it might
22 be old stock, it might be parts out of engines that
23 they've brought back because of warranty, engines
24 that were in crashes or something like that.

25 They get these parts, they put them

1 together and assemble what they call remanufactured
2 engines and then they can sell those which they're
3 new engines, but they sell them at a lower price than
4 what one would be that has just been casted and
5 assembled by the manufacturer.

6 Q. Does a rebuild engine retain the same
7 serial number or does it receive a new number?

8 A. It does.

9 Q. That's an either/or. Does it retain its
10 previous serial number or does it receive a new --

11 A. A rebuilt engine?

12 Q. Rebuilt engine.

13 A. A rebuilt engine retains its original
14 identity.

15 Q. And a remanufactured engine has a new
16 serial number?

17 A. In the case of Detroit Diesel 60 series,
18 yes. I would speculate that all of them do from
19 whatever manufacturer.

20 Q. How do you come by way of this knowledge?

21 A. We have a lot of information that
22 initially has been sent out by FMCSA to us to educate
23 us. We went through some educational classes when
24 ELDs were coming into play, and they have some guides
25 and frequently asked questions, things like that, but

1 when we got into this case, this was one of the early
2 cases that we had with the remanufactured and
3 rebuilt.

4 And we were trying to sort everything
5 out, so I went to the Detroit Diesel remanufacturing
6 facility which is located in Byesville, Ohio in
7 Guernsey, Ohio. I just happened to know it was at
8 that location in close proximity, so during the
9 course of this Compliance Review, I decided to drive
10 over there and ask them a few questions to make sure
11 that what we were doing was true and was accurate.

12 Q. Were you able to observe the process at
13 all there?

14 A. No, they do offer a tour to show process.
15 I did not. I spoke with the plant manager in his
16 office briefly, and he gave me a little bit of
17 information and then referred me to their engineering
18 department, which their parent company is Daimler,
19 and gave me a phone number. And I then took it from
20 there and spoke with a gentleman with Daimler as one
21 of their engineers.

22 Q. And with whom did you speak; do you know?

23 A. David Kayes.

24 Q. Sir, you have the exhibits before you?

25 A. I do.

1 Q. I am looking for Staff Exhibit 10.
2 They're in sequence.

3 A. Yes.

4 Q. Can you identify this document for me,
5 sir?

6 A. This is an e-mail chain that I'm -- I was
7 involved in.

8 Q. Did you initiate the contact with the
9 gentleman who appears on this e-mail chain?

10 A. I did, first by phone, and I think the
11 original e-mail that was sent here was after our
12 phone call, yes, and it even says this is a follow-up
13 to our phone call, and then he sent me some
14 subsequent information.

15 Q. What was the nature of the conversation
16 that you had with him as best you can recall?

17 A. Determining that, what the dates, the
18 build dates are and what identity remanufactured
19 engines from Detroit Diesel possess. So I did have
20 some examples from our Compliance Review that I
21 wanted to validate.

22 We had already validated those with --
23 and I think Mr. Forbes and Mr. Douglas testified to
24 that -- W.W. Williams in Hilliard, but I was trying
25 to make sure that we were certain that what we were

1 finding was correct and I thought the best way to do
2 that was to go straight to the manufacturer.

3 Q. And they indicated to you that they could
4 provide that information?

5 A. Yes.

6 Q. And so your e-mail chain as represented
7 in Staff Exhibit 10 is your correspondence with
8 Mr. Kayes, is it --

9 A. Kayes, yes.

10 Q. -- of Daimler respecting the manufacturer
11 of their engines?

12 A. Correct, in addition to a phone call I
13 had with him.

14 Q. Did you have any further conversations
15 with him?

16 A. I don't recall that there were subsequent
17 phone calls. I don't think so. I think he in his
18 last e-mail said he was going on vacation for a
19 period of time, and I don't believe I spoke with
20 him -- I take that back, I did speak with him after
21 the fact of setting up a tour of the facility in
22 Byesville. He mentioned that. So I know I did talk
23 to him. I'm not certain if I did follow up with a
24 phone call after these e-mails.

25 Q. Okay, very good. Thank you. We have

1 been talking throughout the day about the year 2000
2 and the significance with respect to ELDs. During
3 the course of the Compliance Review, you did -- you
4 and Mr. Douglas did request a list of the company's
5 power units; did you not?

6 A. Uh-huh.

7 Q. Let me refer you to Staff Exhibit No. 9.

8 A. Yes.

9 Q. Is this the information that was provided
10 to you by the company?

11 A. The printed part is what was provided by
12 the company. The notes are my handwriting and were
13 added during the time of the review.

14 Q. Thank you. By truck number, you
15 understand this to be the designation that the
16 company uses to identify its units?

17 A. That's correct, that's their unit number
18 they use.

19 Q. What does the Year column indicate?

20 A. The year of the truck, the model year or
21 the glider kit year if that would be the case.

22 Q. And that's what the regulation addresses
23 specifically, does it not, the model year of the
24 truck?

25 A. Uh-huh, yes.

1 Q. Yes. Is it your understanding that all
2 of the violations that have been found in this case
3 were found in trucks that were manufactured after the
4 year 2000?

5 A. Yes.

6 Q. In addition, Staff has inquired with
7 respect to the engines in each of those units, has it
8 not?

9 A. Yes.

10 Q. Let me have you take a look at Staff
11 Exhibit No. 2.

12 A. Okay.

13 Q. Thank you. You were present for
14 Mr. Forbes's testimony, correct?

15 A. Yes.

16 Q. Did you request that Mr. Forbes obtain
17 information about these engine serial numbers?

18 A. Yes.

19 Q. And did he provide this information to
20 you?

21 A. Yes.

22 Q. There is some handwriting on these pages,
23 2009, 2012, et cetera. Each page has something
24 handwritten on it. Is that your handwriting?

25 A. Yes, it is.

1 Q. And why did you make these notations on
2 these pages?

3 A. To show which unit number from -- and
4 I'll just reference Exhibit 9, the truck unit number
5 there, just for easy reference for us as we're
6 looking at documentation because we didn't have to
7 cross reference the serial number each time and look.
8 It just made it easier to take the stack of papers
9 and know I want Unit 2013 and it could easily be
10 pulled out.

11 Q. Thank you. Let me ask you to refer to
12 Staff Exhibit 12.

13 A. 12?

14 Q. Yes, sir. It's getting a little jumbled
15 up there. It looks like this (indicating).

16 A. Okay. Yes.

17 Q. Did you prepare this document?

18 A. I did.

19 Q. What information did you use to prepare
20 this document?

21 A. I used the information from Staff Exhibit
22 9, Staff Exhibit 2, Staff Exhibit 10 and Staff
23 Exhibit 11. I believe that would be all, but please
24 give me a second.

