Rulemaking Update

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Objectives

– Overview of recent FMCSA rulemakings
– Focus on required State adoption of rule changes to ensure MCSAP compatibility
– MCSAP Comprehensive Policy (MCP) technical guidance to be added
– This presentation will be posted on FMCSA’s public website following the conference
MCSAP Regulatory Compatibility

As a condition of receiving MCSAP funding, States must:

• For **interstate commerce**, adopt compatible regulations that are identical to the Federal Motor Carrier Safety Regulations (FMCSR) and Hazardous Materials Regulations (HMR) or have the same effect as the FMCSRs as soon as practicable but no later than 3 years from the effective date of any newly enacted regulation or amendment to the FMCSRs or HMRs.

• For **intrastate commerce**, adopt rules identical to, having the same effect as, or within the tolerance guidelines (see 49 CFR § 350.341) for the FMCSRs and identical to the HMRs.
Amendments to Part 350 to Implement Grants Provisions of the FAST Act

Final Rule Information

– Federal Register Publication Date: October 14, 2016 [81 FR 71002]
– Effective Date: October 14, 2016.

States are not required to adopt regulations compatible to part 350 in order to maintain MCSAP compatibility.
Notable FAST Act Changes to Part 350

- Final rule incorporated a number of changes made by the FAST Act related to the consolidation of Border Enforcement, New Entrant, and PRISM grants into the formula MCSAP grant;
- Revised and reorganized the format of the State certification to conform to the language in the FAST Act;
- Separated MCSAP and High Priority grants. High Priority grant program is now a standalone program which includes Innovative Technology Deployment (ITD) program;
- Merged Safety Data Improvement Program, which was previously a standalone program, into HP;
- Added a reference to “States, local government agencies, other political jurisdictions, federally recognized Indian tribes, and other organizations and persons” which are now eligible for the HP program;
- Incorporated how MCSAP funds will distributed under the Interim Funding Formula mandated by the FAST Act;
Electronic Logging Devices (ELD)

Final Rule Information

- Federal Register Publication Date: December 16, 2015 [80 FR 78291]
- Effective Date: February 16, 2016.
- Compliance Date: December 18, 2017.
- State MCSAP Compliance Date: February 16, 2019.
- FMCSR Parts Affected: 49 CFR Parts 385, 386, 390, and 395.
Electronic Logging Devices (ELD)

FMCSA has amended the hours of service regulations to:

1. require new technical specifications for ELDs that address statutory requirements;
2. mandate ELDs for drivers currently using Records of Duty Status (RODS);
3. clarify supporting document requirements so that motor carriers and drivers can comply efficiently with Hours-of-Service (HOS) regulations; and
4. adopt both procedural and technical provisions aimed at ensuring that ELDs are not used to harass commercial motor vehicle (CMV) operators.
Electronic Logging Devices (ELD)

Applicability

- ELD final rule did not make any changes to the MCSAP tolerance guidelines in 49 CFR § 350.341 that would allow a State participating in MCSAP to provide an overall exemption to the ELD requirements for intrastate commerce.

- States must adopt the regulatory changes made by the ELD final rule no later than February 16, 2019 and apply them to motor carriers and drivers operating in **interstate and intrastate commerce** in order to remain eligible to receive MCSAP funds. However, States may exempt certain intrastate CMVs, as defined by the State, from the ELD requirements if they meet the tolerance guidelines as provided in § 350.341.
Electronic Logging Devices (ELD)

Specific changes to parts 390 & 395

Part 390

§ 390.36 – we added new § 390.36, Harassment of drivers prohibited, to define harassment by a motor carrier toward a driver employed by the motor carrier and to prohibit motor carriers from engaging in harassment of drivers.
Electronic Logging Devices (ELD)

Specific changes to parts 390 & 395

Part 395

§ 395.1 – we amended this section, Scope of rules in this part, to reflect that drivers who qualify to use the short-haul exceptions under 49 CFR 395.1(e)(1) or (2) are not required to keep supporting documents under § 395.11.

§ 395.2 – we added three new definitions “ELD Record”, “Electronic Logging Device (ELD)”, and “supporting document”.

