

HOT TOPICS

President Trump Unveils First Budget – On May 23, 2017, President Trump released his first budget (for Fiscal Year 2018 and beyond) entitled, “A New Foundation for American Greatness.” This budget sets out a 10-year plan to balance the budget and begin to reduce the national debt as a percentage of GDP. Pres. Trump’s budget relies on a mix of cuts to a host of social programs, optimistic economic forecasting and cuts to non-defense discretionary funding to meet its fiscal targets. In addition to increased defense and border security funding, the budget supports “\$1 Trillion in Infrastructure Investments,” including surface transportation, airports, waterways, and ports, among other needs. Unsurprisingly, if adopted, the infrastructure program would liberalize highway tolling policy, and allow private investment in both tolling and highway rest areas. Discretionary spending for the U.S. DOT, which is separate from funding from the fuel-tax funded Highway Trust Fund, would be cut by \$2.4 billion, or nearly 13%, from annualized 2017 levels. The Federal Motor Carrier Safety Administration fares well in the budget proposal getting increases for its federal programs (e.g., compliance audits and CSA) and its safety grants to States.

Some Top USDOT Slots Filled; Modal Transportation Positions Remain Unfilled – On May 16, 2017, the Senate confirmed Jeff Rosen to be Deputy Secretary of DOT. Rosen will be the top lieutenant for Secretary Elaine Chao to assist with the President’s infrastructure program along with running the Department. Also, in late May, Secty Chao announced the filling of several top policy slots within her office. Lastly, as of late May, Pres. Trump and his 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.).

Entry Level Driver Training Rule Further Delayed – For the third time since Pres. Trump took office, **on May 22, 2017**, the USDOT again delayed implementation of the new CMV driver training rule published late in the Obama Administration.

Hours of Service Restart Study Finalized – In March 2017, the USDOT transmitted to Congress a 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 study investigated the operational, safety, fatigue and health impacts (the outcome metrics) of these two restart provisions on drivers working normal schedules and performing 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 outcome metrics and reconfirmed that a simple, 34-hour restart period provided drivers needed rest time to recover from cumulative fatigue. As a result, the July 2013 restart provisions may not be re-imposed by FMCSA.

Electronic Logging Devices (“ELDs”) - The December 2017 ELD compliance date is fast approaching, and FMCSA guidance to States and industry on how the mandate will be enforced remains under development. An important software program (called ‘eRODS’) 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 to appeal its case to the U.S. Supreme Court. The Supreme Court will likely decide by the end of June whether it will hear the case. There is **no** information to suggest the Trump Administration will alter this rule or the compliance date.

Automated Vehicle/Truck Policy – As a result of Secty Chao’s ongoing review of NHTSA’s draft “Federal Automated Vehicles Policy,” developed by the Obama Administration, the future of NHTSA’s policy approach is unclear. FMCSA’s efforts to develop truck-specific AV guidance took a step forward in April when the agency published a Notice containing a series of questions, and held a well-attended public listening session in Atlanta, GA.

RULEMAKING ACTIVITY

(Note: USDOT has not published a monthly “Significant DOT Rulemakings Report” since President Trump took office)

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 June 5, 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 closed in late April 2017.</p> <p><i>Note: In May 2017, House & Senate members pressed DHHS for new hair testing procedures.</i></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>

Agency	Name & Summary of Rulemaking	Status	Industry Impact
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><i>Decision likely in Summer 2017.</i></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>
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 remains 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 remains 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>
FMCSA	<p><u>Obstructive Sleep Apnea & Minimum Financial Responsibility</u></p>	<p>No recent action; <i>both issues remain under review by the Trump Administration.</i></p>	<p>TBD</p>
FMCSA	<p><u>Split-sleeper Berth Pilot Program</u></p>	<p>In July 2017, FMCSA will initiate data collection as part of its split-sleeper berth pilot program.</p>	<p>If split-sleep options are found to be restorative and safe, a change in the split-sleeper berth rules could provide substantial flexibility for drivers using sleeper berth-equipped trucks.</p>

COMPLIANCE & ENFORCEMENT ACTION

Agency	Compliance & Enforcement Actions
FMCSA	While rulemaking activity within FMCSA has slowed to a crawl under the Trump Administration, motor carrier enforcement activity continues unabated. In the 4 months since inauguration day, FMCSA has issued 143 orders of varying types in carrier-specific enforcement or safety rating proceedings.
FMCSA	Over the last two months (March & April 2017), FMCSA has used its “imminent hazard” authority to shut down one truck driver (from KY) and an individual trucking company (from AL). 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.
DOT Office of Inspector General & Federal Prosecutors	In April 2017, a Virginia-based trucking company and its executives were charged with 126 felony counts including conspiracy, falsifying records, false statements, wire fraud and conspiracy, and money laundering conspiracy related to hours of service and labor law violations. In May 2017, the executives of the company struck a deal with prosecutors and plead guilty to lesser charges. As part of the deal, the executives and the company agreed to pay a fine of \$250,000, forfeit \$2,000,000 of fraudulently gained proceeds, and pay approx. \$1,000,000 in restitution to drivers who were defrauded of their pay.
NHTSA	In April 2017 NHTSA upgraded an ongoing investigation into windshield wiper motor failures on a potential 193,000 MY 2015-16 Freightliner Cascadias. The investigation began after NHTSA received several consumer reports of wiper failures during rainstorms.
CVSA, FMCSA, PHMSA, CCMTA Transport Canada, & SCT of Mexico	From June 6-8, 2017, CVSA will partner with FMCSA and other North American government agencies to conduct the 30 th annual International Roadcheck event, the largest targeted enforcement program on trucks and buses in the world. International Roadcheck is an annual 3-day event when certified inspectors conduct compliance, enforcement and educational initiatives targeted at various elements of carrier, vehicle and driver safety. The focus of this year’s event is the proper securement of cargo.

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.

This report is created and maintained by the staff of Scopelitis Transportation Consulting, LLC, and may not be reproduced or redistributed without its written consent. The material contained in this Update is not exhaustive and should not be regarded or relied upon as individual advice or opinion. STC would be pleased to provide more specific information or individual advice concerning any of the covered issues upon request.