



ASSOCIATION HIGHLIGHTS

MOTOR-REGULATORY

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Proposed Rules and Notices

EPA and NHTSA Emissions Rule for Trucks, Engines, and Trailers

The Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) announced a proposed rule on June 19, 2015 that would raise emissions standards on medium and heavy duty vehicles between 2018 and 2027. 80 Fed. Reg. 40137 (July 13, 2015). The proposed rule (Phase 2) follows a previous joint EPA and NHTSA rule regarding model year 2014 to 2018 medium and heavy duty vehicles (Phase 1). 76 Fed. Reg. 57106 (Sept. 15, 2011). Unlike its predecessor, the Phase 2 rule bases its standards on technology not yet available or widely utilized. *Id.* at 20154. The Phase 2 rule also applies to trailers and to small businesses, neither of which were covered by the Phase 1 rule. *Id.* The Phase 2 rule would also make minor changes to locomotive emissions rules. *Id.* at 40538-39.

The phased-in standards would begin in 2018 for trailers and 2021 for motor vehicles and engines. *Id.* at 40138. By 2027, the agencies expect combination tractor (semi truck) fuel consumption and greenhouse gas emissions to be reduced by 24%, at an anticipated additional cost of \$11,680 per vehicle. *Id.* at 40144. Vocational vehicles (*e.g.* buses, fire trucks, dump trucks and flat beds), pickups and vans would reduce fuel consumption and emissions by 16% at a cost of \$3,380 for vocational vehicles and \$1,340 for pickups and vans. *Id.* Trailers would have a 8% reduction at a cost of \$1,170. *Id.* These costs estimates are higher than in the Phase 1 rule. *Id.* at 40142. However, the agencies expect the cost savings from increased fuel efficiency will mitigate the additional cost in the first two years of ownership of tractors (*Id.* at 40235), five years for vocational vehicles if passed on fully to customers (*Id.* at 40319), three years for heavy-duty pickups and vans (*Id.* at 40165), and two years for trailers (*Id.* at 40272). *See also Id.* at 40482-85. The rule is estimated to cost over \$26 billion but provide \$242 billion in net benefits. *Proposed Rulemaking for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Draft Regulatory Impact Analysis*, June 2015, at ES-11 – ES-12, available at <http://epa.gov/otaq/climate/documents/420d15900.pdf>.

Not all groups agree with the anticipated costs. In a joint statement, the National Automobile Dealers Association and American Truck Dealers stated that “[r]ecent history has shown that mandates with underestimated compliance costs result in substantially higher prices for commercial vehicles, and force fleet owners and operators to seek out less-expensive and less fuel-efficient alternatives in the marketplace.” June 19, 2015 Press Release, available at <https://www.nada.org/Press-Releases/2015/EPA/NHTSA-Emissions-Rule-for-Trucks-Will-Harm-Consumers,-Economy-and-Emissions-Goals/>.

Comments are due by September 11, 2015.

Proposal for Future Enhancements to the Safety Measurement System (SMS)

On June 29, 2015, the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of a Proposal for Future Enhancements to the Safety Measurement System (SMS). 80 Fed. Reg. 37037. The SMS helps the FMCSA and state partners prioritize enforcement and provides motor carrier safety data to the public. Under the proposed changes, the FMCSA would lower the intervention threshold for vehicles in the violation category (BASIC) of maintenance violations, thereby prioritizing enforcement with respect to such violations. Violations involving the category of controlled substances and alcohol, hazardous material compliance, and driver fitness would receive less priority. *Id.* at 37038.

This proposed reprioritization follows an SMS effectiveness test that evaluated the correlation between each SMS violation category and crashes, and is intended to better align intervention thresholds with crash risk. *Id.* The test revealed that violations in the categories of unsafe driving, crash indicator (crash history), and hours of service correlate most strongly with crashes. *Id.* Intervention for those categories would remain unchanged. *Id.*

The FMCSA is also proposing to subdivide hazardous material carriers into two groups: cargo tank and non-cargo tank carriers. *Id.* This would address concerns that cargo tank carriers are being unfairly compared to non-cargo tank carriers despite their distinct businesses. *Id.* Furthermore, all violations following an out of service order would be classified in the unsafe driving category, regardless of the underlying violation, because the nature of the violation is more directly tied to the decision to violate an out of service order than the underlying violation. *Id.* at 37039. Finally, the Utilization Factor – the average number of miles traveled per vehicle in a carrier’s fleet – would be increased from the current analytical cap of 200,000 miles to 250,000 miles to better reflect some industry practice and increase the usefulness of the statistic. *Id.*

Comments were due on July 29, 2015.

CMV Certification Labels

The FMCSA released a notice of proposed rulemaking on June 17, 2015 that would require United States-domiciled “motor carriers engaged in interstate commerce to use only commercial motor vehicles (CMV) that display a certification label affixed by the vehicle manufacturer or a U.S. Department of Transportation (DOT) Registered Importer, indicating that the vehicle satisfied all applicable Federal Motor Vehicle Safety Standards (FMVSS) in effect at the time of manufacture.” 80 Fed. Reg. 34588. Manufacturers of motor vehicles intended to be sold or used in the U.S. are already required to have such a label under 49 CFR Part 567. *Id.* at 34590. The National Traffic and Motor Vehicle Safety Act (codified at 49 U.S.C. 30101, *et seq.*) also requires such labeling for imported vehicles. *Id.* at 43591. If adopted, the rule would allow the FMCSA and its state partners to enforce the existing laws by citation, fine, or civil penalty. *Id.* The National Transportation Safety Board (NTSB) recommended that the FMCSA and others take steps to ensure that CMVs meet labeling requirements following a 2008 NTSB investigation in which a motorcoach that rolled over did not display the appropriate label.

