

Date: March 28, 2017

To: Scott Riccio, Trailways Legislative & Regulatory Committee

From: Ken Presley, United Motorcoach Association

The United Motorcoach Association (UMA) leadership is committed to prioritizing advocacy to facilitate the growth of our industry, including the number of individuals and groups that ride our buses and motorcoaches and the number of operators that provide compliant, innovative, and competitive service.

Key Elements of UMA Advocacy include:

- 24/7 on the ground legislative and regulatory presence in Washington, DC.
- Annual Capitol Hill Days (**April 25-26, 2017**).
- UMA Motorcoach Travel PAC (Political Action Committee)
- Leadership and participation in coalitions with like-minded industry and other groups.
- Grass Roots advocacy with membership and elected officials.
- Facilitating UMA membership development and sustainable relationships with elected officials.
- Maintaining both offensive and defensive fronts.

LEGISLATIVE

Increasingly the distinctive lines between legislation and regulations has blurred with the recent overreach of burdensome regulations and enforcement, much of which was supported by certain segments of the industry, has resulted in UMA seeking Congressional intervention.

Safety Fitness Determination (SFD) (VICTORY!)

The third phase of the much-maligned CSA/SMS program includes a process in which companies could be classified as “unfit”, placed out-of-service, and authority revoked based solely on inspection activity and/or crash record- without benefit of a safety audit or compliance review. FMCSA proposed to eliminate “satisfactory”, “conditional”, and “unsatisfactory” ratings. Despite other references, as proposed, there would not be a “fit” rating. In view of the number of consumers that require a “satisfactory” rating as a condition of doing business, the bus and motorcoach industry opposes SFD on this provision alone. Additionally, few operators can state they have never received a violation and/or out-of-service order that was not accurate or had a crash on their record that was not their fault. FMCSA has no procedures or intentions in place to resolve these inequities.

UMA has sought and supported legislative language in the “Fixing America’s Surface Transportation Act” in which Congress directed FMCSA to review and reform CSA/SMS. Those reforms are in process with the initiation of a study by the National Academy of Sciences. Their final report is expected in June of this year, yet FMCSA proceeded with rulemaking that would utilize the disparate and flawed data so prevalent in FMCSA CSA/SMS scores.

UMA not only filed vigorous comments with FMCSA regarding the flawed proposal, but UMA's lobbying efforts resulted in a provision being inserted in the FY '17 Department of Transportation, Housing and Urban Development appropriations bill prohibiting the proposal from being finalized. That bill is still pending.

Most recently, UMA led a multi-industry coalition (62 national, regional, and state associations) that sent a letter to U.S. Department of Transportation Secretary Elaine Chao urging the proposal be withdrawn. That letter, along with comments filed in the docket, was cited twice as one of the reasons for the withdrawal.

Lease/Interchange Passenger Carrier Rule

The final rule now in place would currently require a formal lease arrangement when two carriers with legal operating authority contract with each other for provision of services, vehicles or drivers. In its current form, this rule is an unwarranted and unwelcome burden on passengers and the industry and would do nothing to enhance safety. The rule deters a motorcoach operator's capability to execute a typical charter contract with other carriers with operating authority for capacity or emergency reasons, as is done in the normal course of motorcoach operations. The rule would prohibit traditional practices and require operators to enter a formal lease arrangement with a carrier for supplemental services and assume full responsibility for the compliance and violations of the federal safety regulations of that carrier.

UMA believes a lease should never be required between two carriers when both have Federal operating authority. The current practice allows enforcement agencies to properly assign violations and address the motor carrier ultimately responsible for compliance under their own US DOT number.

UMA has successfully lobbied Congress to include language in the FY 2017 Department of Transportation appropriations bills directing FMCSA to expeditiously complete its review and modify the rule to resolve issues raised in the industry's Petition for Reconsideration before the extended compliance date of January 1, 2018.

