

# Compliance *News*

Electronic Edition

& Commentary

**Q&A**

My driver was cited at the port of entry for "Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper." The bill of lading was complete in all respects except the shipper didn't include the "UN" number on one of the items. I think that it was the shipper's fault.

Part 171.2 "General requirements" states: "No person may offer or **accept** a hazardous material for transportation .... Unless ... the hazardous material is properly classed, **described**, packaged, marked, labeled ... as required ... by applicable requirements ..."

Paragraph (b) further states: "No person may **transport** a hazardous material in commerce unless ... the hazardous material is handled and transported in accordance with applicable requirements ..." [Emphasis added].



The driver's duty is further stressed in Part 177.817(a), which says, "A carrier may not transport a hazardous material unless it is accompanied by a shipping paper **prepared in accordance with ... 172.202**" which requires that the identification number be listed. Failure to do so is a 'critical' violation under the Part 385 List of Acute & Critical Regulations and subjects the carrier to sever fines.

For answers to your compliance questions, contact Standard & Best (503) 922-2009. Or logon to [www.standardandbest.com](http://www.standardandbest.com)

## Question of hours of service rules settled by Christmas?

### FMCSA submits IFR to OMB for review, committee hearings set for this month

■ According to the Government Services Administration's information site, the Office of Management and Budget (OMB) has received an Interim Final Rule (IFR) from the FMCSA for review. The details of the IFR were not disclosed

The Senate Commerce Committee's Surface Transportation & Merchant Marine Infrastructure, Safety and Security Subcommittee is scheduled to hear testimony on drivers' hours of service Dec. 12.

■ Citizens' groups opposed to the increase in allowable driving hours provided in the 2004 revised hours of service rules successfully sued the FMCSA in the Washington, DC Circuit Court this summer, rolling back the 11-hour driving time and

34-hour restart provisions of the 2004 rule. The final order was delayed until December 27 following a successful filing for a stay.

■ Allowable driving hours for property-carrying commercial motor vehicles actually provide for *more rest* than comparable hours for *passenger-carrying* commercial motor vehicles, the rules for which were unchanged. On a 5-day trip—maximizing allowable hours and obtaining required rest—a property-carrying driver will drive *only one more hour* than a bus driver on a similar trip. However, the truck driver will obtain *10 more hours of rest* during that period than the driver transporting human cargo!

■ The Subcommittee's ranking member is Oregon Senator Gordon Smith who can receive your comments at <http://gsmith.senate.gov/> or phone (202) 224-3753 or -4852.

Source: <http://www.reginfo.gov/public/do/eoReviewSearch>

## Unified Carrier Registration now replaces Single State Registration System

### All interstate carriers required to register under new program

■ Unified Carrier Registration (UCR) is required under the 2005 highway reauthorization bill, replacing the Single State Registration System (SSRS). All motor carriers which operate in interstate commerce were required to be registered as of November 14 of this

year. This differs significantly from SSRS, which only required for-hire carriers to register. The UCR fees are based on fleet size (including trailers).

■ Since Oregon didn't participate in SSRS, it doesn't have a weblink to register at. Carriers who haven't yet registered are directed to a participating state, such as Indiana's <http://www.ucr.in.gov/>

## New Year's Planning: Avoid common audit pitfalls

■ Each year more than 10,000 motor carriers are audited by the FMCSA or a state partner for compliance with the Federal Motor Carrier Safety Regulations (FMCSR).

DOT Inspector General, Calvin Scovel III, testified before Congress this July that since fiscal year 1997, criminal investigations resulted in 533 indictments, 464 convictions, and "nearly \$41 million in fines, restitutions, and civil recoveries," resulting from a 10-year priority of investigating "fraud against the motor carrier safety program."

"Fraud" included "... such crimes as false driver logs, fraudulent commercial driver's licenses, and falsified drug testing."

■ Motor carriers can avoid the appearance of extremes as those cited by the IG with basic planning and commitment to action. Some of the recurring 'trouble spots':

**SafeStat scores** remain the leading trigger for an audit. Carriers who use the SafeStat module to alert them to negative trends that they then take action to counter are less likely to be selected for a compliance review.

**False logs** continue to be a leading cause of motor carriers being out of compliance. Those who argue that they either are not responsible for the actions of their drivers, or that they can't track their drivers' every action, receive a firm rebuff from the regulators. FMCSR 390.11 is frequently cited, "Whenever ... a duty is prescribed for a driver or a prohibition is imposed ... it shall be the duty of the motor carrier to require observance of such duty or prohibition."

**Drug & alcohol.** Allowing a driver to perform safety sensitive functions before receiving a confirmed negative test result is a frequent violation in this area. "Safety sensitive function" and "performing a safety sensitive function" impose specific limitations on the use of a new employee under FMCSR 382.107 and 382.301.

**Vehicle maintenance** rules require carriers to "systematically inspect, repair, and maintain" their vehicles, and to have "a means to indicate the nature and due date of the various inspections" and other planned service events. The methodology is left open to the carrier, but they must be able to demonstrate that the system service its function.

**Hazmat training** is required in three areas and is recurring — general, in depth, and function specific training must be completed and documented. Failing to have properly completed shipping papers is another frequent violation. More than \$2.08 million in fines were issued for Hazmat violations in FY05, according to an official report. Violations of any hazardous materials regulations including training may be subject to a civil penalty of up to \$27,500 for each violation.

## Set your year's safety meeting calendar ahead of time

■ In a recent workshop, attendees expressed difficulty in always knowing what or even how to plan for future safety meeting. While many training issues are common to all carriers, others are market-specific. The following list of topics were frequently identified as key training topics or areas for improvement:

- ⌚ Workplace injuries—Causes & prevention
- ⌚ Company policies—Which ones apply
- ⌚ Winter/inclement driving
- ⌚ Summer driving/construction zones
- ⌚ Defensive driving, backing techniques
- ⌚ Vehicle inspections
- ⌚ Accident scene response & management
- ⌚ Personal finances, family matters
- ⌚ Personal health & wellness
- ⌚ Load securement, liftgate practices
- ⌚ Hours of service, company rules
- ⌚ Food safety—blood borne pathogens
- ⌚ Roadside inspections
- ⌚ Hazmat—general & spill procedures
- ⌚ Shipping papers

## Cost of noncompliance high for carriers failing to meet minimums.

According to public records—  
➡ Eastern carrier fined \$13,370 after failing to properly respond to Notice of Claim alleging employing a driver before a negative drug test result was obtained, who did not have a CDL, who was not medically certified, and operated a vehicle before correcting OOS defects.

➡ Midwestern carrier closed its doors following three compliance reviews resulting in \$79,750 for drug & alcohol and HOS violations.  
➡ A 5-truck operation was fined \$1,120 for failing to file an MCS-150 every 24 months, and operating without the required authority.

➡ A 34-truck operation was fined \$26,200 in a second CR where drug & alcohol and DQ file violations were discovered. The penalty schedule can be found in Appendix B to Part 386 of the FMCSRs.

## Stats

● 10,353 CR's were completed nationally in 2006 with 66% resulting in 'satisfactory' ratings, 25.2% 'conditional,' 6.4% 'unsatisfactory,' and 2.4% unrated. The leading reason for CR's remains unfavorable SafeStat scores.

● In 2006, 12.3% of drivers inspected were placed OOS and 14.5% of vehicles.

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### New services

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

### Workshops

Call for dates:

⌚ Portland Compliance Practitioner's BOOT CAMP

⌚ School of Motor Carrier Regulatory Compliance  
⌚ Fundamentals of Driver Training (Eugene & Portland)