



► **MJS SAFETY TRAINING ANNOUNCEMENT**

**MJS SAFETY LLC** is proud to announce the addition of NCCER and O.Q.S.G. to our OQ Services. **MJS SAFETY LLC** is an "Authorized Assessment Center" for Proctoring Final Assessments and completing Performance Evaluations for O.Q.S.G. and NCCER – as well as other OQ disciplines such as MEA-EnergyU, Veriforce & EnergyWorldNet. [call to schedule](#) [read more...](#)

► **Schedule of classes February 2019:** • *TRAINING CENTER - 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543* • [read more...](#)

**OSHA / CONSTRUCTION NEWS SUMMARY**

► **OSHA Penalties Adjusting in 2019**

OSHA's civil penalties amounts for violations of workplace safety and health standards will increase in 2019 to adjust for inflation. [read more...](#)

► **Cold Stress Facts**

When working outdoors in cold weather or working in artificially cold environments, such as refrigerated areas, serious cold-related injuries and illnesses may occur. [read more...](#)

► **OSHA has made Trenching and Excavation a High Enforcement Priority**

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**TRANSPORTATION NEWS SUMMARY**

► **FMCSA Says Rate of Truck-Occupant Deaths and Fatal Crashes Continues to Climb**

Federal trucking regulators expressed concern over increasing numbers of large-truck-involved fatal crashes in work zones and a continuing increase in the number of fatalities of large-truck occupants. [read more...](#)



► **House DOT Bill Continues ELD Waiver for Livestockers, But Fate Uncertain**



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► **CVSA Complains of Too Many FMCSA Regulatory Exemptions**

"Since 2015, the Federal Motor Carrier Safety Administration has issued nearly 50 exemptions to motor carriers, waiving regulatory requirements for certain segments of the transportation industry,"... [read more...](#)

► **AS PER DIEM BENEFIT SUNSETS FOR COMPANY DRIVERS, CARRIERS FIND A WORK-AROUND AND OOIDA ASKS CONGRESS TO ACT**

Some company drivers could suffer from the elimination of the per diem tax deduction that compensated them for meal costs away from home. The changes in standard deductions should benefit most owner-operators and company drivers. [read more...](#)



▶ **TAX REFORM MEANS ANNUAL SAVINGS OF \$2,000 OR MORE FOR OWNER-OPERATORS ...**

*The more you earn, the more savings you'll see under the new tax bill, experts say.*

Most owner-operators will likely save thousands on their annual tax bills under new provisions implemented by the Tax Cuts and Jobs Act reform law enacted in late December. [read more...](#)

▶ **FMCSA's Hours of Service Proposal Could be Impeded by Government Shutdown**

(NOTE: AS WE ALL KNOW, THE PARTIAL SHUTDOWN HAS BEEN LIFTED UNTIL FEB. 15<sup>TH</sup> ... SO THINGS COULD BEGIN TO MOVE FORWARD ... 'OR NOT', IF THE SHUTDOWN IS REINSTITATED. WE'LL JUST HAVE TO WAIT AND SEE!)

The **partial shutdown** of the U.S. government could delay the publication of a **proposed rule** to reform **hours of service regulations**, according to a U.S. DOT official. [read more...](#)

▶ **Is Something Going on in the Insurance Market for Independents?**

Clearly, the **answer** to that question is **yes** and will no doubt be **yes** to the end of time. [read more...](#)

▶ *Many of you have likely asked yourself this very question in the past few weeks since winter has clearly arrived!!*

**Trucking Law: Can You Refuse to Drive in Poor Weather?** [read more...](#)

MSHA NEWS SUMMARY

▶ **A Preview of MSHA's 2019 Civil Monetary Penalty Levels Adjusted for Inflation**

The **Federal Civil Penalties Inflation Adjustment Act** of 1990, as amended by the **Federal Civil Penalties Inflation Adjustment Act Improvements Act** of 2015 (*Inflation Adjustment Act*), requires the **Department of Labor (DOL)**, including the **Mine Safety and Health Administration (MSHA)**, to adjust its **civil monetary penalty levels** for inflation no later than **January 15** of each year. [read more...](#)



▶ **U.S. Mining Fatalities in 2018 Were Second Lowest on Record**

The U.S. Department of Labor's **Mine Safety and Health Administration (MSHA)** reports that **27 mining fatalities** occurred in **2018** - the **second lowest number** ever recorded. [read more...](#)

▶ **Fatality Alert: Miner drowns when dredge sinks**

The **Mine Safety and Health Administration (MSHA)** issued a **Fatality Alert** — **miner drowned**. On December 29, 2018, a **25-year-old** dredge operator, with **21 weeks** of experience, was **fatally injured** at a coal mine. [read more...](#)



MONTHLY SAFETY & HEALTH TIP NEWS SUMMARY

▶ **Protecting Your Eyes**

*90% of all workplace eye injuries can be prevented by wearing proper protective eyewear — goggles, face shields, safety glasses or full-face respirators.* [read more...](#)



# MJS SAFETY TRAINING ANNOUNCEMENT

**MJS SAFETY LLC** is proud to announce the addition of NCCER and O.Q.S.G. to our OQ Services.

**MJS SAFETY LLC** is an "Authorized Assessment Center" for Proctoring and Testing for ENERGY worldnet, Inc., as well as OQ Performance Evaluation Services.

**MJS SAFETY LLC** continues to offer Proctor and Testing Services, as well as Operator Qualification [OQ] Performance Evaluations under the "EnergyU" system – a service of Midwest ENERGY Association – as well as Veriforce.

**MJS SAFETY LLC** has "Authorized" Performance Evaluators on staff that can perform this service for specific "Covered Tasks."

**MJS SAFETY LLC** is also available to assist with the Knowledge Based Training for these tasks. Knowledge-based training is designed to help personnel successfully pass the OQ Knowledge Based Testing as well as the Performance Evaluation process.

The Operator Qualification Rule – commonly referred to as the "OQ Rule" addressed in Title 49 of the Code of Federal [US DOT] regulations, mandates that individuals who perform "Covered Tasks" on covered pipeline facilities be qualified through the Operator Qualification Process.

