



ASSOCIATION HIGHLIGHTS

September-October 2015

MOTOR-REGULATORY

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New Agency Administrators

President Obama nominated Acting Administrator of the Federal Motor Carrier Safety Administration (FMCSA) Scott Darling to become the FMCSA Administrator, but there has not yet been a confirmation hearing. Darling was elevated to Acting Administrator from his role as FMCSA Chief Counsel.

Greg Nadeau was confirmed as Administrator of the Federal Highway Administration (FHWA). Nadeau had previously been the FHWA's Acting Administrator and the Deputy Administrator. The Administrator position opened when Victor Mendez became Deputy Secretary of Transportation for the Department of Transportation (DOT).

Marie Dominguez was confirmed as Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA). Most recently, Dominguez was Principal Deputy Assistant Secretary of the Army for Civil Works. Timothy Butters had served as the acting administrator at PHMSA. Butters took a senior adviser position at the Federal Aviation Administration following Dominguez's nomination.

FHWA Seeking Comment on Truck Size and Weight Report

The FHWA is receiving comments for an upcoming report to Congress on truck sizes and weights. 80 Fed. Reg. 54653 (Sept. 10, 2015). The report will be based upon a study required by the Moving Ahead for Progress in the 21st Century Act (MAP-21) to assess the safety, infrastructure and enforcement impacts of trucks that exceed the current federal size and weight limits, and to evaluate the impact of allowing bigger and heavier trucks, including the impact on freight diversion.

The DOT has already released certain technical reports based upon the study. But in a June 5, 2015 letter to House Committee on Transportation and Infrastructure Chairman Bill Shuster, DOT Undersecretary Peter Rogoff reported that the study contains significant data limitations and recommended that, until better data can be collected, the laws and regulations regarding truck sizes and weights should not be changed.

Comments must be received by October 13, 2015 in order to be included in the report to Congress; however, the comment period will remain open beyond that date.

NHTSA Issues ANPRM on Underride Guards and Reflective Material for Single Unit Trucks

In what the National Highway Traffic Safety Administration (NHTSA) states is the “first step of a larger agency initiative to upgrade the standards,” NHTSA is seeking comments on the costs and benefits of improving rear impact protection for single unit trucks (SUTs) by requiring that they be equipped with underride guards and reflective tape, like larger tractor-trailers. 80 Fed. Reg. 43664 (July 23, 2015).

SUTs are the most commonly used truck according to the Advanced Notice of Proposed Rulemaking (ANPRM) and include delivery trucks, tank trucks and dump trucks, among others. Underride occurs when a passenger vehicle slides under the comparatively higher rear end of a truck during an accident, causing the truck to directly strike the passenger compartment of the passenger vehicle.

“NHTSA estimates that a requirement for rear impact guards on . . . SUTs . . . could save five lives and prevent 30 injuries each year, and would cost approximately \$669 million A requirement for reflective tape on SUTs could save up to 14 lives per year with a cost of approximately \$30 million annually” according to a NHTSA press release issued on July 17, 2015, available at <https://www.nhtsa.gov/press-releases/dot-issues-advance-notice-proposed-rulemaking-single-unit-truck-crash-protection>.

Hours of Service Exemption Granted to Some HazMat Drivers

Drivers of security-sensitive hazardous materials (such as explosives, weapons, or radioactive materials) may count their time attending to such hazmat toward their mandatory break time, under a recent FMCSA exemption. 80 Fed. Reg. 50912. Drivers of such material are normally required by Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations to attend to the load while their vehicle is stopped, which is considered on-duty time under the FMCSA’s hours-of-service rules. FMCSA regulations prohibit driving longer than eight consecutive hours without an off-duty break of 30 minutes or more, but without an exemption, security-sensitive hazmat drivers cannot go off duty. Exempt drivers may now count their on-duty attendance of hazmat cargo toward the required 30-minute rest break, so long as they do not perform any other on-duty task.

Implementation of Unified Registration System Delayed

Implementation of the FMCSA’s Unified Registration System (URS), has been delayed. The URS was established in an August 2013 FMCSA rule and will make the USDOT number the sole identifier for motor carriers, brokers and freight forwarders, displacing MC, MX and FF Numbers. Implementation had been slated for October 23, 2015, but the new date has not yet been announced.

When implementation goes into effect, nearly all carriers, brokers and freight forwards will be required to demonstrate evidence of financial responsibility, followed by designating an agent for service of process, neither of which were previously required for entities not subject to FMCSA commercial oversight. Further details are available at <https://www.fmcsa.dot.gov/registration/unified-registration-system>.

Electronic Logging Device Final Rule Delayed

A final rule requiring the use of electronic logging devices to record hours of service has been further delayed. Eric Miller, ELD Final Delayed Another Month, FMCSA Says, Transport Topics, Sept. 16, 2015, available at <http://www.ttnews.com/articles/basetemplate.aspx?storyid=39455>. The rule is now expected to be published by the end of November. Congress mandated electronic logging devices as part of MAP-21.

Issuance of Proposed Truck Speed-Limiter Rule Delayed

NHTSA and the FMCSA sent a proposed rule to the White House Office of Management and Budget (OMB) in May that would require that heavy trucks implement speed-limiting devices. The proposed rule had been expected to be issued in September; however, the proposed rule will receive extended review by OMB and no new date of issuance has been set. The agencies have not said what the maximum speed might be, but the American Trucking Associations requested a top speed of 65 mph. Eric Miller, Truck Speed-Limiter Rule Delayed for 'Extended' Review by White House, Sept. 4, 2015, available at <http://www.ttnews.com/articles/basetemplate.aspx?storyid=39357>.

Driver Wellness Initiative

The FMCSA's Motor Carrier Safety Advisory Committee and Medical Review Board held a joint public meeting on September 21 and 22, 2015 regarding the establishment of a non-regulatory public-private partnership to improve drivers' health. Details are available from the FMCSA at <http://mcsac.fmcsa.dot.gov/meeting.htm>.