

CHAPTER 13
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ENFORCEMENT ACTION
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CHAPTER 13

ENFORCEMENT ACTION

1. GENERAL.

a. Complaint Documentation. This chapter outlines procedures for criminal complaint action and preparation of necessary documentation to initiate and sustain such action.

b. Serious Noncompliance. Complaint action is a serious matter and should be taken only after other means for obtaining compliance with motor carrier safety regulations have failed. However, in the event of serious or persistent noncompliance posing a potential hazard to the public, prompt action shall be taken in accordance with established policies and as determined by the field Division Chief.

c. Responsibilities. The field Division Chief, or his/her designee, shall oversee and approve all activity preliminary to requesting a formal complaint. Each MCSU supervisor shall monitor inspection activity to detect trends of serious noncompliance and shall recommend to the Division Chief that complaint action be undertaken when warranted. Preparation of necessary documentation and assembly of evidence is a responsibility of the field Specialist having responsibility for the particular carrier involved. MCSU supervisors shall review and approve investigation packages before submission to the appropriate prosecuting attorney. The court officer is responsible for negotiating with district attorneys and courts, handling administrative details, and keeping the MCSU supervisor apprised of the status of the case. When a complaint package is prepared as outlined in paragraph 2., it is delivered to the appropriate court officer unless otherwise directed by the Division Chief.

d. Enforcement Actions. When complaint action is to be implemented, the following alternatives apply:

(1) Filing a criminal complaint through the district attorney in the appropriate court. For large carriers (except publicly owned) that have significant operations based beyond one district attorney's area of responsibility, the Division implementing the action may coordinate with Enforcement Services Division (ESD) to initiate injunctive proceedings by the Attorney General's Office.

(2) Where courts are receptive, the CHP 215, Notice to Appear, may be used as the complaint [Chapter 1, HPM 100.9, Enforcement Documents, and Vehicle Code Section 40513(b)]. The court officer or other sworn member

designated by the Division Chief shall certify the CHP 215 "on information and belief," based on the MCSU prepared file.

(3) Should the violating carrier operate under a motor carrier of property permit issued by the OMV, or under operating authority or private carrier of passengers registration issued by the PUC, the Department may notify the OMV or the PUC that the carrier's operation presents an imminent danger to the public. Recommendations to the OMV or the PUC and supporting documentation shall be forwarded to ESD for review and coordination with the appropriate agency.

(4) When a carrier has consistently failed to comply with motor carrier safety requirements, the local district attorney should be encouraged to consider filing charges of unfair competition (business practices) as that term is defined in Section 17200 of the Business and Professions Code.

e. Enforcement Action – Public Entities. Prior to initiating criminal action against any public entity, (including federal and state government) field Divisions shall:

(1) Refrain from implied threats of criminal action.

(2) Prepare reports and gather evidence as if the case were going to be prosecuted.

(3) Contact and coordinate action with the district attorney and suggest the consideration of an injunctive procedure in cooperation with the Attorney General's Office. If an injunction is implemented, Division should work directly with the Attorney General's Office and advise ESD.

(4) Arrange a meeting with the governing board of the public entity to assure their awareness of the critical nature of the situation and to advise of the Department's responsibility and course of action. In addition to Division personnel, the Area commander, a district attorney's representative and, when appropriate, a representative of the Attorney General's Office should be encouraged to attend this meeting.

f. Agencies of the Federal Government. Initiating legal action against agencies of the federal government (not a "person" as defined by Vehicle Code Section 470) for violations of motor carrier safety regulations is not always sanctioned. When appropriate, in addition to the guidance in paragraph 1.e., the outline provided in HPM 82.6, and GO 100.68 shall apply.

2. PREPARATION.

a. Purpose. The complaint package documents evidence of violations of laws and regulations and should be sufficiently detailed to support a successful prosecution.

b. Requirements. The assembled documentation must be clear, concise, and complete, and answer the questions who, what, when, where, and how. It must also show that:

(1) Each allegation presented constitutes a violation of a specific statute or regulation.

(2) The evidence supports each element of the alleged offense.

(3) The carrier had knowledge of the violations.

c. Contents. Contents of a complaint package will include (see Figure 13-1):

(1) CHP 216, Arrest-Investigation Report.

(2) CHP 556, Supplemental/Narrative.

(3) CHP 343, Safety Compliance Report/Terminal Record Update,

CHP 343-1, Continuation, and pertinent Vehicle/Equipment Inspection Report(s).

(4) CHP 345, Notice To Carrier.