The intent of the OQ rule is to ensure protection of both pipeline personnel and the public at large. Providing individuals with the necessary knowledge and skills is an essential element of any Operator and Contractor OQ plan.

Acceptable requirements for qualification are determined by the operator. The quality and validity of data related to OQ training, testing, and performance is critical to meet these requirements.

If we can be of assistance with these types of services for your company, please [call to schedule](#).

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- ~Hydrogen Sulfide [H<sub>2</sub>S] - Awareness
- ~Respirator: Medical Evaluation & Fit Testing
- ~Hazard Communication – GHS Training
- ~Teens & Trucks Safety
- ~1st Aid/CPR Course- Medic 1<sup>st</sup> Aid
- ~HAZWOPER 8, 24 & 40 Hour
- ~PEC'S Intro to Pipeline
- ~Confined Space Rescuer Training
- ~PEC Core Compliance
- ~OSHA 10 Hour Construction
- ~OSHA 30 Hour Construction
- ~NUCA Competent Person for Excavation & Trenching
- ~Hands-on Fire Extinguisher training
- ~DOT Hazmat Training
- ~MSHA Sand & Gravel Training [Part 46 only]
- ~Fall Protection for the Competent Person
- ~Defensive Driving Safety for large and small vehicles
- ~Instructor Development for Medic 1<sup>st</sup> Aid/CPR
- ~Bloodborne Pathogens Compliance Training
- ~Respiratory Protection Training

► **MJS SAFETY offers these courses as well as custom classes to fit the needs of your company**

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- PEC Safeland Basic Orientation: February 1, 12, 22; 8 – 4:30
- First Aid/CPR/AED/BLOODBORNE PATHOGENS: February 13, 28; 8 – noon  
(We offer MEDIC FIRST AID)
- TEEK H2S Operator Training – Awareness (ANSI Z390-2017 Course): February 13, 28; 12:30 – 4:30
- Fall Protection Competent Person Training: February 7, 15
- Confined Space Training: February 14, 26
- Confined Space Rescuer: February 19, 27

[ For any last minute schedule updates, go to [www.mjssafety.com](http://www.mjssafety.com) ]

► **NEED ANY OF THESE CLASSES IN SPANISH? CONTACT [carriejordan@mjssafety.com](mailto:carriejordan@mjssafety.com) TO SCHEDULE TODAY** ◀

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**SOURCES FOR THIS ISSUE INCLUDE:**  
 OSHA  
 FMCSA  
 Overdrive  
 CCJ  
 EHS  
 MSHA  
 Ascent Resources – Princeton University  
 Aggregates Mgr Paul O. Taylor - Truckers Justice Center





## OSHA Penalties Adjusting in 2019

OSHA's civil penalties amounts for violations of workplace safety and health standards will increase in 2019 to adjust for inflation. The adjusted maximum penalty amounts will take effect upon publication in the [Federal Register](#). (Due to the partial government shutdown, some publications have been delayed. The effective date will be the date of publication.)

New penalties for willful and repeat violations will be \$132,598 per violation; serious, other-than-serious, and posting requirements are \$13,260 per violation; and failure to abate violations are \$13,260 per day beyond the abatement date.

## OSHA has made Trenching and Excavation a High Enforcement Priority

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) updated the [National Emphasis Program](#) (NEP) on preventing trenching and excavation collapses in response to a recent spike in trenching fatalities.

The emphasis program began October 1, 2018, with a three-month period of education and prevention outreach. During this period, OSHA continued to respond to complaints, referrals, hospitalizations, and fatalities. Enforcement activities will begin now that the outreach period has ended. OSHA-approved State Plans are expected to have enforcement procedures that are at least as effective as those in this instruction.

OSHA's NEP increases education and enforcement efforts while its inspectors will record trenching and excavation inspections in a national reporting system, and each area OSHA office has developed outreach programs.

"Removing workers from and helping workers identify trenching hazards is critical," said Deputy Assistant Secretary of Labor for Occupational Safety and Health Loren Sweatt. "OSHA will concentrate the full force of enforcement and compliance assistance resources to help ensure that employers are addressing these serious hazards."

OSHA has developed a series of [compliance assistance resources](#) to help keep workers safe from trenching and excavation hazards. The [trenching and excavation webpage](#) provides information on trenching hazards and solutions.

## Cold Stress Facts

When working outdoors in cold weather or working in artificially cold environments, such as refrigerated areas, serious cold-related injuries and illnesses may occur. Cold related hazards can cause permanent tissue damage or even death.

### How cold is too cold?

When most people think of hypothermia, they think of frigid temperatures or blizzard like conditions. Actually, hypothermia occurs most often in the spring and fall, rather than winter.

Four factors contribute to cold stress: cold temperatures, high or cold wind, dampness and cold water. A cold environment forces the body to work harder to maintain its core temperature of 98.6°F. Cold air, water, and snow all draw heat from the body. So, while it

is obvious that below freezing conditions combined with inadequate clothing could bring about cold stress, it is important to understand that it can also be brought about by temperatures in the 50's coupled with rain and/or wind.

Wind chill is the combination of air temperature and air movement. The higher the wind speed and the lower the temperature in the work environment, the greater the danger. If weather information is not available, the following signs may help to estimate wind speeds in the field:

- 5 mph: light flag just moves
- 10 mph: light flag is fully extended by wind
- 15 mph: raises a newspaper sheet off the ground
- 20 mph: wind capable of blowing snow

## How your body reacts to cold conditions

When in a cold environment, most of your body's energy is used to keep your internal temperature warm. Over time, your body will begin to shift blood flow from your extremities (hands, feet, arms, and legs) and outer skin to the core (chest and abdomen). This allows exposed skin and the extremities to cool rapidly and increases the risk of frostbite. When the body can no longer maintain core temperature by constricting blood vessels, it shivers to increase heat production. Maximum severe shivering develops when the body temperature has fallen to 95°F. Hypothermia becomes an issue at this point.

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## Cold-Related Illnesses

### **Hypothermia**

Hypothermia means "low heat" and is a potentially serious health condition. It occurs when body heat is lost from being in a cold environment faster than it can be replaced. Symptoms begin with shivering. As the body temperature continues to fall, slurred speech, lack of coordination and memory loss develop and shivering ceases. Once the body temperature falls to around 85° F, the person may become unconscious, and at 78°, the person could die.