25 Q. Take your time, sir.

1 A. And Staff Exhibit 8.

2 Q. And it's your belief that this represents
3 the -- tell me what you believe this represents.

4 A. This was just an easy organized area to
5 put all the data that we had gathered from various
6 sources and knew to be correct and put it just on to
7 one place as an easy reference.

8 Q. I'll ask you the same question I asked
9 Mr. Douglas, and that is, is there anything that
10 we've discussed today that has to do with your
11 Compliance Review that you believe that this
12 Commission needs or could use in making its decision
13 with respect to these violations that we have not
14 discussed?

15 A. I think we discussed -- I think
16 Mr. Forbes discussed the difference between the RE.
17 If you look at Staff Exhibit 12, and just as a
18 reference, in a serial number -- engine serial number
19 from Detroit, the third and fourth digits being RE,
20 that represents one of their remanufactured units.

21 And if it's an R0, that is an original
22 that may or may not have been rebuilt, but it holds
23 its original build date, and I did verify if you look
24 at Staff Exhibit 9, there are a few of the -- when
25 you compare 9 with 8, 8 only had certain -- 8 is the

1 photograph, it only had certain serial numbers on
2 there, and I did verify 8 -- I'm sorry, I verified
3 the serial numbers by sight as trucks would come to
4 and from the yard just by inspecting and looking at
5 the engines.

6 The remanufactured engines have a very
7 clear, easy-to-find plate that Detroit puts on them,
8 and it tells the year that it is. Like, for instance
9 in Unit 2014, it has a 3-10-15 date and it will say
10 2015 on the plate. That's kind of what led to the
11 speculation that the remans may actually be -- you
12 know, carry that new designation no matter what they
13 were before, if it was a 1994 block or whatever
14 before.

15 So I just did inspect all those to make
16 sure that we had that -- had them correct. And I
17 think you'll see on Staff Exhibit 9, I had a note
18 that Tom verified on the roadside on vehicle 2018,
19 that was a vehicle -- or that was the vehicle that
20 Tom conducted the inspection on, he verified the
21 plate on that engine as I testified to. I think that
22 about covers it, hopefully clear it up and not muddy
23 it.

24 Q. You mentioned this RE as opposed to R0,
25 and you indicated after looking at these plates,

1 that's what you surmised. Did you have a
2 conversation with anybody from Detroit Diesel about
3 that designation?

4 A. Yes. First the plant manager and then
5 Mr. Kayes, that the RE was only used for their
6 remanufacturing -- remanufactured engines, and the
7 zero after the R is just a placeholder. They started
8 manufacturing these I think in 1992. I'm not
9 completely certain that that's correct, but it was
10 early '90s, and they just used sequential numbers
11 throughout.

12 So once you have one that's a 2000, one
13 that's a '99, you can tell by the sequential numbers
14 what they are; however, that's not what we used. We
15 did verify through W.W. Williams and then ultimately
16 through Detroit as to the build dates of the
17 vehicles.

18 MR. MARGARD: Thank you. I have no
19 further questions for this witness, your Honor.

20 THE EXAMINER: Mr. Yemc.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Yemc:

24 Q. Thank you. I think you muddled the water
25 a little bit on the difference between the

1 manufacturing date of the engine and the
2 manufacturing date of the vehicle itself. I know
3 Staff counsel over here for the AG solicited
4 testimony from you with regards to the statute and
5 the vehicle manufacturing date, and you testified
6 that that's the date you look at, and that's not
7 accurate, is it?

8 A. Well, we look at both, and it's to the
9 carrier's benefit. If we were to only look at dates,
10 then every one of their vehicles or their trucks that
11 carries a model year of 2000 or later would be ELD
12 required. So we gave --

13 Q. (By Mr. Yemc) If you look at --

14 MR. MARGARD: Your Honor, may the witness
15 be permitted to finish?

16 THE EXAMINER: Yes, proceed.

17 THE WITNESS: So the reason that we look
18 at the engines as well was to give the carrier the
19 benefit of the doubt. They may have had a pre-2000
20 engine installed in an older truck. You get that
21 exemption as an either/or if the truck is pre-2000 or
22 if the engine is a pre-2000.

23 So we did that on their behalf to make
24 sure that actually we had a clear violation or
25 whether the carrier was okay.

1 Q. (By Mr. Yemc) Okay. You're not doing
2 this out of the kindness of your heart. You're doing
3 it out of the FMCSA guidelines?

4 A. I'm doing it out of policy.

5 Q. That's based on the FMCSA guidelines?

6 A. Yes. FMCSA does not have a heart.

7 Q. I want to go over -- and so we're
8 perfectly clear, let's look at Staff's Exhibit 9 and
9 12.

10 A. 9 and 12, yes, sir.

11 Q. Let's start with the ELD exemptions.
12 Look at the 2009. That's the vehicle ID number on
13 Staff's Exhibit 12. It's part of the ELD exempt.
14 And then can you tell me on Staff's Exhibit 9 what
15 the year of manufacturing of that particular truck
16 was.

17 A. On Staff Exhibit 9, the truck manufacture
18 year for Unit No. 2009 is a 2001 model truck. And
19 using Staff Exhibit 12, the Unit 2009 carries an
20 engine that is a 1993 with a build date of 4-21-93.

21 Q. Even though the truck itself is
22 manufactured after 2000, because the engine was
23 manufactured prior to 2000, it's part of the exempt
24 list?

25 A. That's correct. That's why we checked to

1 make sure that the carrier was receiving the
2 exemption that they are entitled to.

3 Q. For brevity's sake, is that the case in 2
4 through 6 as well?

5 MR. MARGARD: On Exhibit 12, I presume?

6 MR. YEMC: On Exhibit 12.

7 A. Those engines are all pre-'99 -- or I'm
8 sorry, pre 1-1 of 2000.

9 Q. Pre 1-1 of 2000 even though the vehicles
10 were manufactured after 2000?

11 A. Correct.

12 Q. The engines were manufactured prior to
13 2000?

14 A. Well, not all of them, but if you take
15 2021, for instance, it carries a 1999 engine, okay,
16 as you look at Staff's Exhibit 12. When you look at
17 Staff's Exhibit 9, 2021 is a 2018 Freightliner glider
18 kit, and it was produced with a pre-'99 engine, so
19 that is what the carrier expressed to us was their
20 intention with the glider kits, was to make sure that
21 all of their glider kits had pre-2000 engines. And
22 some of them did, and we found that some did not. It
23 just depended.

