



ROAD TALK

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Truck **IMPACT** Guards

FMCSA to include rear impact guard examination in annual inspection

On December 29, 2020, the FMCSA issued a notice of proposed rulemaking requiring rear impact guards to be examined as part of the annual inspection for each commercial motor vehicle (CMV). The proposed rule comes in response to petitions from the Commercial Vehicle Safety Alliance and a recommendation included in Government Accountability Office Report GAO-19-264. FMCSA is also proposing to amend the labeling requirements for rear impact guards, and to exclude road construction controlled horizontal discharge trailers from the rear impact guard requirements.



FMCSRs require every CMV to be inspected at least once every 12 months. A motor carrier may not use a CMV unless each component identified in the “Minimum Periodic Inspection Standards” list has passed the required annual inspection. While the FMCSRs have required rear impact guards for more than 65 years, they are not currently included on that list. This means that a vehicle can pass an annual inspection with a missing or damaged rear impact guard. ([federalregister.gov](https://www.federalregister.gov) - RIN: 2126-AC31)

Legislation would require front and side impact guards

March 4, 2021 – U.S. Senators Kirsten Gillibrand (D-NY) and Marco Rubio (R-FL) and U.S. Representatives Steve Cohen (D-TN-9) and Mark DeSaulnier (D-CA) reintroduced legislation for a third time to strengthen safety measures to prevent underride accidents involving tractor-trailers and straight trucks. The Stop Underrides Act would require underride guards on the sides and front of all new trucks and update outdated standards for underride guards on the rear of trucks.

The Stop Underrides Act would require:

- Department of Transportation to strengthen the requirements for rear underride guards, add the requirement to single unit trucks and ensure that these standards are based off of crash testing

- Require all trailers, semi-trailers, and single unit trucks are equipped with front and side guards
- Update the FMCSRs to include underride guards as one of the critical components of inspection

In 2017, the Insurance Institute for Highway Safety produced two side impact tests at 35mph and 40 mph that both prevented a vehicle from riding under a trailer equipped with a side guard.

The trucking industry and trailer makers have expressed concern when similar bills were introduced in 2017 and 2019 about issues such as weight, cost and the potential for lower guards to trap trucks on areas such as railroad grade crossings.



INDEPENDENT CONTRACTOR RULE

Final Rule delayed by Biden Administration

A Department of Labor final rule (Independent Contractor Rule) left over from the Trump Administration which seeks to bring clarity to the independent contractor vs employee debate has officially been delayed by the Biden Administration. The “Independent Contractor Rule” was supposed to take effect on March 8, but has been officially delayed until May 7 to allow the Department to “review issues of law, policy, and fact raised by the rule before it takes effect”.

In the final rule it states that the multifactor economic realities test, long used to analyze a worker’s status, was in need of clarification. *“This economic realities test and its component factors have not always been sufficiently explained or consistently articulated by courts or the Department, resulting in uncertainty among the regulated community”.*

Taking direct aim at the ABC test adopted by the California Supreme Court, the final rule explains that the inquiry into economic dependence is conducted by applying several factors, with no one factor being dispositive. Additionally, it states that actual practices are entitled to greater weight than what may be contractually or theoretically possible. The final rule sharpens this inquiry into five distinct factors, instead of the five or more overlapping factors used by most courts and previously the Department.

The regulatory guidance in the final rule regarding independent contractor status is said to be applicable across all industries and replaces the previous interpretations which applied only in certain contexts such as loggers and farmworkers and is valid in determining contractor status across all industries.

Recently, the House of Representatives passed The Protecting the Right to Organize Act (PRO Act) which, in addition to expanded unionization controls, includes the ABC test to define an employee vs independent contractor. The ABC test is the meat behind California’s controversial AB5 claiming that a worker is considered an employee unless proven otherwise by the ABC test. In that three-pronged test, the B prong states that an independent contractor must be performing work tasks that are outside the usual course of the company’s business activities. While the PRO Act is not expected to get enough votes to pass in the Senate, it shows how the new Administration leans with regards to employees vs contractors. That stance would likely affect the outcome of any legislative effort that defines a worker’s status.