### **Risk Factors**

Anyone working in a cold environment may be at risk for hypothermia. However, older people may be at more risk than younger adults, since older people are not able to generate heat or regulate body temperature as quickly.

Certain medications may prevent the body from generating heat normally. These include anti-depressants, sedatives, tranquilizers and some heart medications.

### **Signs and symptoms**

#### **Mild hypothermia (98 - 90° F)**

- shivering
- lack of coordination, stumbling, fumbling hands
- slurred speech
- pale, cold skin

#### **Moderate hypothermia (90 - 86° F)**

- shivering stops
- mental confusion or impairment
- reduced breathing and/or heartrate
- unable to walk or stand
- confused and irrational

#### **Severe hypothermia (86 - 78° F)**

- severe muscle stiffness
- very sleepy or unconscious
- extremely cold skin
- irregular or difficult to find pulse

#### **First Aid**

Proper treatment depends on the severity of the hypothermia.

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#### **Mild hypothermia**

- move to warm area
- stay active
- remove wet clothes and replace with dry clothes or blankets, cover the head
- drink warm (not hot) sugary drinks such as sports drinks. Avoid caffeinated beverages and alcohol.

#### **Moderate hypothermia**

All of the above, plus

- Call 911 for an ambulance
- Cover all extremities completely
- Place warm objects, such as hot packs or water bottles on the victim's head, neck, chest and groin

#### **Severe hypothermia**

- Call 911 for an ambulance
- Handle the victim carefully. Sudden movement or rough handling can upset heart rhythms.
- Do not attempt to re-warm — the victim should receive treatment in a hospital

#### **Frostbite**

Frostbite occurs when layers of skin tissue freeze. In severe cases, amputation of the frostbitten area may be required. Frostbite can be caused by exposure to severe cold or by contact with extremely cold objects. In fact, frostbite occurs more readily from touching cold metal objects because heat is rapidly transferred from skin to metal.

Frostbite typically affects the extremities, particularly the face, ears, fingers and toes. Initial symptoms vary, but typically include skin that looks waxy and feels numb. Once damaged, tissues will always be more susceptible to frostbite in the future.

## **Signs and symptoms**

- Cold, tingling, stinging or aching feeling in the frostbitten area, followed by numbness
- Skin color turns red, then purple, then white or very pale skin, cold to the touch
- Hard or blistering skin in severe cases

## **First Aid**

- Call 911 for an ambulance
- DO NOT rub the area
- Wrap in soft cloth
- If help is delayed, immerse in warm, not hot, water. Don't pour water directly on the affected area because it will warm the tissue too fast. Warming should take about 25-40 minutes.
- Do not warm the skin if there is a chance of refreezing. Severe tissue damage can occur.

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## **Trench foot**

Trench foot or immersion foot is caused by having feet immersed in cold water for long periods of time. It is similar to frostbite, but considered less severe.

Signs and symptoms:

- Tingling, itching or burning sensation
- Blisters

## **What to do**

- Soak feet in warm water, then wrap with dry cloth bandages
- Drink a warm, sugary drink

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## **Preventing Cold Stress**

Planning for work in cold weather is the most important defense. Wearing appropriate clothing and being aware of how your body is reacting to the cold are important to preventing cold stress. Avoiding alcohol, certain medications and smoking can also help to minimize the risk.

## **Protective Clothing**

Wearing the right clothing is the most important way to avoid cold stress. The type of fabric also makes a difference. Cotton loses its insulation value when it becomes wet. Wool, on the other hand, retains its insulative qualities even when wet. The following are recommendations for working in cold environments:

## **Wear at least three layers of clothing:**

- An **outer** layer to break the wind and allow some ventilation (like Gortex® or nylon)
- A **middle** layer of down or wool to absorb sweat and provide insulation even when wet
- An **inner** layer of synthetic weave to allow ventilation
- Wear a hat. Up to 40% of body heat can be lost when the head is left exposed.
- Wear insulated boots or other footwear sized appropriately. Tight-fitting footwear restricts blood flow, as can wearing too many socks.
- Wear insulated gloves sized appropriately, especially when contacting metallic surfaces and tool handles.
- If you get hot while working, open your jacket, but keep hats and gloves on.
- Keep a change of dry clothing available in case work clothes become wet.
- Do not wear tight clothing which can restrict blood flow. Loose clothing allows better ventilation.

## **Work Practices**

- **Drinking:** Drink plenty of liquids, avoiding caffeine and alcohol. It is easy to become dehydrated in cold weather.
- **Work Schedule:** If possible, heavy work should be scheduled during the warmer parts of the day. Take breaks out of the cold.
- **Buddy System:** Try to work in pairs to keep an eye on each other and watch for signs of cold stress. Victims of hypothermia may not recognize symptoms.

## **Engineering Controls**

Some engineering controls are available to reduce the risk of cold stress:

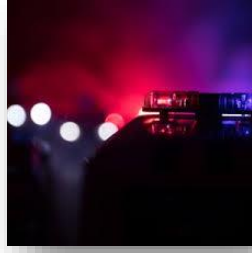
- Radiant heaters may be used to warm workers
- Shield work areas from drafts or wind
- Use insulating material on equipment handles when temperatures drop below 30° F.

## **Training**

Employees and supervisors need to be trained to be able to detect early signs of cold stress. Supervisors should watch for signs of cold stress and allow workers to interrupt their work if they are extremely uncomfortable.

Supervisors should also ensure that work schedules allow appropriate rest periods and ensure liquids are available. They should use appropriate engineering controls, personal protective equipment and work practices to reduce the risk of cold stress.

# FMCSA Says Rate of Truck-Occupant Deaths and Fatal Crashes Continues to Climb



Federal trucking regulators expressed concern over increasing numbers of large-truck-involved fatal crashes in work zones and a continuing increase in the number of fatalities of large-truck occupants.

Speaking at a Jan. 15 session of the 2019 Transportation Research Board Annual Meeting, Jack Van Steenburg, chief safety officer for the Federal Motor Carrier Safety Administration, said the number of large-truck-occupant fatalities increased to 841 in 2017 from 725 in 2016 and 665 in 2015. Roughly 38% of those victims in occupant fatalities were not wearing their seat belts, he said.

