



TRANSPORTATION UPDATE

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Federal Motor Carrier Safety Administration is Established

by Ted McConnell*

Effective January 1, 2000, the Federal Motor Carrier Safety Administration (the "Agency") was established in the U.S. Department of Transportation ("DOT"). The Agency was created by the Motor Carrier Safety Improvement Act of 1999 (the "Act").¹ In taking this action, Congress removed the Office of Motor Carrier Safety ("OMC") from the Federal Highway Administration ("FHWA") and established it as a freestanding organization. At the same time, Congress expanded the enforcement powers of motor carrier regulators. Former OMC personnel became employees of the Agency that in organizational terms will generally parallel other DOT modal administrations, for example, FHWA, the Federal Railroad Administration, and the Federal Aviation Administration.

BACKGROUND

The Act established what many in the industry had long advocated, i.e., an agency devoted solely to motor carrier issues. Its creation was based on a series of Congressional findings critical of the existing Federal motor carrier safety program, including the following:

- the number and severity of motor carrier crashes in the U.S. are unacceptable;
- the number of vehicle and driver inspections is insufficient and civil penalties must be used to deter violations;

- DOT is failing to complete required rulemakings on a timely basis; and
- the number of motor carrier reviews is too low and data collection and sharing capabilities must be improved.

In light of these findings, the purposes of the Act are to establish the Agency and:

- to reduce the number and severity of large-truck involved crashes through more commercial motor vehicle and operator inspections and motor carrier compliance reviews, stronger enforcement measures against violators, expedited completion of rulemaking proceedings, scientifically sound research, and effective commercial driver's license testing, recordkeeping and sanctions.

Passage of the Act was the culmination of a great deal of activity in recent years regarding motor vehicle safety. An unsuccessful effort was made in Congress in 1998 to move OMC from FHWA to the National Highway Traffic Safety Administration. The DOT's Inspector General issued a report critical of OMC that became a focus of Congressional hearings on OMC operations. In addition, former Congressman Norman Mineta was asked to review motor carrier safety issues. Mr. Mineta's report included recommendations that are reflected in the Act. When implemented, the Act will result in increased funding for oversight and

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¹ This UPDATE is intended to highlight key provisions of the Act. A number of provisions, however, are not addressed, as they are beyond the scope of this limited discussion.

enforcement, additional personnel dedicated to motor carrier safety, and increased border inspections of trucks.

Secretary of Transportation Rodney Slater described the key features of the Act in terms of improving the commercial driver's license program by enabling regulators to identify problem drivers, ensuring the safety fitness of newly-formed motor carriers, and levying sanctions on foreign carriers operating illegally in the U.S.

In addition to establishing the Agency and providing for its administration and funding, the Act covers a range of enforcement-related subjects. These provisions are in three principal areas: (i) driver qualifications; (ii) motor carrier provisions; and (iii) state practices and information sharing. The descriptions of the Act in this UPDATE are organized generally along these lines, with an additional section being devoted to other topics addressed in the Act.

DRIVER QUALIFICATIONS; COMMERCIAL DRIVERS LICENSE (CDL)

The Act added these provisions relative to CDLs:

One-Year Disqualification

- from operating a commercial motor vehicle ("CMV") for driving when the individual's CDL is revoked, suspended or canceled based on the individual's operation of a CMV or when the individual is disqualified from operating a CMV based on the individual's operation of a CMV;

Disqualification for Life

- for committing more than one violation of driving a CMV when the individual's CDL is revoked or the driver is disqualified; and
- for conviction of more than one offense of causing a fatality through negligent or criminal operation of a CMV.

Non-Commercial Motor Vehicle Convictions

The Agency must issue regulations within one year to establish disqualifications for:

- a serious offense involving a motor vehicle (other than a CMV) that has resulted in license revocation or suspension; and
- a drug or alcohol related offense involving a motor vehicle (other than a CMV).

Serious Traffic Violations

Prior law enabled DOT to disqualify individuals from operating a CMV for periods of not less than 60 or 120 days for committing 2 or 3 "serious traffic violations," respectively, in a 3-year period. The Act expanded the definition of "serious traffic violation" to include driving a CMV when the driver has not obtained a CDL or does not have a CDL in his or her possession, or driving a CMV when the driver has not met minimum testing standards for the particular class of vehicle or for the type of cargo.

