

Regulatory and Legislative Update

March 2019

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Regulation and Enforcement

FMCSA reduces theory instruction burden on Class B CDL upgrades

The entry-level driver training (ELDT) rule will not take effect for almost a year, but FMCSA already has adopted a change to make it easier for drivers holding Class B commercial driver's licenses (CDLs) to upgrade to a Class A CDL. Under the rule finalized in December 2016 and scheduled for implementation in February 2020, drivers holding Class B CDLs and undergoing training for an upgrade would have had to repeat the entire theory curriculum required for Class A CDL candidates. Under the new rule, FMCSA has adopted has a Class A CDL theory instruction upgrade curriculum to reduce training time and costs. For the Federal Register notice, visit <https://www.federalregister.gov/d/2019-04044>.

FMCSA considers dropping requirement for driver employment application

FMCSA has issued an advance notice of proposed rulemaking (ANPRM) to obtain comment on potential changes to the current employment application requirement, including whether to eliminate the requirement completely. The ANPRM stems from the U.S. Department of Transportation's review, launched in October 2017, to identify regulations that were good candidates for repeal, replacement, suspension, or modification. The requirement for an employment application was a regulation that the American Trucking Associations had identified. *(For more information on the regulatory review and comments in response to it, visit*

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<https://www.regulations.gov/docket?D=DOT-OST-2017-0069>.) Although FMCSA is seeking comment on changing or eliminating the specific requirement for an application, the agency emphasized that it is not seeking comment on whether to eliminate the underlying notification and investigation requirements associated with the employment process. Comments on the ANPRM are due May 7. For the Federal Register notice, visit <https://www.federalregister.gov/d/2019-04188>.

Guidance updated on various CDL issues, seeks comment

FMCSA has updated, effective March 7, its guidance regarding the CDL program, although it also has solicited comments by May 7 on the guidance it issued. The bulk of the changes are deletion of 47 guidance statements for various reasons – i.e., the rule is clear on its face, the guidance was duplicative of other guidance statements, or the guidance is obsolete due to subsequent rulemakings. Other guidance statements were revised for clarity and reorganized. For all the guidance changes, see the March 8 Federal Register notice at <https://www.federalregister.gov/d/2019-04180>.

Diabetes exemption program ends

Now that a FMCSA has adopted a rule for evaluating individuals with insulin-treated diabetes mellitus (ITDM) to operate CMVs in interstate commerce, the agency has decided that its 15-year-old diabetes exemption program is no longer necessary. On February 21, FMCSA officially withdrew the exemption program. Drivers who are operating under a medical examiner's certificate (MEC) granted under the exemption program may continue to operate under that MEC until it expires or until the driver is evaluated under the new rule, whichever comes first.

A rule published September 19, 2018, revised the physical qualifications standard for ITDM individuals who wish to operate CMVs in interstate commerce. The revised standard allows certified medical examiners, in consultation with the treating clinician, to evaluate and determine whether to grant an ITDM individual an MEC.

For the February 21 Federal Register notice, visit <https://www.federalregister.gov/d/2019-02967>. For the September 2018 rule, visit <https://www.federalregister.gov/d/2018-20161>.

FMCSA formally publishes exemption allowing cameras instead of mirrors

FMCSA has published in the Federal Register its approval of an exemption requested by Stoneridge, Inc., for an exemption to allow motor carriers to operate commercial motor vehicles (CMVs) with the company's MirrorEye Camera Monitor System installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA approved the exemption on December 21, but the exemption was not published at that time due to the partial government shutdown. (See *Regulatory Update, January 2019*.) For the Federal Register notice, visit <https://www.federalregister.gov/d/2019-02953>.

Auto haulers win relief on warning flag requirement

FMCSA approved an exemption requested by the Automobile Carriers Conference (ACC) of the American Trucking Associations for relief for motor carriers operating stinger-steered automobile transporter equipment from the requirement to place warning flags on projecting loads of new motor vehicles. The FMCSRs require CMVs 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 two feet wide or less, and two warning flags if the projecting load is wider than two feet. ACC had argued 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

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safety that is greater than that achieved by the warning flags. For the Federal Register notice, visit <https://www.federalregister.gov/d/2019-02378>.

DOT OIG to audit FMCSA's oversight of commercial driver medical certificates

The U.S. DOT Office of Inspector General (OIG) on February 20 announced that in light of an 11% increase in large truck crash fatalities from 2012 to 2017 and “the significant safety risk posed by fraudulent medical certificates” it would be auditing FMCSA’s oversight of the commercial driver medical certificate program. Since August 2014, DOT OIG criminal investigations have resulted in eight indictments and six convictions due to fraud in the medical certification process. The DOT OIG said its audit objectives would be evaluating FMCSA’s procedures for (1) oversight of its medical certificate program, including commercial driver medical certificate data quality, and (2) validating information in the agency’s National Registry of Certified Medical Examiners.

