

Regulatory and Legislative Update

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Regulation and Enforcement

Ag haulers to get 90-day delay on ELD mandate; FMCSA plans further ELD guidance

With the electronic logging device (ELD) mandate less than a month away, the Federal Motor Carrier Safety Administration on November 20 announced several steps intended to ease the transition for many drivers and carriers. Among the actions a 90-day temporary waiver from the ELD requirement for transporters of agricultural commodities and soon-to-be published formal guidance related to the existing hours-of-service (HOS) exemption for the agricultural industry.

The agricultural segment has been especially concerned about the impact of the ELD mandate, and livestock haulers recently petitioned the agency for an exemption. and Congress is considering an exemption as part of the House-passed version of the government funding bill. While livestock haulers would be included in the 90-day waiver of the ELD mandate, the waiver would have a far broader impact. On the other hand, the practical impact of the waiver is limited given that failure to use electronic logs for any carrier would not lead to out-of-service violations or points assessed against Safety Measurement System (SMS) metrics until April 1, 2018 anyway.

FMCSA also announced that it will be providing further guidance to the broader commercial vehicle industry, including guidance on the "personal conveyance" provision and on the existing 150 air-mile HOS exemption. The agency said publication of the guidance is expected was expected within two weeks and would include a public comment process. As of December 1, nothing has been published.

"FMCSA has listened to important feedback from many stakeholder groups, including agriculture, and will continue to take steps to ease the transition to the full implementation of the ELD rule," said FMCSA Deputy Administrator Cathy Gautreaux.

Failure to use ELDs won't affect CSA scores until April

FMCSA confirmed on November 15 that a carrier's failure to use required electronic logs will not be assigned points within the Safety Measurement System (SMS) until April 1, 2018. That is the same date that failure to use either an electronic logging device (ELD) or automatic onboard recording device (AOBRD) will lead to an out-of-service order for drivers required to complete records of duty status (RODS). The disclosure came during a "road show" event in Birmingham, Alabama, by Jon Dierberger, an FMCSA field administrator.

Violations of the ELD mandate, which kicks in December 18, would continue to be recorded, and carriers theoretically could still face enforcement action in the context of a compliance review. But with violations neither leading to an out-of-service order nor affecting SMS metrics, the ELD mandate essentially will be in a soft enforcement phase until April 1.

OOIDA seeks ELD exemption for small truckers with no at-fault crashes

The Owner-Operator Independent Drivers Association (OOIDA) on November 21 petitioned FMCSA for an exemption from the electronic logging device (ELD) mandate for carriers that meet the definition of a small business and that "can document a proven history of safety performance with no attributable at-fault crashes." Another condition is that the carrier cannot have an unsatisfactory safety rating, although in practice this condition is not very important because carriers cannot continue to operate unless they correct an unsatisfactory rating within a matter of a few weeks.

MCRR Coalition participates in DOT regulatory review

The Motor Carrier Regulatory Reform Coalition (MCRR Coalition) on November 16 submitted comprehensive comments in response to the U.S. Department of Transportation's (DOT) request for comments on the regulatory reform process. Essentially the same comments were provided to DOT on November 13 in response to the department's draft strategic plan.

The coalition's 44-page submission on regulatory reform revolved around five principal recommendations. The comments argue that FMCSA and/or Congress should:

- Replace SMS with biennial desktop audits
- Require Administrative Procedure Act-compliant rulemaking
- Revise FMCSA adjudications to ensure administrative due process
- Move key administrative review functions to an independent entity within DOT
- Rethink hours of service and ELDs to improve fatigue

Members of the MCRR Coalition are the Air & Expedited Motor Carrier Association; Alliance for Safe, Efficient and Competitive Truck Transportation; American Home Furnishings Alliance/Specialized Furniture Carriers; Apex Capital Corp.; Auto Haulers Association of America; National Association of Small Trucking Companies; Tennessee Motor Coach Association; The Expedite Alliance of North America; Transportation and Logistics Council; and Transportation Loss Prevention & Security Association.

Comments were due December 1, and more than 2,600 comments had been filed by November 30, mostly focused on electronic logging devices. For a copy of the MCRR Coalition comments, visit <https://www.regulations.gov/document?D=DOT-OST-2017-0069-1680>.

