

**MINNESOTA STATE PATROL  
DATAQS PROGRAM PROTOCOL  
Rev: July 23, 2019**

**I. PURPOSE**

The Minnesota State Patrol's DataQs program enables commercial vehicle drivers and carriers to challenge Out of Service Orders and/or the accuracy or validity of data in roadside inspection and/or crash reports provided by the State Patrol to the Federal Motor Carrier Safety Administration ("FMCSA"). The DataQs program also enables the State Patrol to maintain quality control of its commercial vehicle and/or driver inspection and enforcement program.

**II. NOTICE**

The Commercial Vehicle/Driver Inspection Report will include the following notice to drivers and/or carriers:

Drivers or carriers may challenge the accuracy or validity of a commercial vehicle inspection, including the issuance of an out of service order, by contacting the Federal Motor Carrier Safety Administration (FMCSA) at: <https://dataqs.fmcsa.dot.gov>. The State Patrol's DataQs program protocol is available at: <https://dps.mn.gov/divisions/msp/commercial-vehicles>.

**III. LEGAL STANDARD**

All DataQs challenges will be decided in a fair and impartial manner based upon the evidence available to the decision-maker at the time the challenge is decided. A DataQs challenge will be decided based upon a preponderance of the evidence. The burden of proof is on the Challenger, except that when a challenge involves the enforcement of an Out of Service Order, the burden of proof is on the State.

#### **IV. SUBMITTING A DATAQS CHALLENGE**

##### **A. Eligibility To Submit A DataQs Challenge**

1. A commercial vehicle driver may submit a DataQs challenge within 36 months of the date of a commercial vehicle and/or driver inspection in Minnesota.
2. A carrier may submit a DataQs challenge within 24 months of a commercial vehicle and/or driver inspection in Minnesota.

##### **B. How To Submit DataQs Challenges**

DataQs challenges, along with any supporting documentation, may be submitted to the Minnesota State Patrol electronically only by accessing the Federal Motor Carrier Safety Administration DataQs website at <https://dataqs.fmcsa.dot.gov> and following the directions on the website

##### **C. Acknowledgement of DataQs Challenge**

Acknowledgement of DataQs challenges received through the FMCSA DataQs website is automatic.

#### **V. TIME LINE FOR PROCESSING DATAQS CHALLENGES**

The State Patrol will decide all DataQs challenges through Step 2 within 30 days and all DataQ challenges through Step 3 within 60 days of initial receipt unless the District Commander grants an extension for good cause. The DataQs Administrator is responsible for ensuring that DataQs challenges are timely processed.

#### **VI. METHOD OF REVIEW OF DATAQS CHALLENGES**

##### **A. Step 1**

1. The DataQs Administrative Assistant is responsible for screening all DataQs challenges received by the State Patrol.
2. The DataQs Administrative Assistant will maintain a log of all DataQs challenges received by the State Patrol. The log may include any data elements the State Patrol deems necessary to maintain quality control of its DataQs Review Program.

3. The DataQs Administrative Assistant has authority to respond to all requests for copies of Driver/Vehicle Inspection Reports and related documents and to decide the outcome of all non-enforcement related challenges. Non-enforcement related challenges seek to change and/or correct data entry and spelling errors and carrier misidentification of crash reportability.
  - a. For any non-enforcement related challenges decided in favor of the Challenger, the Administrative Assistant must promptly notify the Challenger and the Inspector's supervisor that the challenge has been upheld and make whatever changes and/or corrections in the SafetyNet and DataQs systems are necessary to accurately reflect the decision. Should the Inspector's supervisor become aware of a pattern of data entry and spelling errors and/or misidentification of crash reportability, that supervisor will address that issue with the Inspector.
  - b. For any non-enforcement related challenges that are not decided by the DataQs Administrative Assistant or are decided against the Challenger, further review will automatically be provided through the Step 2 process set forth in Section B that follows.

**B. Step 2**

4. The DataQs Administrator has authority to decide all non-enforcement challenges not decided or denied by the DataQs Administrative Assistant and all enforcement-related challenges. Enforcement-related challenges seek to rescind Out of Service Orders and/or to make a substantive change to the outcome of an inspection.
5. For any non-enforcement challenges that are not decided by the DataQs Administrative Assistant or that are decided against the Challenger, and for all enforcement-related challenges, the DataQs Administrative Assistant will do the following:
  - a. Obtain complete contact information from the Challenger and the Challenger's preferred method of receiving further communication (i.e. mail or e-mail) regarding the challenge.
  - b. Provide notice to the Inspector and the Challenger of the opportunity to submit further information and documentation to the DataQs Administrator by a designated date prior to when the DataQs Administrator makes his/her decision.

