



ASSOCIATION HIGHLIGHTS

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MOTOR-REGULATORY

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ELD Roll-Out Has Begun Without Significant Negative Impacts

Enforcement of the Electronic Logging Device (ELD) rule began Dec. 18, 2017, without any wide-scale disruptions. The rule requires that ELDs be used that synchronize with vehicle engines to automatically record driving time for purposes of reporting hours of service rather than using self-reported paper logbooks. It applies to most carriers and drivers who are required to maintain record of duty status. The American Trucking Associations (ATA) has supported the rule, while the Owner -Operator Independent Drivers Association (OOIDA) -- the largest trade association representing small-business truckers and professional truck drivers -- has fought against it vigorously.

Drivers and trucking companies were given a bit of a reprieve when it was announced that enforcement would be rolled out in two phases. Inspectors and roadside officers began issuing citations and fines for failure to have an ELD or automatic onboard recording device on December 18, but they will not place any vehicles out of service for violations until April 1, 2018. The FMCSA has emphasized, however, that companies that continually violate the rule could be subject to federal investigation.

Very few exemptions to the ELD rule have been granted, and those that have been granted have been technical or temporary. For example, a 90 day exemption was granted at the request of the Truck Renting and Leasing Association, Inc. to motor carriers and drivers operating property-carrying commercial motor vehicles that are rented for a period not exceeding 30 days. 83 Fed. Reg. 2868 (Jan. 19, 2018). These trucks are often rented to meet temporary carrier demand.

Since implementation began, there have been some reports of ELD products not meeting FMCSA requirements. For example, there were issues with PeopleNet's ELD software not properly integrating with fleet management systems and not meeting certain requirements of the ELD rule (while exceeding other requirements). As a consequence, one of the nation's largest fire-hire carriers -- Old Dominion Freight Lines, Inc. -- was granted a 90 day waiver from the ELD rule, as were similarly situated carriers using PeopleNet's ELD software. 83 Fed. Reg. 2744 (Jan. 19, 2018). According to a weekly survey by CarrierLists, as of the week of Jan. 22., longer haul carriers were nearly 95% compliant, with shorter haul carriers at about 75% compliant, with equipment back order and integration issues being the reason given for the lack of compliance.

Citations for non-compliance with the rule can delay transportation. As a result, some shippers and those hiring owner-operator drivers have been monitoring and requiring drivers to have ELDs. Failure to have ELDs may also place owner-operator drivers and motor carriers in violation of compliance with law requirements, which are customary in transportation contracts. The early signs are that the ELD mandate has not caused a dramatic shift in the industry, although the high demand for truck capacity and corresponding higher rates for service may be mitigating the cost of compliance, and the two-phase enforcement of the rule may be easing the transition. The true impact of the rule will likely begin to take shape in April.

ATA and Heavy Truck Manufacturers at Odds with OOIDA Over EPA Glider Kit Proposal

The Obama Administration Environmental Protection Agency (EPA), along with the National Highway Traffic Safety Administration (NHTSA), issued Phase 2 of its environmental regulation of medium and heavy duty trucks in 2016, which would improve the fuel economy and emissions for these vehicles. Last year, the Trump Administration EPA proposed to repeal the emissions rule for ‘gliders’ – new truck chassis with rebuilt engines – claiming that it does not have authority to regulate glider vehicles, glider engines, and glider kits, because they are not “new motor vehicles,” “incomplete” new motor vehicles or “new motor vehicle engines.” 82 Fed. Reg. 53442 (Nov. 16, 2017).

In the proposed repeal, the EPA went to great effort to demonstrate that there was at least some ambiguity as to whether or not it has the authority under the Clean Air Act to regulate gliders as new vehicles with new engines. It then proposed to interpret the applicable statute in a way that it does not have such authority. About 10,000 gliders are manufactured each year, which is less than 5% of the heavy-duty highway truck market.

The EPA has been taking public comment on this proposal. The ATA opposes the decision as contrary to the trend in the industry toward to more environmentally friendly and efficient vehicles. Volvo Trucks had similar comments.

OOIDA supported the decision, which allow a cheaper alternative to purchasing completely new vehicles. The Glider Kit Association of America argued that gliders provide a safer and more reliable alternative to an older vehicle. In other words, the proper comparison is an older vehicle, not a new vehicle.

The California Air Resources Board unanimously approved plans on February 8, 2018 to enact the Phase 2 rule, including as it pertains to gliders. The tension between California and federal environmental regulations are certainly not new, and will likely continue.

The FMCSA Wants to Know How to Better Receive Complaints Against Transportation Companies and Personnel

In the 1990s there was a telephone hotline known as the Safety Violation Hotline Service. That hotline became a website -- the National Consumer Complaint Database (NCCDB) -- in response to a Congressional mandate in 2005 under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), Public Law 109– 59, 119 Stat. 1144., which required the Department of Transportation to create a system to record and log aggregate complaint information regarding violations of the Federal Motor Carrier Safety Regulations.

The NCCDB accepts complains regarding “safety, driver harassment, coercion, movement of household goods (HHG), financial responsibility instruments for brokers and freight forwarders, and Americans with Disabilities Act (ADA) complaints.” 83 Fed. Reg. 4540 (Jan. 31, 2018). The agency reported that in its fiscal 2016 year, there were 362 complaints filed related to financial responsibility, 96 for harassment and 224 for coercion. *Id.* at 4542.

In early 2017, OOIDA commented that the NCCDB data quality should be enhanced, administration of the program should be improved, inefficiencies in the online portal be corrected, and the name should be changed, since it does not just pertain to consumers. The FMCSA responded to some of the specific issues OOIDA raised, while commenting that it would be open to the possibility of a name change for the database.

The FMCSA is seeking comments on how to improve the NCCDB, “including: (1) Whether the proposed collection is necessary for the agency to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.” *Id.* At 4543.

Supply Chain Executives Discuss Detention and Demurrage With the FMC

The Federal Maritime Commission (FMC) heard from supply chain executives on January 16 on the topic of the impact of force majeure conditions on detention and demurrage fees: the fees charged when a container sits awaiting pickup or return. These fees encourage the efficient flow of good and equipment, but truckers would argue that this effect is diminished when it is unable to pick up the container due to forces beyond its control.

The Coalition of Fair Port Practices filed a petition in 2017 seeking to normalize demurrage and detention practices. The group cited to the west coast port labor issues in 2014 and 2015, the Hanjin Shipping Co. bankruptcy in 2016, and snowstorms and hurricanes, all of which impacted container pickup and often resulted in demurrage and detention charges despite exigent circumstances.

Some truckers complained of heavy congestion and rigid schedules. Larger ships have resulted in a need for truck in bunches, yet in some cases, terminal hours of operation impede the ability to arrange for pickup within the free time. Ocean carriers and terminals pointed to the difficulty in legislating such a rule due to the circumstantial nature of the problem.

The FMC will have a closed session after the comment period closes on January 26 to decide on the petition.