

Motor Carrier Safety Report

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Changes coming to CSA program

Another round of changes to the Compliance, Safety, Accountability (CSA) program is in the works, including a proposal to make hazmat scores public and revise the intervention thresholds that are used to determine when enforcement action is taken against a motor carrier.

The Federal Motor Carrier Safety Administration (FMCSA) is taking public comments on the proposed changes until July 29, 2015. As it has done in the past, the agency says it will provide a "preview" of the changes on its CSA website later this year.

The changes will affect the CSA Safety Measurement Sys-

tem (SMS), which ranks motor carriers against their peers in terms of their safety records. Carriers with the worst CSA scores across seven categories known as the "BASICS" are prioritized for enforcement.

Carriers' BASIC scores are available online at <http://ai.fmcsa.dot.gov/SMS>. Once a carrier's score in any BASIC goes higher than 65-80 percent — known as the "intervention threshold" — it can expect to receive an automated warning letter and possibly more roadside inspections and audits.

The SMS has undergone several rounds of changes — and

see CSA, pg. 4

Off-site auditing going national

Over the next three years, the Federal Motor Carrier Safety Administration (FMCSA) will be rolling out a nationwide off-site auditing process for new motor carriers.

The agency tested off-site auditing in 6 states for 18 months and found it to be effective.

Off-site auditing allows eligible motor carriers to submit compliance documentation to a safety auditor via email, fax, or U.S. mail rather than being

subject to an on-site safety audit.

FMCSA regulations require a safety audit within 18 months after a new motor carrier begins operations, to make sure the carrier has "basic safety management controls" in place. In most cases, these time- and labor-intensive safety audits are done at the carrier's place of business.

In recent years, Congress shortened the 18-month auditing window to 12 months for

see Audits, pg. 5

FMCSA confirms December date for new medical forms

New DOT medical forms issued in April may not be used until December, according to the Federal Motor Carrier Safety Administration (FMCSA).

The agency issued the new forms on April 23, 2015, as part of a new rule, but caused confusion by failing to make clear when the new forms were to be used.

On June 22, the FMCSA issued corrections to the April rule, including a clear message that existing medical forms are to be used until December 22, 2015, and the new forms must be used on and after that date.

The new forms must appear exactly as shown in the regulations, including:

- Form MCSA-5875, the *Medical Examination Report Form*; and
- Form MCSA-5876, the *Medical Examiner's Certificate*.

The forms were issued as part of a broader "Medical

Examiner's Certification Integration" rule, to be phased in over the next three years.

Benefits

One benefit of the rule is that — beginning in June 2018 — medical certificates will be forwarded automatically to state licensing agencies, eliminating the need for commercially licensed drivers to submit their certificates to the state.

In addition, motor carriers will no longer need to verify that medical examiners are listed on the National Registry of Certified Medical Examiners for exams conducted on commercial driver's license (CDL) and learner's permit (CLP) holders.

The corrections made on June 22, 2015, fix numerous errors in the rule, in addition to clarifying the implementation date for the new medical forms. Sections that were corrected include 383.73, 391.23, and 391.43



Section 391.43 now includes images of both the old and new medical forms, with usage dates for each.

The corrected rule also moves up the date when medical examiners can begin designating an exam result as "pending" in cases where the examiner needs up to 45 days to collect additional information before certifying a driver. This new provision goes into effect on December 22, 2015, rather than June 22, 2018.

The correction appeared in the *Federal Register* on June 22, 2015, and is available online at JJKeller.com/tmc. ♦

DOT shuts down 'reckless' motor carrier

It all started with canola oil.

On May 12, 2015, a commercial truck driver tried to deliver nine pallets of canola oil to a Macon, Georgia business but was refused delivery because one of the containers had broken open and was leaking.

The driver contacted his manager and was told to drive

the leaking vehicle back to the Atlanta area. The driver did what he was told, spilling an estimated 1,100 gallons of oil onto I-75 and "causing extremely slick and hazardous road conditions," investigators say.



Four separate vehicle accidents occurred because of the slick roads, and even

police vehicles slid around as they responded to the scene.

Police finally stopped the driver at mile marker 193 and arrested him. When they opened the trailer, they found a canola oil tank completely ruptured and leaking from the trailer seams front to back.

Widespread problems

Soon after, the Federal Motor Carrier Safety Administration (FMCSA) sent investigators to audit the company,

which was based out of its president's house. What they found was widespread non-compliance and a "blatant disregard" for safety.

The company — 75 percent of whose drivers are owner-operators — was unable to identify all the drivers and vehicles it had used over the past year, the FMCSA says.

"I think I need to quit, because we are going to kill somebody."

The company also did not have any employees responsible for safety until someone was picked on the day of the audit. The employee told investigators that "I think I need to quit, because we are going to kill somebody."

Based on its findings, the FMCSA ordered the company

to stop all commercial vehicle operations. The federal out-of-service order dated June 5, 2015, states that "FMCSA's investigation uncovered widespread regulatory violations demonstrating [the company's] repeated and egregious non-compliance with the FMCSRs and a management philosophy indifferent to motor carrier safety," adding that the company's operations are "reckless, with almost nonexistent safety management oversight of its vehicles, drivers, and operations."

