



MARCELLO & KIVISTO

LLC

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FMCSA's New Policy on Supporting Document Retention

Effective July 12, 2010, there was a change in the requirements regarding the supporting documents a motor carrier must retain to verify a driver's record of duty status (RODS).

The FMCSA published a notice entitled "Policy on the Retention of Supporting Documents and the Use of Electronic Mobile Communication/Tracking Technology in Assessing Motor Carriers' and Commercial Motor Vehicle Drivers' Compliance with the Hours of Service Regulations" on June 10, 2010. Click [here](#) to see the notice.

Motor carriers will no longer be required to maintain the following supporting documents, which were previously required under 49 CFR 395.8(k)(1); "driver call-in records, International registration plan, International fuel tax agreement receipts, Trip permits, Cash advance receipts; and Driver fax reports (cover sheets)." This notice rescinds the previous list provided under Guidance Question Number 10 and provides an updated shorter list.

Motor carriers that utilizes a "qualified"

electronic mobile communication/tracking technology, have even less documents to retain. These motor carriers do not need to produce the following supporting documents for the driver of a motor vehicle that is so equipped:

- Gate record receipts;
- Weigh/scale tickets;
- Port of entry receipts;
- Delivery receipts;
- Toll receipts
- Agricultural inspection reports;
- Over/short and damage reports;
- Driver and vehicle examination reports

(however does not effect 49 CFR 396);

- Traffic citations;
- Overweight/oversize reports and citations;
- Carrier pros;
- Credit card receipts;
- Border Crossing Reports;
- Customs declarations; and
- Telephone billing statements.

The term "electronic mobile communication/tracking technology" includes technologies that permit a motor carrier to determine the location of its vehicle and transmit or receive messages to and from its drivers. The notice also refers to that same technology or records as "electronic mobile communication/tracking systems" and "electronic mobile communication/tracking records."

Any motor carriers that take advantage of the relaxed retention requirements are precluded from challenging the accuracy of their electronic mobile communication/tracking records at an Hours-of-Service enforcement proceeding.

This raises the question what is a "qualified"

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M&K Upcoming Events

- **August 8th - PMTA South Central Baseball Outing** - at the Harrisburg Senator's

- **M&K's Annual Seminar** - Keep a lookout for information regarding M&K's upcoming seminar.

Did You Miss the Aggressive Defense of Trucking Lawsuit Webinar?

If you did not participate in the webinar presented by Doug Marcello, or you would like to view it again, you can access the webinar through KCI Insurance's website. Just click [here](#).

For other webinars hosted by KCI Insurance click [here](#).

Updates for Previous Newsletter Article Topics

electronic mobile communication/tracking technology. In order to qualify, the electronic mobile communication/tracking technology must have the following characteristics:

Positioning frequency - must communicate the location of the vehicle at least once per hour while the vehicle is in motion.

Vehicle integration - the system must be synchronized with the vehicle.

Report functionality - must be able to generate a report with the required content in either a paper or electronic format (i.e. spreadsheet, portable document, image file or commonly available software format)

Report content - the generated position history report must contain at least the following information; vehicle identification information, date, time, proximity location (reference points), and latitude and longitude for each position communicated.

Retention - the position history reports must be maintained by the carrier for at least 6 months, as required by 49 CFR 395.8(k)(1).

If a motor carrier uses an electronic mobile communication/tracking technology in the ordinary course of business for any purpose, regardless of whether it meets the qualified requirements, the motor carrier is "expected to include the use of [those] records and information generated by that technology in its HOS oversight activities." Further, a failure to maintain electronic mobile

- **Updated ATRI Compendium on Idling Regulations**- available by clicking [here](#).

- **Updated ATRI Cab Card with Idling Regulations** - available by clicking [here](#).

- **Current State Laws Regarding Handheld Cell Phone and Texting Bans** - available by clicking [here](#).

Documents and Resources Available From M&K

If you are interested in obtaining copies of the following, please call or email.

- **Hours-of-Service Rules Safety Impact 2010 Analysis compiled by ARTI in May 2010**

- **Accident preparedness DVD and/or forms**

- **Powerpoint presentation regarding**

communication/tracking technology records may be cited as a violation of 49 CFR 395.8(k)(1), just like a failure to maintain any other supporting document.

Despite this new policy a motor carrier is still required to comply with other statutes and regulations that may require the retention of other documents and the policy does not cover carriers that are using an electronic on-board recording device as a remedial measure or as part of a settlement agreement.

Pennsylvania Drug & Alcohol Testing of Commercial Drivers

You driver calls. He was in an accident in Pennsylvania. He is being taken for a drug and alcohol test.

