



Transportation Updates and Regulatory News (TURN)

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California Air Resources Board Greenhouse Gas Regulations Update

On April 28, 2017, Owner Operator Independent Drivers Association (OOIDA) [announced](#) that the U.S. Court of Appeals for the Ninth Circuit in California [affirmed](#) a lower court’s dismissal of OOIDA’s case against the California’s Air Resources Board (ARB) tractor-trailer greenhouse gas regulations (GHG). Oral arguments were held on April 19, 2017, based on OOIDA’s [Appellant’s Reply Brief](#) concerning the Environmental Protection Agency’s [GHG waiver](#), and ARB’s associated [GHG regulations](#). At issue is whether ARB’s enforcement of the GHG regulations on out-of-State-based trucks that briefly enter California to conduct interstate

commerce is a violation of the Commerce Clause of the Constitution. Some California-based trucks are exempt from ARB’s GHG regulations, even though these California-based trucks travel more miles inside California than the out-of-State-based trucks operating in California.

Greenhouse Gas and Fuel Efficiency Standards for Engines and Vehicles—Phase 2 Final Rule Update

On May 10, 2017, fleetowner.com reported that the U.S. Court of Appeals for the District of Columbia Circuit granted the April 20, 2017 motion of the Environmental

Protection Agency (EPA) and the National Highway Transportation Safety Administration (NHTSA) to delay consolidated court case No. 16-1430 until July 20, 2017. EPA and NHTSA requested the delay in order to review an April 3, 2017 request from the Truck Trailer Manufacturers Association (TTMA). TTMA requested that EPA and NHTSA review, reconsider, and, in the interim, stay the effectiveness of the trailer standards in the Greenhouse Gas and Fuel Efficiency Standards for Engines and Vehicles—Phase 2 [final rule](#).

Trucks.com (April 26, 2017) reported that TTMA opposed EPA’s and NHTSA’s request for a delay, since the agencies’ request did not include



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a corresponding 90-day extension or a stay of the January 1, 2018 effective date of the trailer standards in the final rule. On December 22, 2016, TTMA petitioned the Court to vacate the trailer standards. On March 22, 2017, the Court ordered the parties to submit proposed briefing formats by April 21, 2017. Motions are now due the Court by July 20, 2017.

The trailer standards require trailer manufacturers to provide aerodynamic equipment, low rolling resistant tires, and tire pressure monitoring or automatic tire inflation systems beginning with model year 2018, even when trailer buyers do not want these accessories. The trailer accessories are designed to reduce the carbon dioxide emissions and fuel consumption of tractor-trailer combinations when they are traveling at highway speeds.

Previous [TTMA comments](#) expressed strong concerns about EPA's and NHTSA's statutory authority to regulate trailers, trailer accessories, and trailer manufacturers, and the assumptions made by EPA and NHTSA in the rule. The TTMA comments questioned the cost and benefit calculations, and the limited time allowed to provide comments on the proposed rule. Trailer-related comments on the proposed rule were also submitted by: [Utility Trailer Manufacturing Company](#), [Great Dane](#), [Wabash National Corporation](#), [Stoughton Trailers](#), [Owner-Operator Independent Drivers Association \(OOIDA\)](#), and [American Trucking Associations](#). Eight States filed a [motion to intervene](#) in the case on January 23, 2017 in support of the final rule.

Electronic Logging Device Litigation Update

On May 16, 2017, [Landlinemag.com](#) reported "that the Department of Transportation had waived its right to file a brief in opposition" to OOIDA's April 11, 2017 [petition to](#) the U.S. Supreme Court. OOIDA asked the Supreme

Court to review the U.S. Court of Appeals for the Seventh Circuit's [denial](#) of OOIDA's petition to vacate the Federal Motor Carrier Safety Administration (FMCSA) Electronic Logging Devices (ELD) and Hours of Service Supporting Documents; [Final Rule](#). The two questions presented to the Supreme Court are:

1. "Whether the Seventh Circuit erred by extending the pervasively regulated industry exception to the Fourth Amendment's warrant requirement beyond the administrative search of business *premises* to include the search of drivers in support of the ordinary needs of law enforcement?"
2. Whether the ELD rule violates the Fourth Amendment by failing to establish a regulatory structure at both the federal and state levels to serve as a constitutionally adequate substitute for a warrant?

On March 21, 2017, a coalition of 17 organizations, including the Agricultural Retailers Association, American Farm Bureau Federation, National Association of Small Trucking Companies, and OOIDA [urged](#) Secretary of Transportation Elaine L. Chao to delay the ELD [mandate](#) which has a compliance date of December 18, 2017, and eliminate the speed limiter [proposed rule](#) that was announced on September 7, 2016. The coalition's letter cited the January 30, 2017, [Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs](#).

Electronic Logging Device Implementation Update

On March 31, 2017, FMCSA updated its ELD [Training and Events](#) website. On May 9, 2017, FMCSA held a [public forum](#) for discussion of the minimum requirements for ELDs to help manufacturers produce ELDs that will comply with the ELD Rule.