DOT adds four opioids to drug testing rule

DOT on November 13 issued a final rule that expands the department's current drug testing panel for regulated industries, including safety-sensitive positions at motor carriers, to include four semi-synthetic opioids: Hydrocodone, hydromorphone, oxycodone, and oxycodone. The rule takes effect January 1, 2018.

Other changes in the rule include adding methylenedioxyamphetamine as an initial test analyte and removing it as a confirmatory test analyte. The revision of the drug-testing panel harmonizes DOT regulations with the revised HHS Mandatory Guidelines established by the U.S. Department of Health and Human Services for federal drug-testing programs for urine testing. The final rule also clarifies certain existing drug-testing

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program provisions and definitions, makes technical amendments, and removes the requirement for employers and consortium/third party administrators to submit blind specimens.

To read the final rule, visit <https://www.federalregister.gov/d/2017-24397>.

OSHA Form 300A due by December 15

Employers with more than 20 employees and classified as general freight trucking (NAICS 4841) or specialized freight trucking (NAICS 4842) generally must submit electronically their 2016 OSHA Form 300A to the Occupational Safety and Health Administration by December 15. The form reports workplace injuries and illnesses. Companies in certain states are not yet required to file reports electronically. For more information, visit <https://www.osha.gov/injuryreporting/index.html>.

FDA issues food transport rule compliance guide for small entities

The Food and Drug Administration on November 21 announced the availability of a small entity compliance guide (SECG) to help small businesses understand the requirements of the final rule on the sanitary transportation of human and animal food (sanitary transportation rule). SECGs are designed to help small businesses meet federal standards. Small businesses with more than \$500,000 in annual revenue have until April 6, 2018, to comply with the rule. In the guide, shippers, loaders, carriers, and receivers covered by the sanitary transportation rule will find descriptions of the rule requirements in a question-and-answer format.

FMCSA nominee clears Senate panel

The Senate Commerce Committee on November 8 approved the nomination of Raymond Martinez, President Trump's pick to lead the Federal Motor Carrier Safety Administration, sending his nomination to the full Senate. Among eight nominations considered by the committee on November 8, Martinez was the only one who did not garner any opposition whatsoever. Martinez currently heads the New Jersey Motor Vehicle Commission.

Martinez had a similar experience about a week earlier when he received the fewest questions of any of four Department of Transportation nominees appearing before the committee at an October 31 nomination hearing of the Senate Commerce Committee. (For coverage of the nomination hearing, see *Regulatory Update*, October 2017.) The committee's approval of Martinez followed his submission of written responses to questions submitted to him following the hearing. To read Martinez's responses, visit <http://bit.ly/MartinezAnswers>.

EPA proposes to repeal greenhouse gas restrictions on glider kits

The Environmental Protection Agency is proposing to repeal the emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits. Comments are due January 5. The proposed rule is premised on the agency's proposed interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor vehicles. Glider engines would be found not to constitute "new motor vehicle engines," and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1).

Legislation

House panel hearing on FMCSA regulations focuses squarely on ELDs

Although billed as a hearing on how federal regulations affect small motor carriers, a November 29 hearing of the House Small Business Committee focused exclusively on a single issue: The upcoming electronic logging

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device (ELD) mandate. The committee heard from carrier executives testifying on behalf of the Owner-Operator Independent Drivers Association, the National Association of Small Trucking Companies and the American Pyrotechnics Association as well as from the president of the National Ready Mixed Concrete Association. For a link to the video recording of the hearing, prepared testimony and other resources, visit <http://bit.ly/HSBChearing>.

House panel approves bills related to human trafficking and trucking

The House Transportation & Infrastructure Committee on November 30 approved two bills related to human trafficking and the trucking industry. Both are similar to bills passed by the Senate in September. (See *Regulatory Update*, October 2017.) H.R. 3814 would permanently disqualify from operating a commercial motor vehicle anyone who uses a CMV in committing a felony involving human trafficking. H.R. 3813 would designate a human trafficking prevention coordinator within the Department of Transportation to work across all modes and would expand the scope of FMCSA's outreach and education program to include human trafficking prevention activities.

For information on H.R. 3814, visit <https://www.congress.gov/bill/115th-congress/house-bill/3814>. For information on H.R. 3813, visit <https://www.congress.gov/bill/115th-congress/house-bill/3813>.

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