

EEI Fleet Management and Policy Committee

Regulatory Update

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May 19, 2009*

USV Hours of Service Exemption

The Safe, Accountable, Flexible, Efficient, Transportation Equity Act-A Legacy for Users (SAFETEA-LU), signed into law August 10, 2009, exempted operators of utility service vehicles from application of the DOT hours of service rules.

This change was opposed by the Commercial Vehicle Safety Association (CVSA), safety advocacy groups and the Teamsters.

CVSA has identified repeal of the USV exemption as a legislative priority as Congress prepares to reauthorize SAFTEA-LU, which expires September 30, 2009. Rep. Jim Oberstar, Chairman of the House Transportation and Infrastructure Committee has said he intends to pass a bill through his committee by mid June, although a final bill is unlikely to emerge from Congress this year. CVSA representatives are currently lobbying against the USV exemption with T&I Committee members and others.

CVSA recently issued a news release citing an analysis by DOT's Volpe research center erroneously claiming the analysis shows the effect of the exemption has been to diminish highway safety. In order to protect the exemption, it will be necessary to counter the arguments made by CVSA and others as Congress continues to develop the reauthorization bill.

Hours of Service Final Rule

A final rule governing the amount of time ("hours of service") a driver may operate a commercial motor vehicle was published in the November 19, 2008 Federal Register. While the hours of service rules no longer apply to "utility service vehicles", some utilities may continue to be operating over-the-road equipment under these rules.

The final rule keeps in place two controversial provisions and is the subject of continuing litigation and possible intervention by Congress. Two primary issues in contention are the question of how much time a driver may operate a vehicle during a daily "tour of duty", and whether, and to what extent, a driver may "restart the clock" for purposes of calculating permissible driving time over the course of several days.

In 2003 the rules were revised to permit 11 hours of driving time within a 14-hour period from the time a driver begins work, after the driver has been off-duty for a period of at least 10 consecutive hours. Prior to the change, drivers could in effect "extend" their workday by taking breaks during the day. Under the 2003 rules, (which were re-issued in

a 2005 rulemaking) a driver may not drive after the 14th hour from clocking in, until he or she has had at least 10 consecutive hours off-duty. It does not matter how long the driver has actually operated the vehicle or how much off-duty time may have been taken during the course of the 14-hour period.

Another change in the 2003/2005 rules was to permit a driver to “restart” the weekly “clock” at any time after he or she has obtained at least 34 hours of consecutive off-duty time. The “weekly clock” requirement limits a driver’s on-duty time to 60 hours in any seven consecutive days, or, if the fleet operates seven days a week, 70 hours in any eight consecutive days. An effect of the 34-hour restart provision is to permit an extra 14-hour shift every 7 days. It also permits a “short week” to be “restarted”. For example, a driver could work two consecutive days of 14-hour shifts, and be off the following day. When off-duty for at least 34 consecutive hours, the “weekly” 7 or 8-day period may be “restarted.”

The 11-hour driving rule and the 34-hour restart provision have been the subject of litigation brought by safety advocacy groups and the Teamsters who claim these provisions undermine safety. In July 2007, the U.S. Circuit Court of Appeals for the District of Columbia remanded the rule to the Federal Motor Carrier Safety Administration (FMCSA) to remedy procedural deficiencies.

In December 2007, FMCSA issued an interim final rule retaining the 11-hour driving rule and the 34-hour restart. The final rule published in the November 19 Federal Register also retains these provisions.

Electronic On-Board Recorders

Key Democrats in Congress and safety advocacy groups continue to put pressure on the Federal Motor Carrier Safety Administration to require electronic on-board recorders (EOBRs) on all commercial vehicles as a means of enforcing driver hours of service (HOS) rules. While the hours of service rules no longer apply to “utility service vehicles”, some utilities may continue to be operating over-the-road equipment under these rules.

FMCSA issued a proposed rule in December 2006 that would require the devices be used for HOS compliance by a limited number of fleets with a demonstrated history of serious HOS violations. These are carriers charged with two serious violations in a two-year period (rate of violation greater than 10%) as a result of compliance reviews.

