

# Regulatory and Legislative Update

March 2020

## Contents

### Regulation and Enforcement

[FMCSA to hold Trucking Safety Summit on March 19](#)

[Final rule on HOS changes goes to OMB](#)

[Clearinghouse logs more than 9,000 positive drug tests by March](#)

[CVSA International Roadcheck to be a month earlier this year](#)

[UPS seeks exemption to allow permit holders to operate doubles](#)

[FMCSA reduces Unified Carrier Registration fees](#)

[FMCSA incorporates latest OOS criteria into hazmat permit rules](#)

[Entertainment industry group seeks limited relief on use of clearinghouse](#)

[Rail maintenance industry gets HOS relief](#)

[Reminder: FMCSA seeks feedback on a new study of large truck crashes](#)

### Legislation

[U.S. House passes federal ABC test in pro-union bill](#)

[House bill would allow states to waive weight limits on perishable loads](#)

[House passes port security bill](#)

### Advocacy and Comment

## Regulation and Enforcement

### FMCSA to hold Trucking Safety Summit on March 19

The Federal Motor Carrier Safety Administration has scheduled the FMCSA 2020 Trucking Safety Summit for March 19 at U.S. Department of Transportation headquarters in Washington, D.C. The formal conference will provide invited stakeholders an opportunity to share ideas on improving trucking safety. Invited stakeholders include including motor carriers, drivers, safety technology developers and users, federal and state partners, and safety advocacy groups.

Although registration for the public meeting is limited, a live stream of the summit will be available, FMCSA said. For details on the summit, visit <https://www.fmcsa.dot.gov/safety/fmcsa-truck-safety-summit>. For the Federal Register notice announcing the summit, visit <https://www.federalregister.gov/d/2020-04427>.

### Final rule on HOS changes goes to OMB

The Department of Transportation on March 2 sent to the White House Office of Management and Budget (OMB) a draft final rule that would make various changes in driver hours-of-service (HOS) regulations in an

## Regulatory and Legislative Update – March 2020

effort to provide drivers and carriers more flexibility. OMB review can take months, but the Trump administration faces a deadline of mid-November at the latest in the event President Trump were to lose his reelection bid. A new president can void any rules issues within 60 days prior to inauguration. However, in the event Democrats were to hold the White House and Congress, legislative tools such as the Congressional Review Act might be available to overturn regulations issued as early as this summer.

Details of the draft final rule will not be available until OMB completes its review and the final rule is published. However, the final rule presumably resembles the proposed rule, which included provisions to (1) expand the time limits and distances allowed for claiming the short-haul exception from use electronic logging devices ; (2) allow more duty time while operating in adverse driving conditions; (3) redefine the requirements for the 30-minute rest break to reduce its impact on productivity; (4) expand options for use of split rest while using sleeper berths; and (5) allow a new “split-duty” option that would allow drivers to pause their 14-hour window for driving by up to three hours by taking an off-duty break. *(For complete details on the proposed rule, see Regulatory Update, September 2019.)*

For FMCSA’s proposed rule, visit <https://www.federalregister.gov/d/2019-17810>. To view supporting documents and the nearly 8,200 comments submitted, visit <https://www.regulations.gov/docket?D=FMCSA-2018-0248>.

### **Clearinghouse logs more than 9,000 positive drug tests by March**

FMCSA announced on February 21 that the drug and alcohol clearinghouse had identified nearly 8,000 positive substance abuse tests of commercial drivers since it launched on January 6. By the beginning of March, officials updated the figures in public meetings to more than 9,000 positive tests. Under the regulation, positive tests and refusals to submit to must be reported to the clearinghouse. Employers of commercial driver’s license (CDL) and commercial learner’s permit (CLP) holders covered by the drug and alcohol regulations must query all prospective drivers during the hiring process and must conducted limited queries on existing drivers at least once a year. Drivers reported to the clearinghouse are barred permanently from operating commercial motor vehicles (CMV) unless they successfully complete the return-to-duty process. For more information on the program, visit <https://clearinghouse.fmcsa.dot.gov>.