24 I think it was the manufacturer, but I
25 can't say that for sure, but I think it differed by

1 which place that they purchased the trucks as to
2 which ones were legitimately exempt and which ones
3 were not.

4 Q. Now, you testified that you went to
5 Detroit Diesel here in Ohio?

6 A. Correct.

7 Q. When you were there, did you speak with
8 Mr. Kayes or no? I can't recall.

9 A. No, Mr. Kayes is out of Portland, Oregon.
10 I spoke with the plant manager. I don't have his
11 name in front of me. It was a very brief
12 conversation. And he did give me some general
13 information but told me that their parent company,
14 who is Daimler, referred or wanted them to refer all
15 questions of this nature, whether it was from
16 government entities or customers, to their
17 engineering department and gave me the number to
18 call, and that's where I got ahold of Mr. Kayes.

19 Q. Do you recall what series of engines were
20 in these glider kits?

21 A. I believe they're 60 series, but I -- it
22 depends on which ones. If you look at Staff's
23 Exhibit 9, we didn't have -- like Unit 2019 and 2020,
24 we didn't have anything on them because they didn't
25 carry any records at their shop and they weren't part

1 of our sample size that Mr. Douglas spoke to earlier,
2 so there was no need to really look any further at
3 those. They may or may not be exempt, but they were
4 not used in the sample. And let me check that just
5 to make sure that I'm correct.

6 If we look at Staff Exhibit 6, we'll we
7 look at Part C of Page 7, about halfway down the page
8 it lists 1 through 5. These were the drivers that
9 were selected and the reason they were selected, and
10 then it also mentions what trucks they drove through
11 that 30-day period. So just going through there, 17
12 and 18 was the first driver. Then 2014 was the
13 second driver.

14 Q. I guess we're getting off on a tangent
15 because my question related to the type of engine.

16 A. Right.

17 Q. And I wasn't asking manufacturing date.
18 I was asking type of engine.

19 A. Okay, but I can't say for sure on these.
20 That's why I was answering your question.

21 Q. If you don't know, that's fine.

22 A. I do know on the ones we had in our
23 sample size, I do know.

24 Q. Were those Series 60s in your sample
25 size?

1 A. Yes.

2 Q. Okay, thank you. Now, with regards to
3 the remanufacturing of engines at Detroit Diesel, you
4 testified that you went there and they have baskets
5 of parts?

6 A. I didn't see these baskets, but that's
7 what I was told by the plant manager and also by the
8 engineer.

9 Q. Where did they get these parts from?

10 A. I testified to that earlier. I believe
11 some of the examples are old stock that they have.
12 When they get warranty work where they may be buying
13 an engine back, then they'll disassemble and use
14 those parts. They buy up crashed vehicles, buy
15 engines. I don't know if they have people that just
16 look for them cheaply on the open market. I can't
17 speak to that, but that's some of the examples they
18 gave me.

19 Q. They didn't give you an example of their
20 refabricating a new part?

21 A. Refabricating?

22 Q. Yeah, fabricating a new part of the parts
23 of these remanufactured engines. It's not something
24 that you didn't testify or they didn't tell you that,
25 yeah, we've got this assembly line over here and

1 we're making this valve for these remanufactured
2 parts?

3 A. I didn't have that discussion with them.

4 Q. Now, you speculated with regards to
5 something, and I just want to clarify your
6 speculation, whether it's a guess or you know for
7 sure. You speculated that all remanufactured engines
8 have new serial numbers. Is that a guess or do you
9 know?

10 MR. MARGARD: I'll object as
11 mischaracterizing the witness' testimony. The
12 witness did further indicate that he had
13 conversations with the manufacturer to verify that
14 that was, in fact, the case.

15 MR. YEMC: With Detroit Diesel. That
16 wasn't my question. My question is with regard to
17 all remanufactured engines.

18 MR. MARGARD: In that case, I object on
19 relevance grounds.

20 THE EXAMINER: Overruled. You can answer
21 the question to your knowledge.

22 THE WITNESS: I testified that it is a
23 fact that all Detroit Diesels do when they're
24 remanufactured carry a new date or build date. I
25 speculated on other manufacturers. I don't know. I

1 should not have speculated, but we didn't have any
2 other engines that we were looking at in our sample
3 size. I think they only had one or two.

4 Q. So you don't know?

5 A. I don't know.

6 Q. Thank you.

7 MR. YEMC: That's all I have.

8 THE EXAMINER: Any redirect?

9 MR. MARGARD: None. Thank you, your
10 Honor.

11 THE EXAMINER: Thank you very much.

12 MR. MARGARD: But I would move for the
13 admission of Staff Exhibits 10 and 12 at this time.

14 MR. YEMC: I will renew my objection.
15 This is information that's being provided by a third
16 party that could have been here to testify as to the
17 accuracy of that information.

18 All that we have on all of the
19 information regarding the date of the engines is
20 information from a third party that is not here to
21 testify with regard to the accuracy of the
22 information. We just have that they received the
23 information, not that it's accurate.

24 THE EXAMINER: Exhibit 12 will be
25 admitted over your objection as to authenticity.

1 I'll admit Staff Exhibit 10, and I'll let the
2 Commission give that weight whatever it wants, but I
3 will note that there was a lot of information in that
4 e-mail that was not testified to. And as to that
5 information, I surely hope the Commission finds it
6 irrelevant.

7 That said, I have no reason to doubt that
8 is not what it purports to be which is an e-mail
9 chain between Mr. May, Mr. Douglas and Mr. Kayes, so
10 Exhibit 10 will be admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 THE EXAMINER: Mr. Margard, do you have
13 another witness?

14 MR. MARGARD: I have one last, thank you,
15 Mr. Rob Moser.

16 (Witness placed under oath.)

17 - - -

18 ROB MOSER

19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Margard:

23 Q. Sir, will you please state your name and
24 business address.

25 A. My name is Rob Moser. My business

1 address is 180 East Broad Street, Columbus, Ohio,
2 43215.

3 Q. By whom are you employed and in what
4 capacity?

5 A. I am the Chief of Compliance for the
6 Transportation Department within the Public Utilities
7 Commission of Ohio.

8 Q. What are your duties and responsibilities
9 in that position?

10 A. To administer the civil forfeiture
11 process for the Transportation Department.

12 Q. How long have you had that position?

13 A. A little over two-and-a-half years.

14 Q. What position did you have prior to that?

15 A. Prior to that, I was a State Trooper for
16 just shy of 30 years working primarily in commercial
17 enforcement.

18 Q. Motor carrier inspections?

19 A. Yes, sir.

20 Q. Did you have any specific training or
21 certification?

22 A. I do. As mentioned before, the North
23 American Standards, I have Parts A and B, Cargo Tank,
24 general Haz Mat, Motor Coach and Bulk and Non-Bulk.

