

THE SOURCE

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FMCSA FINALIZES DRIVER COERCION RULES

The Federal Motor Carrier Safety Administration (FMCSA) has published their Final Rule prohibiting coercion of commercial motor vehicle (CMV) drivers. Set to go into effect on January 29, 2016, the new regulations prohibit motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to operate CMV's in violation of certain provisions of the FMCSA safety regulations—including drivers' hours-of-service limits; the commercial driver's license (CDL) regulations; drug and alcohol testing rules; and the Hazardous Materials Regulations (HMR) - in order to make on-time deliveries. In addition, the rule prohibits anyone who operates a CMV in interstate commerce from coercing a driver to violate the commercial regulations.

The rule allows for the government to take legal action against any of the entities listed above if they are found to have imposed coercion on a driver into violating the aforementioned safety standards. Coercion is defined as "a threat...to take or permit any adverse employment action against a driver", including but not limited to "threats of violence, demotions, reduction of pay, and withdrawal or reduction of benefits, or any actions that is capable of dissuading a reasonable employee from engaging in whistleblowing activity." The final rule also creates channels for truckers to report suspected coercion, steps the FMCSA can take in response to allegations of coercion, and possible penalties.

Truckers must report suspected coercion within 90 days of the incident and provide as much evidence as possible to support their claim, including texts and emails. In addition, the trucker must also include their response to the request to violate federal safety standards, and name any potential witnesses who could bolster their case.

The accused will have an opportunity for a hearing with the FMCSA to defend themselves, and the burden of proof will fall on the FMCSA, which will investigate the claims. Penalties for those found guilty of coercion include civil fines of up to \$10,000 per offense and the possibility of losing operating licenses and authority.

This rulemaking is authorized by S32911 of the MAP-21 and the Motor Carrier Safety Act of 1984, as amended. It builds on the 1984 Act, which conferred authority on the DOT to regulate drivers, motor carriers, and vehicle equipment. The 1984 Act stated that at a minimum, the regulations shall ensure that—(1) CMV's are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMV's do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMV's is adequate to enable them to operate the vehicles safely; and (4) the operation of CMV's does not have a deleterious effect on the physical condition of the operators.

OF INTEREST

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FMCSA FINALIZES DRIVER COERCION RULES *continued from page 1*

This new rule enacts a fifth requirement, i.e., that the regulations ensure that “(5) an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of regulation promulgated under this section (S 32911 of MAP-21), or chapter 51 or chapter 313 of this title [49U.S.C. 31136(a)(5)].”

There are two separate prohibitions. One prohibits motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to violate certain regulations. The second prohibits entities that operate CMV’s in interstate commerce from coercing drivers to violate the commercial regulations. While the second is not immediately related to safety, it is nonetheless consistent with the goals of S31136 (authority for many parts of the FMCSRs) and, according to the FMCSA, will help inhibit the growth of a culture of indifference to regulatory compliance.

In the 1980’s, Congress implemented new financial responsibility requirements for motor carriers of property and passengers to encourage the insurance industry to exercise greater scrutiny over the operations of motor carriers as one method to improve safety oversight. S32911 of MAP-21 represents a similar congressional decision to expand the reach of motor carrier safety regulations from the supply side (drivers and carriers) to the demand side (shippers, receivers, brokers, freight forwarders, travel groups, and others that hire motor carriers to provide transportation and whose actions have an impact on CMV safety).

Drivers and others who testified at FMCSA listening sessions and before Congress said that some motor carriers, shippers, et. al., insist that a driver deliver a load or passengers on a schedule that would be impossible to meet without violating the HOS or other regulations. Drivers may also be pressured to operate vehicles with mechanical deficiencies, despite the restrictions imposed by the safety regulations. Drivers who object that they must comply with the FMCSR’s are sometimes told to get the job done despite the restrictions imposed by the safety regulations. The consequences of their refusal to do so are either stated explicitly or implied in unmistakable terms: loss of a job, denial of subsequent loads, reduced payment, denied access to the best trips, etc.

It must also be noted that, according to the FMCSA’s assistant administrator and chief safety officer, the agency sees on av-

erage fewer than 10 coercion complaints each month, although he does expect the number of reported cases to increase once the rule is in place.

While there seems to be support for prohibiting coercion by a cross-section of individuals and organizations, there has also been concern expressed about the possibility of unintended consequences. For example, if a driver assigned by a motor carrier shows up to pick up a load and advises the shipper or intermediary that he or she cannot lawfully handle the load due to HOS or other concerns, is it then coercion if the shipper or intermediary calls the carrier and requests another driver? Or if a shipper attempts to confirm a delivery appointment with the driver, does that equate to directing the driver to complete a run in a certain time? It may not to the shipper, but the driver may have a different interpretation.