- c. Prepare a DataQs Information Packet for the DataQs Administrator, which at a minimum should include:
  - 1) The Challenger's contact information and preferred method of further communication concerning the challenge;
  - 2) A copy of the DataQs Challenge and any supporting documentation provided by the Challenger;
  - 3) A copy of the Inspection Report and any other related documentation concerning the challenge that are readily available to the DataQs Administrative Assistant, and
  - 4) If the DataQs Administrative Assistant made a prior decision against the Challenger, a statement of the prior decision.
3. Upon receipt of the DataQs Information Packet and prior to making a decision, the DataQs Administrator should:
  - a. Check any applicable state and federal laws, rules and regulations, and if applicable, the North American Out of Service Criteria to determine whether they were correctly applied. (If the Inspector is an employee of the State Patrol, the DataQs Administrator should also determine whether the State Patrol's General Orders and directives were correctly applied);
  - b. Review any further information and documentation received by the Inspector and/or Challenger; and
  - c. Seek any additional information if necessary.
4. When making a decision, the DataQs Administrator must take the following into consideration:
  - a. All of the evidence available to the DataQs Administrator when the matter is considered;
  - b. Whether any applicable state and federal laws, rules and regulations, and if applicable, the North American Out of Service Criteria were correctly applied. (If the Inspector is an employee of the State Patrol, the DataQs Administrator should also determine whether the State Patrol's General Orders and directives were correctly applied); and

- c. If an Out of Service Order is being challenged and a citation was issued at the same time as the Out of Service Order, the DataQs Administrator should take into consideration the court's disposition concerning the citation.
- 5. Once a determination has been made to uphold or deny the challenge, the DataQs Administrator should immediately inform the Administrative Assistant of the decision. If the challenge is upheld, the DataQs Administrative Assistant should promptly notify the Challenger, Inspector and the Inspector's supervisor of the decision and make whatever changes and/or corrections in the SafetyNet and DataQs systems are necessary to accurately reflect that decision.
- 6. A decision by the DataQs Administrator to deny a challenge must be documented in writing by the DataQs Administrator.
  - a. The written decision must include, but is not limited to the following:
    - 1) A clear statement of the DataQs Administrator's decision; and
    - 2) A summary of the basis for the decision, including a statement of the facts and law relied upon to make the decision.
  - b. The Administrator shall send the Challenger a copy of the decision along with a notice that the Challenger may, within 15 days after receipt of the DataQs Administrator's decision, submit, by any of the means set forth in IV.B. herein, a request for further review by the DataQs Review Committee as provided in Step 3, and that if the Challenger does not timely submit that request, the right to seek further review will be deemed waived.

**C. Step 3**

- 1. For all DataQs challenges considered under this section, the DataQs Administrative Assistant will promptly update the DataQs Information Packet for the DataQs Administrator and prepare and distribute a copy of that Packet to each DataQs Review Committee member.
- 2. The updated DataQs Information Packet should, at a minimum, include the following:
  - a. The Challenger's contact information and preferred method of further communication concerning the challenge;

- b. A copy of all information that the DataQs Administrator received and took into consideration when the challenge was previously decided;
  - c. A statement of any prior decisions about the pending challenge taken by the DataQs Administrative Assistant and/or DataQs Administrator.
- 3. *Composition of the DataQs Review Committee:* The DataQs Review Committee will be comprised of no less than three members of the State Patrol's Commercial Vehicle Section and will be selected by the District Administrative Lieutenant.
  - a. The Committee members must have subject matter expertise concerning the issues to be reviewed.
  - b. The Committee members must not have been directly involved in the action taken that is the subject of the Committee's review.
  - c. The DataQs Administrator should not be a member of the DataQs Review Committee.
  - d. In addition to members of the State Patrol's Commercial Vehicle Section who are selected members, an industry representative may be appointed to serve as a fourth member by the District Administrative Lieutenant and/or the District Commander.
- 4. *Scheduling review by the DataQs Review Committee:* To convene the DataQs Review Committee, the DataQs Administrative Assistant will:
  - a. Promptly obtain the names of the Committee members and contact them and/or check their calendars to determine their availability.
  - b. Schedule the review by the DataQs Review Committee, and
  - c. Notify the Challenger and Inspector of the following information:
    - 1) the time and place of the DataQs Review Committee's meeting;
    - 2) that the Challenger and Inspector may appear at the meeting in person or by telephone. If the Challenger and/or Inspector intends to appear by telephone, the DataQs Administrative Assistant will make the necessary arrangements; and