25 Q. Did you have an opportunity prior to

1 taking the stand today to review the Commission's
2 file with respect to this review?

3 A. I did, yes, sir.

4 Q. As part of that file, has the Commission
5 proposed to assess forfeitures against this
6 Respondent?

7 A. Yes, sir, we have.

8 Q. Can you please describe how forfeiture
9 amounts are calculated for compliance.

10 A. Compliance Review violations are divided
11 into basically five different groups. There are
12 State violations, Acute, Critical, Out of Service and
13 then just referred to as NAV, meaning that we don't
14 fine for those.

15 Q. Are all of the possible violations that
16 could be discovered as part of a Compliance Review
17 fall into one of these categories?

18 A. Yes, because we work off of a chart of
19 violations and should the chart contain a violation
20 that's considered to be NAV, there would be no
21 forfeiture assessed to that violation.

22 MR. MARGARD: May I approach, your Honor?

23 THE EXAMINER: You may.

24 MR. MARGARD: Your Honor, may the record
25 reflect that I've handed the witness a multi-page

1 document marked for purposes of identification as
2 Staff Exhibit 14.

3 THE EXAMINER: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Margard) Mr. Moser, have you seen
6 this document before?

7 A. I have, yes.

8 Q. Is this the chart to which you referred
9 just a minute ago?

10 A. It is.

11 Q. Who created this chart?

12 A. I don't know who initially created it.
13 Most recently it was updated right after I came in
14 this section.

15 Q. This is a chart that's maintained by the
16 Commission?

17 A. Yes, sir.

18 Q. Are you aware of any other entity that
19 uses this chart?

20 A. No, sir.

21 Q. Are these classifications, these
22 categories that you described, are they prescribed
23 anywhere by federal rule or policy?

24 A. They are for Compliance Reviews. Acute
25 and Critical are defined within Title 49 of the Code

1 of Federal Regulations, Part 305.

2 Q. And the other categorizations, the Out of
3 Service, the NAV?

4 A. Those are not specifically described in
5 Code.

6 Q. And how is the forfeiture amount
7 determined for each of these different categories?

8 A. Each type of violation -- by type, I'm
9 saying whether it's Acute or Critical -- has its own
10 set amount for that type. For instance, Acute
11 violations are \$1,000; Critical violations are 400;
12 Out of Services are 2,750; NAVs, as I said, are zero;
13 and State violations are 500.

14 Now, those are all the amounts for the
15 initial violation. Subsequent violations in each of
16 those categories with one exception are one-fourth of
17 the original amount.

18 Q. The exception since you raised it?

19 A. The exception would be a Critical
20 violation that falls under the 396 category, so
21 Vehicle Equipment, Maintenance and Repair.

22 Q. Thank you. Are these dollar amounts
23 prescribed anywhere in federal rule regulation
24 guidance?

25 A. They are not at these amounts, no. This

1 model is based loosely off the Federal Motor Carrier
2 Safety Administration's model that they use. I don't
3 know their exact amounts, but I've been told that
4 ours are substantially lower.

5 Q. Substantially lower, at least in your
6 understanding, consistently?

7 A. Yes.

8 Q. And this schedule was in effect at the
9 time the assessments were determined in this case,
10 correct?

11 A. Yes, sir.

12 Q. And have you had an opportunity to review
13 the violations in this case?

14 A. I have, yes.

15 Q. With respect to the proposed forfeitures?

16 A. Yes.

17 MR. MARGARD: Before I go there, may I
18 approach, your Honor?

19 THE EXAMINER: You may.

20 MR. MARGARD: May the record reflect that
21 I've handed the witness a multi-page document marked
22 for purposes of identification as Staff Exhibit 15.

23 THE EXAMINER: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Mr. Margard) Have you seen this

1 document before?

2 A. Yes, sir.

3 Q. Is it one of the documents contained in
4 the Commission's file of investigation in this case?

5 A. It is.

6 Q. What is this document?

7 A. It's what we commonly refer to as an NIF
8 letter. It is a Notice of Apparent Violation and
9 Intent to Assess Forfeiture. This is what we would
10 send the Respondent upon the case entry into our
11 system.

12 Q. And does this document set forth the
13 proposed forfeitures in this matter?

14 A. It does, yes.

15 Q. Have you had an opportunity to determine
16 whether the proposed forfeitures have been accurately
17 determined?

18 A. I have, yes.

19 Q. What is your opinion with respect to each
20 of these violations, please?

21 A. Going from top to bottom, the 395.3(a)(2)
22 violation is assessed correctly. The 391.25(a)
23 violation is also assessed correctly. The 396.17(a)
24 violation is assessed correctly.

25 The 395.3(a)(3)(ii) or 2 is not assessed

1 correctly. If you look at the chart, that violation
2 should actually be zero, not 500. And it's not due
3 to the reading of the chart. It's the application --
4 I guess I failed to mention that in order for
5 violations to be assessed or Critical violations to
6 be assessed, they need to meet a threshold of
7 10 percent of the records checked being a violation.

8 This particular violation, if memory
9 serves me correctly, was two violations out of 30
10 checked, so it doesn't meet the ten percent. So
11 instead of two Critical violations being assessed, it
12 really should have been zero, should be zero dollars.

13 Q. So is Staff proposing that this proposed
14 forfeiture be deleted in this matter?

15 A. That amount should be zero.

16 Q. Thank you. If you would continue,
17 please.

18 A. Then the 382.309 is assessed correctly.
19 And then also the 395.8(a)(1) is assessed correctly.

20 Q. Now, an issue was raised at the beginning
21 of the proceeding, and hopefully you can address that
22 for me. Do you know if the Respondent received all
23 of the notices that they were entitled to receive in
24 this matter?

25 A. Specifically, I don't know if they

1 received them. We sent them the notices that were
2 appropriate. I assume that they received them
3 because they're here.

4 Q. Was a Notice of Preliminary Determination
5 issued in this case?

6 A. Well, yes and no. So this case
7 originated back in 2018 prior to the implementation
8 of Salesforce, our new operating system. When all
9 the cases were migrated from OMCIS into our new
10 system in this case, for whatever reason it was not
11 migrated.