(5) Other supporting documents such as court abstracts, warning letters and return receipts, and accident reports.

d. CHP 216 Preparation. The CHP 216 is to be prepared in accordance with GO 100.39. The guide for arrest/investigation narrative contained in Annex B of GO 100.39 is to be used as a guide for completion of the narrative portion of the report. The face page of the CHP 216 serves as a transmittal and is the first page of the package.

e. CHP 556 Narrative Preparation. The CHP 556 is to be used for the narrative portion of the report. Each page is to be numbered consecutively starting with page 2.

(1) Evidence. It is vital to any contemplated court action to itemize in the narrative all evidence pertaining to each element of the offense. The CHP 343, Safety Compliance Report/Terminal Record Update, and supporting documents describe detected violations and provide facts about which the

Specialist preparing the report can give direct testimony. The information contained in the CHP 343 package is the basis on which a case can be initiated and, if signed by a carrier representative, provides verification that the carrier was aware of the violations.

(2) Organization. The sample narrative in Figures 13-2 through 13-5 develops a case based on alleged noncompliance with 13 CCR 1232(a), Preventive Maintenance. Elements of the narrative should include the following:

- (a) Identification.
- (b) Summary.
- (c) Evidence.
- (d) Analysis and Opinion.
- (e) Recommendations.

(3) Objective. The narrative, standing alone, should indicate that:

- (a) Certain persons own, operate, or control the operation of specified vehicles;
- (b) The vehicles had mechanical discrepancies in violation of specific statutes and regulations; and
- (c) The persons owning, operating, or controlling the operation of the vehicles were aware of the violations and refused or neglected to implement procedures to correct or prevent such violations.

