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SPECIAL POINTS OF INTEREST

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PROPOSED TRUCK DRIVER COERCION RULE WILL IMPACT SHIPPERS AND OTHER SUPPLY CHAIN STAKEHOLDERS

In May, 2014, the Federal Register published the FMCSA's Notice of Proposed Rulemaking (NPRM) on Coercion of Commercial Motor Vehicle Drivers. The proposed regulations would prohibit motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to operate commercial motor vehicles in violation of certain provisions of the FMCSA Safety Regulations, including drivers' hours of service limits among others. Violation of the new regulations could carry a civil penalty of up to \$11,000 per offense.

What does this mean to shippers, receivers, and transportation intermediaries, such as freight brokers or freight forwarders? In practical terms, it means that the above-mentioned stakeholders cannot coerce a driver to violate federal safety rules—such as hours of service regulations—in order to make that on-time delivery. It means that setting a narrow delivery window may no longer be an option for consignees, since not asking a driver about his or her hours and expecting them to stick to a contractual delivery time could lead to a charge of coercion. Essentially, the FMCSA is shifting more of the policing of safety regulations onto the shipper and freight intermediaries.

At the recent Transportation & Logistics Council conference, Hank Seaton, an attorney with the Seaton & Husk law firm, said that the coercion rulemaking will force changes in shipper practice. "Prepare to pay detention charges and accommodate carrier unloading on arrival," he said. "A lot of receivers say 'if it's not here on time, we'll reject it,'" he added. But not for much longer.

"The concept of 'reasonable dispatch' (delivery within a reasonable amount of time, depending on conditions) is really what shippers are going to have to live with. That whole dynamic is going to come into play as a result of the regulatory focus on safety."

Reaction to the proposed rules has been mixed. Some trucking industry groups, such as the American Trucking Association (ATA) and Owner-Operator Independent Drivers Association (OOIDA) are tentatively supportive. In comments submitted to the FMCSA, the OOIDA said that the FMCSA's focus "from one that attempts to identify motor carrier safety violations after they have occurred to one that addresses the source and causes of many of such violations" represented a sea change on the part of regulators.

The ATA said "it recognizes that shippers, receivers and intermediaries, as part of a single supply chain, can have an impact on driver and carrier safety", but that they would like to see a "clear and convincing" evidentiary standard when it comes to review of coercion claims.

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PROPOSED TRUCK DRIVER COERCION RULE IMPACT

Shippers, on the other hand, have been less than thrilled about the proposed rulemaking. The shipper group NAS-STRAC called the proposal “a stunning overreach and abuse of regulatory power”, certain to do “more harm than good.” The Transportation Intermediaries Association (TIA) said the proposal would create new liabilities for shippers and truck freight brokers. And the National Industrial Transportation League said it would impose “unworkable and impracticable” requirements on shippers and receivers, in effect requiring them to inquire whether a driver assigned to their load is working within hours of service regulations.

The National Customs Brokers and Forwarders Association of America (NCBFAA) warns of opening a Pandora’s box of unintended consequences for non-carrier parties, and said the rules “need to be carefully tailored to more properly address the source of the problem concerning the coercion of truck drivers.” The NCBFAA is concerned that the definition of coercion is “ambiguous and overbroad”, a concern that is shared by other shipping organizations. “Shippers and transportation intermediaries typically hire trucking companies rather than

the drivers those companies employ.” This begs the question of who, in the end, is responsible for coercion and who should be penalized.

All of the industry comments posted demonstrate that the proposed rulemaking has opened a floodgate of concerns about FMCSA policy, which is increasingly targeting the supply chain beyond just the truck or the trucking terminal.

Former FMCSA Administrator Anne S. Ferro told shippers, logistic providers, and carriers at the TLC annual conference last year that “safety has got to be part of the supply chain, part of logistics planning, just as sustainability and efficiency are.” During her tenure, Ferro has focused the agency’s regulatory strategy on driver behavior and factors that influence driver health, welfare and safety, including detention time at shipper and receiver docks.

SOURCE: Federal Register Proposed Rule - 5/13/14; Journal of Commerce articles—5/2014 through 3/2015; Transportation & Logistics Council news release posted on website.

FIVE SIMPLE RITUALS TO ENHANCE YOUR PRODUCTIVITY

Despite working 40, 50 or even 60 hours each week, we are probably only producing high-quality work a portion of our work day, given factors like texting, online distractions, snacking, and poor time management. Here are a few practical steps to incorporate into your daily routine to optimize your work time and maintain productivity throughout the day.

- **7 minutes of exercise.** Why 7? It’s short enough not to impact your morning routine and long enough to shake off the morning sluggishness. There are plenty of routines out there—even an app for one. Find one that targets all major muscle groups and works for you.
- **Start out green.** We know we shouldn’t skip breakfast, but most of us want something quick and easy, like a bagel or a coffee shop breakfast sandwich or a cup of yogurt. Try a green smoothie instead. It fits the bill by being quick and easy, and packs tons of energizing ingredients that will provide you with a lift that will get you through your morning. Choose your favorite fruit, vegetable, seeds, and juice combination.
- **Pick 3 wins for the day.** While your smoothie is blend-

ing, decide on 3 things you would like to accomplish in the next 12 hours that will make you feel that your day has been a success. Focus and strategy go a long way toward achievement.