On November 19, 2008, the Federal Motor Carrier Safety Administration submitted a final rule to the White House Office of Management and Budget for review. There was an expectation that this rule would become effective before the end of the Bush Administration. However, this did not happen, leaving open the prospect that the new Administration may redraft the rule in a way that will place greater burdens on industry. There is also a good chance that Congress will weigh in with new legislation. Recently, Senators Frank Lautenberg (D-NJ) and Diane Feinstein (D-CA) and Rep. James Oberstar

(D-MN) have indicated they will introduce bills requiring a universal EOBR mandate if FMCSA does not act to do so.

Entry-Level Driver Training

The Federal Motor Carrier Safety Administration is developing a final rule on entry-level driver training of commercial drivers that, as proposed, will be significantly more comprehensive, and expensive, than current requirements. The agency's proposed rules, published in December 2007, call for 44 hours of behind-the-wheel training and 76 hours of classroom training at an accredited institution before a driver may test for and receive a Class A CDL.

On May 14, 2008, EEI submitted formal comments to the docket as follows:

- The tasks required of a utility service technician/lineman are far removed from those of a truck driver operating a large tractor trailer over long distances. EEI member-companies currently provide extensive and effective training in the use of our specialized equipment; training that is tailored to industry needs. These programs ensure that our employees operate equipment safely and in compliance with federal and state requirements.
- EEI strongly recommends that FMCSA abandon any proposal for accreditation (or third-party curriculum certification) of entry level truck driver training programs.
- Trade school accreditation standards are designed for proprietary educational institutions and are inappropriate to management of entry-level commercial driver training programs.
- An accreditation requirement would be extremely costly to employers and employees alike
- If FMCSA ultimately determines that additional entry-level training oversight is required, a superior approach to either accreditation or third-party certification would be enforcement by means of standard DOT compliance audits.
- EEI objects to the idea of a one-size-fits-all standardized curriculum. The specialized training we provide is highly effective. If FMCSA ultimately determines more standardization is required, we offer to work with the agency to develop something appropriate to our industry.
- EEI objects to the proposal that skills instructors have at least two years commercial vehicle driving experience. This proposed standard is inconsistent with industry practice and would severely limit the number of qualified individuals available to perform this service.

- FMCSA provides no data to substantiate its assumed benefits in terms of reduced crashes. The Agency has not constructed an adequate benefit-to-cost rationale for the proposed rule.

The timing for completion of this rulemaking is uncertain.

Reform of Truck Size and Weight Rules

Rising fuel costs, the need to reduce energy consumption and limit greenhouse gasses, and worsening highway congestion have focused the attention of fleet operators on the need for more productive commercial vehicles.

Several business coalitions have formed in Washington to press for higher federal weight limits. Generally they favor increasing the limit from 80,000 to 97,000 lbs. with the addition of a 6th axle. There are a number of carriers and shippers that would also like to see a relaxation of federal limits on Longer Combination Vehicles, but for the most part they have remained on the sidelines.

On March 30, Rep. Michael Michaud (D-ME) introduced the “Safe and Efficient Transportation Act (H.R. 1799) to allow states to permit vehicles up to 97,000 lbs. with use of the additional axle.

National Registry of Certified Medical Examiners

The Federal Motor Carrier Safety Administration has initiated a rulemaking to create core curriculum specifications for certification of medical examiners qualified to perform the physical exams required of commercial drivers and establish a national registry.

The curriculum is expected to encompass initial training requirements and testing as well as periodic re-training and testing.

Driver Medical Certificate Tied to Commercial Driver’s License

The Federal Motor Carrier Safety Administration published a final rule December 1, 2008 requiring that CDL holders provide a copy of their medical examiner’s certificate to their state driver licensing agency. States are required to record this information on the Commercial Driver License Information System (CDLIS).

Specifically, the Rule requires states to 1) record a CDL driver's self-certification regarding type of driver (e.g., interstate (non-excepted or excepted) and intrastate (non-excepted or excepted) on the CDLIS driver record; 2) modify their CDL procedures to require submission of the medical examiner's certificates (or a copy) from those drivers operating in non-excepted, interstate commerce who are required by part 391 to be medically certified; 3) post the required information from the certificate onto the CDLIS driver record within 10 days; 4) update the medical certification status of the CDLIS driver record to show the driver as “not-certified” if the certification expires; and, 5) downgrade the CDL within 60 days of the expiration of a driver certification.

