

TRUCK Safety Reform Act

U.S. Senator Deb Fischer

Section by Section Analysis

Problem: FMCSA has faced a myriad of challenges to its process for conducting regulatory guidance and rulemaking. From industry to law enforcement and safety organizations, stakeholders often express frustration with FMCSA's lack of follow-through, transparency, or response. These challenges have culminated in the controversial 2013 Hours of Service rulemaking and the flawed Compliance, Safety, Accountability commercial carrier scoring program. With an important mission of ensuring commercial carrier safety, FMCSA is deeply in need of regulatory reform.

Solution: The Truck Safety Reform Act will provide much-needed transparency and better opportunities for input from stakeholders and the general public regarding the FMCSA's regulatory process. Through a five-year review, FMCSA will address questions regarding outdated guidance and rulemaking. In addition, FMCSA must establish a strengthened cost-benefit analysis for major rules, including working with an independent entity to receive written feedback that the sample used in the analysis is representative of the industry.

Section 1: Short Title

Short Title: Trucking Rules Updated by Comprehensive and Key Safety Reform Act or TRUCK Safety Reform Act.

Section 2: Five Year Review of FMCSA Rules, Guidance, Regulations, and Enforcement Policies

Review: Every five years, FMCSA must conduct a comprehensive review of all rules, regulations, regulatory guidance, and enforcement policies. Before beginning each five year review, FMCSA shall publish a review schedule and work plan.

Report: At the conclusion of each review FMCSA must produce a publically available report detailing an inventory of technical rules and guidance, and a determination as to whether or not the rules and guidance are (A) consistent and clear, (B) current and consistent with the state of the motor carrier industry, (C) uniform and consistently enforceable and (D) a statement as to whether guidance is still necessary.

Rulemaking: Within 24 months of the review's completion, FMCSA must amend its current regulations and enforcement policies to ensure that they are consistent and uniform.

Section 3: Guidance

Regulatory Guidance: All issued or re-issued guidance must be published in the federal register on date of issuance or re-issuance. If, after the five year review, FMCSA attempts to reissue a guidance, the guidance will be effective up to 24 months after the conclusion of each review.

Medical Guidance: FMCSA must conduct a formal notice and comment process when issuing medical guidance, except in cases deemed public health emergencies by the Centers for Disease Control and the Department of Health and Human Services.

Section 4: Regulations

Regulatory Evaluations and Performance-Based Measures: When evaluating regulations and enforcement policies, FMCSA must specify how it plans to evaluate future rules to measure their intended outcomes. In addition, FMCSA must allow stakeholders to submit comments as to how a performance-based target would better achieve a given rule's policy objective.

Strengthened Cost-Benefit Analysis: For future regulations, FMCSA must provide a wider scope and selection of motor carriers in its cost-benefit analysis, including truck and bus carriers of all sizes, operation types, and sectors. FMCSA cost-benefit analysis shall be subject to independent peer review by a balanced panel of experts. In certain instances where it is impracticable or contrary to the public interest, the FMCSA administrator may waive these requirements.

Advanced and Negotiated Rulemakings: Before promulgating a Notice of Proposed Rulemaking, that may lead to a major rule, with a cost of over \$1 million, FMCSA must issue an Advanced Notice of Proposed Rulemaking (ANPRM), determine whether a Negotiated rulemaking is necessary, or publish a request for comment in the Federal Register on the rule subject matter.

Stakeholder and Public Comment: Each ANPRM or Negotiated Rulemaking shall identify the compelling public concern for a potential regulatory action. In addition, the agency must collect public comments on the following:

- the best science and technical information supporting the need for regulatory action;
- benefits and costs of potential regulatory alternatives;
- available alternatives to direct regulation, including economic incentives;
- and data on how safety will be quantifiably improved by the regulation.

Independent Entity Feedback: FMCSA must solicit and receive feedback during the development of an ANPRM or NPRM from the Transportation Research Board (TRB) at the National Academy of Sciences or the Inspector General (IG) at the U.S. Department of Transportation to assist the agency in determining the most appropriate universe for carrier selection in the cost-benefit analysis. If FMCSA does not utilize the recommendations of the TRB or the IG, the agency must publish in the Federal Register an explanation as to why the recommendations were not included.

Certification: FMCSA must publish in the Federal Register certification that the agency has attempted, to the maximum extent possible, to consider the impact of a given regulation on various aspects of the commercial truck and bus industry in its cost-benefit analysis.

Section 5: Petitions

Petitions: FMCSA shall prioritize stakeholder petitions based on the likelihood of safety improvements and respond to petitions no later than six months after a petition is submitted.

Inventory: The agency must maintain a publically available inventory of all petitions received, including information about the disposition of each position.

Section 6: Savings Provision

Limitations of ANPRM: Nothing in sections three through five of this legislation is meant to limit the contents of ANPRMs.