12 When I discovered that and I discovered
13 and realized that Mr. Yemc had requested a hearing,
14 that he had declined a settlement, I attempted to
15 revert the post conference summary back to the
16 original amount rather than the agreed upon
17 settlement amount.

18 When I did that, I created an NPD
19 document in order to create a new invoice at the
20 correct amount. I attempted to catch that document
21 so that it did not go out because it was well past
22 the time that it should have. It may be that it
23 slipped through, but the intention was not for them
24 to get that.

25 In this particular case, we had a

1 Settlement Agreement. The Settlement Agreement was
2 sent, and the pretty much immediate response within
3 roughly two weeks was a response of a Request for
4 Hearing. There was no opportunity between settlement
5 and Request for Hearing to send an NPD.

6 Q. So the Request for Hearing was made
7 before an NPD could be issued?

8 A. Yes.

9 MR. MARGARD: I have no further questions
10 of this witness. Thank you.

11 THE EXAMINER: Mr. Yemc.

12 MR. YEMC: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Yemc:

16 Q. Could you go through the calculation for
17 the \$12,300 for me.

18 A. Sure. Because it's a Critical violation,
19 the first offense is \$400, and then each subsequent
20 violation is 100 additional dollars. So 400 plus 100
21 times 119.

22 Q. Okay.

23 MR. YEMC: Thank you. Nothing further.

24 MR. MARGARD: No redirect, your Honor,
25 and I move admission of Staff Exhibits 14 and 15.

1 MR. YEMC: No objections, your Honor.

2 THE EXAMINER: Thank you for anticipating
3 my question. Seeing no objections, those will be
4 admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 MR. MARGARD: Staff rests its case at
7 this point. I have no further witnesses.

8 THE EXAMINER: Thank you.

9 Mr. Yemc.

10 MR. YEMC: Yes, at this point, I would
11 call Jay Owens to the stand.

12 (Witness placed under oath.)

13 - - -

14 JAY OWENS

15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Yemc:

19 Q. Good afternoon, sir. Could you please
20 state your name and address for the record.

21 A. Jay Owens, 88 High Avenue, Waterford,
22 Ohio, 45786.

23 Q. Where do you work, sir?

24 A. Drayer, Incorporated.

25 Q. And what do you do for Drayer,

1 Incorporated?

2 A. Kind of jack of all trades.

3 Secretary/Treasurer would be the title.

4 Q. And were you the lead contact with
5 regards to this Compliance Review?

6 A. Yes.

7 Q. And with regards to this Compliance
8 Review, you heard earlier that we stipulated to a lot
9 of the violations except for with regards to the last
10 violation under 395.8(a)(1), and that's failing to
11 require a driver to prepare a Record of Duty Status
12 using the appropriate method.

13 I just want to go into that with you a
14 little bit and get your thoughts on it. Now, what
15 type of trucks do you currently use with the company?

16 A. Mostly glider kits.

17 Q. And we've heard testimony with regards to
18 what a glider kit is previously. Are you buying
19 glider kits with engines or putting engines in after
20 the fact?

21 A. We've done both.

22 Q. And you are familiar with Staff Exhibit I
23 believe it was 12? Should be up there on the bench
24 maybe.

25 MR. MAY: I accidentally brought it back.

1 A. Yes.

2 Q. You're familiar with that?

3 A. Yes.

4 Q. Okay. And now are you intimately
5 familiar with the engines that are listed on that
6 exhibit?

7 A. Yes, very much so.

8 Q. Now, I don't want to deal with 1 through
9 6 because they're coming back as exempt, but on the
10 first ELD exempt, let's look at the ELD required
11 list, 1 through 5. Do you know what type of engines
12 those are?

13 A. Those are Series 60 12.7 Detroit motors.

14 Q. All of them?

15 A. Yes.

16 Q. Why do you use that particular engine?

17 A. We like to try to have all of our trucks
18 the same so basically all the parts are
19 interchangeable. If you have something that breaks
20 down and you have one sitting there, you can just go
21 take a part off of it, throw it on the other truck,
22 keep it going.

23 Q. Do you recall where you bought those
24 engines from?

25 A. The REs come from Matheny Motors.

1 Q. What's the name of the company?

2 A. Matheny Motors in Parkersburg, West
3 Virginia.

4 Q. Okay. And were you employed by the
5 company when those motors were purchased?

6 A. Yes, I was.

7 Q. And did you have contact with Matheny
8 Motors?

9 A. Yes, I did.

10 Q. And whenever you purchased those motors,
11 could you describe any conversations you had with
12 them?

13 A. I talked to them about the ELD was coming
14 into effect and I asked them, that was one of my
15 questions, you know, are these -- these are glider
16 kits, are these motors exempt? And they told me that
17 the blocks were older than 2000, is exactly what
18 Matheny Motors told me.

19 Q. And these are Series 60 Detroit Diesel
20 motors?

21 A. Right, 12.7 liter.

22 Q. And all with engine blocks older than
23 2000?

24 A. As far as I know, yes. I know that 2014,
25 when that motor came --

1 Q. Is that Unit 2014?

2 A. Unit 2014, when it came from Detroit,
3 they screwed up and left the serial number -- the
4 previous serial number for that motor in the
5 computer. We've since been able to pull it out and
6 it's I think a 1998 motor.

7 Q. And now we heard testimony previously
8 with regards to how Detroit Diesel reissues a new
9 serial number. What's the reason behind that?

10 A. The best I can figure out is it is only
11 for warranty purposes. That number does nothing.
12 You can call Detroit Diesel and give them that number
13 and try to order parts; they will not do it. You
14 have to use another -- you have to use an older
15 motor's serial number in order to do that. And from
16 my conversations with Matheny after everything
17 happened, come to find out that Detroit's the only
18 manufacturer that does that.

19 Q. Only manufacturer that does what?

20 A. Changes the serial number. I mean, the
21 block's the block, it's never been remanufactured.
22 It's been cleaned up and you bolt parts into it. It
23 wasn't remanufactured. They didn't recast it in
24 2015. Detroit Diesel hasn't even made a Series 60
25 since 2011.

1 Q. So whenever we're seeing build dates of
2 2015 and 2016, is that accurate?

3 A. No, because if it was, it would have to
4 have an EGR valve and it also has to have DEF fluid
5 which it's kind of like the government's wanting to
6 have it both ways because the EPA isn't saying that
7 that's a 2015 motor. They would never allow it on
8 the road. It doesn't have any of the stuff that's
9 needed for that to be a 2015 motor.

