

## A Review of a Motor Carrier's Basic Duties after an Accident

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In 2016, 4,213 large commercial vehicles were involved in fatal crashes; 55,633 were involved in injury crashes; and 99,911 were involved in tow-away crashes.[1] For those most serious accidents that result in death, known serious injury, or significant property damage, it may seem like an easy decision for the motor carrier to drug and alcohol test the driver and perform a thorough investigation. But, what about the numerous other accidents in which nobody appears to be hurt and all parties decide to go their own ways and let insurance handle the matter? Under these circumstances, it may not occur to some carriers to conduct a formal investigation. However, that decision could present a problem if the company is served much later with a lawsuit claiming several thousands of dollars in medical expenses. To assist the motor carrier in such situations, this article is a quick review of the basic duties a motor carrier must follow after an accident and when these duties are triggered.

The Federal Motor Carrier Safety Regulations ("FMCSR") contain 2 basic requirements to promptly follow after a collision involving a commercial vehicle engaged in interstate commerce: (1) alcohol/drug testing, and (2) maintaining an Accident Register.

These requirements are not required after every collision, but are generally triggered if the accident involves:

- (1) A human fatality;
- (2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (3) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

### **Alcohol/Drug Testing:[2]**

Post-accident alcohol and drug testing is required of the driver for any accident that involves a human fatality, regardless of whether a citation is issued. A motor carrier must administer an alcohol test if situation (2) or (3) above is met *and* a citation is issued within 8 hours. Drug testing is required under the same circumstances but when a citation is issued within 32 hours.

There may be situations in which a driver or carrier does not know that a citation has been issued or that the other vehicle was towed until well after these time periods elapse. Under these circumstances, the rules provide some leeway to carriers that are unable to meet the deadlines. First, testing must be done "as soon as practicable." Second, if testing cannot be performed within the prescribed time periods, the regulations require a motor carrier to document why the testing could not be performed. This may arise, for instance, if the police investigation is significantly delayed, if an incident occurs in a remote or rural area far from any testing facilities, or if the driver was allowed to leave the scene and simply did not receive notice of the citation until much later. Under these or any other reasonable circumstances, a motor carrier should document the reasons and have these records available for the FMCSA upon request.

## Post-Accident Reporting:[3]

A carrier must also maintain an Accident Register if a collision involves the circumstances above, i.e. (1) fatality; (2) injury resulting in emergency transport from the scene; or (3) one or more disabled vehicles. It is not necessary that a citation be issued to the driver for this duty to be triggered.

The Accident Register must include the following information:

- Date of accident
- City or town, or most near, where the accident occurred and the State where the accident occurred
- Driver name
- Number of injuries
- Number of fatalities
- Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle involved in the accident, were released.

Although the FMCSR's do not require an incident report to be prepared for each collision, the motor carrier's file must include copies of any incident reports required by other law or by an insurance company. This could include reports required by individual states or incident reports forwarded to insurance agents to report a claim.

You can find a template of an Accident Register provided by the FMCSA here: [https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/form\\_1.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/form_1.pdf).

### Other Requirements:

The FMCSR's require other documentation such as pre-trip inspection reports and daily logs tracking hours of service. When in doubt, the motor carrier should ensure that these documents are kept in an incident file in the event that a collision results in a citation or lawsuit. Although the FMCSR's only require a pre-trip inspection report to be kept for 3 months and documents required for hours of service for 6 months, it is important to note that a lawsuit or discovery request could be filed well after these time periods. Thus, a motor carrier may want to retain these documents for a greater period of time than is required by the FMCSR's.

The transportation industry must navigate ever increasing regulation, and the Federal Motor Carrier Safety Regulations can rapidly change. The attorneys at KRCL assist our transportation clients with these changes, as well as other matters that affect the industry. Feel free to contact our attorneys if you have questions about best practices for motor carrier compliance.

[1]<https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/398686/ltbcf-2016-final-508c-may-2018.pdf>

[2] <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.382>

[3] <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.390>

## Related Practices

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