



## Transportation Updates and Regulatory News (TURN)

A quarterly publication of the Agricultural Marketing Service

[www.ams.usda.gov/rules-regulations/transportation/turn](http://www.ams.usda.gov/rules-regulations/transportation/turn)

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### FMCSA Approves Performance-Based Chassis Inspection Training

On August 18, the Federal Motor Carrier Safety Administration (FMCSA) [granted a request](#) by the Intermodal Association of North America (IANA) for a 5-year limited exemption to the agency's time-based approach to the chassis inspection training. The exemption will permit IANA to more efficiently qualify container chassis mechanics as equipment or brake inspectors, using a "performance-based" approach. FMCSA did not specify how IANA was to deliver training in chassis inspections. However, the agency explicitly specified a qualifying individual must receive at least 480 hours of training (notably, less than the 1 year required without FMCSA exemption). Further, one-third of the training must be classroom-based, and two-thirds must be hands-on instruction.

### FMC Investigates Implications of "Merchant" as a Term of Vessel-Operating Common Carriers

On October 14, the Federal Maritime Commission (FMC) [solicited](#) public comment on use of the term "merchant" in bills of lading for vessel-operating common carriers (VOCCs). FMC seeks input on several questions, including how the term "merchant" is defined in VOCC bills of lading. The agency also seeks to learn whether (because of the definition) third parties who are not in contractual privity with the carrier may be subject to joint or several liability. Finally, FMC asks whether carriers have enforced the "merchant" definition against third parties that have not consented to be bound by, or otherwise accept, the terms and conditions of the bill of lading. All comments received would be treated confidentially and would not be posted to the public docket.



### **Port of Brownsville Receives \$14.5 Million Grant**

On October 14, the U.S. Department of Transportation's Maritime Administration awarded a \$14.5 million infrastructure [grant](#) to the Port of Brownsville through its Port Infrastructure Development Program to expand and upgrade its 3-million-bushel grain elevator, including rail and road improvements. A deep-water seaport on the U.S.-Mexico border in Brownsville, TX. The Port of Brownsville provides a major trade channel between the U.S. and Mexico. The improvements are expected to offer all grain producers from the Rio Grande Valley, as well as other parts of Texas and the United States, a new, cost-efficient option to export goods around the world.

### **ATRI Releases Top Trucking Industry Issues Report**

On October 27, the American Transportation Research Institute (ATRI) recently released its 16th [Top Industry Issues report](#). Truck drivers, motor carriers, and other stakeholders were among the 3,122 respondents surveyed about issues facing the trucking industry. Driver shortage was the top issue of concern for the fourth consecutive year, followed by truck parking, driver compensation and retention, and (for the first time since 2005) insurance costs. Tort reform was also in the survey's top 10 concerns for the first time since 2011.

### **FMCSA Requests Comments on Project To Collect Opinions on ADS Technologies**

On November 3, the Federal Motor Carrier Safety Administration (FMCSA) [requested](#) comments on a proposed project to collect baseline opinions of automated driving systems (ADS) before and after hands-on demonstrations with ADS technologies. The

Trucking Fleet Concept of Operations (CONOPS) for Managing Mixed Fleet will survey approximately 2,000 people, including commercial motor vehicle (CMV) fleet managers, CMV sales personnel, State and Federal government personnel, industry engineers, researchers, and CMV drivers. Comments can be viewed [here](#).

### **Coalition Asks FMC To Suspend Detention and Demurrage Charges**

On November 16, a coalition of truckers, shippers, and customs brokers [asked](#) the U.S. Federal Maritime Commission (FMC) to consider immediately suspending detention and demurrage charges at the ports of Los Angeles-Long Beach and New York-New Jersey until congestion at the gateways disperses. A record spike in imports over the past 4 months has created the congestion, leading to a shortage of available appointments for truckers to pick up imports or return empty containers from marine terminals in Los Angeles-Long Beach and New York-New Jersey. In response, the coalition asked FMC to temporarily suspend demurrage charges for storing containers at marine terminals beyond the allotted free time. The coalition also requested a temporary ban on detention charges for returning equipment late. In the long term, the coalition is asking FMC to use the interpretive rule on detention and demurrage as a template for rulemaking.

### **FMCSA Preempts Washington State's Meal and Rest Rules**

On November 17, The Federal Motor Carrier Safety Administration (FMCSA) [determined](#) that Washington State's meal-and-rest-break rules for commercial truck drivers are preempted by Federal hours-of-service (HOS) regulations. In response to a petition by the Washington Trucking Associations, FMCSA found Washington's meal-and-rest-break laws conferred no safety benefits beyond those



already provided by FMCSA regulations, conflicted with Federal HOS rules, and placed an “unreasonable burden” on interstate commerce. FMCSA received 33 comments on the petition, with 24 commenters supporting preemption and nine opposing.