Also under the Rule, motor carriers who employ a covered CDL driver will be required to place his or her current CDLIS record documenting the driver's medical certification status in the driver qualification file before allowing the driver to operate a commercial motor vehicle. Carriers will no longer be permitted to use a copy of the medical examiner's certificate to document physical qualification in the driver qualifications file, except for up to 15 days from the date stamp on the receipt provided to the driver by the state licensing agency. After the 15th day, the carrier must have obtained a copy of the CDLIS motor vehicle record as documentation that the driver is medically "certified".

With respect to driver responsibilities, under current regulation, interstate CDL drivers subject to part 391 are responsible for providing a copy of the medical examiner's certificate to the motor carrier and for carrying a copy of the certificate while operating a commercial vehicle. Under the final rule, drivers will be required to provide the medical examiner's certificate to the state licensing agency. The date-stamped medical examiner's certificate (or a copy) may be used as proof of medical certification for 15 days. After that period, the driver will no longer be permitted to use the medical examiner's certificate as proof of certification to enforcement personnel or employers. Drivers will also no longer be required to carry the actual medical certificate in the vehicle.

States are required to comply with the technical requirements of the program by January 30, 2012. Drivers are required to submit to the state licensing agency the self-certification on whether they are subject to the physical qualification rules by January 30, 2014.

Bill Offers Tax Credits for New Safety Systems

The "Commercial Motor Vehicle Advanced Safety Technology Tax Act of 2009" (H.R. 2024) introduced April 22 by Representatives Mike Thompson (D-CA) and Geoff Davis (R-KY) would amend the Internal Revenue Code of 1986 to provide a credit against income tax to help accelerate the adoption of advanced safety systems for commercial vehicles.

The systems covered in this bill include brake stroke monitoring systems, vehicle stability systems, lane departure warning systems and collision warning systems.

H.R. 2024:

- Creates a tax credit for fleet owners valued at 50 percent of the retail cost of the system with a maximum of \$1,500 per technology;
- Allows fleets to purchase multiple technologies, but limits the total amount of credit permissible to \$3,500 per vehicle;
- Allows the overall tax credit for each truck owner or trucking company of up to \$350,000 per year for all covered technology purchases.

The legislation encompasses both the original equipment and aftermarket installation.

Safety Info Added to FMCSA Website

The Federal Motor Carrier Safety Administration has recently added several safety information resources to its website. These include:

- CMV Web-Based Driving Tips: Video clips demonstrating dangerous driving behaviors which are suitable for driver training programs
(<http://www.fmcsa.dot.gov/about/outreach/education/driverTips/index.htm>)
- Analysis of Benefits and Costs of Roll Stability Control Systems for the Trucking Industry
(<http://www.fmcsa.dot.gov/facts-research/research-technology/report/09-020-RP-Roll-Stability.pdf>)
- Analysis of Benefits and Costs of Forward Collision Warning Systems for the Trucking Industry
(<http://www.fmcsa.dot.gov/facts-research/research-technology/report/09-021-RP-Forward-Collision.pdf>)
- Analysis of Benefits and Costs of Lane Departure Warning Systems for the Trucking Industry
(<http://www.fmcsa.dot.gov/facts-research/research-technology/report/09-022-RP-Lane-Departure.pdf>)
- Benefit-Cost Analyses of Onboard Safety Systems
<http://www.fmcsa.dot.gov/facts-research/research-technology/tech/09-023-TB-Onboard-Safety-Systems-508.pdf>

NTSB Seeks Mandatory Use of Safety Technologies

The National Transportation Safety Board has recommended that DOT act to require the use of several new safety technologies on commercial vehicles including lane departure warning systems, fatigue monitoring systems and electronic on-board recorders. NTSB also recommended that FMCSA:

- Develop and disseminate educational material for transportation industry personnel and management regarding shift work; work and rest schedules; and proper regimens of health, diet, and rest;
- Develop and use a methodology that will continually assess the effectiveness of the fatigue management plans implemented by motor carriers, including their ability to improve sleep and alertness, mitigate performance errors, and prevent incidents and accidents.

There is no indication at this time that DOT intends to move quickly on the NTSB recommendations.

Fatigue Technologies

A number of new technology applications designed to fight driver fatigue have been introduced in recent years.