A number of thoughts race through your mind. Are they taking him for a DOT required test because of a death or a citation with treatment away from the scene or towing? No, the driver assures you. He is not being cited.

You then assume there must be a reason that leads the officer to think drugs or alcohol is involved-odor of breath, eyes, gait, speech, actions, something. Again, your driver assures you that he is clean.

You remain understandably skeptical. But it may not be warranted.

Pennsylvania law provides that a police officer investigating an accident involving a motor carrier vehicle pursuant to a required investigation "shall request that the driver of the vehicle submit to testing for alcohol and controlled substances." 75 Pa. C.S.A. §3756(a). The costs of the test must be paid by the driver's employer. 75 Pa. C.S.A. §3756(a).

A driver who refuses commits a summary offense. 75 Pa. C.S.A. §3756(b). They can be sentenced to pay a fine of up to \$200. 75 Pa. C.S.A. §3756(b).

This is not to be confused with the "implied consent" testing of commercial drivers. 75 Pa.C.S.A. §1613(a). This section provides that upon driving a commercial vehicle in Pennsylvania, a commercial driver "is deemed to have given consent" for a drug or alcohol test. 75 Pa.C.S.A. §1613(a).

CSA 2010 presented by
ATA

- Powerpoint presentation
by Dr. Hickman regarding
Distracted Driving Study
presented at M&K
Seminar

To see M&K's recent
case results and articles
click [here](#).

CSA 2010 Resources

- **FMCSA CSA 2010 Proposed Rule Making**
click [here](#).

- **CSA 2010 Webpage** click
[here](#).

- **Powerpoint presentation regarding CSA 2010** presented by ATA - to obtain a copy contact us.

- **Powerpoint presentation regarding CSA 2010** presented at Marcello & Kivisto webinar on CSA 2010 - to obtain a copy contact us.

- **CSA 2010 Frequently Asked Questions** click [here](#).

That section requires that such testing may be administered by police officer's finding of "reasonable grounds to believe that the driver was driving a commercial motor vehicle while having any alcohol in his system." 75 Pa.C.S.A. §1613(b). The commercial driver's refusal to submit to testing will result in the loss of his commercial license for at least one year. 75 Pa.C.S.A. §1611.

In contrast, Section 3756 is basically an "investigate-an-accident-require-a-test" law. There is no requirement in the law for "reasonable grounds" or "probable cause". That may be a problem for its ultimate enforcement.

If your driver is sent for Section 3756 testing, 9 chances out of 10 it will be by a local police department. There are many in law enforcement who question the application of a law that provides for such testing without a requirement of "probable cause".

Whatever its ultimate Constitutional outcome, we want you to be aware of the law. When your driver calls from a Pennsylvania accident, you will know that the requirement of a test may be just that and nothing more.

Check out our New Website and Blog

Keep current with Transportation Issues and laws through M&K's Transportation Legal News Blog. You can click [here](#) to access the blog or follow the link under the "Stay Connected" section of the Newsletter. You'll also find links to M&K's Facebook, LinkedIn and Twitter pages through the "Stay Connected" section of the Newsletter.

We have also updated our website, to check it out follow this link <http://www.cdl-law.com>.

Free Presentations for Your

- **CSA 2010 Outreach** click [here](#).

- **CSA 2010 Safety Analysis Checklist** developed by R&L Carriers - to obtain a copy contact us.

- **CSA 2010 Spreadsheet of Violation Points** - to obtain a copy contact us.

- **CSA 2010 Webinars by Marcello & Kivisto's Doug Marcello** click [here](#).

Other Resources

To get construction and accident updates for Pennsylvania roadways click [here](#).

FMCSA Distracted Driving Instructional Videos click [here](#).

[PA Motor Trucking Association](#)

[American Trucking Association](#)

[Trucking Industry Defense Association \(TIDA\)](#)

Driver Meetings

We provide FREE presentations at driver's meetings geared toward our client's topics of interests. Recently, we finished filming a mock trial cross-examination of a driver as part of a new presentation.

Please let us know if you are interested.

About Our Firm

Founded in 2005, **M&K, LLC** is dedicated to and focused upon transportation law and the needs of their transportation clients. Since opening in 2005, **M&K, LLC** has expanded its office to provide clients with the attention and availability they deserve.

[Federal Motor Carrier
Safety Administration](#)

[PA Travel InformationTo-
Go](#)

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We want to focus our articles on the issues and concerns of our subscribers. If you have suggestions for our newsletter please do not hesitate to contact us.

QUOTE OF THE MONTH

"Excellence is not a skill.
It is an attitude."

~ Ralph

Marston



DISCLAIMER: The Information Contained in this Newsletter is NOT Legal Advice.

