

Breiner, Mark

From: Krolikowski, Gerry
Sent: Tuesday, June 28, 2011 2:40 PM
To: Breiner, Mark
Cc: Stanczyk, Russ; Donscheski, Doug
Subject: Proposed PSC rule changes

Dear Mark,

Following you will see some comments we have regarding the proposed rule changes that I mentioned on the phone earlier today. Our main nexus is to assure the State of Nebraska remains compliant with the Federal Motor Carrier Safety Regulations but also to assure our personnel are able to enforce all such regulations and rules in a fair and consistent manner. As you are aware, the regulations pertaining to Motor Carriers are rather complex, and if there is a current regulation or rule that will work for all types of carriers we would prefer that they all stay as consistent as possible. While we recognize that Household Goods and Passenger Carriers are more scrutinized, it would benefit our personnel for enforcement purposes to regulate these carriers the same (intrastate vs interstate) whenever feasible.

Again, this email is intended to provide an overview from the Nebraska State Patrol (NSP) regarding the proposal to amend Title 291, Chapter 3, Motor Carrier Rules and Regulations Number 182. :

REVIEW

004.05B Door Displays Size and Color: Each door display will shall be legible at all times. The application number will shall be at least 3 inches high. The color scheme of the display will shall be in distinct contrast to the background color of the vehicle.

Overview - this regulation is more stringent than adopted under State Statute 75-363 (3)(h) as outlined in the Federal Regulations Title 40 CFR Part 390.21 which states "Be readily legible during daylight hours from a distance of 50 feet (15.24 meters) while the CMV is stationary" The PSC amendment requires the number to be at least 3 inches high, which would be more stringent than what is adopted under Statute 75-363 for all regulated carriers. If amended by the PSC there will be 2 standards, one for regulated carriers and one for non regulated carriers. The non regulated carriers are required to comply with State Statute 75-363 (3)(h).

005.01B Adequate sight which shall include vision with visual acuity of at least 20/40 (Snellen) in each eye either without corrective lenses, field of vision in the horizontal meridian of not less than a total of 140 degrees; ability to distinguish colors of red, green, and yellow*, end correct glasses, when driving. Persons who require corrective lenses to meet the minimum sight requirement must wear such lenses while operating the motor vehicle.

Overview - this regulation is compatible adopted under State Statute 75-363 (3)(f) as outlined in the Federal Regulations Title 40 CFR Part 391.41 (b)(10) which states "Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber." If amended by the PSC there

may be questions by the industry that this does not follow the federal regulations identically and may create confusion.

005.02 Each motor carrier shall have in its on files a certificate of physical examination signed by a licensed physician for every driver in its employment, attesting that the physician has examined the driver and found him to meet the requirements in 005.01 of this article. Such certification shall be renewed at least no less than every four years. Physical certificates obtained pursuant to federal regulations meet the requirements of this section.

Overview - This regulation is less stringent than adopted under State Statute 75-363 (3)(i) as outlined in the Federal Regulations Title 40 CFR Part 391.4 which states "the medical certificate shall not exceed 2 years". If amended by the PSC there will be 2 standards, one for regulated carriers and one for non regulated carriers. The regulated carriers would have less stringent regulations than the non regulated carriers. Both the regulated and non regulated carriers are required to comply with State Statute 75-363 (3)(f). NSP's opinion, the amendment would place the State of Nebraska incompatible with the Federal Regulations under 49 CFR Part 350 (d) "Upon a finding by the FMCSA, based upon its own initiative or upon a petition of any person, including any State, that your State law, regulation or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRS, the FMCSA may initiate a proceeding under §350.215 for withdrawal of eligibility for all Basic Program and Incentive Funds.

005.045 No motor carrier shall permit or require any driver employed by such motor carrier to drive nor shall any driver drive (1) more than (10) hours following (8) consecutive hours off duty or (2) for any period after having been on duty 15 hours following (8) consecutive hours off duty.

Overview - this regulation is more stringent than adopted under State Statute 75-363 (7)(a)(ii) which states "For any period after having been on duty sixteen hours following eight consecutive hours off duty. Although this amendment is more stringent as outlined in 49 CFR Part 355.21 NSP believes this will create confusion amongst all motor carriers in general. In addition the Federal Motor Carrier Safety Administration has issued a proposed rulemaking in which it must publish a final Hours of Service Rule by July 26, 2011. This will affect regulated and non regulated motor carriers. During an audit in 2009 FMCSA notified NSP that Nebraska's Intrastate Hours of Service were outside the tolerance guidelines as outlined in 49 CFR Part 350. NSP responded that we would not pursue legislation changes until the Hours of Service Final Rule was published.

005.08 logbook, in the (Form MCS-59), as required by the United States Department of Transportation in Section 395.8 of the Federal Motor Carrier Safety Regulations, will shall be maintained by each driver traveling more than one hundred 100 road miles from the garage or terminus at which he or she such driver reports for work.

Overview: This amendment is more stringent than adopted under State Statute 75-363 (3)(i) as outlined in the Federal Regulations Title 40 CFR Part 395. which states " (100) air mile radius driver. A driver is exempt from the requirements of 395.8 if: the driver operates within a 100 mile radius of the normal work reporting location. **According to 395.1 Interpretations Question 12:** What constitutes the 100-air-mile radius exemption? *Guidance:* The term "air mile" is internationally defined as a "nautical mile" which is equivalent to 6,076 feet or 1,852 meters. Thus, the 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers. Although this amendment is more stringent as outlined in 49 CFR Part 355.21 NSP believes this will create confusion amongst all motor carriers in general.

005.10 f the Commission finds that a motor vehicle under its jurisdiction is unsafe or poses a significant risk to public safety, it may order the carrier to take the vehicle out of service and marked as out of service until repairs have been made and the vehicle had been reinspected by the Commission or Carrier Enforcement personnel.

Overview: This amendment requires the Commission on Carrier Enforcement to conduct an inspection on Out of Service vehicles. Under the guidelines of the North American Inspection Standard, under which NSP follows as well as all states, the motor carrier is required to make repairs before the vehicle can be re-dispatched. NSP does not re-inspect every vehicle that is placed Out of Service. NSP does not have the manpower to do so.

In closing I just want to express our appreciation for allowing us to share our comments. I also offer up our services, if you so desire them, to discuss and amend as you deem appropriate.

Sincerely,

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