

HOT TOPICS

President Trump Provides First Budget Blueprint – In mid March, President Trump released his first budget blueprint (for Fiscal Year 2018) that was light on details normally associated with budget submissions, but gave overall spending amounts. Discretionary spending for the U.S. Department of Transportation, which is separate from funding from the Highway Trust Fund, would be cut by \$2.4 billion or 13% from annualized 2017 levels. Of note, the President’s proposal would eliminate the TIGER grant program, reducing by \$499 million funds that were previously available for surface transportation projects. The budget blueprint did not address funding levels for FMCSA or NHTSA. Notably, the widely reported \$1 trillion infrastructure program was not mentioned in the budget blueprint.

Modal Transportation at USDOT Positions Remain Unfilled – As of late March, President Trump and his White House team have not yet nominated individuals for the top jobs at the USDOT modal Administrations (i.e., the Administrator and Deputy Administrator positions at FHWA, FMCSA, NHTSA, PHMSA, etc.). However, in early March, the President nominated Jeffrey Rosen for the position of Deputy Secretary of Transportation.

Regulatory Reform Efforts in Congress - The House has passed numerous bills aimed at reining in and reforming federal agency rulemaking going by such colorful names as the REINS Act, H.R. 26, and the SCRUB Act, H.R. 998. The House-passed legislation would require Congress to vote approve all major rules or change the deference given to agency rulemaking. However, their prospects are less certain in the Senate.

Regulatory Relief Efforts at FMCSA – The first trucking-specific regulatory casualty under the Trump Administration is the “Carrier Safety Fitness Determination” rulemaking initiated by FMCSA in early 2016. On March 23, 2017, FMCSA withdrew its January 2016 notice of proposed rulemaking which proposed a revised method for issuing motor carrier safety ratings. Although FMCSA had recently announced that a “supplemental” proposal would be the next step in the rulemaking process, a review of this issue by Trump Administration officials resulted in a decision to cancel plans to move this rulemaking forward.

Hours of Service Restart Study Finalized – In early March, the USDOT transmitted to Congress a letter and long-awaited Congressionally-directed report on the efficacy of the July 2013 HOS restart provisions (i.e., the 168-hour limitation, and the required two consecutive 1-5 am periods). The ‘naturalistic’ field study investigated the operational, safety, fatigue and health impacts (the key outcome metrics) of these two restart provisions on CMV drivers where drivers worked their normal schedules and performed their normal duties. The study compared drivers using a restart period with 1, 2 or more than 2 nights. The study did not find meaningful differences in the key outcome metrics and reconfirmed that a simple, 34-hour restart period provided drivers needed sleep time to recover from cumulative fatigue. As a result, under current law, the July 2013 restart provisions may not be re-imposed by FMCSA.

Electronic Logging Devices (“ELDs”) - While FMCSA’s ELD rule is now well-known, and the December 2017 compliance date is approaching, FMCSA guidance to States and industry on how the mandate will be enforced, remains under development. An important software program that will allow States to read driver’s ELD records to enforce the HOS rules, is also under development at FMCSA. Meantime, OOIDA has chosen not to appeal its case to the U.S. Supreme Court.

Automated Vehicle/Truck Policy – As a result of Secretary Chao’s ongoing review of NHTSA’s draft “Federal Automated Vehicles Policy,” developed under the Obama Administration, the future of NHTSA’s policy approach is unclear. Meantime, FMCSA’s efforts to develop truck-specific AV guidance are on hold.

LEGISLATIVE ACTIVITY

Chamber of Congress	Bill Number & Name or Other Activity	Summary of Bill or Other Activity
House	H.R. 5 – The Regulatory Accountability Act**	Passed by House in Jan. 2017; Bill would reduce costs of regs by requiring federal agencies to craft the least expensive regs they possibly can. Cost-benefit analyses become even more critical if made law.
House	H.R. 21 – The Midnight Rules Relief Act**	Passed by House in Jan. 2017; Bill would allow Congress to repeal, in a single vote, any rule finalized in the last 60 legislative days. It amends the Congressional Review Act to allow Congress to bundle multiple rules and overturn all of them with a resolution of disapproval.
House	H.R. 26 – The Regulations in Need of Scrutiny (REINS) Act**	Passed by House in Jan 2017; Bill would require House and Senate to pass a resolution of approval, which the President must sign within 70 legislative days, before any major regulation could take effect.
House	H.R. 985 – The Fairness in Class Action Litigation Act of 2017	Passed by House in early March. The legislation is intended to curb abuses in class action & mass torts litigation by tightening criteria for class certification & ensuring a larger portion of awards goes directly to injured members.
House	H.R. 1568 – The Transportation and Logistics Hiring Reform Act of 2017	In mid-March 2017, four Members introduced bill to create a national hiring standard for motor carriers (review of operating authority, required insurance and safety rating), and to exclude CSA data from being admitted as evidence in negligent hiring litigation.

