

THE REGULATORY LANDSCAPE WIDENS

CARRIERS AND SHIPPERS ALIKE ON THE HOOK FOR CAPACITY, COMPLIANCE AND SAFETY PERFORMANCE

2015 REGULATORY OVERVIEW

A barrage of regulations continues to bear down on the transportation industry. This increased pace of transportation regulations will impact shippers; greater attention to mitigating risks is required. Those who don't stay on top of changes risk leaving their supply chain vulnerable to capacity, compliance and safety issues.

Stemming from the Motor Carrier Act of 1935, federal rules and regulations were established to assure the "security for the protection of the public..." Though carriers have traditionally shouldered the majority of the regulatory weight, the accountability net has widened: shippers are now on the hook too.

With the influx of so many new regulations and the promise of more to come, shippers need to continue to educate themselves on the regulatory landscape. This know-how leads to more and better collaboration between transportation providers and shippers.

The following guide has been developed to help shippers better understand the key points of recently adopted regulations challenging the industry and those on the horizon, the potential impact on business and implementation timing.

REGULATIONS IN EFFECT

HOURS OF SERVICE: Effective Date – July 1, 2013

Background:

The latest iteration of the Hours of Service Rule took effect July 1, 2013. In December 2014, Congress suspended parts, but not all, of the changes that took effect back in July 2013. The Federal Motor Carrier Safety Administration (FMCSA) views the new HOS rules as the foundation of a comprehensive driver fatigue management program. The July 2013 restrictions included the requirement that drivers take a 30-minute break in the first eight hours of work. In addition, the restart was limited to once every 168 hours and required two anchor rest periods between the hours of 1:00 a.m. and 5:00 a.m. The suspension that took effect in December 2014 suspends the requirement of the two 1:00 a.m. and 5:00 a.m. rest periods to reset the weekly work clock and the need to wait 168 hours between resets. The suspension of enforcement in the law is in effect until Sept. 30, 2015. However, if the FMCSA has not provided a naturalistic study justifying the restrictions on the 34-hour restart, the suspension is to continue until they do.

Impact:

The productivity reduction places even more strain on carriers who are contending with a difficult driver hiring market. More drivers are now required to cover the same number of hours worked; shippers have already felt the impact in two forms: productivity decreases and rate increases.

What Shippers Can Do:

While shippers have experienced capacity challenges and rate increases due in part to HOS changes, there are ways to mitigate these challenges. Shippers should choose the right carrier – one that is a safety-conscious thought leader with robust capabilities. Shippers should also strive to become a “shipper of choice” by increasing driver satisfaction, which isn’t strictly a carrier issue anymore. As a critical supply chain issue, every member of the supply chain must address it.

SELF-CERTIFICATION: Effective Date – Jan. 30, 2014

Background:

As of Jan. 30, 2014, all commercial driver’s license (CDL) holders in the U.S. must self-certify (formally disclose) to the State Licensing Agency (DMV) what type of work he or she does, using one of the following four categories:

- Non-Excepted Interstate: Driver is engaged in interstate commerce and must meet the federal Department of Transportation (DOT) medical card requirements
- Excepted Interstate: Driver is engaged in interstate commerce and does not have to meet the DOT medical card requirements
- Non-Excepted Intrastate: Driver is engaged in intrastate commerce and must meet state driver qualification requirements
- Excepted Intrastate: Driver is engaged in intrastate commerce and does not have to meet the DOT medical card requirements

Drivers who work in interstate commerce will also need to provide a medical certification (DOT physical) to prove they are qualified to drive. Failure to present valid medical documentation will result in the denial of the issuance or renewal of the CDL.

Impact:

Any driver who is not currently self-certified will have his or her CDL downgraded to non-CDL status, putting them out of commission until resolved.

MEDICAL EXAMINER RULE: Effective Date – May 21, 2014**Background:**

In 2008, the FMCSA proposed a rule that would require individuals who administer medical exams for commercial drivers to be trained, tested and certified to a national standard. Additionally, a National Registry of Certified Medical Examiners (NRCME) would be created in order to track qualified medical professionals. This rule was developed in order to improve the medical oversight of commercial drivers as well as prevent commercial vehicle-related crashes, injuries and fatalities.

The rule was unfolded in stages, with May 21, 2014, marking the deadline for medical examiners to be properly certified and registered in order for them to administer medical examinations that were compliant with the U.S. DOT.

Impact:

The standardized examinations have identified drivers who exhibit or are considered at-risk for conditions such as hypertension, sleep apnea and diabetes. Flagged drivers are issued temporary medical cards, granting them an additional three months to follow up with their primary care physician regarding their specific condition.

