

# Regulatory and Legislative Update

March 2018

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## Regulation and Enforcement

### Raymond Martinez sworn in as FMCSA administrator

U.S. Transportation Secretary Elaine Chao on February 28 swore in Raymond Martinez as the sixth administrator for the Federal Motor Carrier Safety Administration. Martinez, who was confirmed by the U.S. Senate earlier in February, most recently served eight years as the New Jersey Motor Vehicle Commission's Chairman and Chief Administrator. He oversaw the agency's 2,500 employees and a \$330 million annual operating budget with more than \$1 billion in annual revenue. Martinez also advised the governor and state legislature on all areas of motor vehicle transportation and traffic safety and was responsible for developing the agency's regulatory and legislative agenda and all project prioritization. Martinez is a former Commissioner of the New York State Department of Motor Vehicles, and also served at the U.S. Department of State.

### OOIDA petitions FMCSA for 14-hour rule change, break elimination

The Owner-Operator Independent Drivers Association has petitioned FMCSA to amend the hours-of-service regulations to introduce an opportunity to pause the 14-hour window for completing driving and to eliminate the 30-minute rest break. Under OOIDA's proposal, drivers subject to HOS rules could take a rest break once per 14-hour duty for up to three consecutive hours as long as the driver is off-duty. In essence, the rest break would pause the 14-hour clock. In addition, OOIDA recommended eliminating the existing 30-minute rest break requirement. The association's proposed rest break would have no effect on the required off-duty period between work shifts. Drivers would still need 10 consecutive hours off duty before driving again. FMCSA has not yet published the OOIDA petition for comment.

### FMCSA publishes additional instructions on crash preventability program

With several months of experience with the crash preventability demonstration program that took effect in August, FMCSA has published further a notice providing further instruction and details on

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submitting requests for data review (RDRs) under the program, which allows carriers to seek a non-preventable determination on certain crashes by filing a request through DataQs. Since August 1, more than 2,500 RDRs have been submitted. The agency's Federal Register addresses issues related to:

- Correct submission of eligible crashes
- Types of crashes that can be reviewed
- Documents to be submitted
- Re-opening RDRs
- Input from the Public
- Agency use of data
- DataQs

For a copy of FMCSA's notice, visit <https://www.federalregister.gov/d/2018-02437>

### **ACC seeks relief on vehicle-hauler warning flag requirement**

FMCSA has requested comment until March 29 on an application from the Automobile Carriers Conference (ACC) of the American Trucking Associations for an exemption relieving motor carriers operating stinger steered automobile transporter equipment from the requirement to place warning flags on projecting loads of new motor vehicles. The Federal Motor Carrier Safety Regulations (FMCSRs) require any commercial motor vehicle transporting a load that extends more than four feet beyond the rear of the vehicle to be marked with a single red or orange fluorescent warning flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags if the projecting load is wider than two feet. The flags must be located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle.

The ACC believes that the reflex reflectors that are required to be installed on the new motor vehicles being transported, in conjunction with the various marking and conspicuity requirements required on the trailer transporting the new vehicles, provide a level of safety that is greater than that achieved by the warning flags required by the FMCSRs. For a copy of FMCSA's Federal Register notice, visit <https://www.federalregister.gov/d/2018-03943>.

### **FMCSA grants, considers CDL relief for individuals relocating from Puerto Rico**

FMCSA has granted a 90-day waiver through May 21 to allow to allow state driver licensing agencies (SDLAs) to accept commercial learner's permit (CLP) and commercial driver's license (CDL) applications from individuals relocating from Puerto Rico, which was severely impacted by last fall's hurricanes. The agency also is inviting comment until March 22 on a longer-term exemption application from the Commercial Vehicle Training Association (CVTA) for the same relief. The waiver and proposed exemption would allow SDLAs to follow the Department of Homeland Security's exception process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity. For a copy of FMCSA's notice regarding the waiver, visit <https://www.federalregister.gov/d/2018-03362>. For a copy of the notice regarding the CVTA exemption application, visit <https://www.federalregister.gov/d/2018-03363>.

