

Compliance *News*

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Q&A

My driver was involved in an injury accident.. A post-accident drug and alcohol test wasn't completed because there was no citation given. However, the injured party died ten days later as a result of injuries received in the accident. Are we in violation since we didn't complete a post-accident test for a fatality accident?

No. You are correct in classifying the accident as a 'fatality.' Part 390.5 defines a 'fatality' as "any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident."

However, the rules that applied at the time of the event were those which governed an 'injury' accident, not a 'fatality', since there was no death at that time.

Because there was subsequently a death, you must comply with Part 382.303(b)(1) and (b)(4) and document the reasons why the tests weren't completed (e.g. The events of the accident did not require testing until after the allowable testing periods had expired.)

Some companies require post-accident testing even when a citation isn't issued, being careful to make clear that this requirement is under authority independent of the DOT.

For answers to your compliance questions, contact Standard & Best (503) 263-6162. Or logon to www.standardandbest.com



Proposed on-board recorder rule draws volumes of comments

As the closing date for comments draws near, carriers air their concerns over ownership of data and other issues

■ Following more than a year of speculation, motor carriers breathed a sigh of relief when the FMCSA released a proposed rulemaking that would require carriers who "have demonstrated a history of serious noncompliance with hours-of-service rules " to be subject to mandatory use of electronic on-board recorders (EOBR).

Motor carriers who fail the hours-of-service portion of a compliance review twice in a two year period—an estimated 900 companies, according to FMCSA initial figures— would be required to

install the EOBRs under the proposed rule.

Incentives are offered in the rulemaking for the voluntary use of EOBRs: Compliance review procedures would be revised to limit the Factor 3 portion of the review to a random sampling of records and partial relief from current supporting documents requirements.

■ With several hundred comments so far and the deadline two weeks away, comments center around universal concerns -

✓**Cost.** Many worry that EOBRs will be expensive and make it harder to compete financially.

✓**Privacy.** The refrain, "Big Brother" echoed in many of the comments, as ... (Continued on page 2)

New carriers obtaining USDOT number could come under tighter scrutiny

FMCSA proposes changes that would raise the standard of compliance for carriers in a new entrant safety audit.

■ Under the New Entrant Safety Assurance Process motor carriers obtaining a USDOT number have been subject to a safety audit within their first 18 months of op-

eration to determine if basic safety management controls are in place. This initial meeting has been educational in focus and doesn't result in a safety fitness rating.

Under the proposed rule, the stakes would be raised and a motor carrier ... (Continued on page 2)

EOBR *(Continued)*

... fear was voiced over too much regulatory control.

✓ **Ownership of data.** Paper logbooks are physically the property of the driver or the motor carrier. Some felt more than a little uneasy about electronic data being used against them in the case of litigation.

A review of the comments suggests that many individual writers are addressing concerns that aren't present in the new proposed rule. The rule focuses on carriers currently in serious *noncompliance* with hours-of-service rules. It is not an across-the-board requirement for all carriers.

■ During a meeting in Portland, Oregon this January, a number of vendors showcased their programs to a gathering armed with questions. The responses made some things increasingly clear:

✓ **Costs are coming down substantially,** driven more by a menu of add-on services than by the cost of the hardware.

✓ **Hardware.** The familiar globe on the cab of the truck is fast being replaced by hand-sized units that are easy to install and portable.

✓ **Benefits.** Whether you like the idea of real-time logbooks or not, the benefits derived from fuel tax reporting features, vehicle location, communications with the driver, and efficient logistics can more than make up for the perceived disadvantages.

✓ **Vendors.** Where there were a handful of familiar names a couple years ago, the market is quickly becoming filled with joiners with products to sell.

■ To follow comments on this rule go to <http://dms.dot.gov/> click on the "Simple Search" tab at the top, and enter "18940" for an undated listing of comments.

For a list of vendors who provide EOBR technology and services, logon to <http://www.standardandbest.com> and click on "Resources & Links".

School of Compliance goes beyond basics

■ Structured around five days of core instruction spread over a five week period, the **School of Motor Carrier Regulatory Compliance** places the emphasis on the practical application of essential skills and techniques.

Class size is limited to no more than five students per term and each student receives two follow-up reviews at their work place for further direction in how to apply the regulations to their company's operations.

The School of Compliance differs from other programs, according to Standard & Best, by including subjects not covered in other programs and by providing "hands on" application for each student.

Besides the basic understanding of critical rules, the School of Compliance covers preparing for litigation, USDOT field procedures and audit software, accident investigation, appealing an unfavorable audit and safety management software.

Email ar@standardandbest.com for more details.

New Carriers *(Continued)*

... found to be committing any one of 11 specific violations would automatically fail the audit. The rules targeted for special attention relate to—

✓ **Drug & alcohol** - 382.115(a), 382.211, or 382.215.

✓ **Driver qualifications**— 383.37(a), 383.51(a), 391.11(b)(4) or 391.15(a).

✓ **Insurance**— 387.7(a).

✓ **HOS**— 395.8(a).

✓ **Vehicle maintenance**— 396.9(c)(2) or 396.17(a).

■ New entrant motor carriers are involved in a disproportionately high number of serious crashes, according to the agency. The proposed rule would improve highway safety.

Cost of noncompliance high for carriers failing to meet minimums.

According to public records, motor carriers continue to discover that the cost of noncompliance can be high when violations are discovered in a compliance review. A sampling of recent notices in the Federal Register show:

➔ A motor carrier was fined \$1700 resulting from violations found in 2 roadside inspections.

➔ A hazmat carrier was fined \$7125 for 3 violations of hazmat rules.

➔ A metal fabricator was ordered to pay \$10,400 for failing to provide hazmat training and failing to complete a vessel inspection.

➔ A mid-sized carrier was fined \$18,520 violations of drug & alcohol rules and false logs.

The penalty schedule for various violations can be found in Appendix B to Part 396 of the FMCSRs.

Court news

● A Clark County Superior Court jury returned a guilty verdict to charges of negligence for failing to provide care to a driver injured while under their dispatch. ● An Oregon jury ruled that the driver of a CMV and the motor cycle driver that ran into the truck shared responsibility for a crash in eastern Oregon.

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New services

Considering EOBRs for your fleet? Let Standard & Best do the research for you.

Workshops

⊕ April 10— Portland Compliance Practitioner's BOOT CAMP

⊕ April 16,17 - NW Spring Safety Conference.

⊕ April 26— Fundamentals of Driver Training (Eugene)