You must make compatible changes to your State regulations by adopting these sections no later than February 16, 2019.
Electronic Logging Devices (ELD)

Specific changes to parts 390 & 395

Part 395

- § 395.8 – we amended this section which addresses general requirements for HOS RODS. Subject to limited exceptions, it requires motor carriers to install and use ELDs that comply with the technical specifications no later than 2 years following the date of publication of this final rule. Specifically, we amended this section as follows:
  - § 395.8(a)(1) – subject to limited exceptions, motor carriers must require drivers that keep RODS to use ELDs. This section allows a motor carrier that installs and requires its drivers to use Automatic On-Board Recording Devices (AOBRD) before the compliance date of this final rule to continue to use AOBRDs until December 16, 2019.
  - § 395.8(a)(1)(iii) – this section contains exceptions that allow drivers in a driveaway-towaway operation, when the vehicle being driven is part of the shipment being delivered, drivers operating a CMV in a manner that does not require completion of RODS on more than 8 days within any 30 day period, as well as drivers of vehicles manufactured before model year 2000 to use paper RODS.
Specific changes to parts 390 & 395

Part 395

- § 395.8(a)(1)(iv) – this section provides that, until the compliance date of this final rule, motor carriers must require their drivers to keep RODS manually or by using an ELD or an AOBRD.
- § 395.8(a)(2)(ii) – this section requires drivers to use the recording method required by their motor carrier and to submit their RODS within 13 days.
- §395.8(e) – this section prohibits a motor carrier or driver from making a false report in connection with duty status and from tampering with, or allowing another to tamper with, and AOBRD or ELD to prevent it from recording or retaining accurate data.
- §395.8(i) – this section (filing driver’s record of duty status) has been eliminated because it duplicates the requirements of § 395.8(a)(2)(ii).

You must make compatible changes to your State regulations to adopt these changes to ensure compliance with the amended HOS rules noted above by motor carriers and drivers in your State no later than February 16, 2019.
Electronic Logging Devices (ELD)

Specific changes to parts 390 & 395

Part 395

§ 395.11 – we added this new section which contains detailed requirements concerning supporting documents. This new section provides that the new supporting documents provisions take effect on December 16, 2017, which is 2 years after the publication date of this final rule.

§ 395.15 – this section describes how FMCSA will sunset the authority to use AOBRDs 2 years after this rule’s publication date (sunset date December 18, 2017). However, motor carriers that have installed AOBRDs prior to the sunset date are allowed to continue using AOBRDs for an additional 2 years but no later than December 16, 2019.

You must make compatible changes to your State regulations to adopt these changes to ensure compliance with the amended HOS rules noted above by motor carriers and drivers in your State no later than February 16, 2019.
Electronic Logging Devices (ELD)

Specific changes to parts 390 & 395

Part 395

Part 395, Subpart B – Electronic Logging Devices (ELDs) – we added this new subpart to part 395 that includes new sections 395.20 through 395.38. This subpart applies to ELDs used to record a driver’s hours of service under § 395.8(a) and requires that an ELD used after December 18, 2017 must meet the requirements provided in this subpart.

Appendix A to Subpart B of Part 395 – this appendix to subpart B of part 395 contains the technical requirements for ELDs and consists of seven sections.

You must make compatible changes to your State regulations to adopt these changes to ensure compliance with the amended HOS rules noted above by motor carriers and drivers in your State no later than February 16, 2019.
Electronic Logging Devices (ELD)

Specific changes to parts 385 & 386

You are not required to adopt, for MCSAP grant eligibility purposes, any changes to regulations made by this final rule in 49 CFR Parts 385 and 386.
Unified Registration System (URS)

Updated Final Rule Information

– Federal Register Publication Date: January 17, 2017 [82 FR 5292]
– Effective Date: January 14, 2017.
– Original Final Rule Publication Date: August 23, 2013 [78 FR 52607]
– Final Rule Correction Date: July 28, 2016 [81 FR 49553]. This FR delayed the original effective date until January 14, 2017.
– Delayed Effective Date: January 14, 2017 then immediately suspended. During this suspension, entities needing to file will follow the same procedures and forms (e.g., MCS-150) used to submit information to FMCSA previously.
Unified Registration System (URS)

- FMCSA has extended the implementation date of the final stage of the URS beyond January 14, 2017 because additional time is needed to securely migrate data from multiple legacy platforms into a new central database and to conduct further compatibility testing with its State partners.