The company's violations included:

- Failing to ensure its leased and company-owned vehicles were inspected, repaired, and maintained. The company had 38 roadside inspections with 95 discovered maintenance violations
- Failing to ensure its drivers followed hours-of-service regulations. Investigators found a log falsification rate of about 30 percent, with some logs showing a variance of more than 1,000 miles.
- Failing to comply with driver qualification requirements and allowing unqualified drivers to operate commercial vehicles. The company allegedly filed away its employment applications without reviewing them, and failed to obtain driving records.
- Failing to comply with random and post-accident alcohol and drug testing of its drivers. ♦

CSA scores used to monitor HM Safety Permit holders

The Federal Motor Carrier Safety Administration (FMCSA) has announced a new plan to monitor the Compliance, Safety, Accountability (CSA) scores of motor carriers that hold hazardous materials safety permits (HMSP).

Under the new policy, the FMCSA says it will monitor CSA scores on a monthly basis for any carrier with a non-temporary HMSP.

Any carrier that exceeds the intervention threshold in the Hazmat Compliance category, or that met or exceeded thresholds for any two of the other scoring categories for the preceding two consecutive months, will be targeted for



an audit with an emphasis on hazmat compliance.

The results of the audit could mean the carrier loses its permit.

Under the new enforcement policy, non-temporary HMSP holders will no longer be required to have crash and out-of-service rates that are below the 30 percent threshold at the time of the two-year permit renewal.

"Using the monthly data provides a more powerful tool for identifying the HMSP carriers that have overall compliance problems — warranting a comprehensive investigation — or issues in one particular area of safety performance," the FMCSA wrote.

Monthly monitoring of CSA scores "provides a strengthened, continuous monitoring process for HMSP holders, which merit heightened oversight and monitoring due to the dangerous nature of the materials they transport," the agency added.

The announcement appeared in the *Federal Register* on June 19, 2015. ♦

CSA, from pg. 1

has been the target of many complaints from the motor carrier industry — since it went active in December 2010.

Proposed changes

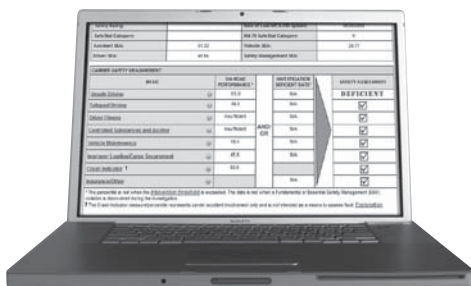
The following is an overview of the changes currently being proposed:

1. **Lowering the intervention threshold for the Vehicle Maintenance BASIC and raising it for the Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance, and Driver Fitness BASICs.**

This change is based on an analysis of the seriousness of the crash risk associated with each BASIC, the FMCSA says. That analysis found that the BASICs fall into three categories of risk:

- **High risk:** Unsafe Driving, Crash Indicator, Hours of Service
- **Medium risk:** Vehicle Maintenance
- **Low risk:** Controlled Substances/Alcohol, HM Compliance, Driver Fitness

To better align the intervention thresholds with that risk, the FMCSA is proposing to change the thresholds as shown in the accompanying chart.



Effect of the change: Carriers with a current Vehicle Maintenance score of 75 to 80 percent will receive an automated warning letter when the change takes effect. Also, the FMCSA says the changes will likely place another 2,430 motor carriers under the enforcement microscope while removing over 450 carriers from the threat of intervention, at least temporarily.

2. **Segregating cargo-tank carriers in the HM Compliance BASIC.**

Analyses have shown that the HM Compliance BASIC has a built-in bias against large non-cargo-tank hazmat carriers, due to the different types of violations that are issued. The agency found that segmenting out the cargo-tank carriers will help the agency target those with serious safety problems.

Effect of the change:

Large cargo-tank carriers will see higher scores in the HM Compliance BASIC, large non-cargo-tank carriers will see lower scores, and small hazmat carriers of both types will see no change.

3. **Making HM Compliance scores public.**

The FMCSA says that segregating cargo-tank carriers (see above) makes the agency “confident that the data in the HM Compliance BASIC appropriately reflects the distinct operations of these carriers.” As a result, the agency says it can make the HM Compliance BASIC scores available to the public for the first time since the BASIC was created in December 2012.

Effect of the change: Shippers, brokers, insurance companies, and other members of the public will be able to see the HM Compliance BASIC scores of all motor carriers that haul hazardous materials.

4. **Placing all violations for operating while out of service (OOS) under the Unsafe Driving BASIC.**

Currently, when a carrier is cited for violating an OOS Order, the violations are associated with the same BASIC as the initial OOS violation. For example, if a vehicle is placed out of service for a vehicle defect but the driver violates the OOS Order, that violation of the OOS Order will harm the carrier’s Vehicle Maintenance BASIC score.

The FMCSA is proposing to reclassify these types of violations so they only impact the Unsafe Driving BASIC, since this type of violation is “more closely related to a motor carrier’s or driver’s safety judgment,” the agency says.

Effect of the change: Carriers with OOS Order violations could see higher scores in the Unsafe Driving BASIC.

5. **Increasing the maximum vehicle miles travelled (VMT) for calculating Unsafe Driving and Crash Indicator BASIC scores.**

The SMS takes vehicle utilization into account when calculating Unsafe Driving and Crash Indicator scores, to paint a more accurate picture of a carrier’s safety performance. A carrier’s VMT per power unit — called the

“utilization factor” — can help carriers with a higher than normal vehicle utilization, but only for carriers with a VMT per power unit of up to 200,000. The FMCSA is proposing to increase that cap to 250,000 miles.

Effect of the change:

High-utilization carriers with a VMT per power unit of up to 250,000 miles could see a benefit to their Unsafe Driving and Crash Indicator BASIC scores.