These include the following:

- **Lane departure warning systems:** These systems monitor the location of the vehicle within the lane and alert the driver when the vehicle drifts from the lane. The FMCSA has developed voluntary standards for functional, data, hardware and software, interface, and maintenance and support requirements;
- **Driver behavior systems:** An example is the PERCLOS system which measures the rate of the driver's eyelid closure. DOT is currently conducting a field operational test to evaluate effectiveness;
- **Steering wheel monitoring systems:** Monitor steering wheel input.

The National Transportation Safety Board has formally recommended to DOT that it develop mandatory rules for deployment of fatigue devices in commercial motor vehicles. While FMCSA is currently developing a voluntary program called the "North American Fatigue Management Program for Commercial Motor Carriers"; a compilation of best practices, there are no current plans for new mandatory requirements.

Anti-Idling Regulations

At least 26 states and many local jurisdictions impose anti-idling restrictions on commercial vehicles. These requirements vary significantly with respect to idling time permitted, time of day, exemptions, fines assessed and degree of enforcement.

One example: Last year the California Air Resources Board implemented a five-minute idling limit for all diesel-fueled trucks over 10,000 lbs. The minimum fine is \$300.00 for a first offense and \$1,000 to \$10,000 for subsequent violations.

The American Transportation Research Institute has compiled a compendium of state and local rules (copy attached).

In 2008, Congress passed the Energy Improvement and Extension Act which provides an exemption from the 12 % federal excise tax for purchases of approved devices (copy of approved devices attached).

Some fleets have also employed on-board vehicle monitoring systems (such as the Cadec System) to limit idling. These systems can also be used to monitor speeding, rapid decelerations, fuel consumption, etc.

Investment in Surface Transportation

It is generally understood that support for highway and bridge infrastructure is facing a financial crisis. While transportation infrastructure spending is a component of the recently enacted stimulus package (H.R. 1), it will not be sufficient to meet the nation's needs. Currently, the U.S. is spending less than \$90 billion a year from all sources. The National Surface Transportation Policy and Revenue Study Commission has concluded that at least \$250 billion is needed each year to maintain and improve the highway system and sustain economic growth. Historically, fuel taxes have been the principal source of revenue, but raising these taxes to the full extent needed, especially during bad economic times, is not politically feasible. Fuel taxes will increasingly need to be supplemented with other revenue sources. Expanded use of tolling, weight-distance taxes for commercial trucking, public-private partnerships, infrastructure investment banks and public bond offerings are all under consideration.

These proposals will be the subject of debate in Congress as it seeks to reauthorize the "Highway Bill" which is due to expire September 30, 2009.

The challenge for fleet operators is to focus government action on the need for infrastructure support without placing a disproportionate burden of paying for it on the backs of these companies.

Federal Excise Tax Exemption for Idling Reduction Devices

In the Energy Improvement and Extension Act (EIEA) of 2008 (PL 110-343), Section 206 excludes certain idling reduction devices and advanced insulation from the federal excise tax. This law amends section 4053 of the Internal Revenue Code.

For purposes of section 4053(9)(B) of the Internal Revenue Code, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation, has determined that the devices listed below reduce the idling of a tractor at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary. For the purposes of EIEA, the effective date of the list is the first day after the enactment of EIEA (October 4, 2008). Companies interested in adding their technology to this list should contact EPA after reviewing the [criteria for product eligibility](#).

Motor carriers must ensure that all devices installed on Commercial Motor Vehicles conform to the Federal Motor Carrier Safety Regulations, 49 CFR 393, Parts and Accessories Necessary for Safe Operation. Those regulations of particular concern to users of auxiliary power units are contained in Section 393.28, Section 393.30, and SubPart E of Part 393. These requirements dictate the specifications of installation of wiring and fuel systems for this equipment.

For additional information regarding the tax exempt status of these idling reduction devices, please refer to the instructions for Form 720, Quarterly Federal Excise Tax Return, found at www.irs.gov. You may also contact Stephanie Bland or Celia Gabrysh from the IRS at (202) 622-3130.

