The November 30, 2015 edition of the Federal Register contains FMCSA’s final rule on driver coercion. The final rule has an effective date of January 29, 2016. The rule was published in response to MAP-21 and prohibits motor carriers, shippers, receivers and transportation intermediaries from coercing drivers to violate various regulations of the FMCSA. The final rule largely tracks the text of the proposed rule, but where changes were made, they are generally welcome. For instance, language in the FMCSA’s proposed rule caused confusion as to whether there was a duty on the part of a shipper or transportation intermediary to inquire as to whether the driver could complete a move within the required shipping schedule without violation of the hours of service regulations. The final rule clarifies that there is no duty of inquiry; according to the rule: “motor carriers, shippers, receivers and transportation intermediaries cannot commit coercion under the final rule unless and until they have been put on notice by the driver that he or she cannot meet the proposed delivery schedule without violating the HOS limits or other regulatory requirements”. Further, the final rule helpfully clarifies that, if the driver provides such notice, the shipper or transportation intermediary is free to request a replacement driver from the carrier without running afoul of the rule.

While these changes are welcome, the rule remains potentially problematic in that the definition of what constitutes coercion is necessarily vague and subject to interpretation. Moreover, the rule does not address detention time, which has been a key point of contention between motor carriers and shippers/receivers.

Complaints alleging coercion must be filed within 90 days of the event giving rise to the complaint. Penalties can be assessed for up to $16,000 per violation. Moreover, the FMCSA has indicated that it can seek revocation of operating authority for violations.

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