



National Transportation Consultants eNews / January, 2020

2020: What to Expect (Maybe)

First, there's the known change: The minimum annual percentage rate for random controlled substances testing, for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL), is now 50%. The alcohol testing rate will remain at 10%.

This increase took place because the trucking industry's random positive rate increased to 1%. At that level or above an increase in the number of required tests is triggered. Even if the random positive rate declines slightly in 2020, it's likely that the rate would remain at 50% for at least another year. The DOT likes to see a clear trend before they lower the testing rate.



When it comes to regulatory predictions, the crystal ball is cloudy at best. There are changes in the works that may result in some rulemaking this year.

Hair Testing:

This rule has bounced back and forth between the DOT and the Office of Management and Budget (OMB). It is currently being reviewed by OMB. It is reported that all of the scientific and legal issues have been resolved. Once it's released it can be published in the Federal Register so we can all get a look at it.

Oral Fluid Testing:

The first step, having the department of Health and Human Services publish a rule authorizing oral testing, has been completed. The next phase involves certifying collectors to administer the test, training medical review offices and revising the chain of custody form. Based on this time-line it's not likely that FMCSA will publish a notice of proposed rulemaking in 2020 for oral fluid testing.

Fentanyl:

A recommendation has been made to HHS Secretary Alex Azar that they add fentanyl to the list of drugs safety sensitive workers such as truck drivers may be tested for. If HHS agrees with the recommendation then FMCSA will be able to modify the testing protocol for truck drivers.

Hopefully at some point motor carriers will have two approved types of testing (oral and either urine or hair) so that potential cheaters will not know in advance which type of test they'll be subjected to.

Drug and Alcohol Clearinghouse:

The regulation requires that states request information from the Clearinghouse about individuals before completing certain commercial driver's license (CDL) transactions for those drivers. The States' compliance with this requirement is delayed for three years until January 6, 2023.

This extension allows FMCSA the time needed to complete its work on a forthcoming rulemaking to address the States' use of driver-specific information from the Clearinghouse, and time to develop the information technology platform through which States will electronically request and receive Clearinghouse information. This rule will, however, allow States the option to voluntarily request Clearinghouse information beginning on January 6, 2020.

All other requirements set forth in the Clearinghouse Final Rule are currently in force.

Electronics and Driver Interaction

It's certainly no secret that today's large trucks are equipped with a wide range of electronics aimed at accident prevention. Anti-lock brakes, rollover prevention, lane departure warnings, and even adaptive cruise control to maintain following distance are just some of these devices. For the most part these devices allow the driver to make decisions and control the vehicle. The electronics don't kick in until they sense that the driver has made or is about to make a driving error and they intervene to hopefully change the outcome.

The ultimate goal, and many companies are working on this, is to eliminate the driver and have an autonomous vehicle capable of maneuvering unassisted. Several high profile accidents involving autonomous cars have shown that this technology has a long way to go before it's ready for "prime time." Most observers believe that the human driver will be around for quite some time.



Unfortunately, we human drivers can become distracted, tired, or even make bad decisions. Because of the nature of a truck driver's environment, the motor carrier's safety department doesn't have the option of direct observation and interaction. There are, however, electronic systems that collect performance data and broadcast the results in real-time.

One device that is gaining popularity is a dash camera. Although the inward facing camera is likely to receive push back from the drivers, that's an important "window" into driver performance. Some carriers have reported "false" activation of the cameras such as when the truck hits a pot hole. However, one carrier reported that those events were helpful because the inward facing camera revealed drivers who were not wearing their seat belt contrary to federal regulation and company policy. These events could also reveal other undesirable driver actions.

There are also devices that monitor the driver's head position and eye closure looking for signs of fatigue. When safe parameters are exceeded an audible alarm and seat vibrator are activated. Any such events are also relayed to the motor carrier. Fleets using this technology report reductions in fatigued as well as distracted driving events.

Many ELD devices have the ability to gather information such as hard braking, hard cornering, and harsh acceleration. Activating this feature may be an easy way to obtain that "window" into driver performance.

Regardless of what level of electronics your fleet is equipped with, be certain to monitor the data that is produced and use it to effectively coach your drivers on improving their performance. Even if you don't utilize this data, in the event of a crash the plaintiff's attorney certainly will pay attention and ask why you failed to take action.

Yard Move Guidance Requested

The Commercial Vehicle Safety Alliance (CVSA) has asked the Federal Motor Carrier Safety Administration (FMCSA) to issue guidance on yard moves as they pertain to the hours-of-service regulations and amend § 395.2 to add definitions of the terms "yard" and "yard move."

CVSA has also requested that in the interim FMCSA should issue guidance on what constitutes a "yard move" and how such movements should be recorded. When issuing guidance and conducting the subsequent rulemaking, FMCSA should consider the following areas to ensure that the definitions are clear and enforceable.

- The definitions should clearly state whether a "yard move" is considered driving or on-duty time.
- It should be made clear what qualifies as a "yard move" so that once the issue of how the time should be assigned is clarified, what is considered a "yard move" is defined.
- Instances where a motor carrier's property is divided by a public road, requiring a driver to cross a public road to move from one part of the property to another, should be addressed.
- The definition needs to outline what qualifies as a "yard." For example, if a "yard" must have restricted access like a fence or a gate or if a "yard" must be located with a terminal.

CVSA notes that in Canada's regulations a "yard move" is assigned as on-duty time if the commercial motor vehicle is within a terminal, depot or port that is not

on a public road. FMCSA should look to harmonize with the Canadian definition where possible.

CVSA feels that having clear definitions of “yard” and “yard move” and clarification regarding how these movements should be handled within the hours-of-service regulations is needed to provide the law enforcement community and the motor carrier industry with a uniform understanding of how and when the designation can be used.

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