Under the proposed rule: “If the certification label is missing, the motor carrier must obtain, and a driver upon demand present, a letter issued by the vehicle manufacturer stating that the vehicle met all applicable FMVSS in effect at the time of manufacture.” *Id.* at 34588.

Comments were due by August 3, 2015.

Medical Certificates for Drivers with Diabetes

The FMCSA issued a notice of proposed rulemaking to change the requirements for drivers with diabetes. 80 Fed. Reg. 25260 (May 4, 2015). Under the proposed rule, drivers with insulin-treated diabetes mellitus would be permitted to drive CMVs if the driver receives an annual medical examiner’s certificate and the driver’s doctor provides documentation that the diabetes is stable and well-controlled. *Id.* Currently, such drivers must seek an exemption from the FMCSA every two years, which is more onerous for the driver and the FMCSA. *Id.* at 25264. “FMCSA has determined that the inconvenience and expense for drivers, and the administrative burden of an exemption program are no longer necessary . . .” to maintain safety. *Id.* at 25265. The comment period for this proposed rule has closed.

Final Rules

Confidential Business Information

By final rule effective June 10, 2015, the FMCSA will treat business information voluntarily submitted to it in response to a notice-and-comment rulemaking as confidential and exempt from public disclosure under the Freedom of Information Act “as long as the submitter can show that it is not customarily released to the general public.” 80 Fed. Reg. 32861, 32862 (to be codified at 49 CFR Part 389). This is the standard adopted by the U.S. Court of Appeals for the D.C. Circuit in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (*en banc*). *Id.* If the FMCSA relies on the confidential business information in making a final rule, it must describe such information in a way that does not identify such information and must explain how it assisted the FMCSA in formulating the rule. *Id.*

Lease and Interchange of Passenger CMVs

The FMCSA issued a final rule regarding the lease and interchange of passenger CMVs, taking substantive effect January 1, 2017. 80 Fed. Reg. 30164 (May 27, 2015) (to be codified at 49 CFR Part 390). The rule is intended “to ensure that passenger carriers cannot evade FMCSA oversight and enforcement by entering into questionable lease arrangements to operate under the authority of another carrier that exercises no actual control over these operations.” *Id.* at 30164. The rule follows a recommendation from the NTSB that the FMCSA regulate passenger carrier leases like they regulate property carrier leases under 49 CFR Part 376. *Id.* at 30166.

Under the rule, leases and interchange agreements for passenger-carrying CMVs must be reduced to writing and such written agreement must state that the lessee “has exclusive possession, control, and use of the passenger-carrying commercial motor vehicle for the duration of the lease, interchange agreement, or other agreement” and that the “lessee shall assume complete responsibility for operation of the passenger-carrying commercial motor vehicle and compliance with all applicable Federal regulations for the duration of the lease, interchange agreement, or other agreement,” among other requirements. *Id.* at 30179-80. A copy of the agreement must be kept with the leased passenger vehicle. *Id.* at 30171. The regulation “applies to all leases or interchanges of passenger-carrying CMVs between motor carriers, no matter how brief” but excludes leases between carriers and vehicle manufacturers or dealers, passenger vehicles exchanged between commonly owned and controlled motor carriers, and Surface Transportation Board approved revenue pooling agreements. *Id.* at 30179.

The FMCSA had extended the period in which to file a motion for reconsideration until August 25, 2015. 80 Fed. Reg. 37553 (July 1, 2015).

Interpretive Rule

Hazmat Carrier Monitoring

The FMCSA has revised its interpretation of its rule regarding Hazardous Material Safety Permit (HMSP) renewal located at 49 CFR Part 385 subpart E. 80 Fed. Reg. 35253 (June 19, 2015). Carriers that hold a non-temporary HMSPs will be subject to continuous monitoring under the SMS rather than the current process of a review every two years of the carrier’s crash and out of service rate. *Id.* at 35254. The “FMCSA will review the permit holder’s SMS scores monthly to determine if the carrier has met or exceeded intervention thresholds for either the Hazardous Materials Compliance BASIC [Behavioral Analysis and Safety Improvement Category] (HM BASIC) or met or exceeded thresholds for any two of the other BASICs for the preceding two consecutive months. If the carrier meets or exceeds the HM BASIC or meets or exceeds thresholds of any other two BASICs over a consecutive two-month period, FMCSA will identify the carrier for investigation with hazardous material compliance emphasis.” *Id.* A carrier’s failure to immediately address deficiencies can lead to suspension or revocation of its HMSP. *Id.*

Carriers with an HMSP that do not have sufficient data for SMS evaluation during any month of a 48-month period will be subject to a comprehensive investigation. *Id.* at 35255. Such carriers will not be allowed to operate for more than four years without a compliance review resulting in a satisfactory rating. *Id.*

The revised interpretation applies only to carriers once they have an HMSP; application standards for new and temporary HMSPs will remain unchanged. *Id.* The new monitoring began August 18, 2015.

Rule Correction

Reporting Driver Convictions

On June 29, 2015, the FMCSA issued a final rule without notice and comment in order to correct its October 1, 2013 MAP-21 Implementation final rule. 80 Fed. Reg. 36930. The corrected rule reinstates the inadvertently deleted requirement for states to report convictions of commercial drivers to the FMCSA's Federal Convictions and Withdrawal Database within 10 days of the conviction, which will appear at 49 CFR 384.209(c). *Id.* at 36930, 36932.