



**U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
50 Mall Road, Suite 212
Burlington, Massachusetts 01803
(781) 425-3210
June 29, 2020**

Mr. Matt Anderson, President
Home Builders and Remodelers Association of Massachusetts
465 Waverly Oaks Road, Suite 421
Waltham, MA 02452

Re: USDOT FMCSA Regulatory Updates

Dear Mr. Anderson:

I write to update you on a number of regulatory changes that the USDOT Federal Motor Carrier Safety Administration (FMCSA) has made to its regulations. The Commonwealth of Massachusetts has adopted the Federal Motor Carrier Safety Regulations (FMCSRs) as they apply to intrastate carriers (companies) through 540 Code of Massachusetts Regulation (CMR) 14.00. As members of your organization may be Massachusetts based carriers with Commercial Motor Vehicles (CMVs) under federal and state definition, I would like to share information that I believe can be beneficial to your membership.

As a reminder, texting while driving a CMV remains prohibited under both federal regulation under 49 CFR 392.80, unless utilizing the emergency exemption to communicate with law enforcement officials or other emergency services when necessary. The Commonwealth of Massachusetts' recently enacted legislation prohibited texting by all drivers, but texting by CMV drivers has been and remains prohibited. Drivers may be cited through both state citation and on USDOT inspection reports that may impact safety scores as located in FMCSA's Safety Measurement System (SMS) for those companies that operate in interstate commerce.

Marijuana is and continues to be prohibited for use by CMV drivers. Marijuana, including a mixture or preparation containing marijuana, continues to be classified as a Schedule I controlled substance by the Drug Enforcement Administration (DEA) in 21 CFR § 1308.11. Under the FMCSRs, a person is not physically qualified to drive a CMV if he or she uses any Schedule I controlled substance such as marijuana. (See 49 CFR §§ 391.11(b)(4) and 391.41(b)(12)). In addition to the physical qualification requirements, the FMCSRs prohibit a driver from being in possession of or under the influence of any Schedule I controlled substance, including marijuana, while on duty, and prohibit motor carriers from permitting a driver to be on duty if he or she possesses, is under the influence of, or uses a Schedule I controlled substance. (See 49 CFR §§ 392.2 and 392.4). Legalization of marijuana use by the Commonwealth of Massachusetts and other jurisdictions has not modified the application of U.S. Department of Transportation (DOT) drug testing regulations in 49 CFR parts 40 and 382.

Those drivers subject to drug and alcohol testing regulations as found in 49 CFR parts 40 and 382 must have their test results recorded within the Drug and Alcohol Clearinghouse (Clearinghouse), beginning on January 6, 2020. The Clearinghouse is a secure online database that gives employers, the Federal Motor Carrier Safety Administration (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 contains records of violations of drug and alcohol prohibitions in 49 CFR Part 382, Subpart B, including positive drug or alcohol test results and test refusals. When a driver completes the return-to-duty (RTD) process and follow-up testing plan, this information is also recorded in the Clearinghouse. Employers are required to query the Clearinghouse when hiring a new driver subject to the drug and alcohol regulations, and take the appropriate action when viewing the results of the query. You may find more information on the Clearinghouse at <https://clearinghouse.fmcsa.dot.gov/>, with helpful Questions and Answers.

Lastly, important changes to CMV driver's Hours of Service (HOS) regulations are coming, effective September 29, 2020. These changes include expanding the short-haul exception to 150 air-miles and allows a 14-hour work shift to take place as part of the exceptions, expanding the driving window during adverse driving conditions by up to an additional 2 hours, requires a 30-minute break after 8 hours of driving time (instead of on-duty time) and allows an on-duty/not driving period to qualify as the required break. Further, the final rule modifies the sleeper berth exception to allow a driver to meet the 10-hour minimum off-duty requirement by spending at least 7, rather than at least 8 hours of that period in the berth and a minimum off-duty period of at least 2 hours spent inside or outside the berth, provided the two periods total at least 10 hours, and that neither qualify period counts against the 14-hour driving window. More information on this rule change may be found at <https://www.fmcsa.dot.gov/regulations/hours-of-service>, including a copy of the final rule itself.

I thank you for taking the time to read and disseminate this important information. If you or your members have questions about this or any other regulation within our purview, please contact myself or Matthew Poirier of my staff at our office contact, and we would be happy to meet with you or your members at your convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard H. Bates". The signature is fluid and cursive, with the first name "Richard" and last name "Bates" clearly distinguishable.

Richard Bates
Division Administrator

RRB/mwp