

THE REGULATORY LANDSCAPE WIDENS

CARRIERS AND SHIPPERS ALIKE ON THE HOOK FOR CAPACITY, COMPLIANCE AND SAFETY PERFORMANCE

REGULATORY OVERVIEW

A barrage of regulations continues to bear down on the transportation industry. This increased pace of transportation regulations will impact shippers; greater attention to mitigating risks is required. Those who don't stay on top of changes risk leaving their supply chain vulnerable to capacity, compliance and safety issues.

RECENT REGULATIONS IN EFFECT	PROPOSED REGULATIONS	LEGISLATION	WITHDRAWN REGULATIONS
Entry-Level Driver Training (2022)	Unified Registration Rule (2017)	Speed Limiter (2019)	Carrier Safety Fitness Determination (2017)
California Air Resources Board (CARB) (2021)	Commercial Driver Pilot Program (2019)	Safe Roads Act (2019)	Evaluation of Safety-Sensitive Personnel for Obstructive Sleep Apnea (2017)
California Assembly Bill 5 (2020)	HOS Reform Rulemaking (2019)	Insurance Act (2019)	Speed Limiters (2017)
Commercial Driver's License Drug and Alcohol Clearinghouse (2020)		Drive Safe (2019)	
Military Licensing and State Commercial Driver's License Reciprocity (CDL Rule II) (2018)			
Diabetes Standard (2018)			
Electronic Logging Devices (2017)			
Commercial Drivers License Requirements for Military Personnel (CDL Rule I) (2016)			
Emissions and Fuel Economy Standards (2016)			
Driver Coercion (2016)			
Tank Endorsement (2015)			
Medical Examiner Rule (2014)			
Self-Certification (2014)			

(Effective date)

The following guide has been developed to help shippers better understand the key points of recently adopted regulations challenging the industry, those on the horizon, the potential impact on business and implementation timing.

RECENT REGULATIONS IN EFFECT

ENTRY-LEVEL DRIVER TRAINING: Final Rule Published December 7, 2016 — *Effective Date February 7, 2022*

This rule applies to new drivers seeking their Class A or B commercial drivers license (CDL) for either interstate or intrastate and includes special training for drivers seeking a hazardous materials, passenger or school bus endorsement on their CDL. The training will be made up of two core parts: theory (classroom) and behind the wheel on a range and on a public road. There is no minimum hours of classroom or behind-the-wheel training. There is no required time that must be spent on theory training, but there are specific topics and materials that must be covered. The training must be given by a registered training provider, listed on the FMCSA's Training Provider Registry, and certify its students before a student may sit for the CDL skills exam. The final rule relies on a driver demonstrating proficiency in operating a commercial vehicle safely at the conclusion of the training, and the driver must pass a knowledge test with at least 80 percent.

CALIFORNIA AIR RESOURCES BOARD (CARB) TRUCK/TRAILER REGULATIONS PLAN: *Effective date January 1, 2021*

The regulations call for the use of energy-efficient technologies and devices on trucks and trailers to move freight within the state of California. The CARB provides several different options for tractor and trailer regulation compliance.

The regulations require investment on the part of carriers and shippers. Retrofitting trucks for compliance ranges from \$10,000-\$40,000 per unit. Retrofitting trailers is estimated at \$800-\$1,200 per unit. Carriers will undoubtedly need to share this cost, which will be reflected in either shipping rates or surcharges for freight moving in and out of California.

Forthcoming:

Tractors entering ports and rail yards: phase-in of 2010 model year engines or equivalent.
CARB Compliance Deadline: January 1, 2021

Tractors not entering ports and rail yards: all model years must be upgraded to 2010 engines. CARB Compliance Deadline: January 1, 2021

CALIFORNIA ASSEMBLY BILL 5 (AB 5): *Effective date January 1, 2020*

AB 5 California law changes how the state determines whether a person is an employee or an independent contractor. As of January 1, 2020, California considers a person an employee unless there is proof that:

- The worker is free from the control and direction of the hiring entity in connection with the performance of their work;
- The worker performs work outside the usual course of business for the hiring entity; and
- The worker is in an independently established trade of business of the same nature as the work performed.

COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE: *Final Rule Published December 5, 2016 – Effective January 6, 2020*

This rule will create a national clearinghouse for DOT regulated positive drug and alcohol tests and those who refused to submit to required tests, excluding hair test results. Drivers with a positive test will be removed from the industry and records of drug and alcohol program violations will remain in the Clearinghouse for five years or until they have completed the mandated return-to-duty process including treatment and follow-up testing, whichever is later. In addition, the rule would require:

- Employers of CDL holders or their service agents to report positive test results to the clearinghouse
- Prospective employers, acting on an application for a CDL driver position with the applicant's written consent, to pay a fee and query the clearinghouse to determine if positive tests are on record for that applicant prior to hiring or allowing the person to drive a CMV
- Carriers to check their entire existing fleet annually to ensure no new results are in the clearinghouse since the driver was hired or leased to
- State licensing agencies to query the database and ensure no positive tests exist prior to issuing a new CDL or renewing or transferring a CDL

The rule is projected to cost \$154 million annually and remove tens of thousands of drivers from entering the market. These increased costs are being passed along to shippers and consumers, becoming a permanent part of the market's supply chain and distribution costs.

Forthcoming: A future regulation on the agenda would allow a state licensing agency to downgrade a CDL when a positive test is entered into the clearinghouse.

MILITARY LICENSING AND STATE COMMERCIAL DRIVER'S LICENSE RECIPROcity (CDL RULE II):

Final Rule Published September 28, 2018 – Effective Date November 27, 2018

The proposed rule will allow State Drivers Licensing Agencies to waive the requirements for the commercial driver's license knowledge tests for certain individuals who are, or were, regularly employed within the last year in a military position that requires/required the operation of a commercial motor vehicle. This program is voluntary for states, and they would not be required to waive the knowledge or skills tests. The costs of this rule are thought to be minimal and not quantifiable, while benefits would be accrued primarily by the service member and their future employer.

DIABETES STANDARD: Final Rule Published September 19, 2018 – Effective Date

November 19, 2018

In August 2017, FMCSA published a follow-up notice requesting comments on a revised proposal that would require insulin-dependent diabetic drivers to get a form from their treating clinician indicating their history with insulin, date of last comprehensive exam and any diabetic complications they have had. This form would be brought to the certified medical examiner doing the drivers DOT physical for review and to use in their determination of whether they will qualify the driver. If approved, a small number of insulin-dependent drivers may be added to the industry's mix.

ELECTRONIC LOGGING DEVICES: Effective Date December 2017

The FMCSA proposed rulemaking on electronic logging devices (ELDs) that would require every motor carrier with interstate drivers to install a compliant ELD.

Starting December 18, 2017, roadside enforcement personnel will begin documenting ELD violations, possibly issuing citations to commercial motor vehicle drivers operating vehicles without a compliant ELD. Despite the noncompliance, these vehicles will still be allowed on the road. Beginning April 1, 2018, inspectors will start placing commercial motor vehicle drivers out of service if their vehicle is not equipped with a required device, and the truck will remain out of service for a minimum of 10 hours. ELD violations will impact a carrier's CSA scores in the Hours of Service BASIC for two years, and it will appear on the driver's PSP record for three years. FMCSA will be able to see which carriers are being issued these types of violations. There has been a virtual lack of ELD violations from large carriers since the mandate. Seventy-six percent of violations are from fleets with fewer than 20 trucks.

EMISSIONS AND FUEL ECONOMY STANDARDS: *Effective Date October 26, 2016*

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) finalized new emissions and fuel economy standards for medium- and heavy-duty vehicles to be implemented fully in 2017. The proposed rule calls for specific percentage reductions in carbon dioxide emissions and fuel consumption for tractors, engines and trailers with improvements throughout the vehicle. The Phase 2 proposed rule would set GHG and FE standards on trailers for the first time beginning with model year 2018 trailers, which could be achieved using tire and aerodynamic technologies already on the market. The rule is expected to lower CO2 emissions by approximately 1.1 billion metric tons, while reducing oil consumption by up to 2 billion barrels over the lifetime of the vehicles sold under the program. The agencies estimate payback time on tractors and trailers to be just two years.

COMMERCIAL DRIVERS LICENSE REQUIREMENTS FOR MILITARY PERSONNEL (CDL RULE I):

Final Rule Published October 12, 2016

In recognition of the truck driver training received while serving our country, the federal government is looking to ease the transition of military members into civilian careers by reducing onerous paperwork and simplifying the licensing process. The proposal includes:

- Extending the time period for applying for a skills test waiver from 90 days to 1 year for recently separated military
- Requires states to accept the military commercial vehicle license of certain military personnel in exchange for a CDL
- Allowing active duty military members to apply for their Commercial Learner's Permit (CLP) or CDL in their current state of residence with the CLP or CDL being issued by their state of domicile

DRIVER COERCION: *Effective Date January 29, 2016*

New fines for carriers, shippers, receivers or transportation intermediaries who coerce truck drivers to operate outside of federal safety regulations have gone into effect, and any party in the supply chain found responsible for coercive acts will be fined up to \$16,000 per incident. Coercing drivers to violate Hours of Service limits, drug and alcohol testing, hazardous materials rules and other regulations are prohibited. This regulation places shippers directly under the FMCSA's regulatory purview for the first time.

