

Regulatory and Legislative Update

September 2018

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Regulation and Enforcement

FMCSA seeks input on hours-of-service flexibility

Prompted by a couple of rulemaking petitions, the Federal Motor Carrier Safety Administration has issued an advance notice of proposed rulemaking (ANPRM) to obtain public comment on several potential changes in the hours-of-service (HOS) regulations for commercial drivers. The petitions were filed earlier this year by the Owner-Operator Independent Drivers Association (OOIDA) and TruckerNation.org. The ANPRM addresses four specific areas of the HOS regulations: (1) short-haul operations; (2) adverse driving conditions; (3) the 30-minute rest break; and (4) split sleeper berth time.

The ANPRM does not include any regulatory proposals, but it does pose a series of questions that indicate that the agency is considering specific changes. In the area of short-haul operations, FMCSA hinted that it is considering harmonizing the limit on consecutive hours worked with the long-haul limit by increasing the 12-hour window to complete driving to 14 hours. Regarding adverse driving conditions, the agency noted that the current regulations allow for up to two more hours of driving time but not an increase in the 14-hour driving window to 16 hours. FMCSA also signaled that it is considering eliminating or modifying the requirement for a 30-minute rest break. Finally, the agency reaffirmed that it is considering whether to restore some flexibility in use of the sleeper berth to split mandatory rest. It noted that a pilot program to explore such flexibility is scheduled to begin this fall. For more information on that program, visit <https://www.fmcsa.dot.gov/research-and-analysis/research/flexible-sleeper-berth-pilot-program>. Comments on the ANPRM are due September 24. For a copy of the Federal Register notice, visit <https://www.federalregister.gov/d/2018-18379>. FMCSA held one public listening session on August 24 and had another scheduled for September 14 (now postponed indefinitely due to Hurricane Florence). For information on the latter, visit <https://www.federalregister.gov/d/2018-19255>. See also item below on specific relief sought by the American Concrete Pavement Association, Inc.

FMCSA to proceed with long range planning, corrective action plan and IRT development

At public forums on July 30-31, 2018, the Agency's Motor Carrier Safety Advisory Committee (MCSAC) endorsed a four year goal of reducing highway fatalities involving large trucks by 50%. See <https://www.fmcsa.dot.gov/advisory-committees/mcsac/meetings>.

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While FMCSA has not addressed substantive regulatory reform initiatives, it has signaled its adoption of the “Item Response Theory” (IRT) suggested by the National Academies of Science (NAS) as a new method for collecting data, seemingly shelving further development of SMS methodology and returning its algorithms to 2015 versions. It proposes to implement in short order the IRT Model in a pilot program, but it has not identified what new BASICs would be considered. Some of NAS’ suggestions include method of pay, driver turnover, comparative wage, etc.

Significant opposition has surfaced, noting an important distinction made by the NAS that use of the IRT and data integrity are distinct issues. Among the requirements of the FAST Act are (1) that the data integrity of SMS methodology be examined before it is restored; and (2) that the Agency consider the effect of use and publication of the data on industry constituents. Neither the NAS nor the Agency has addressed the systemic flaws in SMS methodology which have been repeatedly documented.

Rather than undertake the task of examining the efficacy of SMS methodology as recommended by the NAS, the Agency has instead opined that safety consultants, insurers and others want more complete access to inspection and traffic enforcement data as well as SMS methodology. October 22 has been established as the due date for industry stakeholders to provide comments. See <https://www.federalregister.gov/documents/2018/08/21/2018-17987/fixing-americas-surface-transportation-act-correlation-study>

EDITOR’S NOTE:

The Agency’s Notice of the October 22 comment date does not address the Agency’s duty to make and publish a safety fitness rating for all carriers upon which shippers and brokers can rely, nor does it address what use shippers and insurers should make of data and methodologies which the Agency has developed but which it has been unable to demonstrate are reliable for its own use.