Likewise, the percentage of fatal work zone crashes that involved at least one large truck increased to 30.4% in 2017, up from 27.2% the prior year and 26.8% in 2015, Van Steenburg said.

The percentage of all fatal crashes involving at least one large truck also rose to 12.4% in 2017 from 11.2% in 2016 and 11.1% in 2015.

Overall, the number of fatalities in large truck and/or bus crashes increased to 5,005 in 2017 from 4,629 in 2016, Van Steenburg said. The actual number of large truck and bus fatal crashes rose to 4,455 in 2017 from 4,116 the prior year.

The top five driver-related factors for large trucks and buses in fatal crashes were speeding, distractions such as cell phones, failure to yield right of way, impairment (*fatigue*) and careless driving.

“So we have some work to do,” Van Steenburg said.

FMCSA Administrator Ray Martinez said that some of that work to be done is included in the agency’s safety priorities in 2019. They will include inputting more accurate and timely crash data, evaluating tools to help drivers know when they are fatigued, continuing research on the promise of platooning, and supporting research and adoption of technologies for automated driving systems.

“Streamlined data collection and analysis will support safety improvements which can directly benefit the motoring public,” Martinez said.

Martinez added, “We all know about the human factor in crashes. You hear drivers say that they know when they’re tired. That’s not necessarily true.”

Martinez said that one of the things he likes about the quest to create driverless commercial vehicles is the technological journey that will improve safety along the way.

“This may not impact the industry right now,” he said. “But as a government regulator, there are decisions we have to make now, and in the coming years that will allow the United States to be on firm ground with continued development of these technologies.”

In 2019, the agency plans to continue its second year of study on a new method to improve the Compliance, Safety, Accountability Safety Measurement System using what is known as the Item Response Theory model recommended in a 2017 study by the National Academy of Sciences.

The model, expected to take at least two years before implementation, is expected to use data for informed policy decisions that are currently largely based on expert judgment, said Joe DeLorenzo, director of FMCSA’s office of enforcement and compliance.

“The model can see things not apparent to our expert judgment,” DeLorenzo told an audience of about 200. “The general construct will likely remain the same but the BASICS may change.”

*(BASICS are the agency’s seven Behavior Analysis and Safety Improvement Categories used to compile CSA scores.)*

DeLorenzo said the agency plans to conduct a small-scale data test in the next few months using the IRT model.

DeLorenzo also said that hours-of-service compliance has improved since the electronic logging device rule began being enforced last April 1. Less than 1% (17,651) of all driver inspections (2.3 million) has resulted in the driver being cited for operating without a required ELD or grandfathered-in automated on-board recording device, he said.

Steven Smith, director of the agency’s Office of Analysis, Research and Technology, said FMCSA has several ongoing research projects, including:

- A commercial driver pilot program for military-trained drivers.
- A study on commercial motor vehicle driver commuting.
- Formation of a working group to review the data elements for tow-away crashes.
- A study about the safety and enforcement impact of exemptions.
- Research to support FMCSA’s Beyond Compliance Program.



## House DOT Bill Continues ELD Waiver for Livestockers, But Fate Uncertain



**LIVESTOCK / INSECT HAULERS RELIEVED FROM ELD COMPLIANCE 'UNTIL FURTHER NOTICE'**

The U.S. House recently **passed a bill** that would fund the **U.S. Department of Transportation** for the 2019 fiscal year and extend the **electronic logging device mandate exemption** for truckers **hauling livestock** and bees at least through Sept. 30. **Livestock and bee haulers** have been allowed to **run on paper logs** and **without an ELD** since the mandate took effect in **December 2017**.

However, the bill faces **strong headwinds** in **ultimately** becoming law. Whether the Republican-controlled Senate will **take up** the bill is unknown, and President Trump has insisted he'll **veto spending bills** that **do not** include funds to **build a wall** on the southern border of the **U.S.**

But the **bill could lay** the groundwork for whatever **DOT appropriations package** does **eventually pass** Congress. The timeline for when that could occur is **unclear**, though — lawmakers and the president have been at odds over **government funding** since December, leading to a partial **government shutdown** that's now been lifted temporarily until Feb. 15<sup>th</sup>.

The **shutdown** to this point has **not affected operations** at the **Federal Motor Carrier Safety Administration** or the **Federal Highway Administration**, but more than half of the workers at the **U.S. DOT** had been furloughed.

Also included in the **House's DOT funding package** is a provision hustling **FMCSA** to "ensure a safe and timely completion" of **FMCSA's split sleeper berth study**, which the agency said in December had been scrapped.

It's **unclear** whether the provision would **require FMCSA** to resume the study, which was **initiated several years ago** and intended to study the feasibility of allowing drivers to **split their on- and off-duty periods** into segments. Amid its push for an overhaul of **hours of service** regulations, **FMCSA** halted the study **last year**.

Drivers **hauling livestock and insects** can continue to run on **paper logs** — and without an electronic logging device — "**until further notice**," the **Federal Motor Carrier Safety Administration** said Thursday in an update on its **website**.

**FMCSA** also noted on its **website** that livestock transporters **do not need** to carry documentation about this **exemption**.

The move by the agency **seems intended** to remove at least **temporary uncertainty** surrounding whether **livestock haulers** need to adopt an **ELD** or not.

Congress, as part of a **budget package** for the **2018 fiscal year**, exempted drivers hauling **livestock and insects** from **ELD compliance** through Sept. 30. They then **extended** that through **Dec. 7** with a **short-term, stopgap** spending measure meant to ward off a government shutdown. The **deadline** was then moved again, to Dec. 21, when lawmakers pushed through another **brief spending bill**.

There's **uncertainty** over whether Congress and President Trump can **agree** to a deal to **fund the government** for the 2019 fiscal year and whether that deal **will include** an **extension** of the ELD waiver for livestock and insect haulers.

There were also **rumors circulating** on social media outlets that some roadside **inspectors** had been **incorrectly** telling **livestock haulers** they needed an **ELD**, though it's unclear if any **citations** have been issued.

