Recent legislative action regarding electronic logging data for commercial truck drivers is causing the trucking industry concern as the new rule is scheduled to take effect Dec. 18. The regulation could affect NRCA members by causing delays and disruptions of roofing materials deliveries.

**Background**

In 2012, the Moving Ahead for Progress in the 21st Century Act was approved by Congress and signed into law. The act primarily authorized highway funding, but one provision called for the secretary of transportation to prescribe regulations requiring the trucking industry to use electronic logging devices (ELDs) to record commercial driving hours of service. The intent was to promote a safer work environment for drivers and improve commercial motor vehicle safety by updating the record-keeping process from an outdated paper method to an electronic system.

The regulation also would help improve drivers’ compliance with current hours-of-service regulations. In July 2013, the number of hours a driver can complete weekly was decreased from 82 to 70 hours. According to the Federal Motor Carrier Safety Administration (FMCSA), there is an increased risk of fatigue-related crashes after driving nine hours.

In December 2015, FMCSA published the electronic logging data final rule mandating the use of ELDs by all professional truck drivers and commercial motor carriers who are required to keep hours-of-service logs of their Driver's Record of Duty Status. The final rule will apply to about 3 million drivers.

By helping reduce driver fatigue and enabling ongoing tracking and enforcement of drivers’ hours of service, using ELDs is expected to save 26 lives and prevent 562 injuries annually, according to FMCSA. An ELD synchronizes with a vehicle’s engine to track driving time accurately, is tamper-proof and allows access to the data by law enforcement officials.

According to FMCSA, implementation is expected to save the trucking industry more than $1 billion annually as a result of reduced paperwork, reduced fuel wastage achieved by tracking truck idling time, and an ability to alert drivers of upcoming hours-of-service violations and vehicle diagnostics. However, the cost for an ELD is estimated between $165 and $832 per commercial truck annually, costing the trucking industry more than $1.5 billion.

**Legislative action**

On July 17, the House Committee on Appropriations included language in the Transportation, Housing and Urban Development appropriations bill that calls for the secretary of transportation to “analyze whether a full or targeted delay in ELD implementation and enforcement is appropriate.” It is worth noting companion legislation from the Senate Committee on Appropriations issued July 27 doesn’t include this language, calling into question whether such language will survive the remainder of the appropriations process.

In its report regarding the bill, the House Committee on Appropriations expressed concern with the “heavy burden of this mandate, especially on small carriers” and explained a delay is needed to address implementation challenges, which include significant technological concerns. For example, the devices must be certified, but certification is left to the device’s manufacturer without clear guidelines. Other concerns include cyber vulnerability, law enforcement’s ability to access the data and connectivity in remote areas.

On July 18, Rep. Brian Babin (R-Texas), a member of the Committee on Transportation and Infrastructure, introduced the ELD Extension Act of 2017 (H.R. 3282) to delay the implementation date from December 2017 to December 2019. Babin argued ELD technology shouldn’t be forced on small businesses and explained the legislation would offer temporary relief for those businesses that don’t want the burden or expense. As of Aug. 30, the ELD Extension Act of 2017 had 43 co-sponsors.

On Sept. 7, the full House voted down an amendment sponsored by Babin that would have prohibited funding for implementation and enforcement of the ELD mandate through the end of the 2018 fiscal year. The amendment failed on a vote of 246-173. Given this defeat, it may be Babin’s last effort to delay implementation of the regulation.

**Mixed industry reaction**

The electronic logging data rule has received mixed reactions in the trucking and manufacturing industries. The Owner-Operator...
Independent Drivers Association (OOIDA), which represents small-business trucking professionals, opposes the final rule and claims it violates drivers’ Fourth Amendment rights against unreasonable searches and seizures.

In April, OOIDA petitioned the U.S. Supreme Court to hear its case after the U.S. Court of Appeals for the Seventh Circuit ruled against OOIDA in a case challenging the final rule’s legality. The U.S. Supreme Court declined to hear the case, leaving in place the lower court’s ruling to uphold the final rule.

Conversely, the American Trucking Association strongly supports implementing the final rule by its current deadline, arguing it will improve regulatory compliance and save lives. The association recently sent a letter to the chairmen and ranking members of the House and Senate appropriations committees urging them to keep the Dec. 18 deadline. The Alliance for Driver Safety & Security (also known as the Trucking Alliance) echoes those sentiments, deeming it critical for the industry to keep the public’s trust.

**Be prepared**

Capitol Hill sources indicate it will be an uphill battle to procure any delays to the final rule, especially because other legislative priorities, such as budget and tax reform, require Congress’ attention this fall.

Implementing the final rule has the potential to delay and disrupt job-site deliveries in many industries. NRCA members may want to contact their manufacturers, distributors and other roofing suppliers to identify any potential disruptions before the rule takes effect. Once the rule is implemented, drivers may be more selective about their routes as delays in offloading at job sites will become less profitable.

It is imperative NRCA members be proactive when working with manufacturers, distributors and other suppliers. Specifically, NRCA members may want to consider the following recommendations (courtesy of Atlas Roofing Corp., Atlanta):

- Because trucks typically are booked three to four days in advance of scheduled deliveries, try to avoid changes or delays within 48 hours of scheduled shipping dates to prevent change and cancellation fees.
- Provide clear and concise delivery instructions, including accurate addresses, and adhere to assigned unloading times.
- Stage unloading for ISO (International Organization for Standardization) trucks at an average of 45 minutes each and schedule no more shipments than reasonably can be unloaded, especially for larger jobs. As a result of being stuck in line on job sites, truck drivers now are asking how many other loads are going to a specific job site before committing to the delivery; some drivers are refusing to deliver to certain contractors.
- To avoid delays in unloading, make every effort to adhere to the unloading schedule. If a delivery is unloaded more than two hours late, fees will be assessed and strictly enforced.
- To reduce unloading times, whenever feasible, arrange unloading at a staging area rather than hoisting to a roof.

NRCA members who are able to implement some or all the recommendations significantly will reduce potential delays and disruptions of job-site deliveries resulting from implementing the ELD rule.

For more information about the ELD rule, visit www.fmcsa.dot.gov/hours-service/elds/electronic-logging-devices or contact Teri Dorn, NRCA’s director of federal affairs, at (202) 400-2590 or tdorn@nrca.net.

NRCA will continue to monitor this issue and keep members updated. However, barring any complete action by Congress and President Trump, NRCA members should be prepared for the ELD rule to take effect in December.

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