FMCSA proposes cuts in UCR fees

FMCSA proposes to reduce by about 17.59% from 2017 levels the annual registration fees states collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2019, 2020, and subsequent registration years. The reduction of the current 2019 registration year fees (finalized on January 5, 2018) would range from approximately \$10 to \$9,530 per entity, depending on the number of vehicles owned or operated. The reduction in fees for subsequent registration years would range from approximately \$4 to \$3,565 per entity. For the Federal Register notice, visit <https://www.federalregister.gov/d/2018-17976>.

Exemption from 14-hour rule sought for environmental emergency responders

Four environmental recovery firms - HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC - have filed jointly for an exemption from the hours-of-service (HOS) regulations for drivers engaged in providing direct assistance in environmental emergencies or potential environmental emergencies, subject to various conditions. For the Federal Register notice, visit <https://www.federalregister.gov/d/2018-17062>.

Concrete pavers seek HOS rest break, short-haul exemptions

The American Concrete Pavement Association, Inc. (ACPA) is requesting exemptions from two requirements of the hours-of-service (HOS) regulations for drivers of certain commercial motor vehicles (CMVs) operated by ACPA members: (1) the 30-minute rest break provision; (2) and the requirement that short-haul drivers utilizing the record of duty status (RODS) exception return to their work-reporting location within 12 hours of coming on duty. The first exemption would allow drivers of vehicles hauling ready-mixed concrete – other than those outfitted with rotating mixer drums – to use 30 minutes or more of on-duty "waiting time" to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. The second exemption would allow these drivers to use the short-haul exception but return to their work-reporting location within 14 hours

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instead of the usual 12 hours. Comments are due October 9. For the Federal Register notice, visit <https://www.federalregister.gov/d/2018-19257>.

FMCSA allows windshield mounting for navigation devices

FMCSA has granted Traditional Trucking Corporation's (TTC) application for a limited five-year exemption on behalf of all motor carriers to allow a Global Positioning System (GPS) device to be mounted on the interior of the windshield of a CMV within the areas allowed for "vehicle safety technology" devices. The agency said placement of the GPS device in the windshield area would not have an adverse impact on safety, and that adherence to the terms and conditions of the exemption would achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

Motor carriers will be allowed to operate commercial motor vehicles (CMVs) equipped with GPS devices mounted (1) not more than 100 mm (4 inches) below the upper edge of the area swept by the windshield wipers; or (2) not more than 175 mm (7 inches) above the lower edge of the area swept by the windshield wipers; and (3) outside the driver's sight lines to the road and highway signs and signals. For the Federal Register notice, visit <https://www.federalregister.gov/d/2018-17977>.

FMCSA revises hazmat route registry

FMCSA announced revisions to the National Hazardous Materials Route Registry (NHMRR) reported to the agency as of March 31, 2018. The NHMRR is a listing, as reported by states and tribal governments, of all designated and restricted roads and preferred highway routes for transportation of highway route-controlled quantities (HRCQ) of Class 7 radioactive materials (RAM) (HRCQ/RAM) and non-radioactive hazardous materials (NRHMs). For the Federal Register notice, visit <https://www.federalregister.gov/d/2018-17060>.

Legislation

Senate version of DRIVE-Safe Act introduced

Sen. Todd Young (R-Indiana) and several co-sponsors have introduced legislation (S. 3352) that would allow 18- to 20-year-old interstate commercial drivers under certain conditions. The legislation is essentially the same as one (H.R. 5358) introduced in the House in March. S. 3352 would require that younger drivers demonstrate specific skills during a two-stage, 400-hour apprenticeship program using trucks equipment with specific safety-enhancing technologies. The bill is called the DRIVE-Safe Act with DRIVE standing for "Developing Responsible Individuals for a Vibrant Economy." For more on the Senate version of DRIVE-Safe, visit <https://www.congress.gov/bill/115th-congress/senate-bill/3352>.

FAA Authorization Deadline

The Federal Aviation Administration Reauthorization Act is the proposed vehicle the Duncan Amendment supported by the TIA to establish a national hiring standard and for the ATA supported bill on meals and rest breaks. The deadline for approving the FAA bill is September 30th. There is a substantial likelihood an interim authorization will be approved and the date for final approval addressing industry issues will be handled during the lame duck session.