- **Block your time.** A to-do list is a great tool, but it can stare you in the face as a still-to-do list if you don’t allocate the time to accomplish each task. Blocking time on your calendar and adding about 1/3 more time than you estimate can be an effective way to make your to-do list a done list.
- **Power up after lunch.** Call it professional meditation. Take just 10 or 15 minutes after lunch to refocus on your day—*away from your desk*. Think about the goals you set for yourself for the day and where you are with them. Ahead of schedule? Great! Behind? Use this time to help identify where you got derailed, what is causing distractions, and how you can get back on track.

Try this routine for a week and see if you like the results!



WHERE THERE IS A SEA, THERE *Aarr!* PIRATES

We all have in our mind's eye a picture of pirates as we remember them from our childhood imaginings. They wear knee breeches, poofy white shirts, and sashes around their waist. They may have a glass eye or a black patch and invariably sport impressive scars; they are rarely without a tri-corn hat or a rag wrapped around their head. Weapons of choice would include a cutlass, a scimitar or a blunderbuss—preferably all three. They are dirty, nasty, evil, and foul-mouthed. They all sail under one flag—the Jolly Roger—and owe allegiance to no one.

We may see them as anything from swashbuckling scallywags to ruthless evil personified...Captain Hook, Captain Jack Sparrow, Blackbeard. But however we envision them one thing is irrefutable—we know a pirate when we see one.

Or do we? Pirates do exist—not just in the pages of adventure books and on movie screens, but in real life. Unlike our romanticized versions, the real ones are not very amusing. Many employ sophisticated navigational tools, carry automatic weapons and plastic explosives, and have access to inside information. The International Maritime Bureau (IMB) revealed that there were 245 incidents of piracy reported worldwide in 2014. This represents an overall 44% drop since the Somali piracy peak in 2011, but an increase from 2013, including a 45% increase in the number of crewmembers taken hostage. Reports of piracy activity ranged from sightings of suspicious vessels to being boarded, fired upon, or hijacked. Of the 245 reported incidents, 21 were hijackings, 183 were boarded, and 13 were fired upon. Pirates killed 4 crewmembers, injured 13, and kidnapped 9 from their vessels. The figure cited does not take into account all of the unreported piracy-related incidents.

Contrary to common belief, piracy is not limited to the waters off Africa. You may be surprised to learn that only 55 of the incidents reported in 2014 were attributed to Africa, while 34 were off the Indian subcontinent and a whopping 141—almost 58% - took place off Southeast Asia.

Piracy is seen as an increasing threat in ASEAN member states (Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam), according to the Nautilus Institute for Security and Sustainability (NISS). Based on research by Dr. Carolin Liss, PhD, Murdoch University, this can be attributed to a number of causes, including over-fishing, lax maritime regulations, the existence of organized crime syndicates, the presence of radical politically motivated groups in the region, and widespread poverty.

This is potentially extremely dangerous for the ships and crew that are the victims of piracy, especially since the



perpetrators are increasingly prepared to use violence to achieve their goals. But there is a bigger picture as well, a larger problem for shippers and the shipping industry as a whole.

Just the very risk of piracy is enough to increase costs for shippers due to higher insurance premiums and increased security costs, including in some cases the hiring of armed guards. In addition, ships may be deterred from using ports that are deemed to be security risks due to the waterways that would need to be used to access them, which can have significant economic implications for the port's country.

"The global increase in hijackings is due to a rise in attacks in Southeast Asia," said Pottengal Mukundan, Director of IMB, whose Piracy Reporting Centre has monitored world piracy since 1991. "Gangs of armed thieves have attacked small tankers in the region for their cargoes, many looking specifically for marine diesel and gas oil to steal and then sell." He went on to say that it is important that these gangs are caught and punished under the law, before the attacks become more audacious and violent.

While Asian attacks have tended to be less serious in nature than those in the Horn of Africa, the maritime industry says that ship owners, faced with increasing costs and lower revenues due to the global financial crisis, have cut the size of crews—and in some cases their wages—a situation that leaves the door open to piracy, or can lead to complicity by crew members with pirates.

Dr. Liss believes that successfully responding to piracy will require having to also address the root causes, rather than merely relying on continuing to patrol piracy-prone waters.

SOURCE: Int'l Chamber of Commerce news; Nautilus Institute policy forum report; coverage on Journal of Commerce, BBC News, CNN News

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TRIVIA

1. Who invented dynamite?
2. "All happy families are alike; each unhappy family is unhappy in its own way." These are the opening lines of what famous literary work: Jane Austen's *Pride and Prejudice*, Leo Tolstoy's *Anna Karenina*, F. Scott Fitzgerald's *The Great Gatsby*, or Edith Wharton's *Ethan Frome*?
3. Before playing in the majors, Jackie Robinson played with the minor league Montreal Royals, the top farm club of which organization: Milwaukee Brewers, St. Louis Cardinals, Brooklyn Dodgers, or Chicago White Sox?
4. Which U.S. president threw out the most Opening Day pitches?

Click here for answers to Trivia questions.

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