Eligible Products for the Federal Excise Tax Exemption

These idling reduction technologies are organized by the technology type and listed by company/model:

[Fuel Operated Heaters](#)
[Battery Air Conditioning/Heating Systems](#)
[Auxiliary Power Units/Generator Sets](#)
[Thermal Storage Systems](#)
[Shore Connection Systems](#)

Fuel Operated Heaters

Automotive Climate Control (ACC) / *Fuel Fired Heater (air-to-air) FFHD 2*
Espar / *D1LC*
Espar / *D3LC*
Espar / *Airtronic D2*

Espar / *Airtronic D4*
Espar / *Hydronic 5*
Espar / *Hydronic 8-10-12*
Teleflex A2
Teleflex A4
Teleflex X45
Volvo *41-11*
Webasto / *Air Top 2000*
Webasto / *Air Top 3500*
Webasto / *Air Top 5000 ST*
Webasto / *DBW 2010*
Webasto / *DBW 2020/300*
Webasto / *NGW 300*
Webasto / *Scholastic Heater*
Webasto / *TSL 17*
Webasto / *Thermo 50*
Webasto / *Thermo 90S*
Webasto / *Thermo 230/300/350*

Battery Air Conditioning/Heating Systems

AuraGen / *Inverter / Charger System*
Bergstrom, Inc./ *NITE*
DC Power Systems APU/AC
Dometic Corporation / *Dometic*
Driver Comfort System / *Driver Comfort System*
EnergyXtreme / *PPEX60 / PPEX80*
Freightliner Cascadia Park Smart System
Glacier Bay / *Climacab*
Hammond Air Conditioning, LTD / *Artic Breeze*
Idle Free Systems / *Reefer Link System*
Kenworth Truck Company / *Kenworth Clean Power*
Navistar/Bergstrom / *12V Aux No-Idle HVAC*
Paddock Solar / *Paddock Solar*
Peterbilt / *Comfort Class System*
Safer Corporation / *VIESA*
Sun Power Technologies / *Sun Power*
Volvo / *971-001/2*

Auxiliary Power Units/Generator Sets

Aux Generators Inc. / *Idle Hawk*
Auxiliary Power Dynamics, LLC / *Willis APU*
Black Rock Systems / *Black Rock*
Carrier Transicold / *ComfortPro APU*
Centramatic / *Centramatic APU*
Comfort Master / *Comfort Master*
Cummins / *ComfortGuard*
Cummins Onan / *Quiet Diesel*
Diamond Power Systems / *Diamond Power Systems*
Double Eagle Industries / *Gen-Pac*
Dunamis Power Systems APU
E-Z On APU
Flying J Inc / *Cab Comfort System*
Frigette Truck Systems / *APU*

Frigette Truck Systems / *Gen Set 1*
Frigette Truck Systems / *Gen Set 2*
Gates Corporation / *Cab Runner*
Idle Solutions APU
Idlebuster / *Idlebuster*
Kohler / *3APU*
Kohler / *7APU*
Kool-Gen / *KG-1000*
Mechron Power Systems / *CCS Lightning Cab Comfort System*
Navistar / *Fleetrite APU*
Navistar / *MaxxPower APU w/HVAC*
PDM Industries / *Hp15*
Pony Pack, Inc. / *Pony Pack*
Power Technology Southeast / *PowerPac*
RigMaster Power Systems, Inc.(Div. of International Power Systems Inc.) / *Rig Master Power*
Star Class / *GEN-STAR 4500*
Star Class / *GEN-STAR 6000*
Thermo King/ *TriPac*
TRIDAKO Energy Systems / *Power Cube*
Truck Gen / *UCT 2-5.5*
Truck Gen / *UCT I-3.5*
Truck Gen / *UCT-APU*
Volvo / *971-003/4 -(optional 82A-B1X)*

Thermal Storage Systems

Autotherm Division Enthel Systems, Inc / *T-2500 Energy Recovery System (ERS)*
Webasto / *BlueCool Truck*

Shore Connection Systems

Comfort / *Duo-Therm heat pump*
Freightliner's Shorepower System
Phillips and Temro Industries / *Cab Power 8500633*
Shurepower, LLC / *Shurepower*
Teleflex, Inc. / *CCU Shore Power*
Volvo 5H-A1 / *120 V Shore Power Kit*
Volvo LN-A1 / *Inverter Charger Kit*
Xantrex Technology / *TRUCKPOWER Inverter/Charger & Cab*

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