Preview

The FMCSA says it expects to release a preview of the proposed changes “later in 2015.” Carriers will be able to log in to their FMCSA Portal account to see how the pro-

posed changes would impact their CSA scores, while the general public will be able to see simulated carrier data.

The FMCSA says it packages SMS improvements and releases them as needed. Major updates to the SMS were issued in March 2012, August 2012, and July 2014.

Comments on the proposed changes are due by July 29, 2015, and may be viewed or submitted online at www.regulations.gov under docket number FMCSA-2015-0149.

The proposed changes appeared in the *Federal Register* on June 29, 2015, and are available online at JKeller.com/tmc. ♦

Proposed Changes to the CSA Intervention Thresholds

BASICs	Current Threshold	Proposed Threshold
Unsafe Driving Crash Indicator HOS Compliance	65%	65%
Vehicle Maintenance	80%	75%
Controlled Substances/Alcohol HM Compliance Driver Fitness	80%	90%

Audits, from pg. 1

property carriers and 120 days for motorcoach passenger carriers. These tightened deadlines, coupled with an increase in new-entrant applicants, forced the FMCSA to come up with a more efficient way to conduct the audits, the agency says.

The FMCSA says it will phase in the off-site auditing process beginning this summer and continuing over the course of 36 months, beginning with these 11 states: Georgia, Maine, Michigan, Minnesota, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Vermont, Wyoming, and Washington, D.C.



Auditors in each state will need to be trained before conducting an off-site audit. Carriers eligible for off-site auditing will receive notice from the FMCSA.

Trial run

The agency’s 18-month trial run of off-site auditing took place in Alaska, California, Florida, Illinois, Montana, and New York, and the Canadian Provinces contiguous to Montana and New York. The test began in July 2013 and concluded in December 2014.

Results of the testing phase showed that:

- 60 percent of new-entrant carriers were eligible for, and received, off-site safety audits;
- The number of safety audits completed within the test states increased by 4 percent;

- Off-site safety audits take 33 percent less time to conduct than on-site safety audits;
- Off-site safety audits saved 58 percent on travel costs;
- Carriers identified for the off-site audit were performing well during subsequent roadside inspections; and
- Carriers that received off-site audits, on average, have equivalent or fewer serious violation rates than carriers receiving an on-site safety audit.

Carriers that transport either hazardous materials or passengers, and those with a known safety issue, were not eligible for off-site auditing.

Notice of the off-site auditing expansion appeared in the *Federal Register* on June 29, 2015. ♦

Exemptions renewed for livestock, radioactive materials

Exemptions to the 30-minute break requirement have been renewed for drivers hauling livestock and certain types of radioactive materials.

The exemption for livestock is meant to safeguard the health of the animals, which can suffer if the driver has to stop for a rest break.

The exemption for radioactive materials allows drivers working under contract with the U.S. Department of Energy (DOE) to monitor their security-sensitive shipments while on break.

Livestock

The livestock exemption has been in effect since June 11, 2014, and is now set to expire on June 12, 2017.

The exemption from the 30-minute rest-break requirement in Sec. 395.3 is limited to drivers engaged in the interstate transportation of livestock by commercial vehicle. The exemption no longer applies once the livestock are unloaded.

Livestock industry guidelines



describe stops of up to 30 minutes as “problematic” for many animals, even in favorable weather, and encourage drivers of livestock to keep the vehicle moving “if at all possible,” the FMCSA says. Livestock drivers take breaks, but generally of much shorter duration than 30 minutes.

According to the Federal Motor Carrier Safety Administration (FMCSA), the term “livestock” means:

“...cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary [of Agriculture] that (A) are part of a foundation herd (including dairy producing cattle) or offspring; or (B) are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Emergency Livestock Feed Assistance Act].”

The FMCSA estimates that fewer than 135,000 drivers are eligible for the exemption.

Radioactive

The exemption for DOE contract drivers allows them to use the same rules as drivers transporting explosives. Specifically, they are allowed to use 30 minutes or more of on-duty “attendance” time to meet the rest-break requirement, as long as they do not perform any work during the break.

This exemption has been in effect since July 1, 2013, and is now scheduled to expire on June 30, 2017.

The DOE contends that shipments of security-sensitive radioactive materials require constant surveillance and swift delivery by a team of drivers.

The DOE estimates that 30 power units and 53 drivers are currently eligible for the exemption.

Under 49 CFR Sec. 395.3(a)(3)(ii), a property-carrying commercial driver is prohibited from operating on a public road if more than 8 hours have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes. ♦

Agency fixes rule for reporting driver convictions

The Federal Motor Carrier Safety Administration (FMCSA) has reinstated a requirement that state licensing agencies must notify other states of drivers’ traffic convictions within 10 days.

The agency says it mistakenly removed the requirement from Sec. 384.209(c) almost

two years ago. Between October 1, 2013, and June 29, 2015, the rule said states had to share traffic-conviction data but did not give a deadline.

A new rule issued in October 2013 was supposed to affect only paragraphs (a) and (b) of Sec. 384.209, to add a requirement that states report

foreign commercial drivers’ convictions to a federal database.

When it made the changes, the agency inadvertently removed the 10-day reporting deadline in paragraph (c).

Notice of the correction appeared in the *Federal Register* on June 29, 2015. ♦

New HOS exemption aims to protect honey bees

Add beekeepers to the list of drivers who are now exempt from the need for 30-minute rest breaks.

The Federal Motor Carrier Safety Administration (FMCSA) has granted a two-year exemption from the break requirement to the nation's approximately 1,600 motor carriers who transport bees.