Both House and Senate Committee reports for their FY DOT Appropriations bills contain identical language as follows: "...based on issues raised in numerous petitions for reconsideration. The Committee is pleased by this action, and directs FMCSA to expeditiously complete its review and modify the rule to resolve the issues raised, and ensure the rule appropriately targets unsafe passenger carriers without unduly interfering in compliant business operations. The Committee is confident FMCSA can resolve all outstanding issues prior to January 2018; however, if it is unable to affect a modification of the rule within this time period, the Committee expects FMCSA to grant an additional extension, until the rule can be modified."

UMA has provided a diverse representation of the motorcoach industry for two roundtable discussions held in October 2015 and October 2016. UMA currently awaits FMCSA proposed revisions.

Tax Reform

Congress is expected to take up comprehensive tax reform in 2017. The House is planning to work from the blueprint released last year and the Senate will develop its own bill. UMA has formed its own tax reform task force to prioritize UMA issues as Congress begins this effort in earnest. An issue that has emerged as a potential concern is the border adjustment tax (BAT) originally proposed by House Ways & Means Republican leadership and reportedly attracting the interest of the Trump Administration.

The tax would change how imports and exports are taxed and could significantly increase the cost of imported goods or goods made using imported materials. One area that could be heavily affected is fuel which still relies on a significantly high percentage of imported crude oil. The refining industry is arguing that the BAT could increase the cost of fuel by 25-30% and potentially much higher in areas that rely heavily on imported refined products, like the Northeast. Though controversial, the tax could help promote domestic industries at the expense of industries that depend on imports and is a major source of revenue that allows Republicans to lower overall corporate tax rates.

Persons interested in serving on the UMA Tax Reform Task Force or would like to volunteer their tax accountant should contact Ken Presley at kpresley@uma.org.

REGULATORY

Electronic Logging Devices (ELDs) and Hours of Service Supporting Documents

Minimum performance and design standards for hours-of-service (HOS) electronic logging devices (ELDs); requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status. The main components of the ELD Final Rule include:

- The Agency established technical specifications and performance requirements. FMCSA will provide a list of providers on their website that offer certified ELDs. The Final Rule permits the use of smartphones and other wireless devices, as long as the required technical specifications and certification requirements are satisfied.
- Drivers of vehicles manufactured before model year 2000 may continue using paper record-of duty status (logs).
- The Final Rule provides regulations intended to protect commercial motor vehicle (CMV) drivers from harassment resulting from information generated by ELDs. NOTE: This is in addition to a separate Final Rule released last week that affords additional safeguards from harassment for CMV drivers.
- The Final Rule establishes new hours-of-service supporting document requirements that should result in paperwork reductions.

- Motor carriers who have previously installed compliant Automatic On-Board Recording Devices may continue to use the devices for an additional two years beyond the compliance date.
- Canadian and Mexican domiciled drivers will also be required to use ELDs when operating on U.S. roadways.

Compliance Date: December 18, 2017.

Minimum Training Requirements for Entry-Level Commercials Drivers' Training

An Entry-Level Commercials Drivers' Training Advisory Committee (ELDTAC) was established to conduct a negotiated rulemaking on entry-level driver training for drivers of commercial motor vehicles. The Committee was composed of driver organizations, CMV training organizations, motor carriers of property and passengers) and industry associations, State licensing agencies, State enforcement agencies, labor unions, safety advocacy groups, and insurance companies appointed by the FMCSA Administrator (26 entities in total). UMA provided the leadership on the "Passenger Bus Committee". On May 28, 2015, a final proposal passed with 24 Yes and 2 No votes. The no votes opposed the minimum number of hours for behind-the-wheel training.