The FMCSA responded to these concerns by acknowledging them as unintended consequences of the proposed definition of “coercion”. The Agency has, therefore, amended the reference to the withholding of “current or future business, employment, or work opportunities” by striking the reference to “current or future” business and adding the phrase “take or permit any adverse employment action”. Thus, if a shipper or intermediary requests another driver or gives the load to a different carrier, neither action would force the driver to violate the FMCSR’s, nor would it involve a threat to take other adverse action against the driver.

Furthermore, the final rule does not require shippers, receivers, and transportation intermediaries to monitor or inquire into a driver’s available hours unless the driver raised an objection to the delivery schedule; and an inquiry would not be necessary if the shipper or intermediary agreed to change the delivery schedule or arranged with the carrier to provide a different driver for the load.

There were many other questions and concerns raised in the comment period, too many to enumerate here. To read them and the FMCSA response, and to view the full text of the Final Rule, [click on this link](#).

SOURCE: Federal Register.

CONGRESS PASSES MULTI-YEAR HIGHWAY BILL

In an increasingly rare show of bipartisanship, after years of short-term funding patches and just in time to beat the December 4 deadline for the expiration of the existing short-term transportation bill, the House has passed a bill by a vote of 359 to 65 to provide \$305 billion over the next 5 years to repair and expand highways, bridges, and transit. The Senate is expected to pass the reauthorization bill and President Obama has said that he will sign the bill into legislation, both of which will have happened by the time you are reading this article.

The 1,300-page measure, known as the Fixing America's Surface Transportation Act, or FAST Act, is designed to, among other things, free up highway bottlenecks, increase the number of buses and ferries, enhance high-tech information sharing to reduce congestion, and lift the monetary cap on damages in railway accidents from \$200 million to \$295 million.

In a [joint statement](#), Congressional lawmakers said that the agreement would provide "long-term certainty for states and local governments, and good reforms and improvements to the programs that sustain our roads, bridges, and passenger rail system."

While everyone has agreed all along that a long-term bill financing the Highway Trust Fund was needed and a desirable goal, the devil has been in the details of where the money was supposed to come from.

Historically, the HTF has been funded by the federal gas tax, which has been set at 18.4¢ per gallon since 1993. The fact that the tax is not indexed to inflation, coupled with the greater fuel efficiency of cars, has led to shortfalls since 2008, which Congress has covered with general funds in short-term measures.

But proposals for raising the gas tax, indexing it to inflation, and tying the funding for highway repairs and improvements to monies collected from the users were blocked by the Republican majority, and President Obama's proposal to tax corporate profits now held overseas did not inspire Congress to embark on a corporate tax overhaul. So Congress has devised other ways to make up the \$15 billion per year shortfall, and not all of them are very popular.

The bill will claim \$53 billion from Federal surplus funds over the next ten years; banks will see a \$6.9 billion reduction of Federal Reserve dividends; \$6.2 billion will come from the sale of a portion of the Strategic Petroleum Reserve; \$5.2 billion will come from indexing fees paid to Customs and Border Protection for inflation; and an estimated \$2.4 billion more by allowing the IRS to hire private tax collectors.

You can find the bill in its 1,300-page entirety by [following this link](#).

SOURCE: House Transportation and Infrastructure Committee press release; December 3, 2015 online coverage from The New York Times, NPR, USA Today, Market Watch, Bloomberg.



FEDEX DELIVERS TREES FOR TROOPS

FedEx Corp. and the Christmas SPIRIT Foundation, the charitable branch of the National Christmas Tree Foundation, are joining forces again to bring Christmas trees to our troops and their families through the Trees for Troops program.

Since 2005, more than 157,000 free, farm-grown Christmas trees have been provided to troops in all branches of the military and military families in the U.S. and overseas through this program. Thousands of trees are donated by American farm families and the public, and FedEx delivers these trees to more than 65 military bases in 17 countries. FedEx has logged more than 573,000 ground miles for the Trees for Troops program.

Christmas tree growers have been providing free trees for military families for years. In 2005, FedEx contacted the SPIRIT Foundation about becoming involved in this mission. Together the two organizations expanded the idea of providing Christmas trees to military families, and Trees for Troops was born.

Anyone wishing to donate to Trees for Troops or become involved in any way can obtain information at www.treesfortroops.org.

SOURCE: Christmas SPIRIT Foundation website; FedEx website; Trucking Info website.



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TRIVIA

1. Who narrated the original 1966 TV show *How the Grinch Stole Christmas*?
2. Who was the Greek king at the time of the Hanukkah story—Ahasveros, Antiochus, Alexander, or Antigone?
3. How many gifts would you receive in total if you received all of the gifts in the song "The Twelve Days of Christmas"?
4. We are told that three magi, also known as the three kings or three wise men, came to Bethlehem to adore baby Jesus, bearing precious gifts from their homelands. Can you name the three magi and their gifts?

[Click here for answers to Trivia questions.](#)