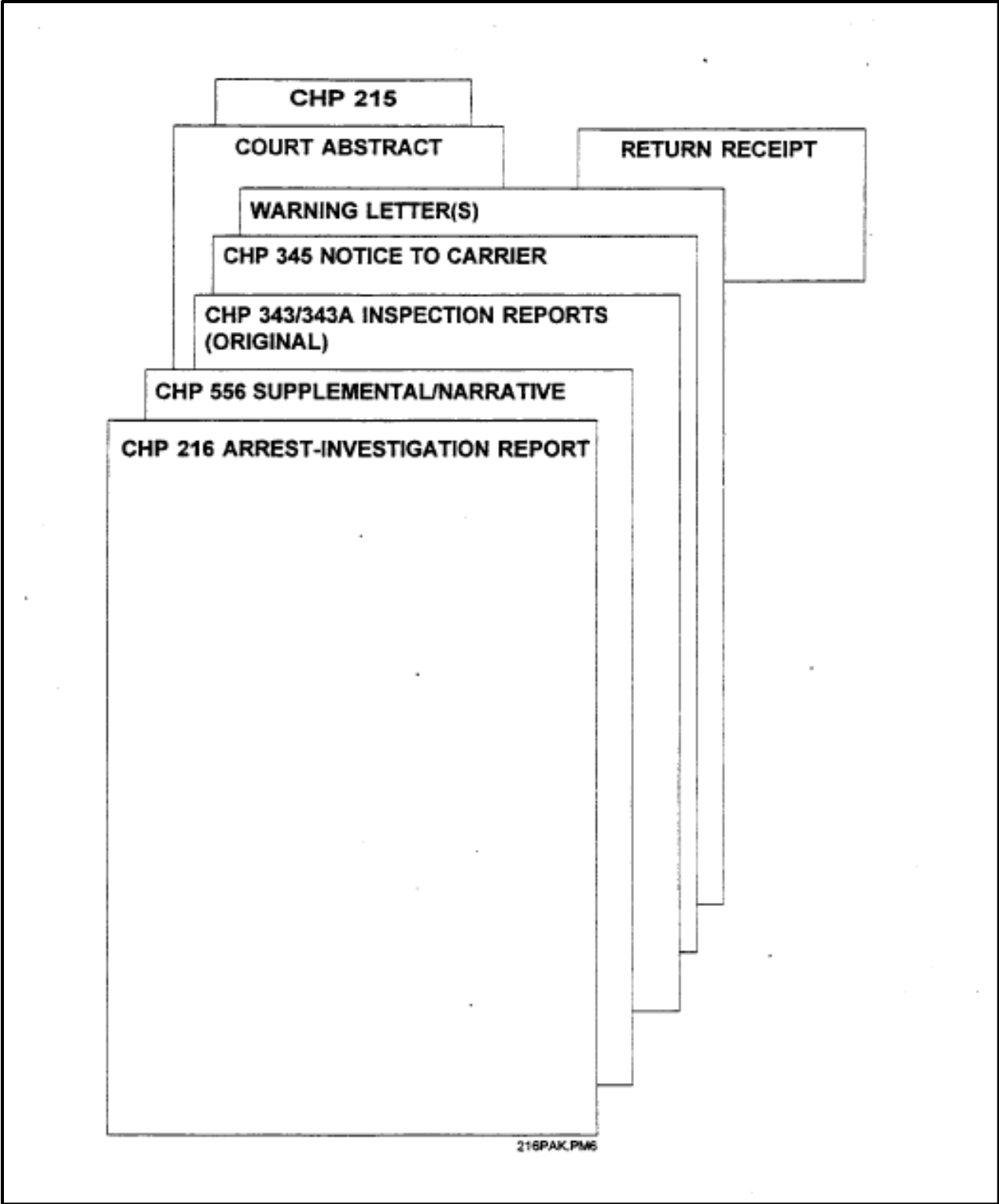


Fig. 13-1. Complaint Package

NARRATIVE/SUPPLEMENTAL

DATE OF ORIGINAL INCIDENT		TIME (MM)	OFFICER I.D. NUMBER	OFFICER I.D. NUMBER
NOV 8	DAY 18	YE. 78	A1364	
"A" ONE		TYPE SUPPLEMENTAL ("X" APPLICABLE)		
<input type="checkbox"/> NARRATIVE	<input type="checkbox"/> COLLISION REPORT	<input type="checkbox"/> RA UPDATE	<input type="checkbox"/> FATAL	<input type="checkbox"/> HIT & RUN UPDATE
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> OTHER: CHP 202	<input type="checkbox"/> HAZ. MATERIALS	<input type="checkbox"/> SCHOOL BUS	<input type="checkbox"/> OTHER:
CITY/COUNTY/JUDICIAL DISTRICT			RPI. DISTRICT/SEAT	CITATION NUMBER
Tres Pinos, Queen County			513	When appropriate
LOCATION/SUBJECT				STATE HIGHWAY RELATED
William Howe, Owner, ABC TRUCKLINES Christopher Smith, Manager, ABC Trucklines				<input type="checkbox"/> YES <input type="checkbox"/> NO
1.	Howe, William			
2.	10120 Gaviota			
3.	Tres Pinos, San Benito			
4.				
5.	Identification			
6.	Subject 1			
7.	Howe, William, owner, ABC Truck Lines, 10120 Gaviota Ave., Tres Pinos, California			
8.				
9.	Subject 2			
10.	Smith, Christopher, Manager, ABC Truck Lines, 10120 Gaviota Ave., Tres Pinos, CA			
11.				
12.	Complainant/Witness			
13.	Jones, Ellis, Assistant Motor Carrier Operations Specialist, California Highway			
14.	Patrol, 1234 Broadway, Bitterwater, California.			
15.				
16.	Witness			
17.	Stonedahl, James, Assistant Motor Carrier Operations Specialist, California Highway			
18.	Patrol, 1234 Broadway, Bitterwater, California.			
19.				
20.	Vehicles:			
21.	No. 1 - 1958 Trailmobile Trailer, VIN 332320804, License WC7088			
22.	No. 2 - 1958 Trailmobile Trailer, VIN 822320689, License WC7777			
23.	No. 3 - 1963 Peterbilt Tractor, VIN DR24129, License X66666			
24.	No. 4 - 1967 Kenworth Tractor, VIN 58716, License P23456			
25.	No. 5 - 1968 Triple-D Trailer, VIN 2222222, License WC 3333			
26.	Registered owner all vehicles: William Howe			
27.				
28.				
29.				
30.				
31.				
PREPARED BY	I.D. NUMBER	NO. DAY YE.	REVIEWER'S NAME	NO. DAY YE.
Ellis Jones, Asst MCOE	A1364	7 18 79	George Brown, Asst MCOE	4 20 79