Because of the increased complexity and administrative efforts associated with the NRCME, most medical professionals and/or healthcare providers have dramatically increased the price for physicals. Carriers alone will not bear the burden of these increased, regulatory-imposed costs. They are being passed along to shippers and consumers, becoming a permanent part of the market's supply chain and distribution costs.

To learn more, visit Schneider's [Knowledge Hub](#).

TANK ENDORSEMENT: Effective Date – July 8, 2015**Background:**

Shippers moving contained liquids in dry van trailers must now comply with the same tank endorsement rules as the bulk industry. The "Commercial Driver's License Testing and Commercial Learner's Permit Standards" rule redefined what is considered to be a tank and, for the first time, includes capacity requirements.

Under the new rule, a tank is:

- 1) "Any commercial vehicle that is designed to transport any liquid or gaseous material within a tank."
- 2) "Tanks having an individual rate capacity of more than 119 gallons and an aggregated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis."

Tanks that are manifested as either being empty or as residue on a bill of lading do not apply under the rule.

If a load meets the capacity and configuration requirements defined above, a driver with a "tank endorsement" on his or her CDL must transport it. All states must be in compliance by July 8, 2015.

Impact:

Since the rule has been published, it has exacerbated the driver capacity crunch, increased load replanning and caused a higher rate of out-of-service trucks.

What Shippers Can Do:

To overcome these hurdles, shippers are encouraged to be aware and thoroughly understand the new tank vehicle definition. When working with a carrier, shippers should fully disclose the type of freight that needs to be transported as well as its weight and packaging.

To learn more, visit Schneider's [Knowledge Hub](#).

PROPOSED RULES EXPECTED IN 2015

MINIMUM LIABILITY INSURANCE: End of Comment Period – Feb. 26, 2015

Background:

The FMCSA is proposing to raise the minimum amount of liability insurance carriers must have to operate. The current minimum, set in 1984, is \$750,000, which the FMCSA advises should be closer to \$2 million if it were indexed to inflation.

The existing required minimum level of insurance does not offer adequate coverage for damages resulting from involvement in a serious accident – and doesn't come near providing the level of financial assurance that had been provided at the time the levels were last adjusted.

On Nov. 28, 2014, the FMCSA published an Advanced Notice of Proposed Rulemaking to solicit input from carriers and other industry stakeholders. Comments are due Feb. 26, 2015.

Impact:

According to the Motor Carrier Safety Advisory Committee, an increase of this size could put extensive strain on small fleets and owner-operators.

What Shippers Can Do:

Shippers are encouraged to confirm that the transportation providers serving them are appropriately capitalized and that they maintain adequate insurance.

To learn more, visit Schneider's [Knowledge Hub](#).

SPEED LIMITERS: Projected Publication Date – July 27 2015

Background:

A pending rule by the U.S. DOT will mandate the use of speed limiters – electronic controlled modules that are able to calibrate a vehicle's speed – on newly manufactured Class 8 trucks as well as the retrofitting of all heavy trucks manufactured after 1990.

If issued, the rule would apply to trucks weighing more than 26,000 pounds and traveling on roads with a speed limit of at least 55 mph. The speed to which heavy-duty trucks would be limited is yet to be determined.

Impact:

The rule is expected to help the transportation industry improve fuel economy and decrease greenhouse gas emissions, along with reducing the incidence of high-severity traffic accidents and mitigating the severity of collisions.

What Shippers Can Do:

Carriers and shippers are encouraged to adjust now. Carriers should make the commitment to outfit their fleets with speed limiters, and shippers can make an impact by tendering freight to carriers using speed limiters.

CARRIER SAFETY FITNESS DETERMINATION: Projected Publication Date – August 17, 2015**Background:**

Initiated in 2007 and passed in 2010, the Compliance, Safety, Accountability (CSA) program has replaced the FMCSA's prior Inspection Selection System for carriers and their drivers performance known as SAFESTAT. Under CSA, FMCSA uses data from the prior 24 months to determine when intervention is needed to include triggering increased roadside inspection and, in some cases, dispatching of an auditor to the carrier's operations for a review and evaluation of their compliance with federal regulations. Because of the lack of resources, FMCSA is only able to audit 1 percent of the country's estimated 500,000+ carriers each year. Today the only way for a carrier's Safety Rating (satisfactory, conditional or unsatisfactory) to change is as a result of an on-site rated review.

The Safety Fitness Determination rule that is under development would allow FMCSA to use CSA data that comes from the results of roadside inspections and DOT reportable crashes to determine a carrier's Safety Rating or use the data to identify carriers for a rated review or a combination of both. This will allow the FMCSA to change a large number of carriers' Safety Rating with the same number of limited resources.

Impact:

The larger number of carriers with poor safety performance records would be revealed to the industry. Those that don't improve their scores will be subject to losing their operating authority, causing further pressure on an already-tight market.