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Petition for an Exemption from Electronic Logging Device Requirements

On March 22, 2017, FMCSA [announced](#) that the Truck Renting and Leasing Association, Inc. (TRALA), in a [petition](#) dated November 1, 2016, requested an exemption from the requirement that a motor carrier install and require each of its drivers to use an ELD to record the driver's hours-of-service (HOS) no later than December 18, 2017. TRALA requested the exemption for all drivers of property-carrying vehicles rented for 30 days or fewer because the ELD mandate will result in unintended technical and operational consequences that will unfairly and adversely affect short-term rental vehicles. TRALA believes that the exemption, if granted, would not have any adverse impacts on operational safety, as drivers would remain subject to the standard HOS limits and maintain a paper record of duty status (RODS). The term of the requested exemption is 5 years. FMCSA requested public comment on TRALA's application for exemption. Comments received on or before April 21, 2017 may be viewed in the regulations.gov Docket ID: [FMCSA-2016-0428](#).

Carrier Safety Fitness Determination Proposed Rule Withdrawn

On March 23, 2017, FMCSA [withdrew](#) its January 21, 2016, notice of proposed rulemaking (NPRM), which proposed a revised methodology for issuance of a safety fitness determination (SFD) for motor carriers. The new methodology would have determined when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce based on the carrier's on-road safety data; an investigation; or a combination of on-road safety data and investigation information. On January 12, 2017, FMCSA had [announced](#) that, rather than move to a final rule, a Supplemental

Notice of Proposed Rulemaking (SNPRM) would be the next step in the rulemaking process. However, after reviewing the record in this matter, including a February 15, 2017 [letter](#) from 62 national and regional organizations of motor carriers that urged Secretary of Transportation Elaine L. Chao to withdraw the NPRM, FMCSA withdrew the NPRM and canceled the plans to develop a SNPRM. FMCSA must receive the [Review of the Compliance, Safety, Accountability Program](#) from the National Academies of Science, as required by [Section 5221](#) of the Fixing America's Surface Transportation (FAST) Act, assess whether and, if so, what corrective actions are advisable, and complete additional analysis before determining whether further rulemaking action is necessary to revise the safety fitness determination process.

Effective Date of Rule for Entry-Level Commercial Drivers' Training Further Delayed

On May 23, 2017, FMCSA extended the [temporary delay](#) of the effective date of its [final rule](#) on Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators to June 5, 2017. The compliance date, February 7, 2020, remains unchanged. The initial effective date of February 6, 2017 was previously delayed to March 21, 2017. The additional delay is in accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "[Regulatory Freeze Pending Review](#)," and the January 24 "[Memorandum: Implementation of Regulatory Freeze](#)." The final rule responds to a statutory mandate imposed under the Moving Ahead for Progress in the 21st Century Act. FMCSA based the final rule on consensus-negotiated rulemaking conducted by FMCSA's Entry-Level Driver Training Advisory Committee, which held a series of



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meetings between February and May 2015. On December 21, 2016, several groups [filed a petition](#) with FMCSA to reconsider the lack of minimum behind-the-wheel provisions in the final rule. FMCSA [denied the petition](#) on January 19, 2017.

Hours of Service of Drivers Restart Rules Update

On March 9, 2017, FMCSA announced that based on the results of the [Commercial Motor Vehicle Driver Restart Study](#), the requirement for two off-duty periods of 1:00 a.m. to 5:00 a.m. during a restart, based on the time zone for their home terminal, will not be enforced. Nor will the once-per-week limit on use of the restart, in which a driver takes 34 or more hours off duty, in order to restart the calculation of the driver's 60- or 70-hour duty-cycle limit for the next 7 or 8 day period. The study did not find that the requirement for at least two nighttime periods of rest and the prohibition on taking more than one restart per week provided a greater net safety benefit than the previous restart regulation, which did not include those requirements.

The study found evidence that the restarts benefitted the ability of drivers to recover from fatigue and sleep loss regardless of the restart provision used (i.e., 34 consecutive hours off duty and/or restarting in less than 168 hours). It showed that there was an increase of more than 2 hours sleep obtained per 24 hours during the restart periods compared to duty days. This study provided evidence that drivers were in need of sleep when they undertook a restart, and when they slept, they slept much longer than when they were working.

FMCSA submitted and published a summary [Commercial Motor Vehicle Driver Restart Study, Report to Congress](#), following an independent [review](#) of the final report and study findings by the Office of Inspector General. In addition to the report to Congress, the [full report](#), [research brief](#), and [public-use dataset](#) are available for download. The [Consolidated and Further Continuing Appropriations Act of 2015](#) enacted on December 16, 2014, suspended enforcement of requirements for use of the 34-hour restart, pending the study. The [Hours of Service of Drivers Final Rule](#) was published in the Federal Register on December 27, 2011. The effective date of the Final Rule was February 27, 2012, and the compliance date of remaining provisions, including the no longer enforced restart restrictions, was July 1, 2013.



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