

DOT/FMCSA - Noteworthy Updates

Allen C. Smith, acsmith@hedrickgardner.com; Austin R. Walsh, awalsh@hedrickgardner.com



Smith



Walsh

On 9/23/16, the Federal Motor Carrier Safety Administration (FMCSA) issued a final rule allowing voluntary mounting of certain “vehicle safety technology” devices on the interior of commercial motor vehicles within the area swept by windshield wipers. These devices include video event recorders, lane departure warning systems, collision mitigation or warning systems, transponders, and hands-free-driver equipment sensors. Because use of these technologies is voluntary, this rule was allowed to bypass usual notice and comment period and will become effective 10/24/16.

On 8/26/16, the National Highway Traffic Safety Administration (NHTSA) and the FMCSA jointly issued a Notice of Proposed Rule Making requiring new heavy-duty vehicles (those with gross weight greater than 26,000 pounds) to be equipped with speed limiters. Many carriers have voluntarily implemented speed limiters since the 1990s to maximize fuel economy and driver performance. The proposed rule estimates that limiting truck speed to 65 mph would save 63 to 214 lives each year. The FMCSA estimates fuel savings totaling \$1.1 billion per year. The period for public comment on the proposed rule ends 11/7/16.

On 8/29/16, the FMCSA submitted its final rule on entry-level driver training to the Office of Management and Budget (OMB) for review. The Department of Transportation (DOT) has worked on creating the entry-level driver standards since 1985. The proposed rule requires a driver seeking a Class A commercial driver license (CDL) should get a minimum of 30 hours of road training with at least 10 hours on a driving range. The remaining 20 hours will be split between a public road or public road trip of at least 50 minutes each.

In an effort to recruit younger drivers, on 8/19/16, the FMCSA announced a 3-year pilot project to allow truck drivers between 18 and 21 with military heavy truck driving experience to operate in interstate commerce. The project will compare the safety record of approximately 200 drivers aged 18 to 21 with those 21 and older. Participants in the pilot program must be a current or former member of the armed forces, reserves, or National Guard and is not permitted to transport passengers, hazardous cargo, or operate “special configuration” vehicles.

On 8/22-23/16, the FMCSA Medical Review Board (MRB) met in Arlington, VA to update its 2012 guidelines related to standards and practices for medical examiners in diagnosing and treating drivers with obstructive sleep apnea (OSA). The respiratory disorder is characterized by a reduction or cessation of breathing while sleeping, which can lead to deficits in attention, memory, and situational awareness during waking hours. The MRB estimated that 22 million American men and women suffer from undiagnosed OSA. The preferred treatment is a Positive Airway Pressure (PAP) machine worn while sleeping.

The MRB has recommended that drivers with body mass index (BMI) of 33 to 40 should be required to take sleep studies if three of 11 risk factors are present, including:

- Hypertension (treated or untreated)
- Type 2 diabetes (treated or untreated)
- A male neck greater than 17 inches or a female neck size greater than 15.5 inches
- A history of stroke, coronary artery disease or arrhythmias
- Loud snoring
- Micrognathia or retrognathia
- Witnessed apnea symptoms
- Hypothyroidism
- Age 42 or older
- Male or post-menopausal female
- Mallampati Scale score of class 3 or 4 (small airway).

Beginning 8/8/16, all passengers in property-carrying commercial vehicles must wear seat belts. Seat belts will continue to be optional for passenger-carrying commercial vehicles.

On 6/14/16, an FMCSA advisory committee began reviewing the FMCSA's plain language guidance documents, which assist carriers, drivers, and inspectors interpret nearly 700 regulations. A final report from the advisory committee is expected in October 2016. Guidance documents were last reviewed was in 1997.

On 7/7/16, the FMCSA announced plans for a two-year program for contesting and removing non-preventable crashes from carriers' crash indicator safety score. The program is a reaction to calls for more accurate Compliance, Safety, Accountability (CSA) scores and will give carriers the ability to dispute and remove crashes that were not the fault of the driver. In its determination of preventability, the FMCSA has rejected requests to use determinations of fault found in police reports. Instead, the FMCSA has proposed 4 scenarios where a collision could be classified as non-preventable: when the other driver is convicted of (1) driving under the influence; (2) driving in the wrong direction; (3) rear-ending the commercial motor vehicle; and (4) striking the commercial vehicle while it is legally stopped.

On 6/8/16, Transportation Secretary Anthony Foxx, advised senators that the CSA percentile scores for carriers will remain unavailable to the public until the DOT completes a study to determine the accuracy of the CSA's Safety Management System (SMS) in predicting future crash risk and severity. Secretary Foxx expects the study and subsequent reforms to take up to two years.

On 6/15/16, the FMCSA filed its brief in response to the Owner-Operator Independent Drivers Association (OOIDA) legal challenge to the FMCSA's electronic logging device (ELD) rule. The OOIDA claim filed with the 7th Circuit Court of Appeals argues that the ELD rule does not advance safety and violates the 4th Amendment's protection against unreasonable searches and seizures. The FMCSA defends the ELD rule, calling it "common sense" regulation to prevent concealed or fraudulent status information and result in fewer crashes. Currently, all interstate carriers are required to comply with the ELD rule by 12/18/17.