MOTOR CARRIER PROVISIONS

Motor Carrier Entrant Requirements

The Agency is required to complete a rulemaking within one year after the passage of the Act — December 2000 — to improve the training and certification of motor carrier safety auditors. After the completion of this rulemaking, each owner and operator granted new operating authority must undergo a safety review within the first 18 months after the owner or operator begins operations. The Agency is also required to initiate a rulemaking to establish minimum requirements for motor carriers, including foreign motor carriers, which are seeking Federal operating authority.

Foreign Motor Carrier Penalties and Disqualifications

The Act establishes new penalties directed at foreign motor carriers operating in the U.S. without authority. Specifically, foreign motor

carriers operating without authority, before the implementation of the land transportation provisions of NAFTA, outside the boundaries of a commercial zone along the U.S. - Mexico border are subject to penalties. The penalties consist of both fines and disqualifications from operating anywhere in the U.S., the severity of each penalty depending on the number of offenses.

Registration Enforcement

The Act adds certain enforcement provisions regarding motor carriers that fail to comply with DOT's registration requirements. In addition to other previously available penalties, a motor vehicle operating without registration or beyond the scope of its registration can be ordered out-of-service.

Minimum and Maximum Assessments

The Act directs DOT to ensure that motor carriers operate safely by imposing civil penalties at levels "calculated to ensure prompt and sustained compliance" with Federal motor carrier and CDL laws. To this end, DOT is directed to establish and assess minimum civil penalties for each such violation of law and maximum civil penalties for repeat offenders.

Payment of Penalties

Current law which enables DOT to suspend, amend or revoke a carrier's operating authority was expanded in the Act to include the failure to pay or arrange for payment of a civil penalty. Moreover, an owner or operator which fails to pay or arrange for payment of a civil penalty cannot operate in interstate commerce on the 91st day after the payment due date.

STATE PRACTICES AND INFORMATION SHARING

Record of Violations

The Act requires each state to maintain as part of its driver information system a record of each violation

of state or local traffic control law by a CDL holder while operating a motor vehicle and to make such information available to employers, prospective employers and state licensing and law enforcement agencies.

No Special Permits

The Act prohibits a state from issuing a special license or permit "including a provisional or temporary license" to an individual who is disqualified from driving a CMV or whose license is revoked, suspended or canceled.

Availability of Information

The Act also expanded the requirement that a state make available to all authorized persons all information the state receives about an individual and any violation by the individual of state or local law. The Act prohibits the withholding or masking of information by a state from the record of an individual holding a CDL.

License Issuance and Removal

Before issuing or renewing a motor vehicle license, states will now be required to request information from the National Driver Register and the commercial driver's license information system.

State-to-State Notification

The Agency is required to develop a system to support the state-to-state electronic data transmission on convictions for motor vehicle traffic control law violations by holders of CMVs.

Noncompliance

If a state is found to be in substantial noncompliance with provisions governing CMV operations, DOT can prohibit the state from carrying out licensing procedures and issuing any CDL until it is in compliance.

Enforcement

The Act increases the requirements for states to cooperate in enforcing registration requirements and financial responsibility requirements.

RULEMAKINGS/REQUIRED ACTIONS

The Act directs the Agency to conduct rulemakings and to take other actions in a variety of areas. In addition to those mentioned previously, the following topics are addressed:

- a rulemaking to establish special CDL endorsement for drivers of school buses;
- a rulemaking to provide for a Federal medical qualifications certificate to be made part of CDLs;
- the development and implementation of appropriate staffing standards for federal and state motor carrier safety inspections in international border areas;
- updating of the motor carrier identification report (form MCS-150) filed by each motor carrier conducting operations in interstate or foreign commerce;
- a comprehensive study of causes of motor vehicle crashes;

- improving the collection and analysis of data on crashes, including crash causation, involving CMVs; and
- a study of the feasibility and merits of requiring medical review officers or employers to report all positive controlled substances tests to the state that issued the driver's CDL and requiring all prospective employers, before hiring any driver, to query the state which issued the driver's CDL whether the state has on record any positive controlled substances tests on the driver.

CONCLUSION

The Agency has a major rulemaking agenda that will occupy at least the remainder of this year. At the same time, the organizing and staffing of the Agency will require a great deal of work. Congressional scrutiny of the Agency's performance relative to the Act's safety goals will remain very strong, as the Agency is called upon to implement the recommendations of the DOT Inspector General's report and achieve specific safety goals.

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