### **Port of Los Angeles Launches New Data Tool To Ease Truck Congestion**

On November 18, the Port of Los Angeles [launched a new data tool](#). “The Return Signal” helps the trucking community know where and when it can return empty containers throughout the San Pedro Bay complex. The tool filters and customizes information and updates every 5 minutes. The Port hopes the tool will help ease the flow of chassis and empty containers across the cargo complex and avoid congestion and delay.

### **FMC Expands Fact-Finding Investigation**

On November 19, the Federal Maritime Commission (FMC) expanded its investigation into whether carriers in alliances that call on the ports of Long Beach, Los Angeles, New York, and/or New Jersey are violating Federal regulations. Practices under investigation for possible violations concern demurrage and detention, container return, container availability for U.S. export cargoes, and other issues. FMC’s November 19 [Supplemental Order](#) expands the authority of its [Fact Finding 29](#) order issued earlier this year.

### **ATRI Releases 2020 Operational Costs of Trucking**

On November 24, the American Transportation Research Institute (ATRI) recently [released](#) a study analyzing detailed trucking costs from 2008 to 2019. According to the study, from 2018 to 2019, the average marginal cost per mile incurred by motor carriers decreased 9.3

percent to \$1.65. Still, that average was 6 cents higher than in 2016, the last time the freight market softened. Costs in most other categories also decreased. From 2018 to 2019, combined driver wage and benefits decreased from 77.6 cents per mile to 69.3 cents per mile. Although total driver compensation declined, bonuses (particularly, retention bonuses) increased by over 80 percent because of a driver shortage. Accurate operational cost data are key to public agencies’ decisions to fund roadway projects. These projects are essential to the efficient movement of freight and commodities, including grain.

### **FHWA Proposes To Allow States More Flexibility With Design Standards**

On November 24, the Federal Highway Administration (FHWA) published a [notice of proposed rulemaking](#) to give States more flexibility in setting design standards for highway projects. These include resurfacing, restoration, and rehabilitation projects on all National Highway System (NHS) roadways, including interstates. The new regulation will let States follow the updated standards of the American Association of State Highway and Transportation Officials, among others, without requiring an FHWA exception. The streamlining measure will allow States to quickly repair highways and interstates needing immediate attention. Roughly 60 percent of U.S. grain is transported by truck (according to USDA’s Agricultural Marketing Service), and well-functioning roadways are essential to sustaining low transportation costs and the competitiveness of U.S. grain. Comments can be viewed [here](#).

### **FMCSA Clarifies Agricultural Commodity Definition in Hours-of-Service Regulations**

On November 24, the U.S. Department of Transportation’s Federal Motor Carrier Safety



Administration (FMCSA) [published](#) an interim final rule (IFR), clarifying the definition of “agricultural commodity” in the hours-of-service (HOS) regulations. Currently, drivers transporting agricultural commodities are exempt from the HOS requirements within a 150-air-mile radius from the origin (source of the commodity) to the destination during harvesting and planting seasons. The rulemaking is intended to ensure proper enforcement of the HOS exemption. The interim final rule became effective December 9, 2020. Comments can be viewed [here](#).

### **FMCSA Seeks Comments On Petition To Eliminate Freight Broker Transparency Regulation**

On November 25, the Federal Motor Carrier Safety Administration (FMCSA) published a [request](#) for public comment on a petition regarding broker transparency filed by the Transportation Intermediaries Association (TIA), representing freight brokers in the U.S. The TIA petition asks for the FMCSA to eliminate 49 CFR 371.3(c), which is the current regulation requiring freight brokers to keep and share transaction records with motor carriers. The TIA petition also asks for FMCSA’s “regulatory guidance [to] ensure that interested parties can distinguish between a dispatch service and an authorized broker.” Broker transparency can shed light on prices paid by shippers and carriers, and as a result, shippers can benefit from a better rate. Comments can be viewed [here](#).

### **FHWA Releases Updated Truck Parking Survey in Compliance with “Jason’s Law”**

On December 1, the Federal Highway Administration (FHWA) [released](#) a summary of an updated survey of truck parking stakeholders. All 50 States and 11,600 drivers participated in the 2019 survey—up from 8,000

in the 2014 survey. The survey found a critical shortage of parking spaces for truck drivers. About 313,000 truck parking spaces were available nationally—40,000 at public rest areas (up 6 percent from 2014) and 273,000 at private truck stops (up 11 percent from 2014). Similar to 2014, parking shortages persist in the Northeast, Mid-Atlantic, Chicago area, and California. New shortages have appeared along the entire I-95 corridor, Pacific corridors, and other major freight corridors. With challenges in every State, roughly 98 percent of drivers reported problems finding safe parking. The five States with the most spaces relative to roadway miles are Indiana, Louisiana, Ohio, Kentucky, and Oklahoma. Enacted in 2012, “Jason’s Law” established a national priority on addressing the shortage of long-term parking for commercial motor vehicles on the National Highway System. The law aims to improve highway safety for commercial motor vehicle operators and other motorized and non-motorized highway users.