### **Electrical contractors seek ELD exemption**

FMCSA has requested comments by March 16 on an application from the National Electrical Contractors Association (NECA) for an exemption from the electronic logging device (ELD) mandate on commercial motor vehicles (CMVs) used by contractors to install, repair, and maintain the infrastructure of electrical utilities. NECA believes the ELD requirement unnecessarily burdens its members' operations. For a copy of FMCSA's Federal Register notice, visit <https://www.federalregister.gov/d/2018-03063>.

### **G4S loses bid for ELD exemption**

FMCSA has denied the application of G4S Secure Solutions (USA), Inc. (G4S) for an exemption from the ELD mandate for its drivers of customer/government-owned vehicles used intermittently to perform passenger transportation. The agency said that the record does not establish that the applicant would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption. For a copy of FMCSA's Federal Register notice visit <https://www.federalregister.gov/d/2018-03944>.

### **STEMCO receives lighting exemption for trailer aerodynamic device**

FMCSA has granted STEMCO LP an exemption allowing motor carriers to use the company's TrailerTail aerodynamic device with rear identification lamps and rear clearance lamps that are mounted lower than currently permitted by agency's regulations. Mounting the device slightly below the roof of the trailer as required by regulations prevents the device from delivering the maximum available fuel economy benefit as opposed to mounting it flush with the top of the vehicle. which may block the visibility of the rear identification lamps and rear clearance lamps. The agency determined that mounting the rear identification lamps and rear clearance lamps at the same level as the stop lamps, tail lamps, and turn signals will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. For a copy of FMCSA's notice, visit <https://www.federalregister.gov/d/2018-03033>.

### **FMCSA renews several exemptions for five years**

FMCSA recently renewed one exemption, confirmed renewal of an exemption and announced its plan to renew a third pending public comment.

FMCSA renewed through January 31, 2023 an exemption requested by Daimler Trucks North America LLC allowing motor carriers operating CMVs manufactured by the company to use an Attention Assist and Lane Departure Warning system camera mounted lower in the windshield than is currently permitted. For a copy of FMCSA's notice, visit <https://www.federalregister.gov/d/2018-01943>.

The agency confirmed its renewal of the Recreation Vehicle Industry Association's (RVIA) exemption from the Federal commercial driver's license (CDL) requirements for drivers who deliver certain newly manufactured motorhomes and recreational vehicles (RV) to dealers or trade shows before retail sale (driveaway operations). The renewed exemption expires on April 6, 2022. For a copy of FMCSA's notice, visit <https://www.federalregister.gov/d/2018-03367>.

FMCSA also said it planned to renew for five years the exemption held by TowMate, LLC to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. The FMCSRs require that with the exception of battery-powered lamps used on projecting loads, all lamps must be powered by the electrical system of the motor vehicle. Comments were due February 20. For a copy of FMCSA's notice, visit <https://www.federalregister.gov/d/2018-02890>.

## Courts

### **U.S. Supreme Court to address arbitration agreements with independent contractors**

The U.S. Supreme Court on February 26 agreed to review an appeal by New Prime Inc. to a decision of the U.S. Court of Appeals for the First Circuit that the Federal Arbitration Act of did not apply to commercial motor vehicle drivers, whether they are employees or independent contractors. The FAA

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generally requires courts to enforce arbitration agreements, but one exception is in “contracts of employment” for transportation workers. Most courts have interpreted the exception to apply only to employee drivers, meaning that they are not bound to honor an arbitration agreement. However, unlike the First Circuit, courts generally have held that this exception does not apply to independent contractors.

In its petition to the court, New Prime said that the First Circuit read the exemption “expansively and effectively eliminated arbitration as a viable means of dispute resolution for the entire transportation industry.” Such an interpretation is contrary to the plain language of the act, the carrier said.

The U.S. Chamber of Commerce and American Trucking Associations filed amicus briefs in support of New Prime’s petition for review. For briefs in the case, visit <http://www.scotusblog.com/case-files/cases/new-prime-inc-v-oliveira/>