In the NPRM, FMCSA proposed new training standards for certain individuals applying for their initial commercial driver's license (CDL); an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials, passenger, or school bus endorsement for their license; and a ``refresher'' training curriculum. These individuals would be subject to the proposed entry-level driver training requirements and must complete a course of instruction provided by an entity that: Meets the minimum qualifications for training providers; covers the curriculum; is listed on FMCSA's proposed Training Provider Registry; and submits electronically to FMCSA the training certificate for each individual who completes the training. This NPRM responds to a Congressional mandate imposed under the Moving Ahead for Progress in the 21st Century Act. The proposed rule is based on consensus recommendations from ELDTAC.

Comments were filed by UMA on April 6, 2016.

The Final Rule reflected the recommendations of the ELDTAC teams with the exception of minimum behind-the-wheel hours; which, are not supported by studies.

This final rule is effective May 22, 2017. The compliance date is three years from the final effective date.

Drug and Alcohol Clearinghouse

FMCSA amends the Federal Motor Carrier Safety Regulations to establish requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse, a database under the Agency's administration that will contain information about violations of FMCSA's drug and alcohol testing program for the holders of commercial driver's licenses (CDLs). This final rule was mandated by the Moving Ahead for Progress in the 21st Century Act (MAP-21. Operating companies considering a CDL holders for safety-sensitive positions will be required to check the 'Clearinghouse" prior to engaging the employee.

Effective Date: January 4, 2017. Compliance Date: January 6, 2020.

Overtime Regulations and Legislation

The Department of Labor's Office of Wage and Hour finalized a rulemaking on overtime regulations on May 18, 2016. Highlights of the rulemaking include:

- Increases the salary threshold indicating eligibility from \$455 per week to \$913 per week, which equates to \$47,476 per year.
- Automatically updates the salary threshold every three years, based on wage growth over time.
- Effective on December 1, 2016.

A federal court in the Eastern Division of Texas granted a nationwide injunction November 22nd, temporarily blocking the enforcement of the FSLA overtime rule.

In short, employers are no longer required to meet the changes with respect to employee status, salary or overtime pay that were slated to go in effect on December 1. The preliminary injunction is not permanent. The existing overtime rule, last updated in 2004, will be preserved until the court reviews the merits of the case. Until there is further action by the court employers may continue to rely on the current \$455 per week salary threshold for exempt status.

The former Obama Administration previously filed an appeal on the ruling. At this moment, the end-game on this regulation is unclear. The court may lift the injunction or make the current injunction permanent. Rectifying this costly regulation is a top priority of the Trump Administration. As a result of the regulation being issued as a final from the Department of Labor, the Executive Branch is limited in preventing its implementation short of restarting the rulemaking process with issuance of a Notice of Proposed Rulemaking. Legislation under the Congressional Review Act is also pending to permanently stop this rule. UMA will continue to participate in the coalition and its activities against this rule.

OSHA: Recordkeeping Regulation

Last year, The Occupational Safety and Health Administration (OSHA) finalized a sweeping new rule on recordkeeping standards. The regulation will require employers, effective January 18, 2017, to submit workplace illness and injury records to OSHA electronically for posting on its web site. The requirements will apply to businesses with 250 or more employees that are already required by OSHA to keep such records.

The rule also prohibits employers from retaliating against employees for reporting occupational injuries or illnesses. Further, employers with safety incentive programs that don't meet OSHA requirements can be cited for rule violations. As part of an effort to evaluate the effectiveness of federal health and safety policies, employers are required to record and report workplace injuries, illnesses, and fatalities.

UMA and the Coalition for a Democratic Workplace oppose this regulation. The House Education and Workforce Committee is hoping to move legislation to suspend this rule early in the new Congress. UMA will continue to stay engaged on this issue.



FMCSA Notice of Public Rulemaking

Speed Limiters

This joint rulemaking with National Highway Traffic Safety Administration (NHTSA) responded to petitions from American Trucking Associations and Roadsafe America to require the installation of speed limiting devices on heavy trucks. In response to the petitions, NHTSA requested public comment on the subject and received thousands of comments supporting the petitioner's request. Based on the available safety data and the ancillary benefit of reduced fuel consumption, this rulemaking would consider a new Federal Motor Vehicle Safety Standard that would require the installation of speed limiting devices on heavy trucks. Rather than propose a national speed limit, the proposal suggests three speed limits and correlated lives saved/injury reductions.