Fig. 13-2. CHP 556, page 2

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL

PAGE 3

DATE OF ORIGINAL INCIDENT MO. 8 DAY 18 YR. 78		TIME (MPP)	REG. NUMBER	OFFICER I.D. NUMBER A1364
<input type="checkbox"/> NARRATIVE <input type="checkbox"/> SUPPLEMENTAL		<input type="checkbox"/> COLLISION REPORT <input checked="" type="checkbox"/> OTHER: CHP 202		
<input type="checkbox"/> SA UPDATE <input type="checkbox"/> HAZ. MATERIALS		<input type="checkbox"/> FATAL <input type="checkbox"/> SCHOOL BUS <input type="checkbox"/> HIT & RUN UPDATE <input type="checkbox"/> OTHER:		
OFFICER/COUNTY/JUDICIAL DISTRICT Tres Pinos, Queen County			API, DISTRICT/BEAT 513	LOCATION NUMBER When appropriate <input type="checkbox"/> YES <input type="checkbox"/> NO
LOCATION/SUBJECT William Howe, Owner, ABC TRUCKLINES Christopher Smith, Manager, ABC Trucklines				
1. Summary - ABC Truck Lines garages six tractors and ten semitrailers at 10102 Gaviota				
2. Ave., Tres Pinos, CA. Vehicles are operated throughout northern California. Three				
3. safety compliance inspections by Motor Carrier Safety Unit personnel during an eight-				
4. month period disclosed numerous mechanical deficiencies, some of which had not been				
5. corrected at time of subsequent inspections. Specific direction to institute a				
6. systematic preventive maintenance program was ignored.				
7. Evidence				
8. (1) Safety compliance reports of August 18, 1978. Vehicle violations disclosed				
9. and recorded.				
10.				
11. <u>Vehicle No.</u> <u>Section Violated</u> <u>Description of Violation</u>				
12. 1 VC34506.3 (13 CAC 1245 (f)) Air loss excessive				
13. 2 VC34506.3 (13 CAC 1232 (a)) All brakes out of adjustment				
14.				
15.				
16. VC34506.3 (13 CAC 1232 (a)) the condition of the vehicles inspected indicate				
17. an inadequate preventive maintenance program.				
18. VC34506.3 (13 CAC 1234 (g)) lubrication records not maintained; last entries				
19. for all vehicles are December 1975.				
20. (2) Out-of-service notices on vehicle Numbers 1, 2, 3, and 4 dated August 18, 1978.				
21. (3) Safety compliance reports of December 15, 1978.				
22.				
23.				
24. Vehicle violation disclosed and recorded.				
25. <u>Vehicle No.</u> <u>Section Violated</u> <u>Description of Violation</u>				
26. 1 VC34506 (13 CAC 1245 (f)) Air Los excessive				
27. 2 VC34506.3 (13 CAC 1232(a)) All brakes out of adjustment				
28.				
29.				
30. VC34506.3 (13 CAC 1232 (a)) the condition of the vehicles inspected continue				
31. to indicate an inadequate preventive maintenance program.				
PREPARED BY <i>Ellis Jones, Cust MCOS</i>		I.D. NUMBER <i>ABM</i>	MO. DAY YR. <i>4 18 79</i>	REVIEWER'S NAME <i>Mark Brown</i>
			MO. DAY YR. <i>4 20 79</i>	

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Fig. 13-3. CHP 556, page 3

NARRATIVE/SUPPLEMENTAL

DATE OF ORIGINAL INCIDENT MO 8 DAY 18 YR 78		TIME (HH)	FILE NUMBER	OFFICER I.D. NUMBER A1364
<input type="checkbox"/> NARRATIVE <input type="checkbox"/> SUPPLEMENTAL		<input type="checkbox"/> COLLISION REPORT <input checked="" type="checkbox"/> OTHER: CHP 202		<input type="checkbox"/> SA UPDATE <input type="checkbox"/> HAZ. MATERIALS
<input type="checkbox"/> FATAL <input type="checkbox"/> SCHOOL BUS		<input type="checkbox"/> HIT & RUN UPDATE <input type="checkbox"/> OTHER:		
CITY/COUNTY/JUDICIAL DISTRICT Tres Pinos, Queen County			OFF. DISTRICT/BEAT 513	CITATION NUMBER When appropriate
LOCATION/SUBJECT William Howe, Owner, ABC TRUCKLINES Christopher Smith, Manager, ABC Trucklines			STATE HIGHWAY RELATED <input type="checkbox"/> YES <input type="checkbox"/> NO	
1	VC 34506.3 (13 CAC 1232(a)) the condition of the vehicles inspected continues			
2	to indicate an inadequate preventive maintenance program.			
3				
4	VC 34506.3 (13 CAC 1234(g)) no current entries made in lubrication records.			
5	Same as last inspected on August 18, 1978. Last entries for all vehicles			
6	is December 1975.			
7	(4) Out-of-service notice on vehicle Number 1, 2, and 5 dated December 15, 1978.			
8	(5) Warning letter to subject Howe dated January 5, 1979 (return receipt signed			
9	by Howe attached).			
10	(6) Safety compliance report of March 13, 1979.			
11				
12	Vehicle violations disclosed and recorded.			
13				
14	Vehicle No.	Section Violated	Description of Violation	
15	1	VC 34506.3(13 CAC 1245(f))	Air loss excessive	
16	2	VC 34506.3(13 CAC 1232(a))	All brakes out of adjustment	
17				
18				
19	VC 34506.5 (13 CAC 1232(a)) the condition of the vehicles inspected continues			
20	to indicate an inadequate preventive maintenance program.			
21	VC 34506.5 (13 CAC 1234(g)) no entries made in lubrication records. No			
22	changes made or instituted since the last inspections on August 18, 1978			
23	and December 15, 1978.			
24	(7) Out-of-Service notice on vehicle Numbers 1, 2, and 5 dated March 13, 1979.			
25				
26	Analysis and Opinion			
27	(1) Evidence, Items 1 and 2, shows that five vehicles were inspected on August 18,			
28	1978, disclosing 29 mechanical violations, nine of which were hazardous. Four			
29	vehicles were placed out of service. Witness Jones will state that most of			
30	these violations were obviously long-standing. Intent to correct violations			
31	was signed by subject Howe.			
INSPECTOR'S NAME <i>Ellis Jones, Unit 1405</i>		I.D. NUMBER <i>AB64</i>	MO. DAY YR. <i>4 18 79</i>	REVISOR'S NAME <i>George Brown</i>
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Fig. 13-4. CHP 556, page 4