The trucking industry has been left out on a limb with the uncertainty over independent contractor status. This has caused many independents to incorporate to alleviate the ambiguity and carriers to trim down their operation and/or cut their independent workforce in an effort to avoid costly penalties.

The final rule can be viewed at: [federalregister.gov](https://www.federalregister.gov) RIN No. 1235-AA34

CVSA’s Roadcheck May 4-6

Emphasis on Lighting and HOS

The Commercial Vehicle Safety Alliance (CVSA) has set May 4-6 as the dates for this year’s International Roadcheck. Over that 72-hour period, commercial motor vehicle inspectors in jurisdictions throughout Canada, Mexico and the U.S. will conduct inspections on commercial motor vehicles and drivers. “CVSA shares the dates of International Roadcheck in advance to remind motor carriers and drivers of the importance of proactive vehicle maintenance and driver readiness,” said CVSA President Sgt. John Samis with the Delaware State Police.

Inspectors will ensure the vehicle’s brake systems, cargo securement, coupling devices, driveline/driveshaft components, driver’s seat, exhaust systems, frames, fuel systems, lighting devices, steering mechanisms, suspensions, tires, van and open-top trailer bodies, wheels, rims, hubs and windshield wipers are compliant with regulations.

Vehicles that successfully pass inspection, without any critical vehicle inspection item violations found after a completed Level I or Level V Inspection, should receive a CVSA decal. In general, vehicles with a CVSA decal are not re-inspected during the three-month period during which the decal is valid.

CVSA’s Cargo Securement Harmonization April 19

The spring 2021 North American Cargo Securement Harmonization Public Forum, will be offered as a virtual event, scheduled for April 19, 2021.

The 2021 Virtual North American Cargo Securement Harmonization Public Forum will be held in conjunction with the 2021 CVSA Virtual Workshop.

This public forum is an unrestricted event open to all stakeholders to voice issues/concerns with cargo securement regulations in pursuit of developing and implementing uniform regulatory requirements for the securement of cargo on or within commercial motor vehicles throughout North America.

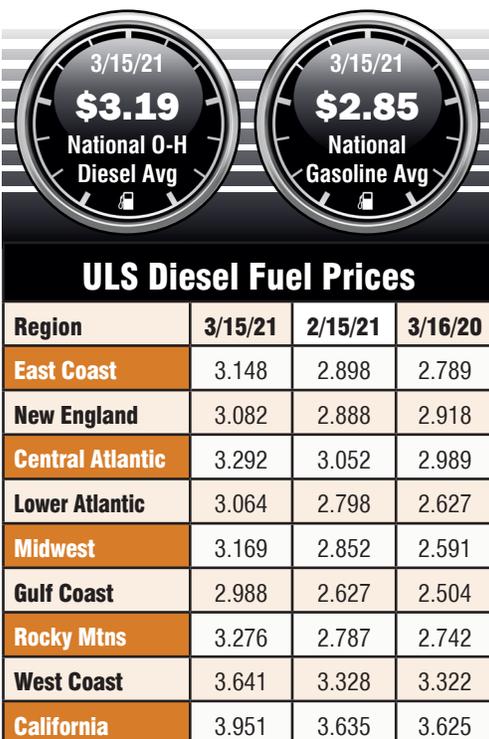
FUEL UPDATE

According to the U.S. Energy Information Association (EIA),

⚠️ Average national gasoline and diesel prices have increased every week since early November 2020 totalling 76 cents-per-gallon for gasoline and 82 cents-per-gallon for diesel.

The U.S. Energy Information Administration (EIA) expects OPEC crude oil production will rise to 26.6 million b/d in May. This increase reflects Saudi Arabia ending voluntary cuts of 1.0 million b/d, along with the relaxation of cuts that were extended through April at the March 4 OPEC+ meeting. The OPEC+ extension of existing supply cuts through April added significantly to near-term upward oil price pressures.