10 Q. You mentioned an EGR valve. What is
11 that?

12 A. It's a part of the -- goes on the turbo,
13 and it's -- it regulates air flow. And we don't want
14 any trucks with an EGR valve because before I joined
15 the company, we had a brand new truck that burnt to
16 the ground because of a bad EGR valve. So the owner
17 does not want a repeat of that, and so that's why we
18 go with motors that are older.

19 Q. And the EGR valve is just on newer
20 motors?

21 A. I believe it's 2004 and newer.

22 Q. Now, you also indicated with regards to
23 DEF requirements. Can you go into that a little bit?

24 A. DEF is a -- it's an additive that runs
25 through your exhaust system, and it's supposed to

1 reduce emissions.

2 Q. On these older motors pre-2000?

3 A. It's impossible to run through them.

4 Q. I want to talk to you a little bit about
5 the Safety Profile and the percentiles that we were
6 seeing change for Drayer. You were in your current
7 position at Drayer back in 2016-2017?

8 A. Correct.

9 Q. And if you recall, I pointed out a couple
10 months on Page 23-24 of that Exhibit, it was Staff
11 Exhibit 3, which showed no percentile for Hours of
12 Service compliance, but then in the following month,
13 it jumped up to a 79 percentile.

14 A. Correct.

15 Q. Do you have any recollection of what
16 occurred during that period of time?

17 A. That is based on number of inspections
18 and what happens in that inspection. So if you had
19 no inspections and you had one, you would go from a
20 zero to high in a hurry is my -- always has been my
21 understanding.

22 It kind of hamstrings small carriers, it
23 always has. That's been a widely recognized problem
24 in the industry, I believe. I know we had had an
25 owner-operator that come to work with us, he was

1 there one week, come in at the end of the week and
2 gave me an inspection, and I believe there were five
3 or six Hours of Service issues on that one thing.

4 And it's finally going away. And it's
5 weighted -- it starts out there's a number, and it's
6 multiplied by three first, and then after six months,
7 I believe it goes down to two. And then after a full
8 year, I believe it goes down to one for the
9 remainder. So it takes quite a while to get things
10 changed around.

11 Q. So one bad inspection, one bad apple can
12 cost you?

13 A. It can go up very quick and it's very
14 difficult to -- it's very time consuming to make it
15 go away.

16 Q. Did you talk to Detroit Diesel at all
17 with regards to the new engines?

18 A. They wouldn't take my calls.

19 Q. But Matheny would?

20 A. Yes.

21 Q. And your testimony is they told you all
22 these engines predated 2000?

23 A. Correct.

24 MR. MARGARD: I'll object and move to
25 strike. That wasn't the witness' testimony. He

1 indicated that the blocks were pre-2000.

2 Q. (By Mr. Yemc) Are the blocks pre-2000?

3 A. That's pretty much the motor. I mean,
4 it's the main part of the motor. I can go out and --
5 I mean, the heads -- I'm not a mechanic. The heads
6 are a little bit different. Your pistons are going
7 to be pretty much the same. I mean, it's the same
8 stuff. It's not a different size. It's all a matter
9 of -- I believe it's the gaskets you put in it.

10 Q. But otherwise, the block is the motor?

11 A. Right.

12 MR. YEMC: I have nothing further, your
13 Honor.

14 THE EXAMINER: Mr. Margard?

15 MR. MARGARD: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Margard:

19 Q. Were you responsible for purchasing these
20 engines from Matheny Motors?

21 A. No.

22 Q. Were they purchased before you were hired
23 there?

24 A. No.

25 Q. Were you responsible for maintaining the

1 records of those purchases?

2 A. To a certain degree, yes.

3 Q. Did the company retain records of those
4 purchases?

5 A. I believe they were all in Chris' office
6 if he had had them. I'd never seen those.

7 Q. Were you asked for documentation --

8 A. Yes.

9 Q. -- on the engines?

10 A. Yes.

11 Q. Did you --

12 A. I did not have any. I requested from
13 Dean that worked for Matheny's several times for
14 stuff. I've never gotten anything.

15 Q. You gave the investigators everything you
16 had?

17 A. Right.

18 Q. You indicated that Detroit Diesel
19 wouldn't take your call. When did you contact them?

20 A. I tried to call them after we had gotten
21 the trucks, and Dean couldn't give me anything that
22 -- Once the mandate came into effect, I was looking
23 for something to be able to put into the trucks so
24 roadside inspections wouldn't be a problem. And I
25 really -- I just was unsuccessful in getting any help

1 from anybody.

2 Q. Did you seek information from Matheny
3 Motors with respect to the --

4 A. Yes, I did.

5 Q. But you received no documentation?

6 A. I got nothing from them that said what
7 year these motors were. They wouldn't give me
8 anything.

9 Q. Did you contact anyone else?

10 A. I didn't know who else to contact other
11 than, well, you know, Detroit Diesel, but I think I
12 called a couple times and left messages at a main
13 number and nobody ever called me back.

14 MR. MARGARD: I think that's all I have.
15 Thank you. Your Honor.

16 THE EXAMINER: Mr. Yemc.

17 MR. YEMC: No redirect.

18 Steve.

19 (Witness placed under oath.)

20 - - -

21 STEVEN D. FORREST

22 being first duly sworn, as prescribed by law, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Yemc:

1 Q. Good afternoon. Could you please state
2 your name and address for the record.

3 A. Steven D. Forrest, Washington Street,
4 Waterford, Ohio.

5 Q. Mr. Forrest, what's your occupation, sir?

6 A. Mechanic.

7 Q. How long have you been a mechanic?

8 A. Legally since 1973. That's when I became
9 of age.

10 Q. And where do you currently work?

11 A. For Drayer, Incorporated.

12 Q. How long have you worked there?

13 A. This last time, three years.

14 Q. Prior to that?

15 A. Globe Metallurgical.

16 Q. Prior to that?

17 A. Drayer, Incorporated.

18 Q. How long were you there for that period
19 of time?

20 A. Approximately five years.

21 Q. Always as a mechanic?

22 A. Yes.

23 Q. Have you ever worked for any
24 manufacturers?

25 A. Detroit Diesel.

1 Q. When did you work for Detroit Diesel?

2 A. In 1986-87.

3 Q. What did you do for Detroit Diesel?

4 A. I ran their -- actually Covington Diesel
5 out of Charlotte, North Carolina is one of their
6 remanufacturers, and I ran their shop of 11 people.

7 Q. So you're intimately familiar with
8 remanufactured engines?

9 A. Yes, sir.

10 Q. All right. Now, I'm going to also talk
11 to you about Staff Exhibit 12, if it's up there, and
12 talk to you about the ELD required engines 1 through
13 5. If it's not up there, I'll come up. I'll
14 approach.

