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Trucking Policy Developments To Watch In 2nd Half Of 2019

By **Linda Chiem**

Law360 (July 12, 2019, 6:41 PM EDT) -- The U.S. commercial trucking industry is buckling in for new proposed safety regulations and other policy shifts that could reshape operations and staffing models for motor carriers, freight forwarders and other ground-based shippers.

Transportation regulators are considering a variety of new mandates and regulatory initiatives meant to address safety, interstate commerce and infrastructure improvements. But these moves also come at a time of increased enforcement and plaintiffs' litigation that have put the industry on the defensive.

Here, Law360 examines some of the policy developments that commercial trucking companies are watching in the second half of 2019.

Regulating Drivers' Rest Breaks

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration is expected to release a proposed rule this summer revising regulations that govern commercial truck drivers' rest breaks and limiting the hours they can spend on the road to give truckers more flexibility in their operating schedules.

The agency received nearly 5,300 comments after issuing an **advanced notice of proposed rulemaking** in August seeking the public's input on whether the agency should tweak its hours-of-service regulations in response to pleas from lawmakers and the trucking industry for less rigid mandates. The FMCSA is targeting a July 31 release date for the proposed rule, which is still being reviewed by the White House's Office of Management and Budget.

The agency's hours-of-service, or HOS, regulations generally limit commercial truck drivers to 11 hours of driving time within a 14-hour window after they come on duty, and they can only come on duty after taking 10 consecutive hours of off-duty rest time. According to the FMCSA, drivers that use sleeper berths in their trucks are allowed to combine two hours of off-duty time with eight consecutive hours spent in a sleeper berth to meet that 10-hour off-duty mandate.

Supporters of a revised HOS rule say truck drivers should have some flexibility to take their individual rest breaks instead of having an arbitrary rule that forces them off the road. Meanwhile, opponents of the rule change say it needlessly heightens road safety risks if fatigued truck drivers are allowed to remain on the road.

The American Trucking Associations has said it's "encouraged" by the FMCSA's decision to pursue potential changes in the HOS regulations, and the level of flexibility the FMCSA ultimately offers should be data-driven. The group said in comments filed with the agency that it "agrees that additional HOS flexibility should be provided when appropriate, and is confident that any rulemaking that results from the comments received by this ANPRM will be made based on sound industry data."

The Truck Safety Coalition, Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers, which represents thousands of families of truck crash victims and survivors, said in comments filed with the agency that they were "disappointed that the FMCSA has placed greater

importance on these unstudied proposed changes to hours of service rules than it has to advance proven safety technologies."

Catherine Chase, president of Advocates for Highway and Auto Safety, said the proposed change to the HOS rule comes on the heels of the FMCSA's December decision determining that California's meal and rest break rules were preempted by the Federal Aviation Administration Authorization Act, which bars states from enacting or enforcing laws and regulations "related to a price, route, or service of any motor carrier."

"This egregious agency overstep should be reversed," Chase said in remarks to lawmakers in a recent hearing examining the state of the trucking industry. "Further, special interests continue to push Congress to expand working and driving limits or create carve-outs under the guise of 'flexibility.'" These are nothing more than attempts to force drivers to work even more demanding schedules."

Some experts say they're cautiously optimistic that the FMCSA's HOS proposal will balance the need for driver flexibility without increasing safety risks.

"Any regulatory relief would be welcomed by motor carriers, who are contending with a wide variety of other challenges," Marc Blubaugh, a partner and co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics practice group, told Law360. "While almost any proposed revision will have broad appeal across the motor carrier industry, certain segments could particularly benefit from some tweaks."

The FMCSA said it's looking to revise regulations covering four areas: short-haul operations involving less than 12 consecutive hours on the road, operations in adverse driving conditions, the 30-minute break rule and a time-splitting option for sleeper berth use.

For example, intermodal motor carriers stand to benefit from extending the current 12-hour work period contained in the agency's exemption for short-haul truckers to 14 hours, harmonizing the regulation for short-haul truckers with the regulation governing long-haul truck drivers, Blubaugh explained.

"Doing so will simplify compliance on the part of the intermodal motor carriers and their drivers, particularly those that provide both intermodal and long-haul services," he said.

The FMCSA is also seeking to eliminate an existing 30-minute rest break rule that's part of the HOS regulations. Current regulations bar truckers from driving if more than eight hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. The rule does not apply to short-haul drivers, including those driving commercial motor vehicles within a 100-mile radius of their normal work-reporting location and returning to that location within 12 hours, as well as drivers who do not need a commercial driver's license and operate within a 150-mile radius of their work reporting location.

The 30-minute rest break rule sometimes forced drivers to pull off the road and take a break even if they weren't tired or already had other opportunities to rest during the course of a given job. For example, short-haul intermodal drivers can sometimes spend one to three hours waiting at shipping or receiving facilities for the loading or unloading of shipments on their trucks, so they're already given a break to rest or take a meal. Requiring an entirely separate rest break is silly, Blubaugh said.