The comment period closed December 7, 2016.

Qualifications of Drivers; Diabetes Standard

FMCSA proposes to permit drivers with stable, well-controlled insulin-treated diabetes mellitus (ITDM) to be qualified to operate commercial motor vehicles (CMVs) in interstate commerce. Currently, drivers with ITDM are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from FMCSA. This NPRM would enable individuals with ITDM to obtain a Medical Examiner's Certificate (MEC), from a medical examiner (ME) at least annually in order to operate in interstate commerce if the treating clinician (TC) who is the healthcare professional responsible for prescribing insulin for the driver's diabetes, provides documentation to the ME that the condition is stable and well-controlled.

The comment period closed 07/06/2015.

FMCSA Advanced Notice of Proposed Rulemaking

Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea

The Federal Motor Carrier Safety Administration (FMCSA) and Federal Railroad Administration (FRA) request data and information concerning the prevalence of moderate-to-severe obstructive sleep apnea (OSA) among individuals occupying safety sensitive positions in highway and rail transportation, and on its potential consequences for the safety of rail and highway transportation. FMCSA and FRA (collectively "the Agencies") also request information on potential costs and benefits from regulatory actions that address the safety risks associated with motor carrier and rail transportation workers in safety sensitive positions who have OSA. For instance, the agencies request comment on the costs and benefits of requiring motor carrier and rail transportation workers in safety sensitive positions who exhibit multiple risk factors for OSA to undergo evaluation and treatment by a healthcare professional with expertise in sleep disorders.

UMA participated on a CMV Driver Health and Wellness panel that resulted in a proposal that liberalizes physician discretion when determining the need for further testing.

The FMCSA Medical Review Board (MRB) issued updated recommendations during a two-day session Aug. 22-23 to help the agency formulate a proposed rule that would offer clear guidelines for medical examiners to diagnose and treat moderate to severe obstructive sleep apnea.

MRB recommended that a driver with a body mass index of 33 to 40 should be required to take sleep studies if he or she has three of 11 factors, including:

- Hypertension (treated or untreated)
- Type 2 diabetes (treated or untreated)
- A male neck size greater than 17 inches or female neck size greater than 15.5 inches
- A history of stroke, coronary artery disease or arrhythmias
- Loud snoring
- Micrognathia or retrognathia (small or recessed jaw)
- Witnessed apnea symptoms
- Hypothyroidism (underactive thyroid; untreated)
- Age 42 or older
- Is male or post-menopausal female
- Mallampati Scale score of class 3 or 4 (small airway)

The board also recommended that drivers at risk for apnea may be issued conditional 90-day medical certifications pending sleep study and treatment, if diagnosed with apnea.

Final comments were due on June 8, 2016.

Financial Responsibility for Motor Carriers, Freight Forwarders, and Brokers

The FMCSA is proposing a rulemaking to increase the minimum levels of financial responsibility for motor carriers, including liability coverage for bodily injury or property damage in the case of freight and passenger motor carriers. The legislative history of the Federal minimum insurance requirements strongly suggests that Congress recognized that crash costs would change and that DOT would regularly examine the levels and make adjustments as necessary. In completing the report Congress required under section 32104 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), FMCSA has determined that the current financial responsibility minimums are inadequate to fully cover the costs of some crashes in light of increased medical costs and DOT's revised value of statistical life estimates. The FMCSA is also considering proposing to extend the financial responsibility requirements to private motor carriers, as authorized by section 4120 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In addition, FMCSA is considering financial responsibility requirements for passenger carrier brokers, implementation of certain MAP-21 provisions concerning broker and freight forwarder financial responsibility, revisions of the rules concerning self-insurance and trip insurance

Comment period closed 02/26/2015.