### **CVSA International Roadcheck to be a month earlier this year**

The Commercial Vehicle Safety Alliance announced that International Roadcheck will take place May 5-7, 2020. The annual high-volume enforcement initiative traditionally has been held during the first week of June, but CVSA said it is being moved up one month because the weather may be more favorable for many jurisdictions. CVSA also usually announces that International Roadcheck will focus on a particular type of violation. This year, the focus is slightly broader, covering all aspects of driver requirements.

### **UPS seeks exemption to allow permit holders to operate doubles**

FMCSA is requesting comments by March 26 on a UPS request for an exemption to allow its driver-trainees holding CLPs to operate twin 28-foot trailers on public roads to obtain behind-the-wheel (BTW) skills training under the direct supervision of driving instructors. Although federal CDL regulations allow drivers with CLPs to operate CMVs, drivers must have proper endorsements; the regulations do not permit a double/triple trailers endorsement on a CLP. For the Federal Register notice, visit <https://www.federalregister.gov/d/2020-03710>.

### **FMCSA reduces Unified Carrier Registration fees**

FMCSA issued a rule reducing the annual registration fees states collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement. For the 2020 registration year, the fees will be reduced by 14.45% below the 2018 registration fee level to ensure that fee revenues collected do not exceed the statutory maximum, and to account for the excess funds held in the depository. The fees will remain at the same level for 2021 and

## Regulatory and Legislative Update – March 2020

subsequent years unless revised in the future. The reductions in 2019 registration year fees range from approximately \$3 to \$2,712 per entity, depending on the number of vehicles owned or operated by the affected entities. For the Federal Register notice, visit <https://www.federalregister.gov/d/2020-01761>.

### **FMCSA incorporates OOS criteria into hazmat permit rules**

FMCSA issued a final rule effective March 25 amending its hazardous materials safety permit regulations to incorporate by reference the April 1, 2019, edition of the CVSA “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” For the Federal Register notice, visit <https://www.federalregister.gov/d/2020-03129>.

### **Entertainment industry group seeks limited relief on use of clearinghouse**

FMCSA is requesting comments by April 6 on an application by Motion Picture Compliance Solutions (MPCS) for an exemption on behalf of its members that use CDL holders subject to drug and alcohol testing. MPCS, which serves as a consortium/third-party administrator (C/TPA) for member employers involved in transportation related to theatrical, commercial, television, and motion picture production, requests an exemption from the requirement that an employer must not employ a driver who is subject to drug and alcohol testing to perform safety-sensitive functions prior to conducting a full query of the drug and alcohol clearinghouse. Under the requested exemption, MPCS would conduct a limited query before one of its member employers hires a driver for a project. If the limited query indicates that information about the driver exists in the Clearinghouse, the driver would not be permitted to perform safety-sensitive functions unless and until a full query subsequently shows that the driver is not prohibited from operating a CMV. For the Federal Register notice, visit <https://www.federalregister.gov/d/2020-04649>.

### **Rail maintenance industry gets HOS relief**

FMCSA has granted an exemption requested by R.J. Corman Railroad Services, Cranemasters, Inc., and the National Railroad Construction and Maintenance Association, Inc. for a limited exemption from the maximum driving time requirements in the HOS regulations to allow affected railroad employees subject to the HOS rule to respond to an unplanned event that occurs outside of or extends beyond the employee’s normal work hours. For the Federal Register notice, visit <https://www.federalregister.gov/d/2020-04428>.

### **Reminder: FMCSA seeks feedback on a new study of large truck crashes**

FMCSA is requesting comments by March 16 on how best to design and conduct a study to identify factors contributing to FMCSA reportable large truck crashes. The agency specifically seeks information on how best to balance sample representativeness, comprehensive data sources, ranges of crash types, and cost efficiency. FMCSA plans to use on-board electronic systems to obtain information about speeding, lane departure, and hard braking. The agency plans to conduct a study that ranks the significance of various activities and the reductions in crash frequency and severity that would result from reducing each activity. For more information, see the Federal Register notice at <https://www.federalregister.gov/d/2020-00557>.