DIABETES STANDARD: Projected Publication Date – July 3, 2015**Background:**

This rulemaking action would amend the FMCSA's Medical Qualification Standards initiated in 2006, allowing drivers with insulin-treated diabetes mellitus to operate commercial motor vehicles without seeking an exemption from the Federal Motor Carrier Safety Regulations.

Impact:

If approved, a small number of insulin-dependent drivers may be added to the industry's mix.

COERCION: Projected Publication Date – Sept. 10, 2015**Background:**

The MAP-21 bill passed in July 2012 requires that regulations governing commercial motor vehicle safety ensure "an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate in violation of a regulation promulgated under [the respective sections and chapter] of the law." Coercing drivers to violate Hours of Service limits, drug and alcohol testing, hazardous materials rules and other regulations that could jeopardize safety are prohibited.

Impact:

Under the proposed rule, coercion is described as the loss of a job, denial of subsequent loads, reduced payment and denial of access to the best trips, to name a few. If threatened or asked to conduct illegal shipping activities, drivers will have 60 days to file a written coercion complaint with a FMCSA division administrator. The administrator would then determine whether the complaint was "non-frivolous" and conduct an investigation as necessary.

If found guilty of coercion, motor carriers, logistics operators and shippers could face penalties up to \$11,000 per incident.

What Shippers Can Do:

This proposed regulation places shippers directly under the FMCSA's regulatory purview for the first time. In its totality, it should have transportation intermediaries, shippers and trucking companies reevaluating their current practices.

To learn more, visit Schneider's [Knowledge Hub](#).

ELECTRONIC LOGGING DEVICES: Projected Publication Date – Sept. 30, 2015**Background:**

In March 2014, the FMCSA gave notice of a proposed rulemaking on Electronic Logging Devices (ELDs). Key regulations within the proposal include the requirement for every motor carrier with interstate drivers to install a compliant ELD.

Impact:

The ELD technology will drive compliance and allow for an accurate assessment of HOS rules industry wide.

What Shippers Can Do:

To maximize efficiency, shippers will want to find a multimodal carrier that is an early adopter of ELDs and has already worked through the productivity, driver compliance and acceptance issues associated with this technology.

Shippers should not assume that all early adopters of ELDs are safety conscious. Shippers should proactively check Compliance, Safety and Accountability (CSA) scores before awarding a carrier.

To learn more, visit Schneider's [Knowledge Hub](#).

UNIFIED REGISTRATION RULE: Projected Publication Date – April 2016**Background:**

The proposed Unified Registration Rule will do the following:

- Adjust the Unified Registration System (URS) registration fee for those under the FMCSA's jurisdiction who must register with the agency to operate in interstate commerce
- Implement several MAP-21 provisions that require changes to the URS regulations, the online application for U.S. Department of Transportation Number/Operating Authority Registration (Form MCSA-1) and MCSA-1 instructions
- Prohibit transfers of operating authority registration
- Make several technical amendments to the Motor Carrier Safety Administration (MCSA-1) form and instructions for purposes of clarification

Impact:

The URS will streamline the registration process and serve as a clearinghouse and depository of information on, and identification of, motor carriers, brokers, freight forwarders, intermodal equipment providers, hazardous materials safety permit applicants and cargo tank facilities required to register with FMCSA.

NATIONAL CLEARINGHOUSE FOR DRUG AND ALCOHOL RESULTS: Projected Publication Date – Dec. 14, 2015**Background/Impact:**

The National Clearinghouse for Drug and Alcohol Results is expected to remove those drivers from the industry who have a background of positive drug and alcohol tests. In addition, the rule would:

- Create a central database for verified positive controlled substances and alcohol test results for CDL holders and refusals by such drivers to submit to testing
- Require employers of CDL holders and service agents to report DOT positive test results and refusals to test to the Clearinghouse
- Require prospective employers, acting on an application for a CDL driver position with the applicant's written consent, to pay a fee and access the Clearinghouse to determine if any specific information about the driver applicant is in the Clearinghouse before allowing the applicant to be hired and to drive a commercial motor vehicle
- Require motor carriers to annually pay a fee for access to the Clearinghouse to determine if any new results are registered for their active driver fleet

The database will only contain DOT drug test results and will not accept non-DOT drug tests, such as hair tests.

This rule is projected to cost the industry \$186 million annually. These increased costs are being passed along to shippers and consumers, becoming a permanent part of the market's supply chain and distribution costs.

What Shippers Can Do:

Though this rule is already progressing through the legislative process, shippers can provide some much-needed momentum around it by contacting their federal legislators – particularly those legislators who are members of the Transportation and Infrastructure Committee and the Highways and Transit Subcommittee – and voicing support for the rule to help remove drivers with drug and/or alcohol dependency.

To learn more, visit Schneider's [Knowledge Hub](#).