

DOT/FMCSA - Noteworthy Updates

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



Smith



Walsh

On 2/21/19, the Federal Motor Carrier Safety Administration (FMCSA) announced the end of its exemption process for the medical certification of insulin-dependent drivers. Any diabetic driver who has a medical card will need to renew and those in the future must be determined fit to drive by a certified medical examiner. Since the exemption process began in 2003, approximately 76% of applicants have received exemptions.

The new rule, published on 9/19/18, will allow medical examiners, in consultation with drivers' treating physicians, to decide whether diabetics are qualified to drive commercial motor vehicles (CMVs). This rule eliminates the 2-3 month waiting period for diabetic drivers to request exemptions from the FMCSA. Treating physicians will now be required to submit a FMCSA-certified form to medical examiners certifying that the driver's diabetes is under control. Diabetic drivers will also no longer be required to submit to annual vision and endocrinologist exam.

On 2/20/19, the Department of Transportation (DOT) announced an Inspector General (IG) audit of the FMCSA's medical examiner certification program and ensuring the validity of current medical examiner information in the National Registry. This inspection is in response to recent cyber security issues, an 11% increase in fatal crashes from 2012 to 2017, and convictions of six medical examiners for fraud since 2016. One medical examiner's conviction in August 2017 resulted in 600 drivers having to renew their medical certifications. On 12/1/17, the FMCSA's medical examiners site was hacked and shut down, resulting in significant delays. As a result of the hack, the final rule eliminating the need to carry medical cards has been pushed back to June 2021.

On 12/26/18, the FMCSA announced a 5-year exemption to Stoneridge Inc. to allow its digital camera and sensor system to be installed on trucks and motor coaches replacing traditional mirrors. The Stoneridge system utilizes 5 cameras, sensors, and 3 digital displays along the A-pillars and the high center of the cab. Stoneridge boasts that removing side mirrors reduces drag forces and can improve fuel efficiency by as much as 4%.

On 12/21/18, the FMCSA announced that federal regulations preempt California's meal and rest break requirements, which are incompatible with current federal rules, have no safety benefit beyond the current federal regulations, and result in an undue burden on interstate commerce.

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Under 49 USC § 31141, the Secretary of Transportation may review a state law or regulation on commercial motor vehicle safety to determine whether the regulation has the same effect as a federal rule, is less stringent than a federal rule, or is more stringent than a federal rule. If a state law or regulation is more stringent, the Secretary may permit enforcement in conjunction with federal rules unless the Secretary determines that (1) the state law or regulation has no safety benefit, (2) is incompatible with the federal regulation, or (3) enforcement of the state law or regulation would cause an unreasonable burden on interstate commerce.

California's rule requires one, 30-minute rest break for employees working more than 5 hours per day and a second 30-minute rest break for drivers working more than 10 hours per day. The federal rule requires a 30 minute rest break after an 8-hour on-duty period. Over 700 comments were received over the 30-day comment period.

On 2/6/19, California's Attorney General and Labor Commissioner and Teamsters have petitioned the FMCSA in the U.S. Court of Appeals for the Ninth Circuit review the FMCSA's preemption decision. A decision in favor of the State of California would pave the way for states to create more restrictive regulations.

On 12/16/19, the FMCA's exemption for automatic onboard recording device (AOBRD) users to migrate to Electronic Logging Devices (ELDs) is set to expire. The FMCSA estimates that compliance with the ELD mandate has reached 99% nationwide. In large part due to the ELD mandate, the trucking telematics industry has doubled to \$1.1 billion since 2015.

On 2/15/19, the FMCSA announced a 5-year exemption to carriers operating stinger-steered automobile transporter equipment hauling new autos from a requirement to display warning flags on projecting loads. Currently, carriers must display certain warning flags for loads that extend more than 4 feet beyond the rear of the trailer. Carriers complained that the flags could not be affixed to new motor vehicles or to the trailers due to risk of scratching or damage to the new vehicles. Stinger-steered vehicles have the fifth-wheel hitch on a drop frame behind and below the rear-most axle of the tractor and account for a fraction of the 16,000 automobile transport vehicles.

The FMCSA continues to consider changes to the Compliance, Safety, Accountability (CSA) program's Safety Management System (SMS) to implement the Item Response Theory (IRT) recommended by National Academy of Sciences' (NAS) June 2017 report. The FMCSA expects to have the IRT modeling evaluation completed by fall 2019 (delayed from April 2019).

In the meantime, the SMS system has reverted to its pre-June 2015 methodology while the FMCSA works to implement the NAS report's recommendations, including developing a new statistical model to support the SMS. IRT models are used in

educational, psychological, and political science research and would evaluate commercial carriers by determining the frequency of each violation and whether the violation is a good marker for identifying a carrier's safety culture. The intention is that an IRT will provide a more accurate safety assessment for carriers based on the types of violations committed.

In October 2018, the DOT IG began an audit of the plan to revamp the CSA. The IG will be assessing how the FMCSA is implementing its corrective action plan to develop the IRT model. The IG's audit will be submitted to the Senate Committee on Commerce, Science, and Transportation for review.

On 10/24/18, President Trump signed the Opioid Crisis Response Act of 2018, which is intended to curb the nation's opioid epidemic. The law includes a provision requiring the Substance Abuse and Mental Health Services Administration to investigate and develop hair testing guidelines for commercial drivers but does not mandate that the DOT begin the rulemaking process. Hair follicle testing is more difficult to defraud and can detect traces of illegal substance as much as 90 days later compared to a limited 2-3 day look back for urine samples.

On 9/28/18, the FMCSA published a final rule permitting (but not requiring) state licensing agencies to waive CDL knowledge and driving skills tests for certain veterans who receive military training to operate commercial vehicles. The FMCSA expects that the new rule will save \$16 million over the next 10 years. For states that will retain skills testing for veterans, a FMCSA rule from October 2016 will continue to grant veteran drivers a one-year waiver from the time of leaving military service before they need to apply for a skills test. The 2016 rule also allows active-duty military to apply for a commercial learner's permit and CDL from the state in which they are stationed.

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Hedrick Gardner Trucking & Transportation Team

Allen C. Smith
Practice Group Leader
Civil Litigation
Charlotte
704.319.5449

Martha W. Surles
Workers' Compensation
Charlotte
704.319.5438

Jeffrey H. Blackwell
Civil Litigation
Wilmington
910.795.2208

Matthew D. Glidewell
Workers' Compensation
Charlotte
704.319.5432

David L. Levy
Civil Litigation
Charlotte
704.319.5426

Thomas W. Page
Workers' Compensation
Charlotte
704.319.5446

Kristie L. Hedrick
Civil Litigation
Raleigh
919.719.3718

Joseph D. Delfino
Civil Litigation
Charlotte
704.602.8012

Austin R. Walsh
Civil Litigation
Charlotte
704.602.8010

Charlotte
Wilmington

704.366.1101
910.509.9664

Raleigh
Columbia

919.832.9424
803.727.1200

www.hedrickgardner.com