15 A. I'll find it someplace. Here's 11. I'll
16 jump into 13.

17 Q. He can just have my copy. Do you see
18 that Exhibit there, sir?

19 A. Yes, sir.

20 Q. There are five ELD required engines
21 listed on there that this Staff has listed as the ELD
22 is required for those engines with various
23 manufacturing dates put on them. You previously
24 worked at Detroit Diesel. Do you know what those
25 dates just refer to as?

1 A. When they were remanufactured.

2 Q. What's the process of remanufacturing an
3 engine?

4 A. That depends on your client. And I sat
5 here and I've heard that there is rebuilding and
6 there is remanufacturing. Rebuilding is taking your
7 existing engine or someone else's, as far as that
8 goes, you rebuild it with as many original parts as
9 possible by checking them but not inspecting them.

10 So if the head checks out that it's good,
11 it holds pressure, no cracks, everything looks good,
12 you put it on, there's not a reconditioning of it.

13 When it becomes a reman, then all of that
14 can still be the same head, same block, but it's all
15 been taken apart, inspected and put back together
16 with either the good parts and only the bad parts
17 replaced in it.

18 Q. Where would those parts come from if they
19 needed replaced?

20 A. At -- depending on what engine, it can
21 come from the manufacturer. It can come from after
22 market people. Now, with Detroit, it will mostly all
23 come from them. If it is still available through
24 them, the same way with any of the other
25 manufacturers, because some engines, the dealer will

1 still rebuild or the manufacturer, but they no longer
2 have the parts for them. So they outsource those
3 parts and get the engine back together.

4 Q. So this isn't a new engine being
5 manufactured; these are just parts and pieces?

6 A. Correct.

7 Q. Of perhaps even old engines being put
8 onto that old block?

9 A. Anything that is the same or accepted as
10 the same.

11 Q. What type of engines are those, the 1
12 through 5, if you know?

13 A. These are Detroit 60 series. They are
14 the 12.7s.

15 Q. That's the engine that you seem to run in
16 a lot, if not all, of your trucks?

17 A. Yes.

18 Q. Why is that?

19 A. Because like at this point, if we have a
20 head, it will fit on any of them. If we have a truck
21 come in with a busted head, we take it out of our
22 stock and we put it on that truck. We don't have to
23 have a dozen different heads for each truck. And
24 that's why we go with the whole system of this
25 engine, so that we are all the same.

1 Q. How about the wiring in computer systems
2 used on these older engines?

3 A. On the 12.7, there is two different.
4 There is a 3 and a 4, classifications of them, and
5 all it is is an update in the computer system to help
6 the performance of the engine, but they still use the
7 same basic components of the engine. And that's the
8 difference between those two, the Series 3 and the
9 Series 4.

10 Q. And so are those two series reflected in
11 these engines here?

12 A. Yes, due to computers. That's basically
13 when they're talking this type of Series 3 -- Series
14 1 through Series 4 is the computer itself. Now, the
15 engine also has different things in the engine. Now,
16 like when you get from the old Series 1 to the Series
17 4, they have beefed up like connecting rods, made
18 them harder, tougher or put different oiling systems
19 in them to make the engine be able to take care of
20 the horsepower that is developing.

21 Q. Now, do you know when Detroit stopped
22 making that Series 60 engine?

23 A. I believe 2011. You can no longer get
24 any -- get one from Detroit. You can still get their
25 reconditioned engine, but you could not buy a new

1 one.

2 Q. So with your experience as a
3 remanufactured engine, is it the same as a new
4 engine?

5 A. No. A brand new engine with its standard
6 oil change and everything can possibly get up to
7 close to a million miles. A remanufactured or a
8 rebuilt one, you're looking at maybe 5-, possibly
9 600,000 miles. That's all you're going to get out of
10 it before you have to get through it again because
11 the tolerances are bigger.

12 They have what they call a guide that
13 you're allowed so many thousand to wear, either small
14 or wide that's acceptable, and you put the engine
15 back together if it's within that guideline or you
16 have the engine repaired by having it machined.

17 Q. And having worked at Detroit Diesel, are
18 you familiar with their serial number system?

19 A. Their serial number system is kind of an
20 odd one on those because they start out with the 60
21 series, and it just stays -- you can tell by how many
22 cylinders it is and, of course, here whether it's
23 been rebuilt, reconditioned or not by the serial
24 number, but the serial number just gradually
25 increases.

1 And now there are a few others like the
2 Rs on into it if you will have -- you may have
3 different letters also in these, and that's for a
4 certain configuration of the engine for whatever
5 application.

6 Q. Now, to your knowledge, is Detroit Diesel
7 the only manufacturer or remanufacturer that assigns
8 a new serial number to these engines?

9 A. To my knowledge, it's the only one that
10 ever has, and they always have put down whatever year
11 it was rebuilt because when they go for a
12 remanufactured engine, then it becomes warrantied and
13 they will not use the old serial number because it
14 has already been used through their system as a
15 warranty.

16 Q. So they do it for warranty reasons?

17 A. They do it mainly for warranty reasons
18 and that's why you'll have the RE on them, because
19 that way they know that they are remanufactured.

20 MR. YEMC: Thank you, sir. No further
21 questions.

22 MR. MARGARD: If I could have a moment,
23 your Honor.

24 THE EXAMINER: Yes.

25 (Pause.)

- - -

CROSS-EXAMINATION

By Mr. Margard:

Q. Mr. Forrest --

A. Yes, sir.

Q. -- it's been a while since you've been in a remanufacturing plant?

A. Yes, it has.

Q. With respect to the serial numbers, you indicated that a remanufactured engine receives a new number?

A. In the Detroit, that I know of, yes.

Q. Brand new number? They're not just changing a letter, it's a whole brand new number?

A. Yes, in what we have found out here in the 60 Series. Now, prior to the 60 Series was the old two strokes, the old Detroit engines. They retained their own full number no matter what.

Q. You don't have any of those?

A. No, but with these, we've seen -- we have seen that they -- of course, we rebuild our own, so we do not ever change the serial number on them. We don't need to.

Q. But you don't remanufacture your own? You can't remanufacture your own, correct?

1 A. I can do the same thing as Detroit Diesel
2 does with that engine, yes, myself, and well, our
3 team. Now, we have to send it out if we have to have
4 a block -- something done to it to bring it back into
5 the specifications that it needs, yes, but we can't
6 do that.