EIA continues to expect downward crude oil price pressures will emerge in the coming months as the oil market becomes more balanced. Brent crude oil prices in the forecast average \$58/b in the second half of 2021 compared to the current \$67/b.



Prices listed above are diesel averages in dollars per gallon.

Up-to-date statistics are available from the Department of Energy at www.eia.gov.



Drug and Alcohol Clearinghouse

Mandatory Compliance Date Jan 5

In 2017, the FMCSA established requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), a database under the Agency's administration that contains information about violations of FMCSA's drug and alcohol testing program for the holders of commercial driver's licenses (CDLs). This rule is mandated by the Agency's MAP Act.

The Clearinghouse gives employers, the FMCSA, State Driver Licensing Agencies (SDLAs), and State law enforcement personnel real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations.

The Clearinghouse requires that:

- 1) Employers query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads.
- 2) Employers annually query the Clearinghouse for each driver they currently employ.

All employers of CDL drivers must purchase a query plan in the Clearinghouse. This query plan enables employers, and their consortia/third-party administrators (C/TPAs), to conduct queries of driver Clearinghouse records. Query plans may be purchased from the FMCSA Clearinghouse only at <https://secure.login.gov>. The deadline for making those queries is January 5.

Owner-operators operating under their own authority must also run their first query by the deadline. FMCSA states that any employer who employs himself or herself as a CDL driver must comply with all Clearinghouse requirements imposed on both employers and employees.

Get more information at: clearinghouse.fmcsa.dot.gov



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Zero-Emissions Trucks Rule

*California Air Resources Board adopts
Advanced Clean Trucks regulation*

In June of 2020, the California Air Resources Board (CARB) adopted a rule (Advanced Clean Trucks regulation) that requires truck manufacturers (from Class 2b to Class 8) to transition from diesel trucks and vans to electric zero-emission trucks beginning in 2024. By 2045, every new truck sold in California must be zero-emission. There is the start of a big push in the U.S. to transition away from diesel fueled vehicles to electrified vehicles. The “don’t get left behind” mentality will undoubtedly mean that it’s just a matter of time before we see other states adopting similar measures.

According to California governor Gavin Newsome, the new rule directly addresses disproportionate risks and health and pollution burdens affecting communities adjacent to the ports, railyards, distribution centers, and freight corridors. The goal is to put California on a path for an all zero-emission short-haul drayage fleet in ports and railyards by 2035, and zero-emission “last-mile” delivery trucks and vans by 2040 - especially in the Los Angeles region and the San Joaquin Valley.

According to CARB, trucks are the largest single source of air pollution from vehicles, responsible for 70% of the smog-causing pollution and 80% of carcinogenic diesel soot even though they number only 2 million among the 30 million registered vehicles in the state.

In the coming months, CARB will also consider two complementary regulations. The first sets a stringent new limit on NOx (oxides of nitrogen) requiring new trucks still using fossil fuels to include the most effective exhaust control technology during the transition to electric trucks. There is also a proposed requirement for larger fleets in the state to transition to electric trucks year over year.

To help CARB in developing policies and recommendations to accelerate this large-scale transition to zero-emissions, there will be a one-time reporting requirement for large entities that operate or direct vehicles in California. The expected reporting deadline is April 1, 2021; however, the Office of Administrative Law (OAL) has not yet approved the regulation. The final rulemaking package was submitted to the OAL on January 29, 2021.

For more information visit: ww2.arb.ca.gov

American Highway Carriers Association



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Visit us at www.AHCAonline.com to see all the discounted benefits available to members. Also, we are very excited to be working on valuable NEW benefits for members available in the New Year, so stay tuned. Many of our benefits require the use of your AHCA ID Number which is located on your AD&D Certificate in your member package. You may also call AHCA at (877) 855-8462 and we will look it up for you.