

# DANNEMILLER BULLETIN

(June 9, 2014)

**Another proposed rule for Electronic Logs:** Over the past 19 years, EOBRs, electronic Logs, have been the subject of at least 12 DOT proposals and rulings. Some went into effect and some did not. Most recent activity has the DOT, in April 2010, issuing a "bad actor" rule requiring carriers who had been found Unsatisfactory in the Hours-of-Service factor of an on-site audit to use Electronic Logs for at least 2 years. In September of 2010 legislation was introduced that would have required EOBRs to be used in all commercial vehicles. In February 2011 the DOT issues a proposal to require all interstate drivers to use EOBRs. In August 2011 a Federal Appeals Court forces DOT to "vacate" it's April 2010 "bad actor" rule on the basis of potential driver harassment issues. In July 2012 there is a new law that requires the DOT to issue a final mandate on electronic logs which are now to be known as ELDs (electronic logging devices). The deadline given comes and goes with no rule.

Fast forward - the DOT has now issued a supplement to its February 2011 ELD proposal, including new technical specifications and a revised mandate for the use of ELDs. A final version of the rule is expected late 2014 or early 2015 (or, ..who knows!!). I'm sure someday they will get this done. I guess we're lucky that we don't get all the government we pay for.

**Court decides where DataQ challenges can be heard.** DataQ, the online facility that can be used to challenge erroneous roadside inspection violations, may or may not remove violations that a driver, or the company, has had dismissed in court. If not, the involved party must then request the state agency (ex: PUCO) remove the dismissed violation. If they will not, court is the only option. According to a recent decision of the U.S. Court of Appeals for the D.C. Circuit, these cases belong in district court, not the court of appeals as argued by the Department of Justice.

**Enhanced Investigation Techniques (EIK):** If this sounds ominous, you've got the right feeling. We have been advised that the DOT will soon be using more stringent procedures in their on-site audits. Compliance reviews (audits) will involve a longer and harder look at carrier's safety programs and documentation. Currently, the threshold for whether or not a carrier is fined for violations found in a Compliance Review is if it is a critical or acute violation. For instance, in the Hours-of-Service category, if more than 10% of the records (logs) checked for either 11-hour, 12-hour, 14-hour, 70-hour, or falsification, are in violation that would be a critical violation, and would affect your safety rating, and would almost surely be followed by a fine. Currently, if violations were only 7%, 8%, 9% of the records checked, your safety rating would not be affected and there would be no fine. This would be one of the changes. Carriers who are consistently at 7%, 8%, 9% violation level are likely to be fined.

This has already begun in other regions. We were in contact with a carrier in Missouri who had been charged with eleven 70-hour violations. They were fined over \$32,000 just for those violations. This was their first audit. Do the math,..over \$2,900 per violation. This is normally \$300-\$400 per violation.

Let me know if any questions regarding the above.

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## Sen. Booker Proposes HOS Amendment To Transportation Bill

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New Jersey Democrat Cory Booker unveiled an amendment to a fiscal 2015 funding bill June 18 that would undo a provision that would suspend for one year a rule that puts limits on the time truckers can operate on roadways.

This week, the full Senate is considering an expansive spending bill that includes proposed funding for transportation programs, and over the past few days, Booker promised to offer his amendment. The exact wording hasn't been finalized.

"Truck accidents are on the rise, and driver fatigue is a leading cause," Booker said.

Fellow New Jersey Democrat Robert Menendez is a co-sponsor. Other co-sponsors, all Democrats, are West Virginia's Jay Rockefeller, Connecticut's Richard Blumenthal, New York Sens. Charles Schumer and Kirsten Gillibrand, Massachusetts Sens. Ed Markey and Elizabeth Warren, California's Dianne Feinstein and Ohio's Sherrod Brown.

The bill's managers have indicated Booker's amendment will be considered June 19. The amendment would undo a proposal by Sen. Susan Collins of Maine that was adopted at a committee hearing by a bipartisan vote of 21-9.

Collins' proposal would call for not funding last year's changes to the Federal Motor Carrier Safety Administration's hours-of-service restart rules while the agency studies the rule and justifies its safety claims to Congress.

The rule took effect last summer. It mandates that truck drivers have a 34-hour resting period between workweeks and include two consecutive 1 a.m.-to-5 a.m. periods during that restart time off.

By Eugene Mulero  
Staff Reporter

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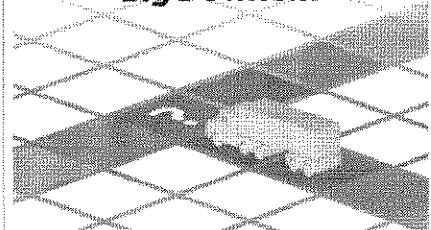


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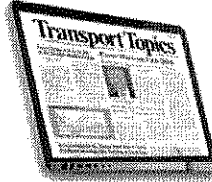
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