7 Q. You're not responsible for the
8 recordkeeping for these engines as far as the
9 purchases are concerned, are you?

10 A. The way I -- we take care of -- I take
11 care of what we put in those engines, yes.

12 Q. But you don't know when the engines were
13 purchased?

14 A. No, I do not.

15 Q. Do you know if any of the engines were
16 sent to be remanufactured by Drayer?

17 A. No, sir.

18 Q. No, you do not know, or no, none of them
19 were?

20 A. I do not know if any of them were because
21 most of the time, we do it ourselves. Some of
22 them -- now, a couple of these were done between
23 my -- a year and three -- well, a year-and-a-half or
24 a little bit more when I was not there and then came
25 back.

1 Q. You don't have any knowledge of Drayer
2 sending an engine out to be remanufactured?

3 A. No, I do not.

4 MR. MARGARD: That's all I have. Thank
5 you.

6 THE EXAMINER: Any redirect?

7 MR. YEMC: None.

8 THE EXAMINER: Thank you, Mr. Forrest.

9 MR. YEMC: Just one last witness, your
10 Honor.

11 (Witness placed under oath.)

12 - - -

13 CHRISTOPHER DRAYER

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Yemc:

18 Q. Please state your name and address for
19 the record.

20 A. Christopher Drayer. I live at 20470
21 State Route 60, Beverly, Ohio.

22 Q. What is your occupation?

23 A. I'm the owner of Drayer, Inc.

24 Q. How long have you owned Drayer, Inc.?

25 A. 25 years.

1 Q. I'm going to be real specific with you
2 with regards to the engines that were purchased by
3 your company, specifically Staff Exhibit 12, 1
4 through 5, where they indicate ELD required. Did you
5 purchase those engines?

6 A. I purchased them from Matheny Motors.

7 Q. Do you recall when you purchased those?

8 A. I really don't know the exact dates, but
9 whatever the purchase date of the truck, I would be
10 in that same vicinity because they put them together.

11 Q. They put them together for you?

12 A. Absolutely. The engines came completely
13 there with the transmissions and Matheny put them
14 together on their site.

15 Q. Did you make any special requests with
16 regard to the engines to go into these vehicles?

17 A. Yes, to make sure they were under the
18 year 2000.

19 Q. Is there a reason why you would make such
20 a request?

21 A. We were running paper logs. We had been
22 running paper logs. It's the way we've done it
23 forever since I've been trucking and just wanted to
24 keep it that way, keep it simple.

25 Q. How about the engine itself, I mean, is

1 there a reason why you chose that Series?

2 A. The 12.7, everybody that's in the
3 trucking industry knows that's the most efficient
4 motor out there. You get the best fuel mileage.
5 They're cheaper to take care of. I've got nine
6 glider kit trucks. I have other trucks that have the
7 same motor. It just makes sense to have everything
8 the same. I keep everything the same in my company,
9 tire size, wheel size, everything to make everything
10 efficient.

11 Q. You have the same engine in other trucks,
12 and some of those truck engines, they have a
13 different build date than the five listed on the ELD
14 required list?

15 A. Correct.

16 Q. Why is that?

17 A. Just from older trucks blowing motors,
18 I've had to purchase motors like at the scrap yards
19 and sticking them in so the motors are different than
20 the year of the truck.

21 Q. Now, are any of those remanufactured
22 motors from a different source?

23 A. No. The only remanufactured motors I've
24 got was from Matheny's. All the other glider trucks,
25 we got them from Diesel Power Machine out in Pearson,

1 Indiana.

2 Q. And the dates on all of those engine
3 blocks per your request were pre-2000?

4 A. As to my knowledge, yes.

5 Q. And that was a specific request made by
6 you?

7 A. Absolutely. In talking to Matheny's,
8 they wouldn't give me nobody to talk to. It's like
9 a -- you can't get no information from Detroit Diesel
10 at all.

11 Q. That's because they threw a serial number
12 on there?

13 A. Correct, it's covering their base,
14 covering their butts.

15 Q. And do you know why they put a new serial
16 number on there?

17 A. For warranty purposes only. And they put
18 a tag on the motor, that's the main thing. They put
19 tags on it. They erase the serial number off the
20 block and they put a tag on there. Tags can be taken
21 on and off real simply. That's why the block and the
22 engine is the same.

23 You take all nine trucks of mine, take
24 their motors out, lay them out through there, there
25 ain't a person, even that man over there that's been

1 working on them for 45 years, can tell the difference
2 between either one of them. They're all the same.
3 So reman motor and a rebuilt motor are the same.

4 MR. YEMC: Thank you, sir. I have
5 nothing further.

6 THE EXAMINER: Mr. Margard?

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Margard:

10 Q. No records of your purchases from
11 Matheny?

12 A. I have Purchase Agreements when I bought
13 the trucks but they came with the trucks. Like when
14 I bought the truck, it was already -- when you buy a
15 new truck, it shows the motor and everything in them.

16 Q. Did you provide that information to the
17 Staff when it came to conduct its review?

18 A. Negative.

19 Q. Why not?

20 A. Didn't feel it was relevant. We were
21 talking about a motor, not a truck.

22 Q. You understand that that information was
23 requested?

24 A. No, I did not. As far as I'm concerned,
25 it wouldn't have helped anyway.

1 Q. But you wouldn't speak with Staff, you
2 wouldn't meet with Staff; is that correct?

3 A. With who?

4 Q. You would not meet with the investigators
5 when they came?

6 A. I was not there. I was on vacation.

7 Q. On vacation.

8 MR. MARGARD: I don't have any further
9 questions of this witness. Thank you, your Honor.

10 MR. YEMC: No redirect. No witnesses.

11 THE EXAMINER: You may step-down.

12 MR. YEMC: No exhibits to be objected to.

13 THE EXAMINER: What's the fun in that?

14 MR. YEMC: I know.

15 THE EXAMINER: Let's go off the record
16 for just a second.

17 (Off the record.)

18 THE EXAMINER: We had a brief
19 conversation about the fact that I am requesting
20 briefs from counsel, and we've determined that those
21 briefs, one round, will be due on January the 3rd,
22 2020.

23 Anything else, gentlemen?

24 MR. MARGARD: No, thank you.

25 MR. YEMC: Nothing else. Thank you.

1 THE EXAMINER: Thank you for being here
2 today. We're adjourned.

3 (The hearing was concluded at 3:43 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, November 14,
2019, and carefully compared with my original
stenographic notes.

Cynthia L. Cunningham

Cynthia L. Cunningham

- - -



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Summary: Transcript In the Matter of Drayer, Inc., Notice of Apparent Violation and Intent To Assess Forfeiture, hearing held on November 14th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Cunningham, Cindy