** Note: Each of these bills were previously passed by the House but did not pass in the Senate.

RULEMAKING ACTIVITY

Agency	Name & Summary of Rulemaking	Status	Industry Impact
FMCSA	<p><u>Carrier Safety Fitness Determination</u> A proposal to amend the FMCSRs to adopt revised methods for carrier safety fitness determinations, a/k/a safety ratings. The proposed methods would determine when a motor carrier is not fit to operate commercial motor vehicles in interstate commerce based on (1) the carrier's CSA scores; (2) an investigation; or (3) a combination of on-road safety data and investigation information.</p>	<p>NPRM published on 01/26/2016; <i>FMCSA withdrew this rulemaking on March 23, 2017.</i></p>	<p>Would have linked a carrier's safety rating to its CSA scores. With recent withdrawal, the longstanding safety rating process that is based on compliance review outcomes will remain in place for the foreseeable future.</p>
FMCSA	<p><u>Entry Level Driver Training Standards</u> Establishes new minimum training standards for certain individuals applying for a CDL for the first time; an upgrade of their CDL (e.g., Class B holder seeking a Class A CDL); or a hazmat (H), passenger (P), or school bus (S) endorsement for the first time.</p>	<p>Final rule published on 12/08/2016; <i>Original effective date of 02/06/2017 has been delayed by the Trump Administration to May 22, 2017</i></p>	<p>The rule is designed to ensure drivers are properly qualified before receiving CDLs. It will raise the training bar, making it more difficult to get or upgrade a CDL. At the same time, it will likely improve the skills and safety performance of new drivers entering the industry.</p>
FMCSA	<p><u>Notice of Application for Exemption – Hair Testing</u> Notice provides information and comment period on petition filed by several large motor carriers seeking to have FMCSA allow hair analysis in lieu of urine testing for pre-employment drug testing of CDL holders.</p>	<p>Notice of Application for Exemption published on Jan. 19, 2017, and comment period was re-opened for another 60 days on Feb. 24, 2017.</p>	<p>This exemption, if granted, would allow six (6) large motor carriers to substitute hair tests for urine tests under the DOT drug-testing program. If granted, this petition would provide regulatory and cost relief for the six petitioning carriers only.</p>
FMCSA	<p><u>Notice of Application for Exemption – ELDs and Short-term Rental Trucks</u> This notice announces the Truck Rental and Leasing Association's (TRALA) request for an exemption from the requirement that a carrier install and require each of its drivers to use an ELD in trucks rented for 30 days or less.</p>	<p>Notice of Application for Exemption published on March 22, 2017; comment period closed on April 21, 2017.</p>	<p>This exemption, if granted, would provide ELD relief to all motor carriers that rent CMVs for periods of 30 days or less. According to TRALA, the ELD mandate will result in unintended technical and operational consequences that would unfairly and adversely affect short-term rental vehicles (and the renting motor carrier).</p>

Agency	Name & Summary of Rulemaking	Status	Industry Impact
NHTSA FMCSA	<p><u>Heavy Vehicle Speed Limiters</u> NHTSA and FMCSA proposed rules that would require CMVs with a GVWR of more than 26,000 pounds to be equipped with a speed limiting device initially set to a speed no greater than a speed to be specified in a final rule, and would require motor carriers operating such vehicles in interstate commerce to maintain functional speed limiting devices set to a specified speed for the service life of the vehicle.</p>	<p>NPRM published 09/07/2016; <i>this issue is being carefully evaluated by the Trump Administration, and its future is uncertain.</i></p>	<p>Minimal impact as all heavy trucks already have them, this would just make sure they are set and maintained. Some transit times could be affected if the chosen speed setting is lower than 65mph.</p>
NHTSA & EPA	<p><u>Fuel Economy Standards, Phase 2</u> Establishes new standards for medium and heavy-duty vehicles aimed at improving fuel efficiency and cutting carbon pollution (CO2). The standards promote a new generation of cleaner, more fuel efficient trucks by encouraging wider use of available technologies and the development of new, advanced technologies through MY 2027. They attempt to build on the phase I fuel efficiency and GHG emissions standards for MY 2014-18 trucks.</p>	<p>Final rule published on 10/25/2016; <i>Effective date of 12/26/2016; this rule is being carefully evaluated by the Trump Administration and its future is uncertain.</i></p>	<p>The cost of a new tractor and trailer will increase. On the flip side, increased fuel efficiency will benefit carriers as their overall fuel consumption falls. This will result in a decrease in operating cost per mile and a buffer against volatility in fuel pricing.</p>

ENFORCEMENT ACTION

FMCSA	While rulemaking activity within FMCSA has slowed to a crawl under the Trump Administration’s regulatory freeze, motor carrier enforcement activity continues unabated. In the two months since inauguration day, FMCSA has issued 96 orders of varying types in carrier-specific enforcement or safety rating proceedings.
FMCSA	Over the last two months (Feb & March 2017), FMCSA has used its “imminent hazard” authority to shut down two separate truck drivers (from TN and GA). While the facts in each case are different, FMCSA uses its ‘shut down’ authority when drivers or companies are found to be willfully and egregiously violating the federal motor carrier safety regulations.
FMCSA	In FY 2016 (Oct 1, 2015 – Sept 30, 2016), FMCSA conducted a total of 16, 705 compliance audits or investigations of motor carriers. This was a 13% increase over FY 2015, and likely a result of the CSA program. About 4% of these audits/investigations resulted in an Unsatisfactory rating, or an out—of-service order. Almost 30% (29.78% to be exact...) of these audits/investigations resulted in the assessment of a Notice of Claim (i.e., a civil fine).
NHTSA	No recent enforcement activity against heavy duty truck OEMs.

This STC Trucking Update is a regular report on recent and pending federal regulatory, enforcement and administrative initiatives by the U.S. Department of Transportation, and certain sub-agencies of the USDOT (including the Federal Motor Carrier Safety Administration (“FMCSA”) and the National Highway Transportation Safety Administration (“NHTSA”)) that impact the trucking industry at large.

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