



How Federal Trucking Regulations Become Law

Learn How to Make Your Voice Heard at FMCSA



“There ought to be a law!” Isn’t that our frustrated cry when faced with situations in life that just don’t make sense? The sad irony is that life does give us laws – lots of them.

Trucking no doubt has many laws, as well as regulations. Whether we believe those laws and regulations good or bad, fair or unfair, we need to understand what they are, how they originate, and what we can do about them.

In this PrePass whitepaper, you will learn all you need to know about federal trucking regulations, with a particular focus on Federal Motor Carrier Safety Administration (FMCSA) regulations.

“THERE OUGHT TO BE A LAW!” ISN’T THAT OUR FRUSTRATED CRY WHEN FACED WITH SITUATIONS IN LIFE THAT JUST DON’T MAKE SENSE?

WHAT ARE REGULATIONS? REGULATIONS ARE LAW, PERIOD.

Regulations come from a government entity with the authority to require compliance – a “regulatory agency.” Regulatory agencies arm regulations with sanctions to encourage compliance among those who fall under the agency’s authority.

The FMCSA, for example, is the regulatory agency for commercial trucks and buses. FMCSA is one of several agencies that operate under the umbrella of the U.S. Department of Transportation (USDOT). Under federal law, FMCSA publishes regulations which motor carriers must follow or face penalties.

In contrast, the National Transportation Safety Board (NTSB) is not a regulatory agency and operates independent of the USDOT. NTSB conducts investigations, issues findings, and calls on USDOT regulatory agencies like FMCSA to take certain steps – but federal law does not authorize NTSB to issue regulations and it has no authority to require compliance.





The confusion that occasionally surrounds regulations can result simply from grammar. We often use the word “law” to mean a statute or legislation passed by Congress. In addition, both Congressional statutes and agency regulations have “the effect of law;” they must be followed and there are penalties for not complying.

People also confuse regulations with other actions by the regulatory agencies themselves – studies, pilot projects and guidance. For instance, an agency can seek public comment on a proposed study or pilot project or a proposed guidance document, just as it seeks public comment on a proposed regulation.

Guidance documents assist people in applying existing regulations to real-world situations and do not have the force of law. Agencies use studies gather facts, often coupling them with a request for voluntary data submission. Pilot projects contain a waiver or adjustment of certain regulations to test how a different regulatory regime could work. They have legal requirements, but those requirements apply only to the project participants.

Under federal law, pilot projects cannot last longer than three years. Regulations, by comparison, have no end date, but they can change for three reasons: 1) new agency rulemaking; 2) new Congressional direction; or 3) court decisions.

As during the COVID-19 pandemic, agencies can waive or adjust regulations by an emergency order. This typically happens during natural disasters, such as floods and hurricanes. Emergency orders have a stated end date but they may be extended or adjusted when the underlying emergency continues. That extension requires a new statement from the regulatory agency. Because emergency orders give an exception to standard regulations, agencies include restrictions and limitations in the emergency declaration.

WHERE REGULATORY AGENCIES GET THEIR POWER.

Remember your high school civics lessons? The [U.S. Constitution](#) puts Congress in charge of law-making. Congress passes laws laying out the statutory charter for each federal agency – what the agency can do and must do. Congress may separately weigh in on specific issues, expanding or refining the scope of an agency's jurisdiction on that issue.

The Motor Carrier Safety Improvement Act of 1999 contains FMCSA's charter. There, Congress clearly listed what it felt were the shortcomings in motor carrier safety to that point, which it directed FMCSA to address. Statutory charters also include limitations to agency powers. Ultimately, the U.S. Constitution provides a limit to federal actions. Court decisions can also define the scope of a regulatory agency's authority, and Congress is quite willing to block agency actions of which it doesn't approve.

SOURCES OF PROPOSED REGULATIONS.

So, do “nameless federal bureaucrats” sit around and devise the next set of trucking regulations? No. At FMCSA, staff recommendations can result in proposals, if they meet with approval from the agency administrator and the USDOT secretary. Similarly, private entities, such as motor carriers, trucking trade associations, and commercial vehicle enforcement agencies can petition for rulemaking with FMCSA to advance a rule or regulatory change.

By far, Congress is the primary source of federal regulations for FMCSA and any regulatory agency. Congress triggers federal regulations in three ways:

- The agency's statutory charter, in which Congress has said what the agency must do;
- Congressional legislation directing the agency to adopt a specific regulation; or
- Congressional legislation adopting a program, for which the relevant agency must then write regulations for implementation.

Look first to Congress to see what is ahead in regulation.





WHAT IF THE REGULATORY AGENCY MAKES MISTAKES OR PROPOSES A PENALTY THAT IS UNJUST OR TOO HARSH?