State Inspection Programs for Passenger Carrier Vehicles

FMCSA is considering a rulemaking that would require States to establish a program for annual inspections of commercial motor vehicles designed or used to transport passengers as required by the provision from section 32710 of the Moving Ahead for Progress in the 21st Century Act.

The comment period closed 06/27/2016.

Surface Transportation Vulnerability Assessments and Security Plans

On December 16, 2016, the Transportation Security Administration (TSA) issued ANPRM requesting public comments on several topics relevant to the development of surface transportation vulnerability assessment and security plan regulations mandated by the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act). Based on its regular interaction with stakeholders, TSA assumes many higher-risk railroads (freight and passenger), public transportation agencies, and over-the-road buses (OTRBs) have implemented security programs with security measures similar to those identified by the 9/11 Act's regulatory requirements. In general, TSA requested information on three types of issues:

- 1) Existing practices, standards, tools, or other resources used or available for conducting vulnerability assessments and developing security plans.
- 2) Information on existing security measures, including whether implemented voluntarily or in response to other regulatory requirements, and the potential impact of additional requirements on operations.
- 3) Information on the scope/cost of current security systems and other measures used to provide security and mitigate vulnerabilities.

TSA believes this information is necessary to establish a baseline, estimate cost of implementing the statutory mandate, and develop appropriate performance standards.

Final comments were due February 14, 2017; however, the comment period was extended 60 days.

NOTE: TSA is evolving as a new regulatory body for the passenger carrier industry. Operators should read this proposed rule thoroughly and file comments.

Security Training for Surface Transportation Employees

The Transportation Security Administration (TSA) is proposing to require security training for employees of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, and over-the-road bus (OTRB) companies. TSA states, Owner/operators of these higher-risk railroads, systems, and companies would be required to train employees performing security-sensitive functions, using a curriculum addressing preparedness and how to observe, assess, and respond to terrorist-related threats and/or incidents. As part of this rulemaking, TSA would also expand its current requirements for rail security coordinators and reporting of significant security concerns (currently limited to

freight railroads, passenger railroads, and the rail operations of public transportation systems) to include the bus components of higher-risk public transportation systems and higher-risk OTRB companies.

The comment period closed March 16, 2017.

National Highway Traffic Safety Administration (NHTSA) Notice of Proposed Rulemaking

Motorcoach Rollover Standard

NHTSA issued an NPRM on August 6, 2014 proposing a new Federal motor vehicle safety standard to enhance the rollover structural integrity of certain types of large buses (generally, over-the-road buses (of any weight) and non-over-the-road buses with a gross vehicle weight rating (GVWR) greater than 26,000 lbs. The agency is proposing performance requirements that new large buses must meet in a test in which the vehicle is tipped over from an 800 millimeter (mm) raised platform onto a level ground surface. The performance requirements would ensure that these vehicles provide a sufficient level of survival space to restrained occupants in rollover crashes. The performance requirements would also ensure that seats and overhead luggage racks remain secured and window glazing attached to its mounting during and after a rollover crash, and would ensure that emergency exits remain closed during the rollover crash and operable after the crash.

The current projected date for a Final Rule is May 4, 2017.

UMA Capitol Hill Days – April 25-26, 2017 - REGISTRATION DEADLINE FRIDAY, MARCH 31st!!

The UMA Capitol Hill Days has grown significantly the past few years. UMA underwrites a significant part of member participant's hotel room rate, briefs participants on issues and practices, schedules all appointments, and participates in nearly every appointment with the help of the Prime Policy Group team. Last year, over 450 individualized appointments took place. For the past several years, UMA has enjoyed participation from Trailways members and a breakfast sponsorship. Thank you!

UMA Motorcoach Travel PAC

UMA is half way to our goal of \$50,000 this year. The UMA Political Action Committee fund helps reelect those legislators that support and advance UMA positions.