

## Title: *Christmas 2014 brings De-Regulation to Trucking Industry*

Christmas came early for the trucking industry as the fall of 2014 marked positive changes for commercial drivers and motor carriers. The trucking industry is reaping the effects of two positive regulatory developments. First, the Federal Motor Carrier Safety Administration (FMCSA) issued in the Federal Register a final rule on December 18, 2014, wherein the FMCSA eliminated a commercial driver's obligation to maintain "no defect" Driver Vehicle Inspection Reports (DVIR). Secondly, bilateral action on the part of Congress and President Obama resulted in the passage of the Collins Amendment on December 16, 2014, which immediately repealed the changes to the 34 hour restart which became effective in July of 2013. Both of these regulatory developments translate into more efficient operations for motor carriers, and will save the industry nearly 2 billion dollars annually. These recent regulatory changes have the trucking industry saying—thanks Santa!

### *No-Defect DVIRs are No Longer Required*

The requirement for commercial drivers to document and report vehicle defects stems back to the World War II era. In 1939, the Interstate Commerce Commission (ICC) issued regulations that required commercial drivers to prepare a written report regarding the condition of the vehicle at the end of each work day or trip. *See* Inspection, Repair, and Maintenance; 79 Fed. Reg. 75437, 75438 (December 18, 2014) (to be codified at 49 C.F.R. pt. 396). This regulatory requirement was revised by the ICC in 1952 to improve a motor carrier's inspection, maintenance, and record keeping procedures. *Id.* The ICC revised this regulation to require that commercial drivers prepare a vehicle condition report at the end of each work day regardless of whether a mechanical or equipment defect was discovered. *Id.* The ICC noted in a report dated April 14, 1952, that the underlying reason for requiring a vehicle inspection report even when no mechanical deficiencies were found was "... to provide a continuous record of vehicle condition and to insure that the reports, particularly those involving defects, will be made out currently and maintained on a current basis." *Id.*

Presently, a commercial driver's vehicle inspection report is referred to as a DVIR. The current day federal regulations continued to require commercial drivers to prepare DVIRs under 49 CFR § 396.11. Specifically, the statutory language of section 396.11(a)(2) required that "[i]f no defect or deficiency is discovered by or reported to the driver, the report shall so indicate." 49 C.F.R. § 396.11. However, as of December 18, 2014, commercial drivers no longer have to prepare a DVIR when no mechanical or equipment defects are identified, or the driver is not made aware of such defects. *See* Inspection, Repair, and Maintenance; 79 Fed. Reg. 75437, 75438 (December 18, 2014) (to be codified at 49 C.F.R. pt. 396). In other words, "no defect" DVIRs are no longer required under federal regulations. This significant change to federal law is attributable to President Obama's Executive Order No. 13563 which launched a government wide review of federal regulations with an eye for eliminating out-of-date, ineffective, or overly burdensome rules, and reducing regulatory burdens on the private sector. *Id.* Eliminating a commercial driver's requirement to prepare daily "no defect" DVIRs relieves motor carriers from burdensome paperwork, and the FMCSA estimates that the trucking industry will reap savings of 1.7 billion dollars annually, and approximately 12 to 15 billion over the next 10 years. *Id.*

Commercial drivers and motor carriers, however, are still required to adhere to the fundamental elements of sections 393 and 396 of Part 49 of the Code of Federal Regulations. For instance, commercial drivers are still required to conduct pre-trip inspections of equipment's condition, and prepare DVIRs if any defects or deficiencies are found or reported during the work day. The FMCSA was careful to stress the importance that only "no defect" DVIRs were no longer required to be reported by the trucking industry.

#### *Changes to 34 Hour Restart Provision*

The results of the of the 2014 mid-term elections sent a clear message to both Democrats and Republicans in Washington that the American public did not want another government shutdown from political bickering over the budget. On the heels of the election results, Congress passed a 1.1 trillion spending bill for the 2015 fiscal budget on December 13, 2014, which President Obama signed 3 days later on December 16. The spending bill was closely being watched by the trucking industry because it contained the so-called Collins Amendment proposed by Senator Susan Collins of Maine. The amendment proposed to suspend the changes to the 34 hour restart which became effective in 2013.

July of 2013 marked the start of regulatory changes to the 34 hour restart. Effective July 1, 2013, commercial drivers were required to include two consecutive periods between 1-5 am within a 34 hour restart period. Commercial drivers were also required—for the first time in trucking history—to take a 30 minute break before driving more than 8 hours. As of July 1, 2013, the 34 hour restart provision in 49 CFR § 395.3 required the following:

(c)(1) Through June 30, 2013, any period of 7 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours. After June 30, 2013, any period of 7 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two periods from 1 a.m. to 5 a.m.

(2) Through June 30, 2013, any period of 8 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours. After June 30, 2013, any period of 8 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two periods from 1 a.m. to 5 a.m.

These regulatory changes obligating commercial drivers to include two time periods of 1-5 am within the 34 hour restart period was foreseeably not well received by the trucking industry. The Collins Amendment which took effect immediately after the President signed the spending bill on December 16 now requires for motor carriers and commercial drivers to operate under the pre-July 1, 2013, restart provision. Thus, the 34 hour restart provision at 49 CFR § 395.3 which requires two consecutive 1-5 am periods to be included within any 34 hour restart period is no longer effective.

The Collins Amendment also suspended the limitation contained by § 395.3(d) which restricted commercial drivers from taking more than one 34 hour restart period in a 7 day period.

Commercial drivers are now authorized to take as many 34 hour restart periods during their work week.

The FMCSA is expected to prepare a notice for the Federal Register that will explain the impact of the Collins Amendment with respect to commercial vehicle enforcement.

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