# CVSA Complains of Too Many FMCSA Regulatory Exemptions

“Since 2015, the **Federal Motor Carrier Safety Administration** has issued nearly **50 exemptions** to motor carriers, waiving regulatory requirements for certain segments of the transportation industry,” said a letter written to **FMCSA** Administrator Ray Martinez recently. “This is in addition to the **dozens** of legislative and **regulatory exemptions** already in place.”

The letter, written by **Commercial Vehicle Safety Alliance** Executive Director Collin Mooney, added that “over the last two years, the agency has issued a number of exemptions from the **electronic logging device requirement**, a critical safety requirement designed to help combat fatigue on our nation’s roadways and designed to **level the playing field** for motor carriers seeking to operate safely within the **hours-of-service rules**.”

Further, the letter asks that the agency give **CVSA** and its state and local partners a seat at the table in the **exemption decision-making process**. Not only do the exemptions too often create confusion for inspectors, they also require additional training, **CVSA** said.

“This issue is **further complicated** when motor carriers are made aware of an exemption before the **enforcement community**, setting up a scenario where conflict may arise roadside when a driver and company have communication from the agency indicating they are exempt, but the **enforcement community is unaware**,” **CVSA** said.

**CVSA** said it has long opposed **issuance of exemptions**, except when a motor carrier can “demonstrate that there is a proven, **critical need** and provide assurances that an equivalent level of safety will be attained. In short, **exemptions should be the exception, not the rule**.”

“Inspectors must be able to perform their duties without the **apprehension** that one of these exemptions will be overlooked, a driver or vehicle placed **out of service** notwithstanding an obscure exemption, or an exemption being given to a driver or vehicle that is not in a **privileged, segmented or specialized exemption category**,” **CVSA’s** letter said.

In a separate letter to **FMCSA**, the organization representing **4,000 inspectors** in the United States, Canada and Mexico asked that the agency put a limit on **driver personal conveyance mileage** and/or time.

**Personal conveyance** is off-duty time after drivers have reached their **11-hour driving time limit**. To claim the exemption, a driver must be relieved from work by the employer and any subsequent movement of the truck after that would have to be of a **personal nature**. There are numerous conveyance scenarios, but some of the more common ones include a driver returning home, or looking for a hotel, parking place or restaurant. However, **drivers cannot advance** their loads closer to their delivery destination during **conveyance time**.

An **FMCSA** spokesman confirmed the agency was in receipt of the materials saying both items are **under review**, but **declined further comment**.

**CVSA** believes the agency’s recently revised guidance lacks “**definitive language**” and leaves it up to the inspector’s interpretations of what is “**reasonable**.”

“Under the **revised guidance**, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of **personal conveyance**,” **CVSA** said. “This presents the opportunity for increased driver fatigue and **risk on our roadways**, as drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after **driving a full day**.”

**CVSA** suggested that **FMCSA** study the standard set in Canada, which allows drivers to use a vehicle for **personal conveyance** purposes for a maximum of 46 miles per day.

“**American Trucking Associations** believes the best way to address exemptions to the hours-of-service rules is by **moving forward** with their ongoing review of the current rules,” said Sean McNally, ATA spokesman. “Ensuring the **rules are flexible** and recognizing the trucking industry’s diversity is the best way to **reduce** the number and scope of **exemption requests**.”

On the **personal conveyance** issue, McNally said **ATA** is currently reviewing **CVSA’s** personal conveyance petition and will be providing feedback to the agency if **requested**.

## AS PER DIEM BENEFIT SUNSETS FOR COMPANY DRIVERS, CARRIERS FIND A WORK-AROUND AND OOIDA ASKS CONGRESS TO ACT

*Some company drivers could suffer from the elimination of the per diem tax deduction that compensated them for meal costs away from home. The changes in standard deductions should benefit most owner-operators and company drivers.*

Swept away with **new tax code** enacted in late 2017 was the allowance for truck drivers and other transportation workers to take an **income deduction** for **daily expenses** on meals and incidentals, known as the **per diem**. The change affects only **company drivers**; owner-operators **still can file** per diem as a business expense.

In the year since the **law took effect** in January 2018, there's been a **pronounced trend** among carriers to shift to a **pay model** that effectively compensates **company drivers** for the missing **per diem benefit**, says Kehl Carter, chief executive officer for Atlantic HR Solutions, a **consulting firm** that works with hundreds of carriers.

"It's a **huge movement** right now for **retention** and **recruiting**," Carter says. "Because of the '**driver shortage**,' you don't want to be the carrier that **doesn't offer** drivers an alternative. We know a **driver will leave** an employer for even a small bonus, let alone something that could be **worth \$4,000**" or more annually.

As carriers **shift toward** adding **per diem pay** as an option, the **Owner-Operator Independent Drivers Association** has filed a letter with lawmakers in the House and Senate asking them to restore the **per diem deduction**. "The per diem deduction was a **popular tax provision** among these drivers," writes Todd Spencer, president and CEO of **OOIDA** and the letter's signatory. "Its elimination **shouldn't result** in them sending more of their **hard-earned money** to Washington.

A more **positive part** of tax code change was the increase in **standard personal deductions**, which will reduce taxable income for most professional drivers. Married couples now take a **standard deduction** of up to \$24,000, nearly double that of the previous \$12,700. Single filers also got a boost in the **standard deduction** — now \$12,000, up from the previous \$6,350. That could help drivers, especially married filers, to offset the impact of the **per diem loss**.

"Despite the **increased standard deduction**," Spencer writes, "elimination of the **per diem** could lead to greater tax exposure for many **hard-working Americans** who make their living behind the **wheel of a truck**."

Until the **2018 tax year**, filings for which are **due in April**, drivers could deduct from their annual income 80 percent of the allowed \$63 per diem for every day **spent away from home**. Often, that amounted to a **hefty deduction** and could save drivers thousands a year in tax liability.



A driver on the road **four days a week** could take a deduction of nearly **\$10,500**; depending on the driver's income, that could reduce a **tax bill** by \$1,500 or more.

Though many carriers are aware of this change, which will be reflected for the **first time this year** on annual **tax returns due in April**, many drivers don't know about it, says Carter, who recently polled **400 drivers** at a fleet of more than 5,000 trucks.