According to the agricultural groups who applied for the exemption, bees are particularly vulnerable to heat and require a steady supply of cool, fresh air during transport. Bees are commonly transported long distances to provide crop pollination, the FMCSA says, and stopping for a rest break could literally be fatal for the load.

The FMCSA already exempts livestock haulers from the 30-minute break requirement — for the same animal welfare reasons — but the agency's regulations do not recognize honey bees as livestock.

1.6 million beehives

According to the California Farm Bureau Federation (CFBF), California hosts 1,620,000 beehives each year for the almond crop alone. Honey bees also pollinate apples, plums, cherries, and a large variety of other crops in California and across the nation.

The FMCSA says the exemption will also assist in meeting the goals of a 2014 presidential memorandum

aimed at protecting honey bees.

The exemption only applies during the interstate transportation of bees and no longer applies once the bees are unloaded from the vehicle. It may only be used by motor carriers with a "satisfactory" safety rating or those that are unrated.

Drivers claiming the exemption must carry a copy of the exemption document in the vehicle and present it to law enforcement upon request.

Any carrier that has an accident while operating under the exemption must notify the FMCSA by email within 5 days.

The rest-break exemption expires on June 19, 2017. ♦

More time given for appeals of bus leasing rule

Motor carriers now have until Aug. 25, 2015, to ask the DOT to reconsider a recent rule addressing the lease and interchange of passenger-carrying commercial motor vehicles.

After the rule was issued on May 27, 2015, the American Bus Association (ABA) and United Motorcoach Association (UMA) joined forces to ask the Federal Motor Carrier Safety Administration (FMCSA) for more time to appeal the rule.

The rule was intended to make sure unsafe passenger carriers can't evade oversight and enforcement by entering into "questionable" lease arrangements to operate under the authority of

another carrier that exercises no actual control over those operations.

In part, the rule requires a written agreement and specific vehicle markings whenever a vehicle is leased, interchanged, rented, borrowed, or loaned.

The rule took effect on July 27, 2015, but compliance is not required until Jan. 1, 2017.

Petitions to reconsider a rule must normally be filed within 30 days of publication, but the FMCSA may extend that deadline, as was done in this case.

Significant questions

In requesting the extension, the UMA and ABA wrote that their members "have raised a

number of significant questions regarding the practical and operational applications of the rule's requirements."

Diversity in the bus and motorcoach industry "has led to unintended consequences or possibly inaccurate interpretations" of the rule, the groups wrote, adding that they would like to work with the FMCSA to seek clarification before deciding whether to file an appeal of the rule.

Petitions asking the FMCSA to reconsider the leasing rule must be filed in accordance with 49 CFR Sec. 389.35 by Aug. 25, 2015. ♦



New privacy procedures aim to help DOT write better rules

If the Federal Motor Carrier Safety Administration (FMCSA) wants to write data-driven safety rules, it sometimes needs to collect usable data from the industries it regulates.

Unfortunately, this rarely happens because companies are hesitant to share their confidential business information, the agency says.

Now regulators are hoping to change all that with new procedures for protecting confidential commercial or financial information that is voluntarily submitted to the FMCSA.

The agency says the new procedures will help it issue better safety rules, benefitting both the motor carrier industry and the public.

Normally, whenever the agency drafts a new rule and

opens it to public comment, the comments are placed into a public docket for all to see. Those who wanted their data to be treated as confidential have needed to submit an individual claim.

Limited data

Historically, the FMCSA says it “has received limited amounts of usable data submitted as part of the rulemaking comment process, even in response to specific requests for data on particular topics.”

Under the new procedures, the FMCSA Administrator can declare a whole “class” of information to be confidential, eliminating the need for commenters to individually request confidential treatment of their data.

Companies submitting confidential information will need to sign a form (shown

in Appendix A to 49 CFR Part 389) certifying that the information meets the confidentiality threshold under the Freedom of Information Act (FOIA).

The FOIA exempts from public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” Like other federal agencies, the FMCSA has procedural rules implementing this provision, found in Sec. 389.7.

Commercial or financial information is considered confidential if it “was voluntarily submitted and is the type of information that is customarily not released to the general public by the person or entity from whom it was obtained.”

The new procedures were published in the *Federal Register* on June 10, 2015. ♦

Drivers of oversize/overweight loads exempt from breaks

Federal regulators have granted an exemption from the 30-minute break rule to drivers transporting certain oversize/overweight loads.

The new exemption — in effect until June 18, 2017 — applies to specialized carriers and drivers transporting loads that exceed normal weight and dimensional limits and that require a government-issued permit.

Restrictions in the permits, as well as unsafe parking options, make it difficult for these drivers to get their 30-minute break, according to the Specialized Car-

riers & Rigging Association (SC&RA), which asked for the exemption.

Under 49 CFR Sec. 395.3, interstate commercial truck drivers must get at least 30 minutes off duty every 8 hours.

To use the exemption, drivers must:

- Be operating in interstate commerce with an oversize/overweight (OS/OW) load that requires a permit issued by a government authority; and
- Carry and provide to roadside enforcement personnel a copy of the exemption

document — either an exemption letter issued to the SC&RA or the *Federal Register* notice of June 18, 2015.

The exemption is only available to motor carriers that have a “Satisfactory” safety rating or that are unrated, and that have CSA scores below the intervention thresholds.

According to the SC&RA, the 30-minute break rule has increased the number of times drivers have had to park OS/OW loads at roadside or on exit ramps, increasing the risk of an accident.

