



## Transportation Updates and Regulatory News (TURN)

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### Final Rule Allows States to Waive Commercial Learner's Permit Requirements for Military Drivers

On September 28, 2018, the Federal Motor Carrier Safety Administration (FMCSA) [announced](#) States will have the option to waive the requirements for the commercial learner's permit (CLP) knowledge test for certain individuals who currently are, or were, regularly employed, within the last year, in a military position requiring the operation of a commercial motor vehicle (CMV). The final rule includes the option for a State to waive the tests required for a tank vehicle endorsement, or hazardous material endorsement, with proof of training and experience.

In combination with the military Commercial Driver's License (CDL) rule published on October 13, 2016 ([81 FR 70634](#)), this new rule gives States the option to waive both the CDL

knowledge and driving skills tests for certain current and former military service members. Those service members must have received training to operate CMVs during active duty, National Guard, or reserve service, in military vehicles comparable to CMVs. Certain current or former military drivers, domiciled in participating States, will be allowed to transition to a civilian CDL more quickly due to their armed forces training and experience. Documents and comments are available in Docket No. [FMCSA-2017-0047](#).

### American Trucking Association's California Meal Rest Break Preemption Petition Announced

On September 28, 2018, FMCSA [announced](#) the American Trucking Associations (ATA) [petition](#) requesting FMCSA's determination that the State of California's meal and rest break rules are preempted by Federal law. According to the



announcement, California generally requires employers in the transportation industry to provide employees with an off-duty 30-minute break for every five hours worked, before the end of each five-hour period; and a ten-minute off-duty break for every four-hour period (or "major fraction thereof," i.e., period greater than two hours), in the middle of each such period if possible. Commercial drivers covered by collective bargaining agreements that meet certain statutorily enumerated criteria, however, are not subject to the meal period requirement. Among other things, FMCSA requested comments, by October 29, on what effect, if any, California's meal and rest break requirements may have on interstate commerce. Documents and comments are available in Docket No. [FMCSA-2018-0304](#).

### **Rulemaking on Broker and Freight Forwarder Financial Responsibility Announced**

On September 27, 2018, FMCSA [announced](#) it is considering adopting a rule to immediately suspend any broker's/freight forwarder's operating authority when there is an actual drawdown on the bond/trust fund below the \$75,000 minimum as required by Congress, or when the broker/freight forwarder does not respond after the surety/trust fund provider provides notice of a valid claim, such as from a trucking company. The advance notice of proposed rulemaking (ANPRM) is part of the Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 raised the financial security amount for brokers to \$75,000 and, for the first time, established financial security requirements for freight forwarders.

Eight separate areas are covered under the rulemaking: (1) group surety bonds/trust funds; (2) assets readily available; (3) immediate suspension of broker/freight forwarder operating authority; (4) surety or trust

responsibilities in cases of broker/freight forwarder financial failure or insolvency; (5) enforcement authority; (6) entities eligible to provide trust funds from form BMC-85 trust fund filings; (7) form BMC-84 and BMC-85 trust fund revisions; and (8) household goods. Documents, as well as comments and data are requested by November 26, 2018, may be viewed in Docket No. [FMCSA-2016-0102](#).

### **Customers Using Port Drayage Trucking in California to Share Legal Responsibility and Liability**

On September 22, 2018, [California Senate Bill No. 1402](#) became law, providing joint legal responsibility and liability for unsatisfied judgments against port drayage motor carriers for unpaid wages, damages, unreimbursed expenses, and penalties with customers that use port drayage motor carriers. The law applies in cases where the customer received advance notice of a port drayage trucking company's record of unsatisfied judgments for labor law violations, including misclassification of drivers as independent contractors. Customers and port drayage motor carriers are prohibited from taking any adverse action against drivers, who provide notification of violations or file a claim or civil action. The Labor Commissioner and the Employment Development Department will adopt necessary regulations and rules to administer and enforce the law, effective January 1, 2019.