"Only **three or four** knew that the law had been changed," he says. That indicates many drivers likely will be caught by **surprise** when they file their **taxes**, he said.

**One way carriers** have changed their driver compensation packages to make up for the **lost deduction** was by factoring **per diem pay** into drivers' regular per-mile pay.

Another was to **reimburse \$63** – now \$66, at 2019's level – to drivers for each day spent on the road. Because the money comes from **drivers' regular pay**, they receive a lower base pay, but they'll benefit from the **tax-free treatment** of each reimbursement. The 80 percent rate applies, so **\$50.40 of last year's \$63 payment** would be tax-free under those restructured pay plans.

Likewise, carriers save some because they **avoid paying items** such as payroll taxes and workers compensation on those **reimbursements**.

Kevin Rutherford, a former **small fleet owner** and now a radio personality and owner-operator coach, said early last year he estimated that **company drivers** would pay on average \$600 or more a year in **taxes due** to the loss of the **per diem allowance**.

Like Carter, Rutherford said the **onus would be on carriers** to overhaul their **pay plans** to account for the change. He said drivers who were making **40 cents a mile** could take a base pay of **30 cents a mile** and then have 10 cents a mile added as a **per diem reimbursement**.

## TAX REFORM MEANS ANNUAL SAVINGS OF \$2,000 OR MORE FOR OWNER-OPERATORS ...

*The more you earn, the more savings you'll see under the new tax bill, experts say.*

Most owner-operators will likely save thousands on their annual tax bills under new provisions implemented by the Tax Cuts and Jobs Act reform law enacted in late December. [read more](#)

# FMCSA's Hours of Service Proposal Could be Impeded by Government Shutdown

(NOTE: AS WE ALL KNOW, THE PARTIAL SHUTDOWN HAS BEEN LIFTED UNTIL FEB. 15<sup>TH</sup> ... SO THINGS COULD BEGIN TO MOVE FORWARD ... 'OR NOT', IF THE SHUTDOWN IS REINSTATED. WE'LL JUST HAVE TO WAIT AND SEE!)

The **partial shutdown** of the U.S. government could delay the publication of a **proposed rule** to reform **hours of service regulations**, according to a U.S. DOT official.

**Federal Motor Carrier Safety Administration** officials hinted in December that a **notice of proposed rulemaking** offering potential revisions to federal hours regs could come as early as March. But the lingering closure of federal agencies will impede **FMCSA's** ability to proceed with the rulemaking process, the official said.

Though the **Federal Motor Carrier Safety Administration** remains mostly unaffected by the shutdown, operations at other branches of the DOT have been **hampered**. More than 20,000 U.S. DOT workers are furloughed, including more than 400 of the 1,470 employees at the **DOT's Office of the Secretary (OST)**. Also, 327 employees at the White House's **Office of Management and Budget's (OMB)** 488 employees have been furloughed.

Those two agencies — the **OST** and the **OMB** — must **review** and **approve** the **hours of service notice of proposed rulemaking** before it's published. Since operations at those agencies have been mostly shutdown, "everything's stopped," the official said, referring to the **federal rulemakings process**.

The official didn't say whether **FMCSA** had filed an **hours of service proposal** with **OST**, which must clear it before it heads to **OMB**. But there's "**back and forth**" required between the **three agencies (OST, OMB and FMCSA)**, the official said.

It usually **takes weeks, if not months**, for rulemakings to be **cleared for publication**. Once cleared, the **proposed rule** will be sent back to **FMCSA**.

"Until the **shutdown is rectified**," the official said, the **hours rule** will be hung up in that **procedural process**.

What's more, when the **government shutdown ends** and employees at the **OST** and **OMB** return to work, they'll have a **large backlog of rulemakings** and filings to address from all other **government agencies**, the official said, which will **further impede** the **hours of service proposal**.

**FMCSA** boss Ray Martinez has insisted the **agency wanted** to "**fast track**" the **hours of service rulemaking**. However, that was well before the **shutdown fight** ensnared D.C.

Despite the **hours of service proposal** likely being **delayed** by the shutdown, other **FMCSA** operations remain unaffected. **Agency functions** like **compliance reviews**, grants to states for enforcement, **new entrant carrier processing**, reviews of **DataQs** challenges and issuance in **CDLs**, to name a few, have not been affected by the lapse in funding for the U.S. DOT. **FMCSA** derives much of its funding from the **Highway Trust Fund**, funded by gas and diesel taxes and **not annual appropriations** from Congress.



## Is Something Going on in the Insurance Market for Independents?

Clearly, the **answer** to that question is **yes** and will no doubt be **yes** to the end of time.

A **Tennessee-based independent** stated that when his **insurance** came up for renewal recently (*something many of you may well go through this time of year*), he got a **pretty big surprise**. “Basically, I’m getting put out of business,” the **71-year-old says**, after more than four decades trucking. His **insurer** basically told him they **wouldn’t renew** because he was **uncoverable**.

The **independent trucker**, who runs in an **e-log-exempt** older Peterbilt, has had a run of bad luck the last **few years** (*one speeding ticket, too*) with accidents — the most recent was in a **personal vehicle** when he was hit by a distracted driver who ran a **stop sign** near where he lives. **Her fault, not his**. Another nearby incident he was in his truck motoring up hill toward the house when a pickup driver in a **parking lot** “didn’t get it into gear and came rolling backward” **down a hill**, into the road, slipping the back of the trailer, among other incidents farther back in time that were **not his fault**.

None of those incidents **claimed** toward his **motor carrier** liability insurance, but an incident in 2016 did when he collided with a **four-wheeler** near his front fenders on an interstate highway as he was **changing lanes** and the auto driver then came into that same lane from the other direction. “**Georgia blamed me**,” he says.

When he started with his **insurance carrier** five or six years ago, he says, following a **long history** as an independent, he paid about **\$5,400**

**annually**, then it crept up to “\$5,700” in a subsequent year, then \$6,600,” then **ultimately hitting \$7,200** in the most recent year, after the one loss claim he’s had. Then — **no dice**. Attempting to shop around for new coverage, the “cheapest I’ve found is **\$16,400 for one truck** — One company told me they would insure me for **\$27,000**” and some change. As he **quite rightly** notes, a “**one-man operation** can’t do that.”