VIOLATIONS, SANCTIONS AND CHALLENGES.

Every regulatory agency has a set of sanctions for violating its regulations. For example, FMCSA can issue [civil fines and penalties for violation of federal trucking regulations](#).

FMCSA utilizes a motor carrier's violation history in calculating its Compliance, Safety, Accountability (CSA) scores and [may launch a compliance review](#) of a carrier and determine its safety rating.

What if the regulatory agency makes mistakes or proposes a penalty that is unjust or too harsh? At FMCSA there are two ways to address mistakes:

- Motor carriers can use [DataQs](#) to challenge errors made in an inspection or crash report.
- Non-preventable crashes may be removed from FMCSA use and from a driver's record through the [Crash Preventability Determination Program](#).

A motor carrier must first challenge the legality or harshness of a proposed regulatory penalty within the agency before a court will accept jurisdiction. In legal terms, a person must "exhaust all administrative remedies" before going to court. At FMCSA, the agency's [Rules of Practice](#) lay out those steps.

COMING AND CURRENT REGULATORY PROPOSALS.

Federal regulatory agencies give advance notice of what new regulations they have in mind through the [Unified Agenda of Regulatory and Deregulatory Actions](#). It covers approximately 60 departments, agencies, and commissions, including all [federal entities that currently have regulations under development or review](#).

The timelines for regulatory development shown in the Unified Agenda are estimates. Currently open regulatory dockets are found at [Regulations.gov](#). People can search by agency (e.g., "FMCSA"), by subject matter (e.g., "hours of service"), or by specific Docket No. (e.g., "FMCSA-2007-27748"). The [Federal Register website](#) is the official publication for government regulations, and conduct a similar search.

WHY FEDERAL REGULATIONS WERE FIRST DEVELOPED.

When were federal regulations first developed?

To guide the country out of the Great Depression, the Franklin D. Roosevelt administration hired an unprecedented number of government experts to fix the economy. The president granted them unfettered powers and each federal agency and department did things its own way. When Congress asked Harry Hopkins, head of the Federal Emergency Relief Administration, to explain how he allocated federal funds, he simply declined to answer.

Congress responded by passing the [Administrative Procedure Act](#) in 1946. The APA provided uniform procedures for all federal agencies in the adoption of regulations and the adjudication of disputes. The APA also laid the foundation for judicial review of agency decisions.

HOW FEDERAL TRUCKING REGULATIONS ARE DEVELOPED.

When a federal agency, like the Federal Motor Carrier Safety Administration (FMCSA), the National Highway Traffic Safety Administration (NHTSA), or the Substance Abuse and Mental Health Services Administration (SAMHSA), proposes so-called “legislative rules,” it means regulations that are made pursuant to the agency’s Congressional charter or Congress’s specific direction. The agency must then follow the “informal rulemaking procedures” outlined in the APA. Most people recognize these “informal” procedures as the “notice-and-comment” steps of federal rulemaking.

- These “informal” or “notice-and-comment” procedures are the standard approach when it comes to rulemaking. However, other paths do exist under APA, such as:
- The rarely-used “formal” procedure with hearings held before an official, and cross-examination of witnesses allowed
- The “direct final rule,” in which an agency adopts a necessary regulation quickly with no opposition expected
- A “negotiated rulemaking” with the agency requesting interested parties to reach a compromise and then submitting that compromise for public comment

The goals of the APA include public participation in rulemaking, clarity of the rulemaking process, and public understanding of the final result – things that today we would call “transparency.” To achieve those goals, the APA requires publication of a Notice of Proposed Rulemaking (NPRM) in the [Federal Register](#). That NPRM must contain “(1) the time, place, and nature of public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.”

Once the agency gives adequate notice that a regulation is being considered, the public must have ample opportunity to submit comments. The APA does not set a minimum time period in which an agency must accept comments, but in most cases at least 60 days are allowed. The agency must

read and account for the comments (“data, views, or arguments”), though courts have only obligated agencies to directly respond to “significant” comments.

The agency then publishes a final rule, in which it is required to consider “relevant matter presented” and explain the reason for the result in terms the public can understand. In general, the agency must publish the final rule in the Federal Register not less than 30 days before the rule’s effective date. That 30-day delay is intended to give the public time to adjust to the new regulation.

As we have seen with FMCSA regulations, the effective date of a new rule may occur more than 30 days in the future to allow for training by motor carriers, drivers and enforcement personnel. Federal, state and private entities may also need time to adjust data communication channels.

FMCSA follows that APA process, as does NHTSA when issuing regulations for new cars and trucks. SAMHSA adheres to APA when issuing regulations for drug and alcohol testing.



CRAFTING EFFECTIVE COMMENTS FOR A REGULATORY DOCKET.

