



Regulatory Update

Motor Carriers – Repeat Violators Must Install Electronic Recorders

EXECUTIVE SUMMARY

On April 5, 2010, the Federal Motor Carrier Safety Administration (FMCSA) issued a new federal regulation, which requires motor carriers that repeatedly violate driver time limits to install electronic on-board recorders (EOBRs) that track how long drivers are at the wheel.

- The regulation is **effective on June 4, 2010**. However, motor carriers have until **June 4, 2012**, to comply.
- The regulation requires new performance standards for EOBRs installed in commercial motor vehicles (CMVs) manufactured on or after **June 4, 2012**.
- Violators of the new federal regulation may have their operating authority revoked and may incur substantial civil penalties.

This Friedman Associates Regulatory Update provides an overview of the new regulation. Please read below for more information and contact your Friedman Associates representative with any questions.

OVERVIEW OF THE FINAL RULE

In general, the final rule allows motor carriers to use EOBRs in their CMVs to document drivers' compliance with the hours-of-service (HOS) requirements. It also requires some noncompliant carriers to install, use and maintain EOBRs for this purpose as well as updates existing performance standards for on-board recording devices. In the development of this final rule, which had been under consideration for the past three years, the FMCSA found the overall crash rates of 1 x 10 and 2 x 10 motor carriers were considerably higher than the crash rates of the general motor carrier population.

Mandatory Compliance for Repeat Violators

Motor carriers across all sectors that have demonstrated serious non-compliance with the HOS rules will be subject to mandatory installation of EOBRs meeting the new performance standards. If the FMCSA determines, based on HOS records reviewed during a compliance review, that a motor carrier has a 10 percent or greater violation rate (threshold rate violation) for certain HOS regulations, the FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will then be required to install EOBRs in all of its CMVs regardless of their date of manufacture. These motor carriers will be required to use the devices for HOS recordkeeping for a period of two years, unless the carrier already equipped its vehicles with automatic on-board recording devices meeting the FMCSA's current requirements prior to the finding, and demonstrate to the FMCSA that its drivers understand how to use the devices.

New Performance Standards

The FMCSA has amended the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate new performance standards for EOBRs used to monitor drivers' HOS recording devices installed in CMVs manufactured on or after June 4, 2012. On-board HOS recording devices meeting the FMCSA's current requirements and installed in CMVs manufactured before June 4, 2012, may continue to be used for the remainder of the service life of those CMVs.

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Some of the new performance standards include:

- EOBRs will be required to automatically record the CMV's location at each change of duty status and at intervals while the CMV is in motion. Current on-board recorders are not required to do this;
- EOBRs must also conform to specific information processing standards to ensure the security and integrity of the data that is recorded. Drivers will be able to add information to the EOBR record (annotate) while the EOBR maintains the original recorded information and tracks these annotations;
- The EOBR support system must be able to provide a digital file in a specified format for use by motor carrier safety enforcement officials; and
- On-board recording devices must be integrally synchronized to the engine.

Voluntary Use of EOBRs

The final rule also provides incentives for motor carriers to voluntarily use EOBRs. FMCSA will use incentives to encourage industry-wide use of EOBRs, such as elimination of the requirement to retain and maintain supporting documents related to driving time, as this information will be maintained and accessible from the EOBR. Additionally, compliance reviews that reveal a proposed 10 percent or higher violation rate based on the initial focused sample would be expanded to assess a random sampling of the motor carrier's overall HOS records.

Expanding the Scope of Mandatory EOBR Use

In response to safety concerns raised by Congress and the National Transportation Safety Board, the FMCSA has stated it will examine the issue of a broader EOBR mandate. The FMCSA recognizes that the potential safety risks associated with some motor carrier categories, such as passenger carriers, hazardous materials transporters and new motor carriers seeking authority to conduct interstate operations in the United States, are such that mandatory EOBR use for such operations might be appropriate. The FMCSA will consider expanding the scope of mandatory EOBR use in a new rulemaking proceeding.

For a complete copy of the new federal regulation and related detailed commentary, see: www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/rule-programs/rule_making_details.aspx?ruleid=298.

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