- The Agency recently completed a complex migration of its information technology systems to a “cloud” environment. This mitigation effort was a necessary step in order to provide a foundation to successfully implement URS.

- By moving the implementation date, FMCSA is providing its State partners more time to develop, update, and verify data connectivity and system reliability. The additional time will also enable the Agency to conduct more thorough training and to implement broader outreach and education activities that will provide for a seamless transition.
Unified Registration System (URS)

- FMCSA intends to lift the suspension of the compliance dates once the technology to implement URS 1 is complete. FMCSA will publish a Federal Register Notice announcing the revised regulatory compliance dates after the URS has been adequately tested by the Agency and its State and industry partners.

- Since the December 2015 launch of the initial phase of URS, FMCSA estimates that the industry has saved more than $3 million in registration expenses. In addition, the Agency issued over 100,000 new USDOT numbers, removed more than 360,000 dormant USDOT numbers from its databases, and achieved a 100 percent screening of operating authority applications for disqualified carriers attempting to fraudulently “reincarnate” as new operators.
CDL Drug & Alcohol Clearinghouse

Final Rule Information

– Federal Register Publication Date: December 5, 2016
– Effective Date: January 4, 2017.
– Compliance Date: January 6, 2020.
– State MCSAP Compliance Date: January 6, 2020.
CDL Drug & Alcohol Clearinghouse

Applicability

49 CFR part 382 applies to persons and employers of such persons who operate CMVs in commerce in the United States and who are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers (49 CFR 382.103(a)).
CDL Drug & Alcohol Clearinghouse

Specific changes to part 391

§ 391.23(e) – we amended this section to require employers to investigate a prospective employee’s drug & alcohol compliance history during the preceding 3 years. Employers are required to use the Clearinghouse to conduct this background investigation after the Clearinghouse has been in operation for 3 years (see 49 USC 31306a(f)(3)).

§ 391.23(f) – this section prohibits employers from allowing a driver to operate a CMV if he/she refuses to grant consent for the release of his/her information.

You must adopt compatible part 391 regulations no later than January 6, 2020 in order to remain eligible to receive MCSAP grant funding. You are NOT required to adopt any changes we made to parts 382, 383, and 384.
Lease & Interchange of Vehicles by Mexico-Domiciled Motor Carriers

• This FR notice was issued on November 22, 2016 to prevent inconsistent enforcement of a law that is no longer applicable. It also served to inform all motor carriers and the general public that, in accordance with NAFTA and MCSIA, Mexican-domiciled motor carriers (lessors) are allowed to lease their equipment to U.S. motor carriers (lessees) regardless of the destination of the cargo, as long as the carriers meet the requirements of 49 CFR part 376.

• Included in part 376 are requirements that the “authorized carrier” (in this case, the U.S. motor carrier) assume “complete responsibility for the operation of the equipment for the duration of the lease” [49 CFR 376.12(c)]. These types of leasing arrangements are compliant with MCSIA and the Agency’s regulations.
Amendments to Implement Certain FAST Act Provisions

Final Rule Information

– Federal Register Publication Date: July 22, 2016 [81 FR 47714]
– Effective Date: July 22, 2016.
– State MCSAP Compliance Date: July 22, 2019.
Amendments to Implement Certain FAST Act Provisions

Specific changes

Part 390

• § 390.38 — we added new § 390.38, to exempt pipeline welding trucks from certain requirements of the FMCSRs. Paragraph (a) describes those parts of the FMCSRs from which the pipeline welding truck is exempt. Paragraph (b) provides a definition of “pipeline welding truck.”