In addition, permits restricting the drivers’ hours of opera-

tion can vary from location to location and can conflict with the timing of the required 30-minute rest break.

An average OS/OW load may measure approximately 15-16 feet wide and high and in excess of 100 feet in length, according to the Federal Motor Carrier Safety Administration (FMCSA).

Limited opposition

Out of 79 public comments the FMCSA received, just 5 opposed the exemption. The Advocates for Highway and Auto Safety commented that:

“None of the measures described by SC&RA are related in any way to the need to combat the acute fatigue of working and driving a vehicle for up to eight hours straight. The FMCSA itself made the case that safety requires a one-half hour break after eight

hours on duty, and [SC&RA] provides no information to either refute or countermand the need for that break time as it applies to OS/OW operators.”

A commenter identified only as Trish wrote that “all drivers are faced with the challenge of finding refuge for the required 30 minute break, whether it’s from traffic or fear of life in some instances. Continuing to grant exemptions defeats the purpose of the rule and is unfair to grant on the basis of someone’s business model. Choosing to haul cattle, household OR oversize should not exempt carriers from the rules and regulations enacted to promote safety.”

The agency responded by saying “the arguments against the exemption are not trivial,” since all drivers face problems with parking.

“Nonetheless, finding suitable parking for trucks with OS/OW loads is particularly difficult, as SC&RA pointed out, and the default option is likely to be parking on the shoulder of a highway, with the load sometimes extending into the lanes of traffic. No matter how well marked, trucks parked at roadside, especially at night, are too often mistaken for moving vehicles and struck, frequently with fatal consequences, before an inattentive driver can correct his mistake.”

Carriers using the exemption must notify the FMCSA by email within five business days of any accident involving an exempted driver.

The exemption appeared in the *Federal Register* on June 18, 2015. ♦

Will ‘restart rollback’ be coming to an end?

The law that prevents the Federal Motor Carrier Safety Administration (FMCSA) from enforcing restrictions on use of the 34-hour “restart” provision could soon come to an end ... or may be extended.

A DOT funding bill signed into law last December forbids the FMCSA from enforcing the 168-hour and “1 a.m. to 5 a.m.” restrictions on when commercial truck drivers can get a 34-hour restart to their 60- or 70-hour clock.



The suspension of enforcement

was to remain in effect until the *later* of:

- Sept. 30, 2015; or
- The date on which the FMCSA submits a final report to Congress on studies that are being done concerning the effectiveness of the restart restrictions.

Though the study is well underway, Congress is already considering making it harder for the FMCSA to once again enforce the rules.

Fiscal year 2016 spending bills in both houses of Congress contain language keeping the enforcement suspension in place until the FMCSA shows “statistically signifi-

cant” evidence that the restart restrictions improve highway safety.

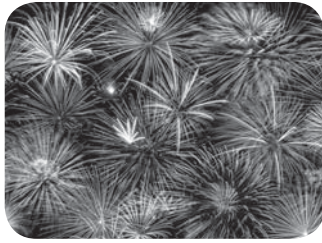
That’s a higher hurdle than found in the 2014 law and could delay the FMCSA’s restart study as well as keep the current enforcement policy in place well into 2016. The legislation faces a veto threat from the White House, however, due in part to the restart provision.

Until the suspension of enforcement ends, truck drivers may get a restart at any time by taking any 34 consecutive hours off.

Watch JKeller.com for the latest news on this developing topic. ♦

Carrier shut down 5 years after going 'out of business'

Federal investigators recently shut down an Illinois-based fireworks transporter that had told the government it was going out of business over five years ago yet was still operating.



apparently defunct motor carrier.”

But in May 2015, the FMCSA learned that the fireworks display company had transported fireworks to a baseball stadium in Hannibal, Missouri.

When inspectors arrived, they found a cooler with several cans of beer, along with three open boxes, three sealed boxes, and two plastic grocery bags all containing fireworks.

None of the packages was secured, and the floor, walls, and door of the trailer all had ferrous metals on them, “a

dangerous condition capable of causing the fireworks to explode in the trailer,” the FMCSA says. The vehicle had no fire extinguisher or warning devices.

The driver also had no commercial driver’s license, no logs, no medical card, and failed to comply with hazardous materials regulations.

The federal out-of-service order dated June 4, 2015, states that “these widespread violations substantially increased the likelihood of serious injury or death to [the company’s] drivers and the public.” ♦

DOT says no to darker windows

Out of safety concerns, the USDOT has denied a request to allow commercial vehicles to have darker window tinting to the right and left sides of the driver.

Current rules allow the windshield and side windows to be tinted as long as they still allow 70 percent of ambient light to pass through.

The International Window Film Association (IWFA) recently asked the Federal Motor Carrier Safety Administration (FMCSA) to allow the use of darker tinting, arguing that it would improve driver comfort, reduce eye strain, and lower both the interior temperature and energy usage for cooling.

The IWFA, however, failed to provide the FMCSA with any evidence that darker tinting would have any safety

benefits, a key requirement for the issuance of exemptions, the agency said.

Market standard

The IWFA asked for an exemption from 49 CFR Sec. 393.60 that would allow the use of a market-standard film that only allows about 50 percent of light to pass through.

“This film is the same minimum visibility requirement used in the majority of states for automobiles and is essentially ‘clear’ to the extent that, in most cases, it is difficult to determine if a vehicle even has had film applied,” the IWFA wrote in its exemption application.

The association referred to a 1988 study arguing that window tinting can have safety benefits, but the FMCSA countered that tinting (also known as glazing) can increase crash

risks, especially for older drivers.