Under the rule, coercion is defined as:

- "A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives to withhold business, employment or work opportunities from, or to take or to permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more FMCSA regulations; or the actual withholding of business, employment or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for having refused to engage in such operation of a commercial motor vehicle."

TANK ENDORSEMENT: *Effective Date July 8, 2015*

Shippers moving contained liquids in dry van trailers must now comply with the same tank endorsement rules as the bulk industry. The "Commercial Driver's License Testing and Commercial Learner's Permit Standards" rule redefined what is considered to be a tank and, for the first time, includes capacity requirements. Under the new rule, a tank is:

1. "Any commercial vehicle that is designed to transport any liquid or gaseous material within a tank."
2. "Tanks having an individual rate capacity of more than 119 gallons and an aggregated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis."

Tanks that are manifested as either being empty or as residue on a bill of lading do not apply under the rule. If a load meets the capacity and configuration requirements defined above, a driver with a "tank endorsement" on his or her CDL must transport it.

MEDICAL EXAMINER RULE: *Effective Date May 21, 2014*

In 2008, the FMCSA proposed a rule that would require individuals who administer medical exams for commercial drivers to be trained, tested and certified to a national standard. Additionally, a National Registry of Certified Medical Examiners (NRCME) would be created in order to track qualified medical professionals. This rule was developed in order to improve the medical oversight of commercial drivers as well as prevent commercial vehicle-related crashes, injuries and fatalities.

May 24, 2014, marked the deadline for medical examiners to be properly certified and registered to be compliant with the U.S. Department of Transportation (DOT). Since then, standardized examinations have identified drivers who exhibit or are at-risk for conditions such as hypertension, sleep apnea and diabetes. Because of the increased complexity and administrative efforts associated with the NRCME, most medical professionals and/or healthcare providers have dramatically increased the price for physicals. These costs are being passed along to shippers and consumers.

SELF-CERTIFICATION: *Effective Date January 30, 2014*

As of January 30, 2014, all CDL holders in the U.S. must self-certify (formally disclose) to the State Licensing Agency (DMV) what type of work he or she does, using one of the following four categories:

- Non-Excepted Interstate: Driver is engaged in interstate commerce and must meet the federal DOT medical card requirements
- Excepted Interstate: Driver is engaged in interstate commerce and does not have to meet the DOT medical card requirements
- Non-Excepted Intrastate: Driver is engaged in intrastate commerce and must meet state driver qualification requirements
- Excepted Intrastate: Driver is engaged in intrastate commerce and does not have to meet the DOT medical card requirements

Drivers who work in interstate commerce will also need to provide a medical certification (DOT physical) to prove they are qualified to drive. Failure to present valid medical documentation will result in the denial of the issuance or renewal of the CDL, putting them out of commission until resolved.

PROPOSED REGULATIONS EXPECTED IN THE NEAR FUTURE

HOS REFORM RULEMAKING: Notice and Request for Comments Published August 2019

In August 2019, the FMCSA published the proposed rule to consider five changes with request for comments. The proposed changes are as follows:

- Short Haul Exemption: Change the maximum on-duty time from 12 hours to 14 hours and expand the air-mile radius from 100 air-miles to 150 air-miles
- Adverse Driving: Extend the 14-hour window by two hours as opposed to the current proposal which adds two hours to the 11-hour drive time
- Sleeper Berth: Split the required 10 hours off-duty into two periods; one of at least seven consecutive hours and the other of at least two hours. The total must be 10 hours on-duty or sleeper combined.
- Pause: Allow for a one time per day pause of the 14-hour clock for a period of up to three hours when off-duty or in the sleeper
- Break: A 30-minute break would be required after eight hours of continuous driving and would allow the break to be on-duty or off-duty

COMMERCIAL DRIVER PILOT PROGRAM: Notice and Request for Comments Published May 2019

FMCSA is collecting feedback on the training, qualifications, driving limitations and vehicle safety systems that should be considered in the pilot design. The data from the pilot would then be used to determine if a change to the current requirement for interstate drivers to be 21 years of age be reduced to allow drivers age 18-20 with military training to operate commercial motor vehicles (CMV). There is a possible second pilot program to allow non-military drivers age 18-20 to operate CMVs in interstate commerce.