FMCSA launches website for upcoming drug and alcohol clearinghouse program

FMCSA has released online resources for CDL holders, employers, state driver licensing agencies, medical review officers, and substance abuse professionals regarding implementation of the drug and alcohol clearinghouse, which is slated to take effect in 2020. The clearinghouse will be a secure online database to allow designated stakeholders to identify in real time CDL drivers who have violated federal drug and alcohol testing program requirements. The clearinghouse resource webpage (<https://clearinghouse.fmcsa.dot.gov>) provides a fact sheet, implementation timeline, and frequently asked questions. Interested parties also can sign up to receive clearinghouse-related email updates.

Rail maintenance industry seeks HOS relief

FMCSA requests comments by April 8 on an application from R.J. Corman Railroad Services, Cranemasters, Inc., and the National Railroad Construction and Maintenance Association, Inc. for a limited exemption from the maximum driving time requirements in the hours-of-service (HOS) regulations to allow affected railroad employees subject to the HOS rule to respond to an unplanned event that occurs outside of or extends beyond the employee's normal work hours. For the Federal Register notice, visit <https://www.federalregister.gov/d/2019-04189>.

Legislation

Congress extends ELD exemption for livestock haulers, blocks bus lease rule

In an action that finally ended the disputes that had led to the partial government shutdown in December and January, President Trump on February 15 signed legislation (H.J.Res.31) funding the federal government through September 30. In addition to funding FMCSA, Public Law 116-6 continues the provision first adopted last year exempting haulers of livestock and insects from the requirement to use electronic logging devices (ELDs). The funding act also bars FMCSA from enforcing the May 2015 rule regarding the lease and interchange of vehicles. The measure would have little immediate effect, however, as the agency already had pushed back enforcement until 2021 while it considers changes to the rule. (See *Regulatory Update, December 2018*.) Finally, the law continues a longstanding provision that requires FMCSA to notify new entrants by certified mail, registered mail, or another manner of delivery that records the receipt of the notice if the agency chooses to launch an expedited action against the carrier. For more information on the final fiscal 2019 funding legislation, visit <https://www.congress.gov/bill/116th-congress/house-joint-resolution/31>.

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Bills reintroduced to allow 18-year-old interstate drivers under specific conditions

Legislation (H.R. 1374, S. 569) that would establish an apprenticeship program allowing for interstate drivers aged 18 to 20 was introduced in both the House and Senate on February 26. Called the Developing Responsible Individuals for a Vibrant Economy Act, or DRIVE Safe Act, the bill would require separate probationary periods of 120 hours and 280 hours, each with specific performance benchmarks. A driver could not transport hazardous materials until after completing the 120-hour probationary period hauling non-hazmat freight.

The legislation would allow 18- to 20-year-olds to drive interstate only if the CMV is governed at 65 mph and equipped with automatic manual or automatic transmissions; active braking collision mitigation systems; and Forward-facing video event capture.

Proponents reportedly plan to push for the DRIVE Act to be included in an infrastructure bill if one advances in Congress. For more information, visit <https://www.congress.gov/bill/116th-congress/house-bill/1374> and <https://www.congress.gov/bill/116th-congress/senate-bill/569>.

Bills would require underride protection rulemaking

Legislation (H.R. 1511, S. 665) introduced in the House and Senate in March would mandate regulations to require installation and retrofit of rear, side, and front underride guards on all CMVs with gross vehicle weight ratings of more than 10,000 pounds. The bills also would specify performance standards for each type of underride guard as well as require rules on inspection, maintenance, and repair of the devices.

The Owner-Operator Independent Drivers Association (OOIDA) immediately announced its opposition to the bills, arguing that the requirements could not be accommodated on most trucking equipment and would yield little, if any, safety benefit while costing billions of dollars. However, OOIDA noted that it does not object to the portions of the bills that would require updates to existing regulations for rear underride guards. On the other hand, the Commercial Vehicle Safety Alliance (CVSA) announced support for the legislation, saying it would mitigate the severity of underride crashes.

Essentially the same bills were introduced in December 2017 but did not advance during the 115th Congress. For more information, visit <https://www.congress.gov/bill/116th-congress/house-bill/1511> and <https://www.congress.gov/bill/116th-congress/senate-bill/665>.