### **NHTSA Seeks Feedback on Automated Driving Technology**

On December 3, the National Highway Traffic Safety Administration (NHTSA) requested [comments](#) on possible development of a framework for Automated Driving System (ADS) safety. The framework identifies elements necessary for objectively defining and assessing ADS competence. Feedback is invited on key components that satisfy motor vehicle safety needs, while allowing innovative designs that meet agency guidelines. Comments can be viewed [here](#).

### **FMCSA Grants Exemption for Additional Rear Lights**

On December 7, the Federal Motor Carrier Safety Administration (FMCSA) [published](#) a notice granting a 5-year exemption from Section 393.25(e) of the Federal Motor Carrier Safety Regulations. The regulation requires all exterior lamps on commercial motor vehicles to





be “steady-burning” (i.e., not blinking or pulsating), with few exceptions. The exemption will allow motor carriers operating trailers and van body trucks to install amber, brake-activated, pulsating warning lamps on the rear of the trailers and trucks. The new pulsating lamps are to be *in addition to* (not instead of) the steady-burning brake lights required by Federal regulation. The exemption will expire on December 2, 2025.

### **FMCSA Proposes To Eliminate Duplicate Traffic Convictions Report**

On December 14, the Federal Motor Carrier Safety Administration (FMCSA) [issued](#) a notice to eliminate a regulation the agency says largely duplicates a separate provision. The regulation FMC has proposed for elimination requires commercial motor vehicle drivers to submit annually a list of their convictions for traffic violations to their employers. FMCSA estimates that eliminating the requirement would save about \$4 million each year. Comments can be submitted by February 12, 2021.

### **FMCSA Proposes To Renew Study on CDL Skill Test Delays**

On December 14, the Federal Motor Carrier Safety Administration (FMCSA) [published](#) a notice to renew a discontinued study on commercial driver’s license (CDL) skills test delays. Mandated by the Fixing America’s Surface Transportation Act (FAST) enacted in 2015, the CDL skills test delay study must be published by FMCSA annually to gather information for a number of metrics on CDL skills test delays. The annual report is also required to describe specific steps the Administrator is taking to address delays in States with average skills-test or retest wait times of more than 7 days. Comments can be viewed [here](#).

### **DOT Launches Regional Infrastructure Acceleration Program**

On December 16, the Department of Transportation (DOT) launched a new demonstration program to expedite delivery of transportation infrastructure projects through innovative finance and delivery methods. DOT’s Build America Bureau (the Bureau) issued a [notice of funding opportunity](#) to designate and fund Regional Infrastructure Accelerators (Accelerators) to serve defined geographic areas and act as a resource to qualified entities within the designated areas. The demo program is also to show the effectiveness of these Accelerators in expediting the delivery of eligible projects through Federal credit assistance programs, including the Transportation Infrastructure Finance and Innovation Act (TIFIA) and other innovative financing methods. A total of \$5 million is available for the program.

### **FMCSA Extends CDL Waivers**

On December 15, the Federal Motor Carrier Safety Administration (FMCSA) [extended](#) its waiver from certain regulations affecting holders of a commercial driver’s license (CDL), commercial learning permit (CLP), and medical certificates. Effective January 1 through February 28, the extended waiver gives the State agencies discretion to issue local extensions. According to FMCSA, the extension was necessary to mitigate potential backlogs at some State driver’s license agencies. With increasing COVID-19 cases, the agency anticipates more stay-at-home orders this winter that could bring more disruptions.



## OOIDA Asks FMCSA To Add Feed To List Of Qualifying Agricultural Commodities

On December 17, the Owner-Operator Independent Drivers Association (OOIDA) filed [comments](#) asking the Federal Motor Carriers Association (FMCSA) to consider adding feed ingredients to the list of qualifying agricultural commodities in its interim final rule on the definition of agricultural commodities. OOIDA stated that feed ingredients are an integral part of the agricultural and livestock supply chains and, given the unpredictable nature of the feed production process, drivers can often experience lengthy delays at these facilities. Therefore, to maximize efficiency and clarity for drivers, OOIDA believes feed ingredients should also be covered in the definitions.

## FMCSA Publishes Final Rule on New Driver Testing

Published December 17 and effective 60 days after publication in the Federal

Register, a [new final rule](#) of the Federal Motor Carrier Safety Administration (FMCSA) allows States to commission third-party skills test examiners to administer the commercial driver's license test (CDL). Previously, Federal rules had prohibited use of third-party CDL skills test examiners. Intended to eliminate testing delays, inconvenience, and expense to CDL applicants, the final rule lets States have third-party instructors conduct both teaching and testing. States that wish to take advantage of the new Federal rule will need to adjust local rules. FMCSA hopes the new rule will help alleviate a shortage of commercial drivers resulting from the COVID-19 pandemic.

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