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL

PAGE 5

DATE OF ORIGINAL INCIDENT MO. 8 DAY 18 YR. 78		TIME (MM)	FILE NUMBER	OFFICER I.D. NUMBER A1364
<input type="checkbox"/> NARRATIVE	<input type="checkbox"/> COLLISION REPORT	TYPE SUPPLEMENTAL ("X" APPLICABLE)		
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> OTHER: CHP 202	<input type="checkbox"/> RA UPDATE	<input type="checkbox"/> FATAL	<input type="checkbox"/> HIT & RUN UPDATE
		<input type="checkbox"/> HAZ. MATERIALS	<input type="checkbox"/> SCHOOL BUS	<input type="checkbox"/> OTHER:
CITY/COUNTY/JUDICIAL DISTRICT Tres Pinos, Queen County			APT. DISTRICT/BEAT 513	CITATION NUMBER When appropriate
LOCATION/SUBJECT William Howe, Owner, ABC TRUCKLINES Christopher Smith, Manager, ABC Trucklines				STATE HIGHWAY RELATED <input type="checkbox"/> YES <input type="checkbox"/> NO
1.	(2) Evidence, Items 3 and 4, show that four vehicles were inspected on December 15,			
2.	1978, three vehicles were placed out of service because of unsafe condition.			
3.	Witness Jones will state the Vehicle No. 4 returned to terminal while he was			
4.	there with the same violations noted during inspection on August 18, and that			
5.	subject (Smith) stated, "Didn't have time to fix it." Vehicle No. 4 again			
6.	placed out of service along with Vehicle No. 5. Matter of implementing			
7.	preventive maintenance program discussed with subject Howe who indicated			
8.	intent to correct violations by signing report.			
9.				
10.	(3) Evidence, Item 5, shows that letter dated January 5, 1979, warning of possible			
11.	enforcement action was delivered to and receipted for by subject Howe.			
12.				
13.	(4) Evidence, Items 6, and 7, show that three vehicles were inspected on			
14.	March 13, 1979; all were placed out of service because of unsafe condition.			
15.	Complainant Jones and witness Stonedahl will state they discussed findings			
16.	with subject Howe who was adamant in his refusal to consider implementing			
17.	systematic maintenance program stating it was "hogwash." Subject Smith			
18.	signed report indicating intent to correct violations as subject Howe			
19.	refused to do so.			
20.	Recommendation - Criminal complaint be issued against ABC Trucklines for failing to comply			
21.	with the following regulations and statutes:			
22.				
23.	23.1. One count of VC Section 34506.3 (13 CAC 1232(a)), failure to ensure all vehicles under			
24.	their control and all required accessories on the vehicles are regularly and			
25.	systematically inspected, maintained, and lubricated to ensure they are in safe and			
26.	proper operating condition.			
27.				
28.	28.2. Three counts of VC Section 34506.3 (13 CAC 1245(f)), excessive air loss in brake system.			
29.				
30.	30.3. Three counts of VC Section 34506.3 (13 CAC 1232(a)), all brakes out of adjustment.			
31.				
PREPARED BY NAME <i>Ellis Jones, Asst MCOS</i>		I.D. NUMBER <i>A1364</i>	MO. DAY YR. <i>4 18 79</i>	REVISOR'S NAME <i>George Brown, Asst MCOS</i>
				MO. DAY YR. <i>4 20 79</i>

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Fig. 13-5. CHP 556, page 5