• § 390.39 — we amended paragraph (b)(1) to reflect changes in the statutes concerning exemptions found in State laws for covered farm vehicles.
Amendments to Implement Certain FAST Act Provisions

Specific changes
Part 391, 392, & 393

§ 391.2 – we added paragraph (e) to exempt drivers of pipeline welding trucks from the rules in part 391.

§ 392.1 – we designated the existing text as paragraph (a) and added a paragraph (b) to exempt drivers of pipeline welding trucks from the rules of part 392.

§ 393.1 – we added paragraph (e) to exempt drivers of pipeline welding trucks from the rules in part 393.

Part 395

§ 395.1(e)(1) - we changed this paragraph to provide that drivers of ready-mixed concrete delivery vehicles who are on duty for 14 consecutive hours may be exempt from the requirements of § 395.8.

§ 395.1(t) - we added this paragraph to allow the driver of a ready-mixed concrete delivery vehicle to use 30 minutes or more of time spent waiting with the vehicle to meet the requirement for the 30-minute rest break in 395.3(a)(3)(ii).

§ 395.1(u) & (v) – we added these paragraphs to exempt drivers engaged in the transportation of bees and livestock, respectively, from the 30-minute rest break requirement.

§ 395.1(w) – we added this paragraph to provide that on-duty time for a driver of a hi-rail vehicle does not include time in transportation to or from a duty assignment under certain circumstances.

§ 395.1(x) – this paragraph exempts drivers of pipeline welding trucks from the rules in part 395.
Amendments to Implement Certain FAST Act Provisions

Specific changes

Part 396

§ 396.1(d) - we added this paragraph to exempt pipeline welding trucks from the rules in part 396.
General Amendments to 49 CFR Parts 393 & 396 and Appendix G

Final Rule Information

– Federal Register Publication Date: July 22, 2016 [81 FR 47722]
– Effective Date: July 22, 2016.
– State MCSAP Compliance Date: July 22, 2019.
– FMCSR Parts Affected: 49 CFR Parts 393 and 396 & Appendix G to Subchapter B of Chapter III.
General Amendments to 49 CFR Parts 393 & 396 and Appendix G

This final rule amended the FMCSRs in response to several petitions for rulemaking from CVSA and ATA and two safety recommendations from the NTSB.

§ 393.5 – we added the definition of “major tread groove.”

§ 393.11 – we modified Table 1, footnote 11 dealing with rear license plate lights (no rear license plate lamp required on vehicles that do not display a rear license plate).

§ 393.75 – we added new paragraph (f) dealing with speed-restricted tires and tread wear indicators and an illustration of a tread wear indicator.

§ 396.9 – we amended paragraph (d)(2) dealing with correction of violations of defects.

§ 396.17 – we amended paragraph (f) to bar roadside inspections from serving as annual inspections.

§ 396.19 – we amended paragraph (b) to make it consistent with amended 396.17.

§ 396.23 – we removed 396.23(a) to eliminate the option for a motor carrier to meet the periodic inspection requirements through roadside inspections and to make it consistent with 396.17 and renumbered the remainder of the section accordingly.

Appendix G – we amended Appendix G by adding sections 1.l (Antilock Brake System) and 1.m (Automatic Brake Adjusters), revising section 10(c) (Tires), adding section 14 (Motorcoach Seats), and eliminating introductory text.

You must adopt compatible part 393, 396, & Appendix G regulations no later than July 22, 2019 in order to remain eligible to receive MCSAP grant funding.
Driving of Commercial Motor Vehicles; Use of Seat Belts

Final Rule Information
– Federal Register Publication Date: June 7, 2016 [81 FR 36474]
– Effective Date: August 8, 2016.
– State MCSAP Compliance Date: August 8, 2019.
Driving of Commercial Motor Vehicles; Use of Seat Belts

This final rule amended the FMCSRs in response to a petition for rulemaking from CVSA.

§ 392.16 – we amended this section to require passengers in property-carrying CMVs (that have seat belt assemblies installed) to use seat belts whenever the vehicles are operated on public roads.

You must adopt a compatible part 392 regulation no later than August 8, 2019 in order to remain eligible to receive MCSAP grant funding.
Questions?