Preparing for Autonomous Trucks

The Trump administration is working on its next update to consensus-based technical standards for so-called automated driving systems after releasing the National Highway Traffic Safety Administration's **third version** of the federal government's self-driving car policy, "Preparing for the Future of Transportation: Automated Vehicles 3.0", last October.

The policy offered **broad federal guidance** on how auto manufacturers, technology giants, artificial intelligence developers and other companies should go about developing and testing their automated car technologies on U.S. roads.

While much of the focus and fanfare has been on the development of self-driving cars, experts say the trucking industry must also be included in the conversation for developing and testing automated and connected vehicle technologies.

"The autonomous vehicles discussion is fascinating and that's something that within the last two years has gone from futuristic fantasy to something that is a reality — it's coming down the pike," Scott D. Carey, chair of Baker Donelson Bearman Caldwell & Berkowitz's transportation group, told Law360.

Congress has also been looking for ways to speed up the development of self-driving cars with its consideration of federal legislation that for the first time would regulate the rollout of automated driving systems. The bills, which **saw some momentum** in late 2017 but stalled in 2018, notably carved out exemptions for automakers to test hundreds of thousands of self-driving cars without meeting existing auto safety standards.

The House's Safely Ensuring Lives Future Deployment and Research In Vehicle Evolution Act, or SELF DRIVE Act, had included provisions for autonomous trucking. But the Senate's version of the bill — the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act, or AV START Act — did not address autonomous trucks.

Carey explained that the industry would like to see autonomous vehicle regulations be framed under a national directive, instead of a patchwork of guidelines from the states.

Whatever the framework, safety advocates insist that autonomous trucks "must be subject to robust federal regulations and minimum performance requirements including that a trained commercial driver be behind the wheel at all times," according to Chase's remarks.

"Autonomous technology is still in its infancy as evidenced by fatal and serious crashes involving passenger motor vehicles equipped with driverless systems," Chase said. "Some of the most pressing safety shortcomings associated with autonomous vehicle technology, which include the [automated driving system] properly detecting and reacting to other road users, driver engagement and cybersecurity, are exponentially amplified by the greater mass and force of an autonomous commercial motor vehicle."

Contending With The Driver Shortage

A number of groups including the White House's Council of Economic Advisers, the International Brotherhood of Teamsters, and even the Federal Reserve Board have said that the trucking industry is contending with a severe labor shortage as demand for trucking and logistics services continue to skyrocket.

According to the American Trucking Associations, the lead lobbying group for the nation's commercial trucking industry, there was a shortage of 50,000 commercial drivers in 2017, which was the highest level on record.

And if current trends hold, the shortage could grow to more than 174,000 by 2026, according to the ATA. The trucking industry will need to hire roughly 890,000 new drivers over the next decade taking into account the industry's aging workforce and the impending retirement of many commercial truck drivers, the ATA said.

"This shortage, in turn, threatens to increase the cost of moving freight, and reduce supply chain efficiencies," ATA President and CEO Chris Spear told lawmakers in a recent hearing examining the state of the industry.

According to Spear, the driver shortage persists despite the fact that private fleet drivers saw their pay rise to more than \$86,000 from \$73,000 — a nearly 18% bump — from 2014 to 2017. Over that same period, the median salary for a truckload driver working a national, irregular route increased to over \$53,000 — a nearly \$7,000 bump or 15% increase, according to Spear.

One way to help with the shortage is revamping the nation's licensing standards for obtaining a commercial driver's license, or CDL, because current rules disproportionately burden entry-level

drivers, the ATA said.

Interstate truck drivers must be at least 21 years old to get a CDL under existing rules. But there's growing support for lowering that minimum age requirement to 18 so long as qualified apprentices meet safety, training and technology requirements as proposed in the DRIVE-Safe Act that was introduced in the House in February.

"There's a real disadvantage to the trucking industry because you can't get kids right out of high school to drive a truck and a lot of those people that might go into the trucking industry get into the construction industry so we lose out on that window or period of [recruiting] young drivers," Carey said, adding that lowering the CDL age requirement to 18 would help address the shortage.

However, Advocates for Highway and Auto Safety is among the groups that oppose the DRIVE-Safe Act, saying it would severely jeopardize the safety of all road users by putting teenagers behind the wheel of large trucks in interstate commerce.

"Provisions in the bill that at first glance would seem to be pro-safety actually could be detrimental," Chase said in her remarks. "Specifically, certain technologies, such as active braking collision mitigation systems and speed limiters, are only required during the scant probationary period. The result is a teen driver would initially learn to drive in a truck fitted with this technology but after the probationary period, he or she could get behind the wheel of a truck without any of the safety technology and its benefits."

--Editing by Emily Kokoll.