### **Comments Available Concerning Revising the Hours-of-Service Regulations for Drivers**

On September 20, 2018, FMCSA extended the comment period on [revising the current hours-of-service \(HOS\) regulations for interstate truck drivers](#), to October 10, 2018. FMCSA initiated the ANPRM on August 23, 2018, in response to widespread Congressional, industry, and citizen concerns about HOS regulations, and is seeking



answers to determine if HOS revisions may alleviate unnecessary burdens placed on drivers, while maintaining safety on our nation's highways and roads. According to FMCSA, the congressionally mandated electronic logging device (ELD) rule, which required most FMCSA-regulated motor carriers to convert their records from paper to an electronic format, brought focus to HOS regulations. Those regulations having a significant impact on agriculture and other sectors of trucking are of particular interest for review.

In support of the rulemaking, FMCSA scheduled [five public listening sessions in 2018](#): Dallas, Texas on Friday, August 24; Reno, Nevada on Saturday, September 22; Joplin, Missouri on Friday, September 28; Orlando, Florida on Tuesday, October 2; and Washington, DC on Wednesday, October 10. Recorded live streams and transcripts of the listening sessions; answers to FMCSA questions; documents and comments are available, in Docket No. [FMCSA-2018-0248](#).

The four specific areas under consideration for revision by FMCSA are:

- Expanding the current 100 air-mile "short-haul" exemption, from 12 hours on-duty to 14 hours on-duty, to be consistent with the rules for long-haul truck drivers;
- Extending the current 14-hour on-duty limitation, by up to two hours, when a truck driver encounters adverse driving conditions;
- Revising the current mandatory 30-minute break for truck drivers after 8-hours of continuous driving; and
- Reinstating the option for splitting up the required 10-hour off-duty rest break for drivers operating trucks that are equipped with a sleeper-berth compartment.

FMCSA also asked for data and answers to questions on two petitions requesting

regulatory relief. The first petition pertaining to the 14-hour on-duty limitation, was filed by the [Owner-Operators Independent Drivers Association](#) (OOIDA). OOIDA would like all drivers to be able to pause the consecutive 14-hour on-duty time, by up to 3 consecutive off-duty hours. According to OOIDA's petition, drivers would still take at least 10 hours off-duty before starting a new 14-hour on-duty period.

The second petition, pertaining to the 10-hour off-duty requirement, was filed by [TruckerNation.org](#). TruckerNation.org would like all drivers to be able to split the consecutive 10-hour off-duty requirement, with a minimum of 3 consecutive off-duty hours, to equal 10 hours off-duty.

With the off-duty flexibility requested in each petition, OOIDA and TruckerNation.org want FMCSA to eliminate the 30-minute off-duty rest break requirement, which currently applies if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes.

With regard to what is under consideration in the HOS rulemaking and advocated in the two petitions, on August 28, 2018, the American Transportation Research Institute (ATRI) released an [analysis](#) on the potential benefits of allowing flexibility for drivers to take off-duty breaks. "ATRI utilized empirical truck GPS data to model the application of split rest beyond the current 8- and 2-hour increments allowed under the existing HOS rules. Through this analysis it was found that drivers could spend less time and money, driving the same distances behind the wheel," by going off-duty for short periods of time instead of continuing to drive during periods of highway congestion.



## Comments Available on “Improving Motor Carrier Safety Measurement”

On August 21, 2018, FMCSA [requested comments](#), by October 22, on 3 of the 6 recommendations presented in the summary of the National Academy of Sciences (NAS) report, “Improving Motor Carrier Safety Measurement.” Documents and comments are available in Docket No. [FMCSA-2017-0226](#).