“The amount of light transmitted through vehicle glazing affects the ability of the driver to see objects on the road,” the FMCSA wrote. “Low light transmittance can make it difficult to detect low contrast objects, such as pedestrians, whose luminance and coloring causes them to blend with the background of the roadside environment. The effect of low light transmittance levels on the driver’s vision is most pronounced at dusk and night when the ambient light level is low.”



Standards

Window tinting on vehicles manufactured since 1968 must comply with manufacturing standards from the National Highway Traffic Safety Administration (NHTSA).

The NHTSA was on the verge of amending those standards in the 1990s but changed its mind, saying that “the benefits of tinting do not

appear great enough to justify any loss in safety that may be associated with allowing excessive tinting of windows.”

The American Trucking Associations (ATA) supported the IWFA’s exemption application, while a retired police officer argued to the FMCSA that darker tinting can make it harder to see inside the vehicle.

The group Advocates for Highway and Auto Safety also argued against the exemption, stating that it would “amount to a whole cloth change of current regulation for all commercial motor vehicles” and would result in “widespread non-compliance” after the two-year exemption expires.

The FMCSA noticed appeared in the *Federal Register* on June 11, 2015. ♦

Manufacturer certification labels to be required

Commercial vehicles that are missing their manufacturer certification labels may be in violation once new DOT rules are finalized.

The Federal Motor Carrier Safety Administration (FMCSA) is proposing to require all U.S.-domiciled motor carriers to make sure their commercial vehicles display a certification label affixed by the vehicle manufacturer or importer.

The label — already required under the Federal Motor Vehicle Safety Standards (FMVSS) — is used to indicate that the vehicle satisfied all applicable manufacturing standards in effect at the time of manufacture.

Under the proposed rules, if the certification label is missing, the motor carrier must obtain a letter issued by the vehicle manufacturer stating that the vehicle met the standards when it was manufactured. Drivers will have to present the letter to enforcement personnel upon demand.

According to the FMCSA, manufacturers should be able to determine quickly whether a vehicle was built to comply

with the FMVSS by comparing the vehicle identification number (VIN) to their production records.

Sec. 393.8

The proposed rules would add new section 393.8, *Federal Motor Vehicle Safety Standard Certification Labels*, that would apply to all motor carriers engaged in interstate commerce.

The certification labels would have to comply with 49 CFR Part 567, *Certification*. Part 567 provides detailed requirements concerning the location of, and information to be displayed on, the label. The requirements apply to manufacturers of vehicles produced for use in the U.S., and the label must be affixed prior to the first sale of the vehicle.

Failure to display a certification label could result in a citation and fine during a roadside inspection, or a civil penalty as a result of a compliance review. Under current out-of-service criteria, it would not by itself constitute grounds to place a vehicle out of service, the FMCSA says.

The proposed rule addresses concerns that the National Transportation Safety Board expressed about the operation of vehicles that do not display certification labels. It would not apply to foreign-domiciled vehicles, i.e., vehicles operated by Mexico- and Canada-domiciled motor carriers.

No impact

The FMCSA says the rules “would have no impact on the vast majority of U.S. carriers” except those that may have acquired a vehicle that was not originally manufactured for sale or use in this country and that had somehow been improperly imported.

As it considers finalizing the rules, the FMCSA says it wants input about the prevalence of such vehicles in U.S. fleets.

The proposed rule was published on June 17, 2015. Comments may be submitted to the FMCSA until August 3, 2015, at www.regulations.gov under docket number FMCSA-2014-0428, or by fax to (202) 493-2251. ♦

DOT grants exemption for transponder mounting

A new exemption will allow motor carriers to install certain transponders near the bottom of the windshield on commercial motor vehicles, an area where they would normally be prohibited.

Federal safety regulations in Sec. 393.60(e) currently require antennas, transponders, and similar devices to be located no more than six inches below the upper edge of the windshield, as well as outside the area swept by the windshield wipers and outside the driver's sight lines to the road and traffic signals.

The exemption granted to HELP, Inc., will allow motor carriers to mount the com-

pany's transponder systems lower in the windshield than is currently permitted, to maximize the device's ability to send and receive roadside data.

The company says its preferred mounting location is two inches right of the center of the windshield and two to three inches above the dashboard.

The Federal Motor Carrier Safety Administration (FMCSA) decided that's a "reasonable and enforceable" option that should not detract from highway safety, the agency said.

The elevated seating position in most trucks and buses

"greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal," the FMCSA added.

If the design of the windshield wipers on a particular vehicle means a mounting location two to three inches above the dashboard is too low for the transponder to be within the swept area of the wipers, the transponder can be positioned "as low as possible" to get it into the swept area, the FMCSA says.

The exemption is in effect until June 22, 2017. Notice of the exemption appeared in the *Federal Register* on June 22, 2015. ♦

Major carrier gets exemption from learner's permit rule

One of the nation's largest motor carriers has received an exemption that allows its commercial learner's permit (CLP) holders to drive without front-seat supervision.

Federal regulations require CLP holders to be under direct observation at all times by someone who holds a commercial driver's license (CDL) and

who is seated next to or, in the case of a bus, directly behind the CLP driver.

The Federal Motor Carrier Safety Administration (FMCSA) has granted a two-year exemption from that requirement to C.R. England, but only for CLP holders who have already passed the CDL skills test and are driving as part of a team.

According to the company, the exemption would allow a CLP holder to participate in a revenue-producing trip back to his or her state of domicile to obtain the CDL document.