UNIFIED REGISTRATION RULE: Projected Publication Date June 22, 2017 — *Awaiting Publication of Proposed Rule*

The proposed Unified Registration Rule will do the following:

- Adjust the Unified Registration System (URS) registration fee for those under the FMCSA's jurisdiction who must register with the agency to operate in interstate commerce
- Implement several MAP-21 provisions that require changes to the URS regulations, the online application for U.S. DOT Number/Operating Authority Registration (Form MCSA-1) and MCSA-1 instructions
- Prohibit transfers of operating authority registration
- Make several technical amendments to the Motor Carrier Safety Administration (MCSA-1) form and instructions for purposes of clarification
- Retire MC, MX, and FF numbers – DOT numbers will be the sole identifier for carriers, brokers, freight forwarders

The URS will streamline the registration process and serve as a clearinghouse and depository of information on, and identification of, motor carriers, brokers, freight forwarders, intermodal equipment providers, hazardous materials safety permit applicants and cargo tank facilities required to register with the FMCSA.

LEGISLATION

MINIMUM INSURANCE LIABILITY: *Introduced July 2019*

The new proposed bill, Improving National Safety by Updating the Required Amount of Insurance Needed by Commercial Motor Vehicles per Event (INSURANCE) Act was introduced to replace the rule on minimum liability insurance, which was withdrawn in 2017. The Insurance Act would raise the minimum liability insurance requirements for carriers and tie the minimum to the inflation rate of medical costs. The current mandatory minimum of \$750,000 hasn't changed since 1980 when the Motor Carrier Act passed. In a 2014 report the FMCSA concluded that \$750,000 did not cover serious accidents due to inflation and increased medical costs. The new bill would set the insurance minimum at \$4.9 million per accident.

SAFE ROADS ACT: *Introduced July 2019*

The proposed Safe Roads Act would set a new standard requiring new commercial motor vehicles to be equipped with an automatic emergency braking system and be installed in commercial motor vehicles to be used while in operation. The automatic emergency braking system would, based on a predefined distance and speed to an obstacle in the path of the vehicle, alert the driver of an obstacle and automatically apply the brakes if necessary to avoid a collision.

SPEED LIMITER: *Introduced June 2019*

The proposed bill known as the Cullum Owings Large Truck Safe Operating Speed Act of 2019 would require all new Class 7 and Class 8 trucks to be equipped with speed-limiting devices that would be set to maximum of 65 mph. The bill would also require that trucks with existing speed limiters would extend the 65 mph maximum speed requirement. Trucks without speed limiters would not be forced to install them retroactively.

YOUNGER INTERSTATE DRIVERS: *Introduced February 2019*

The proposed bill (H.R. 1374; S.569) known as the DRIVE Safe Act has been reintroduced. This bill would allow 18- to 20-year-old interstate commercial motor vehicle (CMV) drivers under certain conditions.

FTR Transportation Intelligence conducted an analysis of the 18- to 20-year-old population, account for gender breakdowns, high school graduation rates, college enrollment, labor participation rates for young adults and the current trucking participation rate. This analysis combined with the proposed DRIVE Safe Act could result in 48,000 new interstate heavy truck/tractor-trailer drivers initially and an estimated 16,000 each year after.

REGULATIONS WITHDRAWN

SPEED LIMITERS: *Rule Was Withdrawn July 2017*

A pending rule by the U.S. DOT issued by both FMCSA and NHTSA will mandate the use of speed limiting devices — automatically calibrating a vehicle's speed — on the electronic control modules (ECM) of newly manufactured trucks weighing more than 26,000 lb., effective three years after the final rule is published. The rule was withdrawn when the DOT moved the speed limiter mandate to a long-term agenda item, away from the active rulemakings list.

EVALUATION OF SAFETY SENSITIVE PERSONNEL FOR OBSTRUCTIVE SLEEP APNEA: *Rule Was Withdrawn June 2017*

The FMCSA and Federal Railroad Administration (FRA) requested data and information regarding the prevalence of moderate to severe obstructive sleep apnea (OSA) for individuals occupying safety-sensitive positions in rail and highway transportation. The agencies also sought information about the potential economic impact and safety benefits of regulatory action for transportation workers with multiple risk factors for OSA to undergo medical evaluation and treatment. The rule was withdrawn after the agencies determined there was not enough information available to support moving forward with a rulemaking action.

CARRIER SAFETY FITNESS DETERMINATION: *Rule Has Been Withdrawn Pending Review of CSA Study Results*

The FMCSA withdrew its January 21, 2016, notice of proposed rulemaking on March 23, 2017. The notice had proposed changing the current Compliance, Safety, Accountability (CSA) system to a one-rating system that would deem carriers “unfit” if they failed two or more CSA BASICS. The withdrawal was prompted by reactions to the initial proposal.