The NAS [report](#) was commissioned by FMCSA, under Section 5221, Correlation Study, of the Fixing America’s Surface Transportation (FAST) Act. FMCSA developed a [corrective action plan](#) for Congress and the U.S. Department of Transportation’s (DOT) Office of Inspector General (OIG) on June 25; [withdrew](#) proposed enhancements to the Safety Measurement System (SMS) on July 16; and held a public meeting on August 29. SMS is FMCSA’s algorithm for identifying patterns of non-compliance and prioritizing motor carriers for interventions. FMCSA is prohibited from publishing SMS percentiles and alerts on the SMS website, for motor carriers transporting property, until the NAS study is complete and all reporting and certification requirements under the FAST Act are satisfied. FMCSA’s corrective action plan includes solicitation of input from the public for NAS recommendations number 2, 3, and 4 that are the subject of this rulemaking:

- NAS Recommendation 2: FMCSA should continue to collaborate with States, and other agencies, to improve the quality of the Motor Carrier Management Information System (MCMIS) data in SMS, with immediate attention to carrier exposure and crash data;
- NAS Recommendation 3: FMCSA should investigate ways of collecting data that will likely benefit the recommended methodology for safety assessment. This includes data on carrier characteristics—

such as information on driver turnover rate, type of cargo, method and level of compensation, and better information on exposure; and

- NAS Recommendation 4: FMCSA should structure a user-friendly version of the MCMIS data file used as input to SMS, without any personally identifiable information, to facilitate its use by external parties, such as researchers and carriers.

NAS recommendations number 1, 5, and 6, while not a part of this rulemaking, are included in FMCSA’s corrective action plan:

- NAS Recommendation 1: FMCSA should develop the suggested Item Response Theory (IRT) model over the next 2 years. If it is then demonstrated to perform well in identifying motor carriers for alerts, FMCSA should use it to replace SMS in a manner akin to the way SMS replaced SafeStat;
- NAS Recommendation 5: FMCSA should undertake a study to better understand the statistical operating characteristics of the percentile ranks to support decisions regarding the usability of public scores; and
- NAS Recommendation 6: Given that there are good reasons for both an absolute and a relative metric on safety performance, FMCSA should decide on the carriers that receive SMS alerts using both the SMS percentile ranks and the SMS measures, and the percentile ranks should be computed both conditionally within safety event groups and over all motor carriers.

## Fees for the Unified Carrier Registration Plan and Agreement to be Reduced

On August 21, 2018, FMCSA [requested](#) comments on reductions in the annual registration fees States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing





companies, for the Unified Carrier Registration (UCR) Plan and Agreement for the 2019, 2020, and subsequent registration years. The proposed fees for the 2019 registration year would be reduced below the 2017 registration fee level, which was in effect, by approximately 17.59 percent to ensure that fee revenues do not exceed the statutory maximum, and to account for the excess funds held in the depository. The proposed fees for the 2020 registration year would be reduced below the 2017 level by approximately 9.5 percent. The reduction of the current 2019 registration year fees (finalized on January 5, 2018) would range from approximately \$10 to \$9,530 per entity, depending on the number of vehicles owned or operated by the affected entities. The reduction in fees, for subsequent registration years, would range from approximately \$4 to \$3,565 per entity. Documents and comments are available in Docket No. [FMCSA-2018-0068](#).

### **2018 Pocket Guide to Large Truck and Bus Statistics Available**

On August 18, 2018, FMCSA published the [2018 Pocket Guide to Large Truck and Bus Statistics](#).

This guide highlights FMCSA's role in enforcement and in collecting and analyzing crash data and statistics to support its mission to prevent commercial motor vehicle-related fatalities and injuries. Sections include: Motor Carrier Management Information System; large trucks and buses overview; roadside inspections and violations; investigations; crashes; data quality; grant programs; and agency resources.