- 3) that additional documentation concerning the subject of the challenge may be submitted for consideration by the DataQs Review Committee no later than 5 days prior to scheduled date of the DataQ Review Committee's meeting.
5. The DataQs Review Committee has authority to decide all commercial vehicle non-enforcement and enforcement challenges submitted to it for review.
6. When making a decision, the DataQs Review Committee must take the following into consideration:
  - a. All of the evidence available to the DataQs Review Committee when the matter is considered;
  - b. Whether the applicable state and federal laws, rules and regulations, and if applicable, the North American Out of Service Criteria were correctly applied. (If the Inspector is an employee of the State Patrol, the DataQs Review Committee should also determine whether the State Patrol's General Orders and directives were correctly applied), and
  - c. If an Out of Service Order is being challenged and a citation was issued at the same time as the Out of Service Order, the DataQs Review Committee should take into consideration the court's disposition concerning the citation.
7. Any presentations made by the Challenger, Inspector, or other interested persons to the DataQs Committee will be audio-recorded by the State Patrol. The audio-recording and a final updated DataQs Review Committee Information Packet will be preserved for a minimum of 90 days from the time the Challenger receives due notice of the DataQs Review Committee's final written decision. However, the deliberations of the DataQs Review Committee shall not be recorded.
8. Once the DataQs Review Committee has made its decision, a DataQs Review Committee designee will inform the DataQs Administrator and DataQs Administrative Assistant of the decision. If the challenge is upheld, the DataQs Administrative Assistant should promptly notify the Challenger, Inspector and the Inspector's supervisor of the decision and make whatever changes and/or corrections in the SafetyNet and DataQs systems are necessary to accurately reflect that decision.
9. Any decision by the DataQs Review Committee to deny a challenge must be documented in writing by the DataQs Administrator with the assistance

of a DataQs Review Committee designee. The written decision must include, but is not limited to the following:

- a. A clear statement of the DataQs Review Committee's decision;
  - b. A summary of the basis for the decision, including a statement of the facts and law relied upon to make the decision, and
  - c. A statement that the DataQs Review Committee decision constitutes a final agency decision for purposes of an appeal to the Court of Appeals pursuant to Minn. Stat. § 480A.06, subd. 4 and Chapter 606 and Rule 115 of the Minnesota Rules of Appellate Procedure, and that a petition for review by writ of certiorari must be issued within 60 days from the time the Challenger receives due notice of the DataQs Review Committee's final written decision.
10. *Dissemination of the DataQs Review Committee's Decision:* A copy of the DataQs Review Committee's decision must be sent to the Challenger, the Inspector and the Inspector's supervisor.
  11. The DataQs Administrator and DataQs Administrative Assistant will work together to ensure that final agency decisions of all DataQs challenges are correctly noted in the District's DataQs log referred to in Section VI.A.2. herein, and any required changes and/or corrections in the SafetyNet and DataQs systems are promptly made.

## **VII. QUALITY CONTROL REVIEW OF THE DATAQS PROGRAM PROTOCOL**

- A. The District Commander and the District Commander's supervisor are each responsible for providing oversight to ensure that the protocol of the Patrol's DataQs program is being properly followed. The District Commander and/or the District Commander's supervisor, after consultation with the DataQs Administrator and legal counsel, if necessary, has authority to determine whether the protocol described in Sections II. through VI. herein, requires further revision to be effective and to maintain continued compliance with all state and federal laws, rules and regulations, and if applicable, with North American Out of Service Criteria and the State Patrol's General Orders and directives.
- B. The DataQs Administrator is responsible for conducting a periodic review of the DataQs challenge log referred to in Section VI.A.2. herein and should consult with the DataQs Administrative Assistant on a regular basis to ensure that DataQs challenges are being processed in a timely manner. The DataQs Administrator has authority to take reasonable and appropriate action to address any related concerns. The DataQs Administrator is also responsible for identifying any non-enforcement and enforcement training issues that may arise and for ensuring that that such issues are promptly conveyed to appropriate training personnel to address the issues.