Practical, workable regulations – rules that can be applied to real-world situations and achieve common goals – are built through your input. The folks at FMCSA may be experts in their field, but their perspective is necessarily from a government point of view (after all, that’s their job). Your perspective, as someone applying the regulations, is critical to a satisfactory result for everyone.

And it is your individual comments that are important. In an industry as diverse as trucking, the regulatory challenges encountered by a dry van carrier may be different from those of a tank hauler. The perspective of a hazmat driver may differ from that of the short-haul driver transporting electronics. Unless you or your trade association submit comments on your unique challenges and concerns, FMCSA will have no means to accommodate them. Regulatory decisions are based on what is in the docket.

WHAT YOU NEED TO KNOW ABOUT SUBMITTING COMMENTS ON PROPOSED TRUCKING REGULATIONS.

A docket is the collection of agency notices, documents, petitions and public comments on a specific rulemaking. By going to [regulations.gov](https://www.regulations.gov), you can view each of the entries in a rulemaking and read what others are saying about a proposed regulation. If you want to submit an effective comment, there is one entry in the docket you must read – the agency's notice.

Comments to any type of agency notice should do at least these three things:

- Address the topic raised by the agency;
- answer the specific questions asked by the agency in the notice; and
- be filed on time.

Effective comments do much more. To accomplish those three basic items, you must read the notice itself. Sadly, many comments to rulemaking dockets are about regulation in general or past agency decisions. They may be legitimate concerns – but if they are not on point with this agency notice, they will have no effect.

Agency notices are often filled with bureaucratic language, acronyms and citations to statutes and federal regulations. Do not be daunted. Begin with these sections, taken from a typical [Notice of Proposed Rulemaking in the Federal Register](#):

- **Heading.** After the department (e.g., “Department of Transportation”) and agency (“Federal Motor Carrier Safety Administration”), you will see listed, in descending order, the CFR (Code of Federal Regulations) sections affected by the proposal, the Docket Number [shown in brackets], the RIN (Regulation Identifier Number), and the official title of the rulemaking. Make a note of the Docket Number and the rulemaking title. You will cite those in your comments and can use them for tracking developments later.
- **Summary.** This is a very brief capsule of the proposal. Thorough discussion can be found under sections titled Executive Summary and General Discussion of the Proposal. The summary will let you know how deeply you may want to delve into the notice. If the proposal appears to impact you directly, you may want to review those and other subsequent sections.
- **Dates.** Comments must be filed by the date shown.
- **Addresses.** You can file comments electronically, by fax, by mail or by hand delivery.
- **Major Issues on Which the Agency Seeks Comment.** This section may be buried under pages of explanation and regulatory history, but it is important. The agency will know you actually read the notice when you answer the specific questions it poses here. Answer those where you have facts or experience. If the agency has missed a key issue, point it out in your comments.

Notices also contain lengthy sections on the legal basis for the proposed regulation and on the regulatory history of the topic. This ends with a section-by-section review of the proposed language and various regulatory analyses that agencies must conduct. Comment on these if you have related background and experience.

THE BEST KINDS OF COMMENTS ARE ‘EFFECTIVE’ ONES.

Effective comments are built from these points:

- Identify yourself as a person or company and why you are affected by the proposal;
- answer the questions listed in the notice and point out important or clarifying questions not posed;
- discuss conflicts or concurrence of the proposal with other federal regulations, with statutes or with state-level regulations and laws – i.e., appeal to regulatory uniformity;
- use facts, data and direct personal experience, cite relevant studies (include a copy of any information used or cited);
- underscore how the proposal hinders or helps you achieve the agency goal – for comments to FMCSA, show how your ability to achieve safety is impacted;
- describe how the proposal hinders or helps you achieve your personal/business goals. While FMCSA is not charged with promoting the economic health of the trucking industry, comments here may affect the cost/benefit analysis for the proposed regulation and may attract the attention of Congress;
- ask for a response and the outcome you desire; and
- above all, respond by the due date!

This whitepaper shows what regulations are, the process that they follow, and the way your comments can best influence the outcome. Now it is up to you to participate.

ABOUT PREPASS: STRATEGIC CONSULTANTS AT WORK FOR YOU

PrePass Safety Alliance works every day to make highways safer and more efficient through innovative data-driven solutions. As a PrePass customer, we take the time to understand your operation before prescribing a solution. This begins with an understanding of your business operation, goals, objectives, and business challenges. Our solutions include a powerful suite of systems—weigh station bypass, toll payment services and data insight tools. You receive a single, comprehensive program that helps you improve safety, reduce compliance risk, and control operating costs.

Contact us today at prepass.com/contact
or (800) 773-7277 option #2

