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Minnesota Crop Production Retailers

REGULETTER

Does that Nurse Wagon have Lights?

Don't be surprised the next time you go to purchase a new wagon for an anhydrous ammonia nurse tank that it comes equipped with tail and turn lights. Originally reported in our August 2016 newsletter, changes for the lighting and marking of agricultural equipment have hit the field - causing quite a ruckus. Beginning June 22, 2017, the rule issued by the National Highway Traffic Safety Administration (NHTSA) applies to equipment manufactured by the original manufacturer (OEM) and requires the equipment to be built with lighting and markings that meet the American Society of Agriculture and Biological Engineers (ASABE) standard 279.14. Remember, retrofitting equipment made before June 22, 2017 is not required.

Heads-Up! If you think lights will be hard to maintain, you should be particularly interested that last month ASABE announced that they have initiated the development of five new standards regarding the braking of agricultural equipment. Part 4 will be requirements for equipment braking on towed equipment. These proposed standards could result in significant changes for manufacturers, and ultimately the end user when it comes to repair and maintenance.

NHTSA deemed it unnecessary to provide a public notice of the lighting rule and headed directly for issuing a final federal rule. This, and the fact our industry was not adequately represented on the ASABE committee and throughout this process, would seem to cry out for better transparency. MCPR has reached out to our national associations with this concern.

Stay tuned for more developments...
(Asmark Institute)

ELD Enforcement in Full Swing

The Commercial Vehicle Safety Alliance (CVSA) confirms that property-carrying commercial motor vehicle (CMV) drivers operating their vehicle without a required registered electronic logging device (ELD), or a grandfathered automatic on-board recording device (AOBRD), will be placed out of service for 10 hours. In addition, failing to have a required electronic record of duty status will appear on the roadside inspection report and a ticket or civil penalty may be given to the driver. All ELD violations appearing on a roadside inspection report will be counted against a motor carrier's Safety Measurement System (SMS) score, which will drive selection for investigation within the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program. FMCSA will determine appropriate action against non-compliant motor carriers.

After 10 hours out of service, the driver may continue to their final destination if the driver has accurately documented their hours-of-service requirements using a paper record of duty status and has a copy of the inspection report and/or citation. If the driver is stopped again before reaching their final destination, the driver must provide the safety official with a copy of the inspection report and proof that they are still on the continuation of the original trip. This may be satisfied using a bill of lading. After reaching their final destination, if the driver is re-dispatched again without obtaining a compliant ELD, they will again be subject to the out-of-service process, unless the driver is traveling back to the principle place of business or terminal empty to obtain an ELD.

Remember, the ELD mandate does not change the underlying hours-of-service requirements.
(Asmark Institute)

D.O.T. Has Ag Retailers M.A.D.

No one should ever have to face is the problem of the state and federal government agencies pose when they stand in the way of compliance - of their own rules.

Motor carriers have witnessed a significant increase in the requirements and processes for qualifying drivers of commercial motor vehicles over the past decade. The heart of the issue revolves around multiple facets of the Department of Transportation launching its journey into the world of technology. The result has created a severe driver shortage and added multiple layers of bureaucratic red tape. Shortly after the Comprehensive Safety Analysis (CSA) system was launched in 2010, Congress intervened, pointing out the program was particularly unfair for small carriers and owner-operators. Despite popular belief, CSA is not a set of rules or regulations, but rather an initiative designed to improve the efficiency of DOT's enforcement and compliance program. The aim of CSA is to measure carrier safety performance, identify potentially unsafe carriers and prioritize them for enforcement.