"The exemption is not seeking a reprieve from any testing or training standards," the company wrote, "but instead is seeking to allow qualified drivers to begin providing for their families rather than having

to cut through unnecessary bureaucratic red tape."

The FMCSA says the only difference between a CLP holder who has passed the CDL skills test and a CDL holder is that the latter has received the actual CDL document.

C.R. England provides CDL training for its drivers at five truck driving schools around the country and says the licensing rules limit its ability to efficiently recruit, train, and employ new drivers.

"The rule places C.R. England in the untenable position of either sending the CLP holder home without having hired him or her (because the person does not yet have a CDL) with no assurance that the driver will remain with C.R. England after obtaining



the CDL; or, hiring the CLP holder and sending him or her home in an unproductive non-driving capacity," the FMCSA wrote.

Opposition

After the FMCSA published a notice about the exemption request in late 2014, it received 274 comments, including 11 in support of the exemption, 257 opposed, and 6 neutral.

More than 250 commenters argued that allowing inexperienced CLP holders to drive without the supervision of a CDL holder is unsafe.

"The fact is that CLP holders who have passed the CDL skills test are qualified and eligible to obtain a CDL," the FMCSA wrote. "If these CLP holders had obtained their training and CLPs in their state of domicile, they could immediately obtain their CDL ... and begin driving a CMV without any on-board supervision."

There is no data showing that having a CDL holder accompany a CLP holder who has passed the skills test improves safety, the FMCSA added.

The exemption is in effect until June 12, 2017. Drivers for C.R. England who use the exemption must maintain a valid driver's license and CLP with the required endorsements, must not be subject to any out-of-service orders or suspension of driving privileges, and must meet all physical qualification standards. In addition, the company must notify the FMCSA within five days of any accidents involving drivers using the exemption.

Notice of the exemption appeared in the *Federal Register* on June 11, 2015. ♦

Electronic stability control systems to be required

Electronic stability control (ESC) systems will be standard equipment on all new heavy trucks and buses in coming years under new rules from the National Highway Traffic Safety Administration (NHTSA).

The agency says its new Federal Motor Vehicle Safety Standard (FMVSS) No. 136, *Electronic Stability Control Systems for Heavy Vehicles*, will annually save up to 49 lives, prevent up to 1,759 crashes, and provide net economic benefits of more than \$300 million.

ESC works instantly and automatically to maintain directional control in situations where the driver's own steering and braking cannot be accomplished quickly enough to prevent a rollover or other type of crash.

"ESC is a remarkable safety success story, a technology innovation that is already saving lives in passenger cars and light trucks," U.S. Transportation Secretary Anthony Foxx said. "Requiring ESC on heavy trucks and large buses will bring that safety innovation to the largest vehicles on our highways, increasing safety for drivers and passengers of these vehicles and for all road users."

The manufacturing standards will be phased in over the next four years. No retrofitting of existing vehicles will be required. For newly manufactured vehicles, the standards apply on:

- August 1, 2017, for all new, typical three-axle truck tractors;
- June 24, 2018, for all new buses with a gross vehicle



weight rating (GVWR) of greater than 33,000 pounds; and

- August 1, 2019, for all other truck tractors (including two-axle vehicles and severe-service tractors) and all other buses with a GVWR greater than 26,000 pounds.

The National Transportation Safety Board has recommended a requirement for ESC on heavy-duty vehicles

see *ESC*, pg. 14

**Poster
Topic**
This Month

ESC, from pg. 13

since 2011. In 2012, a rule requiring light-duty vehicles to include ESC took effect and Congress directed NHTSA to consider an ESC requirement for motorcoaches.

“Reducing crashes through ESC in these trucks and buses will save lives — nearly 50 each year. It will move goods and people more efficiently and reduce the toll crashes take on our economy through traffic delays and property damage,” said NHTSA Administrator Mark Rosekind. “It’s a win for the safety and convenience of the traveling public and for our economy.”

NHTSA estimates the rule will prevent up to 56 percent of untripped, rollover crashes — that is, rollover crashes not caused by striking an obstacle or leaving the road — and 14 percent of loss-of-control crashes.

Without the new rule, the agency estimates that by 2018 about 34 percent of new truck tractors and 80 percent of new buses would be equipped with ESC systems.

NHTSA had considered requiring truck tractors, large buses, and trailers to be equipped with roll stability control (RSC) systems instead, because they are more cost-

effective but have fewer safety benefits.

ESC systems include all the functions of an RSC system plus the ability to mitigate severe oversteer or understeer conditions by automatically applying brake force to help maintain directional control of a vehicle.

Compliance with the new ESC standards will be tested using a “J-turn” test that replicates a curved highway off-ramp.

The new rule appeared in the *Federal Register* on June 23, 2015, and take effect on August 24, 2015. ♦

Five applicants denied hours-of-service exemptions

If you want an exemption from the hours-of-service rules, you’d better have evidence that highway safety will be improved, or at least won’t be harmed.

That’s the lesson that four motor carriers and a driver recently received in the form of rejection letters from the Federal Motor Carrier Safety Administration (FMCSA).

The carriers and driver had sought exemptions from various federal hours-of-service rules, but the FMCSA said none of the applicants was able to show that their exemp-

tion would not harm public safety.

The FMCSA has authority to grant exemptions from its rules for up to two years as long as they “would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation.”

Short haul

A Pennsylvania-based motor carrier engaged in the short-haul transportation of topsoil, fill, stone, and similar materials asked for permission to use the 100-air-mile exception even when its drivers’ work-days stretch beyond 12 hours. Such an exemption would allow drivers to use time records instead of logs and forgo 30-minute rest breaks.