### **American Transportation Research Institute Crash Predictor Model Updated**

On July 31, 2018, the American Transportation Research Institute (ATRI) released an [updated](#) Crash Predictor Model, "which statistically quantifies the likelihood of future crash involvement based on specific truck driving

behaviors (e.g. prior crashes, violations and convictions)." ATRI highlighted several key findings in their press release:

- The top two behaviors for predicting future crash involvement, each with more than 100 percent increased likelihood of a future crash, are a reckless driving violation and a failure to yield right of way violation.
- Prior crash involvement continues to have a statistically significant relationship to future crash involvement with a 74 percent increase of the likelihood of being in a future crash.
- Women truck drivers were safer than male counterparts, in every statistically significant safety behavior, and men were 20 percent more likely to be involved in a crash than women. Several stable behaviors have emerged, across all three ATRI Crash Predictor Models (2005, 2011 and 2018), as statistically significant predictors of future crash involvement; including convictions for improper lane/location, reckless/careless/inattentive/negligent driving, and improper or erratic lane change.

### **Small Business in Transportation Coalition Request for Exemption from ELD Requirements**

On July 9, 2018, FMCSA extended the comment period to July 16, 2018 on the Small Business in Transportation Coalition (SBTC) request for an exemption from the ELD requirements, for all motor carriers with fewer than 50 employees. This includes, but is not limited to, one-person private and for-hire owner-operators of commercial motor vehicles used in interstate commerce. Documents and comments are available in Docket No. [FMCSA-2018-0180](#).



### **Update on Pilot for 18-21-Year-Old Ex-Military Drivers to Operate Vehicles in Interstate Commerce**

On July 6, 2018, FMCSA [published](#) the details and FMCSA's responses to comments on the 3-year pilot program to allow a limited number of individuals, ages 18 to 20, to operate commercial motor vehicles (CMVs) in interstate commerce, if they received specified heavy-vehicle driver training while in military service and were hired by a participating motor carrier. In a separate July 6, 2018, [notice](#), FMCSA asked for comments on the information to be collected during the pilot program. "This program will allow our Veterans and Reservists, to translate their extensive training into good-paying jobs, operating commercial vehicles safely across the country, while also addressing the nationwide driver shortage," [said](#) U.S. Secretary of Transportation Elaine L. Chao. Documents and comments are available in Docket No. [FMCSA-2017-0196](#) for the information collection, and Docket No. [FMCSA-2016-0069](#) for the pilot program.

### **Highway Freight Conditions and Performance Report Provided to Congress**

On July 6, 2018, the Federal Highway Administration (FHWA) issued the first ever [Highway Freight Conditions and Performance Report](#) on the National Highway Freight Network (NHFN). The report uses data from FHWA's Freight Performance Measurement program to analyze the impacts of congestion and determine the operational capacity and efficiency of key freight routes throughout the United States. The latest data show the National Highway System is handling a record amount of freight, with trucks moving nearly 60 percent of the nation's total freight volume (representing 30 million tons), and close to 70

percent of total freight value (representing about \$34 billion), each year. The highway system remains the most used mode of transport for freight by tonnage and value of goods moved.

### **United States Transportation Alliance Files Petition with FMCSA**

On July 3, 2018, FMCSA received a [petition](#) from the United States Transportation Alliance (USTA), which proposes revisions to hours of service and other rules. USTA proposes a 14/8/2 plan for a driver's work week of 80 hours in 7 days, with 14 flexible daily hours each day for work or driving; 8 flexible hours for sleeper berth; and 2 hours for personal use. Time spent loading and unloading would be subtracted from the 14 hours and all remaining hours could be used for driving. The 8-hour sleeper berth time could be split in combinations of 2 hours and 6 hours, 3 hours and 5 hours, and a full 8 hours sleeper time for single drivers and split sleeper berth every 6 hours, with a 4-hour minimum, for team drivers. The work week could be reset after 24 hours off-duty. Empty trucks could be used as personal conveyance to the driver's residence or company terminal. Loaded trucks could be used as a personal conveyance to safe parking within a 75 air-mile radius from the last shipper or receiver. The agricultural exemption would apply to a 250-mile radius of the source and to a 200-mile radius of the destination, with total time in one day not to exceed 18 hours.

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