CSA, like many of the new requirements, all start with good intentions, but because government simply cannot keep up with the speed of business, they wind up making compliance more difficult for the regulated community. We support the objectives to help safe, responsible carriers distinguish themselves from carriers that don't place the same emphasis on safety, **but we have genuine concerns when we routinely encounter the following**

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failures by the regulators to meet their most basic of obligations:

- Overarching flaws in the CSA program are mostly centered on the methodology DOT uses to ultimately impact carriers' safety ratings, however if one of your trucks is rear-ended, mistakenly confused with another motor carrier, the victim of inaccurate data entry or winds up with violation(s) being thrown out of court - best of luck in trying to get your CSA score corrected.
- The Commercial Driver License Information System (CDLIS) requires every driver to update their Medical Examiner's Certificate to the state authority where they are responsible for entering it into their system, so the Motor Vehicle Record (MVR) for the driver will show him or her as qualified. Not a day passes that we don't encounter a state that cannot provide the most recent MVR - sometimes for up to 2-3 weeks - because they are backlogged.
- The National Registry of Certified Medical Examiners (NRCME) was established to assure medical examinations were performed by competent, qualified physicians. Motor carriers are now required to visit the national registry website to document the physician used for each driver is listed as approved - despite the look-up feature on the website has been down since December of 2017 after being hacked.
- DOT erroneously sent notification to several Medical Examiners in early February stating they would be removed from the national registry because the system indicated his or her state medical license was expired or was due to expire shortly. DOT had to correct their mistake saying they "were not currently planning to remove any Medical Examiners from the national registry based on outdated information." DOT said they would notify all Medical Examiners when the website is restored. Medical Examiners were instructed to segregate all examinations completed during the time the website was down and be prepared to upload them when the website is back online - with no penalties.
- Soon every participant passing through DOT's Drug & Alcohol program will be databased in yet another national DOT database called the clearinghouse. Once established, motor carriers will be required to query the system for information concerning current or prospective employees who have unresolved

violations of the federal drug and alcohol testing regulations that prevents them from operating a commercial motor vehicle. It also requires employers and medical review officers to report drug and alcohol testing program violations.

Why would this be concerning?

An appeals case challenging the accuracy of a similar database, the DOT's Pre-employment Screening Program (PSP) database, was found in favor of DOT. In the January 12, 2018 decision, the United States Court of Appeals ruled that the drivers, whose data was found to be inaccurate, were unharmed by the mere existence of the inaccurate information in the government's database. The Court stated that the dissemination of the information is not imminent, therefore the drivers suffered no concrete injury sufficient enough to bring the lawsuit. Imagine the nightmare these two unsuspecting drivers have been subjected to - since someone "mishandled" their data.

- If you are the unfortunate recipient of being lost, misplaced or your data mis-keyed in any of the new-fangled systems above, then you will need to brace yourself for weeks, months or perhaps a year of getting things straightened out.
- The examples above are real situations that affect livelihoods, careers and possibly the futures of people - real people. A motor carrier whose truck is struck while parked, or is rear-ended while sitting at a red light, still has those accidents included in its CSA crash scores. As a result, those scores don't accurately reflect the carrier's true safety. Once added to a carrier's safety history, violations are almost impossible to remove, even if they are out-of-date or incorrect. Small businesses and drivers continue to be penalized for citations that are dismissed in court.

Particularly in cases where a driver or carrier is not responsible for causing an accident, it's reasonable to fear that plaintiff attorneys will use whatever data is available - accurate or not - to show the driver or motor carrier in question has experienced violations to cast doubt on their safety records.

So here we are, kind of stuck in the middle with a "partner" that is not only - not carrying their share of the workload, but actively contributing to lost or mis-entered data, reports that are incorrect, reported wrong or whatever the case

may be. It makes it harder for the regulated community to comply. Those affected by these types of situations come away wondering how does an agency of a state or federal government have more authority than the court of the land? Nothing should be reported that was dismissed and cleared by a court of law. And one would hope that before a state or federal government proposed inserting themselves in the pathway to compliance, they would first take measures to assure the agency is up to the task.

Does anyone know who to call when a regulatory agency should receive a violation for "dropping the ball" and failing in a way that makes it harder or impossible for the regulated community to comply? (Asmark Institute)