The company argued that logs lead to “too much non-productive driver time” and indicated that its drivers are

spending 10 minutes making a log entry for a 5-minute stop.

The FMCSA countered that logs are necessary for enforcement purposes and that short stops may be “flagged” in the Remarks area, which “should take less than one minute.”

Unique rules

An individual driver for a major Iowa-based motor carrier asked the FMCSA for a complete exemption from the hours-of-service rules, in favor of rules of his own design.

He proposed that he be “allowed to drive between 3 to 11 hours followed by 2 to 10 hours of rest/sleep,” with “at least 8 hours [of sleep] during 24 hours of service,” according to his exemption application. He also proposed a 24-hour restart.

The FMCSA denied the exemption because the driver failed to provide any evidence



that highway safety would be maintained.

Rest breaks

Finally, three construction companies applied jointly for an exemption from the requirement for a 30-minute rest break every 8 hours.

The companies operate commercial vehicles in support of nighttime road repair and maintenance operations, the FMCSA says. Their drivers

deliver equipment and materials to work zones, spending an average of just two hours per day behind the wheel.

The companies argued that their deliveries are often time-sensitive, citing asphalt as an example of a material that must be delivered before its temperature drops.

The companies alleged that mandatory breaks constrain their ability to make deliveries and are unnecessary given

their drivers' limited time behind the wheel and frequent rest breaks of less than 30 minutes.

Despite receiving 438 public comments in favor of the exemption (all containing identical text, the FMCSA says), the agency denied the request, saying that "minimal effort would be needed for these drivers to extend one of their frequent short breaks to 30 minutes." ♦



IOWA

FMCSR adoption

The Iowa Department of Transportation has adopted Parts 385 and 390-399 of the Federal Motor Carrier Safety Regulations (FMCSRs) as in effect on October 1, 2014.

The adoption includes revisions to the exception to the hours-of-service regulations for certain agricultural operations during the state's planting and harvesting season.

Under the revised exception, the hours-of-service requirements (Part 395) shall not apply during planting and harvesting seasons to drivers transporting:

- Agricultural commodities from the source of the agricultural commodities to a location within 150 air-miles from the source;
- Farm supplies from a wholesale or retail distribution point to a farm or other

location where farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

- Farm supplies from a wholesale distribution point to a retail distribution point within a 150 air-mile radius from the wholesale distribution point.

Iowa's planting and harvesting seasons are March 15 through June 30 and October 4 through December 14.

The adoption was effective July 15, 2015.

MAINE

FMCSR adoption

Maine has updated its adoption of the Federal Motor Carrier Safety Regulations (FMCSRs) for intrastate operations. Included in the adoption is a change to the intrastate vehicle identification and marking requirement.

Effective June 19, 2015, intrastate vehicles with a gross vehicle weight rating of 10,000 pounds to 26,000 pounds are not required to comply with the vehicle marking and identification requirements in 49 CFR Secs. 390.19 and 390.21.

This exception does not apply to vehicles transporting hazardous materials or vehicles that meet the state's definition of a bus.

OREGON

FMCSR adoption

Oregon has updated its adoption of Parts 380, 382, 383, 385, 387, 390-393, 395, 396, 398, and 399 of the Federal Motor Carrier Safety Regulations (FMCSRs) with some exceptions. The adoption includes all amendments in effect on April 1, 2015.

The adoption was effective May 26, 2015. ♦



Regulations Calendar

The following are upcoming rulemaking actions and significant, pending compliance deadlines related to motor carrier safety. The entries are arranged in date order.

8/20/2015

Speed Limiters

A proposed rule that would require the installation of speed limiting devices on commercial trucks over 26,000 pounds is expected in August.

9/6/2015

Brake Safety Week

Brake Safety Week takes place September 6-12, 2015. During the event, inspectors will conduct brake system inspections on trucks and buses across North America to identify out-of-adjustment brakes and brake-system violations.

9/17/2015

Safety Fitness

The FMCSA is projecting that it will issue the long-awaited "carrier safety fitness determination" rule by mid-September. In part, the rule would use CSA data to assign safety ratings, rather than relying solely on audits.

9/25/2015

Anti-Coercion

The FMCSA says late September is when it plans to issue a final rule that will prevent drivers from being coerced into driving when they would violate the safety regulations. See *MCSR*, 7/14, p. 1.

9/30/2015

ELD Rule

The final rule on electronic logging devices is still on track to be issued by the end of September, requiring the devices for most interstate commercial drivers. The industry is expected to have just two years to install and begin using the devices once the final rule takes effect.

10/23/2015

URS Takes Effect

The Unified Registration System (URS) becomes fully operational on October 23, 2015. See *MCSR*, 10/13, p. 1.

12/14/2015

Clearinghouse

Mid-December is the projected date for a final rule to establish a clearinghouse of CDL drivers who have tested

positive on DOT drug or alcohol tests.

12/22/2015

Medical Forms

A new medical exam form and certificate (wallet card) must be used beginning December 22 (and no sooner), due to a new rule issued April 23, 2015. See related article, p. 2.

1/1/2016

IRP for Charter Buses

Starting January 1, 2016, charter buses that have two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds, or that have three or more axles, will be subject to the International Registration Plan (IRP).

1/1/2017

Bus Lease/Interchange

Compliance will be required in 2017 for a new rule targeting bus operators that use lease agreements to hide their identity from DOT enforcement. See related article, pg. 7. ♦

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