And he’s **not the only** owner-op seeing some **out-of-hand behavior** from insurers in recent times. Another operator reported hearing about **dramatic hikes** when his young, **two-truck fleet** made a move to expand and add drivers, difficult to do for a carrier in business less than a **couple years**.

The **Tennessee independent** points to a friend in Wisconsin with eight trucks running who told him his own insurer came back with a renewal at **\$300,000 annually**. That friend too said, “I’m out of business”. “My cousin’s got five trucks – he’s got a **few drivers** who’ve really raked him over the coals, and insurance quoted him at \$100,000 this year” before “he finally **got it down** to \$70,000.”

Much has been made in the **insurance business press** about the “**loss leader**” that is commercial auto insurance, the category that includes motor carrier liability policies, at least for **non-specialty insurers**. “Price increases are the norm” for providers in the space generally, **one insurer’s thoughts** are summed up in a story in “**Insurance Journal**” magazine from around this time last year that explores the factors insurance companies have faced in recent times that are driving efforts to **raise rates** where they can — with some insurance carriers getting out of the **commercial-auto business** entirely.

As for getting out of business, the Tennessee owner-op says he’s contemplating a **few options**, one of which includes a trip to the **state insurance commission** in Nashville to find out just what standards might be in place and needing enforcement to **prevent drastic rate hikes** and denial of coverage. And “I’ve got a buddy of mine who’s thinking about taking over my **authority** and maybe I’ll **cool my heels** till when I do my **MVR**” and it looks better than it does now. He’s also had some associates speculate that, “though **insurance companies** will never tell you this, they’re probably using your age against you,” as the owner-op puts it.

➤ Many of you have likely asked yourself this very question in the past few weeks since winter has clearly arrived!!

## Trucking Law: Can You Refuse to Drive in Poor Weather?

***In response to this commonly asked question from truckers and owner-operators, attorney Paul Taylor addresses drivers' right to refuse to drive in severe winter conditions.***

*(Paul O. Taylor is managing partner of Truckers Justice Center and has represented truck drivers for over 25 years — TruckersJusticeCenter.com.)*

Every year I get calls from drivers who encounter bad weather on the road, refuse to drive until conditions improve and are fired as a result. Here are common questions I get.

### **Do I have the right to refuse to drive in dangerous road conditions?**

*Under the employee protection provision of the Surface Transportation Assistance Act, you have the right to refuse to operate a commercial vehicle if it would be unsafe to drive. U.S. Department of Transportation regulations state that "if conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed" until it's safe to drive.*

*This does not mean that you have the right to refuse a load just because snow is forecast or because you think the weather could turn bad. Conditions must be bad enough at the time you refuse, whether at the start of the haul or at some point along your route, that it would be unsafe to operate a commercial vehicle.*

*Unlike the depth of your tire tread or the thickness of a brake shoe, both of which can be measured easily with the right tools, gauging whether driving conditions are unsafe is somewhat subjective. Are you driving in the mountains or over a steep grade? Have you observed other vehicles having difficulty with traction and control? What are other drivers saying about the road conditions ahead? What kind of freight are you hauling, and how is the weight distributed? You must take all such factors into consideration and make a judgment call as to whether conditions are too dangerous.*

### **How do I go about refusing to drive in bad weather?**

*Once it becomes clear that road conditions are too hazardous for driving, you must inform your dispatcher that you are refusing to drive and why. The best way to do this is usually in writing, since it creates a record. If you communicate with your dispatcher using an in-cab device, e-mail or text, send a message clearly stating that you are refusing to drive because the weather is bad and the road conditions are unsafe.*

*Be sure to provide some details about why you believe the conditions are unsafe. It could be snowing heavily and impairing visibility on the road, or perhaps you heard a forecast on the radio predicting imminent freezing rain or advising against any driving. It is your responsibility to communicate to your supervisor why you are refusing to operate the vehicle.*

### **What type of documentation should I have in order to protect myself?**

*Whenever you think you might be fired for refusing to violate any commercial vehicle safety regulation, keeping documentation is a good idea.*

*In the case of refusing to drive in hazardous weather, obtain weather forecasts from local news and information from the National Weather Service. If you have a smartphone, take photographs of your Qualcomm and text messages documenting your refusal to drive and your clearly stated reasons for the refusal. Obtain names and telephone numbers of other drivers who also were facing these same adverse conditions.*

*A claim under STAA has a statute of limitations. This means you must file your claim with the Occupational Safety and Health Administration within 180 days of your termination. You can consult with an attorney to determine whether you have a claim and how best to proceed. Drive safely and know your rights!*



## A Preview of MSHA's 2019 Civil Monetary Penalty Levels Adjusted for Inflation

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (*Inflation Adjustment Act*), requires the Department of Labor (*DOL*), including the **Mine Safety and Health Administration (MSHA)**, to adjust its **civil monetary penalty levels** for inflation no later than **January 15** of each year. **Adjustments** are made by issuing a **final rule** that is **effective** on its date of **publication** in the **Federal Register**.

Due to the **partial government shutdown**, publication of the **Department of Labor Final Civil Penalties Inflation Adjustment Act Annual Adjustment for 2019 Final Rule** has been **delayed**. The **Final Rule** will not go into **effect** until it is **published** in the **Federal Register**. The effective date will be the **date of publication**, and the **increased penalty levels** will apply to any **penalties** assessed after the **effective date** of the **increase**.

The **pre-published version of the Final Rule for 2019** is available on the **DOL website** for **informational purposes only** until the **official version** is published in the **Federal Register**. Stakeholders will be **notified** when the **Final Rule** is **published** in the **Federal Register**.

The **table below** shows the **changes to MSHA's penalties in 2019**.