### Legislation

#### **House passes federal ABC test in pro-union bill**

The U.S. House of Representatives on February 6 passed by a vote of 224 to 194 legislation (H.R. 2474) that would make various changes in law to support unionization efforts. A provision of special interest to the trucking industry is a definition of an employee as opposed to an independent contractor under the National Labor Relations Act. Sec. 2(a)(2) of the bill would impose a federal ABC test with the B prong stating that a worker is to be considered an employee unless “the service is performed outside the usual course of the business of the employer.”

The bill also includes typical pro-union measures, such as a prohibition against permanent replacements of workers who participate in strikes and a revision of the definitions of “employee” and “supervisor” to prevent employers from classifying employees as exempt. H.R. 2474 has no chance of becoming law in the current Congress given Republican control of the Senate and White House. For more information on the bill, visit <https://www.congress.gov/bill/116th-congress/house-bill/2474>.

#### **House bill would allow states to waive weight limits on perishable loads**

Rep. Rob Woodall (R-Georgia) introduced a bill (H.R. 5773) that would authorize states to waive the federal vehicle weight limits on certain vehicles hauling perishable commodities or products. The legislation covers goods covered under the Perishable Agricultural Commodities Act as well as concrete in an unhardened state, live poultry, raw or unfinished forest products, livestock feed or “other products or commodities that could be deemed not useful after a specified amount of time in accordance with industry standards and practices, as defined by a state. To qualify for the waiver, the vehicles would have to be equipped with speed-limiting technology that prevents the vehicle from traveling above the posted speed limit or 65 mph, whichever is lower. For more information, visit <https://www.congress.gov/bill/116th-congress/house-bill/5773>.

#### **House passes port security bill**

The U.S. House of Representatives in February passed legislation (H.R. 5273) that requires the Department of Homeland Security (DHS) to report to Congress on a plan to expeditiously scan all commercial and passenger vehicles entering the United States at a land port of entry using large-scale non-intrusive inspection systems, such as X-ray and gamma-ray imaging systems, or similar technology. The plan is to include (1) an inventory of such systems currently in use, (2) the estimated costs of achieving a 100% scanning rate, and (3) the anticipated impact that increasing the scanning rate will have on wait times at land ports of entry. For more information on the bill, visit <https://www.congress.gov/bill/116th-congress/house-bill/5273>.

### Advocacy and Comment

To follow is an update on advocacy and comments:

1. [FOIA Request](#). MCRR has supported a Freedom of Information Request to the FMCSA to turn over its ERODs program. This program is available to all enforcement officials and greatly simplifies the auditing of electronic logs. Making this program available to carriers, both large and small, would afford equal access to the computer program that could be used to ensure driver compliance. The FOIA request has not been acted upon.

## Regulatory and Legislative Update – March 2020

2. Causation Study. As described above, the Agency proposes to conduct a new large truck crash causation study utilizing telemetrics not available when the last study was conducted. We will be requesting the specifics, cost and purpose of the study which is not clearly identified in the Notice. Based upon the previous problems with identifying “preventability,” the proposed causation study to be prepared by Volpe faces the same systemic problems as SMS and some assurance that the study is not to be coupled with the IRT model in a reincarnation of SMS is needed.

3. OMB Request. The Office of Management and Budget has requested information concerning “Improving and/or reforming regulatory enforcement and adjudication” which is due on March 16. We will be presenting a laundry list of due process issues including the Agency’s failure to comply with rulemaking protections for small carriers, the absence of administrative due process in the Agency’s safety rating procedures, etc. See <https://www.federalregister.gov/documents/2020/01/30/2020-01632/improving-and-reforming-regulatory-enforcement-and-adjudication>.