Name/ Description	CFR Citation	2018		2019	
		Min Penalty (Rounded to nearest dollar)	Max Penalty (Rounded to nearest dollar)	Min Penalty (Rounded to nearest dollar)	Max Penalty (Rounded to nearest dollar)
Regular Assessment	30 CFR 100.3(a)		\$70,834		\$72,620
Penalty Conversion Table	30 CFR 100.3(g)	\$132	\$70,834	\$135	\$72,620
Minimum Penalty for any order issued under 104(d)(1) of the Mine Act	30 CFR 100.4(a)	\$2,361		\$2,421	
Minimum penalty for any order issued under 104(d)(2) of the Mine Act	30 CFR 100.4(b)	\$4,721		\$4,840	
Penalty for failure to provide timely notification under 103(j) of the Mine Act	39 CFR 100.4(c)	\$5,903	\$70,834	\$6,052	\$72,620
Any operator who fails to correct a violation for which a citation or order was issued under 104(a) of the Mine Act	30 CFR 100.5(c)		\$7,673		\$7,867
Violation of mandatory safety standards related to smoking standards	30 CFR 100.5(d)		\$324		\$332
Flagrant violations under 110(b) (2) of the Mine Act	30 CFR 100.5(e)		\$259,725		\$266,275

### U.S. Mining Fatalities in 2018 Were Second Lowest on Record

The U.S. Department of Labor's **Mine Safety and Health Administration (MSHA)** reports that **27 mining fatalities** occurred in **2018** - the **second lowest number** ever recorded.

**Eighteen fatalities** occurred at **surface operations**; nine occurred in **underground mines**. Approximately **250,000 miners** work across **12,000 U.S. metal/nonmetal mines**, and **83,000 miners** work in the nation's **1,200 coal mines**.

The **leading cause** of fatalities was **powered haulage**, which accounted for **13 fatalities** or **48 percent** of the annual total. **MSHA** has taken action to **counter powered haulage fatalities**, including **publishing a Request for Information** seeking stakeholder **input** on technologies and **practices** that can improve **safety conditions** related to **mobile equipment** and belt conveyors. **MSHA** also **launched** a campaign to **educate miners** and mine operators on the **hazards** associated with **such equipment**.

### Fatality Alert: Miner drowns when dredge sinks

The **Mine Safety and Health Administration (MSHA)** issued a **Fatality Alert** — **miner drowned**. On December 29, 2018, a **25-year-old** dredge operator, with **21 weeks** of experience, was **fatally injured** at a coal mine. The **victim drowned** when the **dredge** he was operating **sank**.

Although this is a coal mine fatality, it is the **type of accident** that could occur at any **dredging operation**, including a **sand and gravel operation**.

**MSHA** offers the following **Best Practices** to help **prevent this type of accident**:

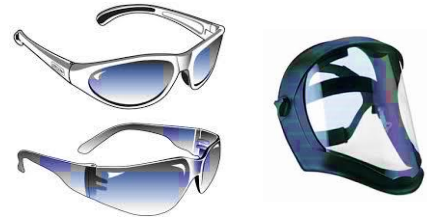
- **Task train** all persons to **recognize all potential hazardous conditions** and ensure they understand **safe job procedures** for **elimination of the hazards** before **beginning work**.
- **Examine work areas and equipment** during the shift for **hazards** that may be created as a result of the work being performed.
- **Conduct a risk analysis** before starting **non-routine tasks** to ensure that all **hazards** are **evaluated and eliminated**.
- **Establish procedures** requiring persons to **alert coworkers** when they are in **danger**.





## Protecting Your Eyes

*90% of all workplace eye injuries can be prevented by wearing proper protective eyewear — goggles, face shields, safety glasses or full-face respirators.*



### What are the Common Causes of Workplace Eye Injuries?

- Flying objects (bits of metal, glass)
- Tools
- Particles
- Chemicals
- Harmful radiation (sunlight)
- Any combination of these or other hazards

### What is my Best Defense Against an Eye Injury?

- Use proper eye protection.
- Know the eye safety dangers at work - complete an eye hazard assessment
- Eliminate hazards before starting work. Use machine guarding, work screens, or other engineering controls.

### When Should I Protect My Eyes at Work?

You should wear safety eyewear whenever there is a chance of eye injury. Anyone working in or passing through areas that pose eye hazards should wear protective eyewear. If eye protection is not enough, utilize face shields in addition to eye protection.

### Here are 5 ways to help prevent an eye injury in your workplace.

**Assess** — Look carefully at operations. Understand the hazards of the work environment. Determine ways to eliminate hazards. Be sure to consider the material and substances in the work area. Pay careful attention to wind direction and body positioning.

**Fit** — Workers need protective eyewear that fits well and is comfortable. Have eyewear fitted by an eye care professional or someone trained to do this. Make sure that the protective eyewear is in good operations condition to ensure that it protects appropriately.

**Participate** — Make sure that you are using the right eye protection and ensure others are as well.

**Protect** — Select [appropriate protective eyewear](#) that is designed for the specific duty or hazard. Select the eye protection that provides the greatest level of protection for the material within the workplace environment. If safety glasses are not sufficient, consider goggles. Face protection can be used in combination to protect against additional hazards.

**Remember** — The key to keeping yourself and others safe from hazards is to recognize the hazards and eliminate the hazards. In cases where hazards cannot be eliminated, the proper PPE assessment is a must.

### Eye Safety Checklist

This quick checklist will help you avoid workplace eye injuries and may also make you more aware of possible hazards outside of work.

#### Create a safe work environment.

- Minimize hazards from falling or unstable objects.
- Make sure that tools work and that safety features are in place.
- Make sure people know how to use tools properly.
- Keep bystanders out of hazardous areas. Evaluate safety hazards.
- Identify the primary hazards at the site.
- Identify hazards from nearby workers, large machinery, and falling/shifting objects. Wear the proper eye and face protection.
- Select the right eye protection for the work site.
- Make sure safety eyewear is in good condition.
- Make sure safety eyewear fits right and stays in place. Use smart workplace safety practices.
- Always brush, shake, or vacuum dust and debris from hardhats, hair, forehead, or your brow before removing protective eyewear.
- Don't rub eyes with dirty hands or clothing.
- Clean eyewear regularly.

► [LEARN MORE ABOUT EYE SAFETY.](#)

### The ABC's of Eye Injury Prevention

**A**ssess your hazards and have a safe worksite.

**B**e sure your eyewear fits properly.

**C**omply with eye safety requirements.

**MJS Safety can assist with many types of Safety Supplies ... Give us a call!**

CARRIE – 720-203-4948

MIKE – 303-881-2409

JEREMY – 720-203-6325