



▶ MJS SAFETY TRAINING ANNOUNCEMENT

MJS SAFETY LLC is proud to announce that we are now available to perform Operator Qualification [OQ] Performance Evaluations under the MEA EnergyU system as well as Veriforce. [call to schedule](#) [read more...](#)

▶ **Schedule of classes Jan 2018:** • *TRAINING CENTER - 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543* • [read more...](#)

OSHA / CONSTRUCTION NEWS SUMMARY

▶ Statement from OSHA Regarding Fatal Occupational Injuries in 2016

The Bureau of Labor Statistics' Census of 2016 Fatal Occupational Injuries reports there were 5,190 workplace fatalities in 2016, a 7-percent increase from 2015. [read more...](#)

▶ Breaking: D.C. Circuit Upholds Silica Standard

Source: Sherman & Howard

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▶ **HAZARD ALERT RELEASED FOR AIR MONITORS** [read more...](#)

TRANSPORTATION NEWS SUMMARY

▶ Congressional Dems want to Force FMCSA to Resume Sleep Apnea Screening Rule

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▶ DOT to Require Testing for Synthetic Opioids Beginning Jan. 1

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Attorneys for the Owner-Operator Independent Drivers Association argued recently in court that the U.S. DOT illegally altered sleep apnea screening guidelines for truck drivers by slipping an appendix into the larger rule after the public comment period had ended. [read more...](#)

▶ Will Enforcement Use ELD Data for Purposes Beyond Hours of Service?

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▶ With ELD Mandate Here, FMCSA Looks to Clarify Personal Use of Trucks

The Federal Motor Carrier Safety Administration has released a proposal to slightly alter the guidance issued to carriers and drivers involving the use of their truck as a personal vehicle to travel to their home or to restaurants and motels along their route. [read more...](#)

2018

~ Wishing you all the best in the New Year ~

▶ **Trucking Rap Sheet: Clean Inspection Bribes, CDL Schemes and Fraudulent Drug Tests**

Action in four trucking-related crimes has recently been reported by the Department of Transportation's Office of Inspector General, including two CDL schemes, an inspection bribery scheme and a drug testing scheme. [read more...](#)

▶ **TRUCKING IN 2017: MAJOR FLEET MERGER — 34-HOUR 'RESTART ROLLBACK' — ANTI-REGS PUSH — ELD COMPLIANCE HIGHLIGHT BUSY YEAR** [read more...](#)

▶ **ELD Face-off: Two Sides of the Looming Mandate**

Just a week before the much debated electronic logging device rule kicked in on Dec. 18, *Heavy Duty Trucking* asked top officials of two trucking associations that have been outspoken in their support or criticism of the far-reaching mandate to weigh in on several key aspects. [read more...](#)



▶ **CVSA Asks for Updates to Inspection-Report Processes for the Digital Age**

In a letter to **Federal Motor Carrier Safety Administration** Deputy Administrator Kathy Gautreaux dated Dec. 12, the **Commercial Vehicle Safety Alliance** has requested attention be paid to an "unnecessary administrative burden that is impacting both the enforcement community and the motor carrier industry," partners that make up the alliance. [read more...](#)



▶ **WINTER DRIVING MISTAKES YOUR DRIVERS SHOULD AVOID** [read more...](#)

▶ **Truckers Rack Up Nearly 39,000 Warnings, Citations During Operation Safe Driver Week**

Law enforcement officers issued nearly 39,000 citations and warnings to truck drivers during the **Commercial Vehicle Safety Alliance's Operation Safe Driver Week**, held Oct. 15-21, across North America. [read more...](#)

▶ **ELD-Day: On the Ground with Enforcement in Kentucky as Truckers, Officers Adjust to New Logs Reality**

Northbound on I-65 coming out of the Nashville, Tenn., Cherokee Marine Terminal, "Trucker Ted" had a feeling he was going to get pulled in by the Kentucky State Police at their scale just across the state line in Simpson County near Franklin, Ky. **Why?** [read more...](#)

▶ **ELD Compliance Extension for Ag/Livestock Haulers Formally Issued by FMCSA**

Just shy of a month after announcing it would give drivers hauling livestock and other agricultural commodities a brief reprieve from compliance with the **electronic logging device mandate**, the U.S. DOT has officially released the waiver granting such haulers until **March 18, 2018**, to switch from paper logs to ELDs. [read more...](#)



MSHA NEWS SUMMARY

▶ **Final Report - Fatality #3 - March 2017**

MSHA POSTED ON: DECEMBER 05, 2017
Fatal Powered Haulage Accident
 Los Lunas, New Mexico [read more...](#)



MONTHLY SAFETY TIP NEWS SUMMARY

▶ **Cold Stress Guide**

Anyone working in a cold environment may be at risk of cold stress. [read more...](#)

▶ **How to Recognize a Natural Gas Leak**

Look for signs of a possible leak: [read more...](#)

If you have reason to believe that there is a gas leak, call 911, then the local utility company immediately.

Always Better To Be Safe Than Sorry!

MJS SAFETY TRAINING ANNOUNCEMENT

MJS SAFETY LLC is proud to announce the addition of ENERGY worldnet, Inc. [EWN] 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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- ~Hazard Communication – GHS Training
- ~Teens & Trucks Safety
- ~1st Aid/CPR Course- Medic 1st 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
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- ~Bloodborne Pathogens Compliance Training
- ~Respiratory Protection Training

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

Schedule of classes Jan 2018: • TRAINING CENTER - 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543

- PEC Safeland Basic Orientation: January 9, 19, 25; 8 – 4:30
- First Aid/CPR/AED / BLOODBORNE PATHOGENS: January 5, 22; 8 - noon
(We offer both MEDIC FIRST AID & AMERICAN HEART ASSOCIATION)
- TEEX H2S Operator Training – Awareness (ANSI Z390 Course): January 5, 22; 12:30 – 4:30
[For any last minute schedule updates, go to www.mjssafety.com]

► NEED ANY OF THESE CLASSES IN SPANISH? CONTACT carriejordan@mjssafety.com TO SCHEDULE TODAY ◀

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To sign up for one of these classes, or inquire about scheduling a different class
Call Carrie at 720-203-4948 or Jeremy at 720-203-6325 or Mike at 303-881-2409

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●Safeland Basic Orientation ●Hydrogen Sulfide Awareness ●First Aid/CPR
●OSHA 10 Hour for General Industry or Construction ●Confined Space for Construction

— ALSO OFFERING —

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OSHA / CONSTRUCTION

Statement from OSHA Regarding Fatal Occupational Injuries in 2016

The Bureau of Labor Statistics' Census of 2016 Fatal Occupational Injuries reports there were 5,190 workplace fatalities in 2016, a 7-percent increase from 2015. The fatal injury rate also increased from 3.4 per 100,000 full-time equivalent workers in 2015 to 3.6 in 2016.

More workers lost their lives in transportation incidents than any other event in 2016, accounting for about one out of every four fatal injuries. Workplace violence injuries increased by 23 percent, making it the second most common cause of workplace fatality. The report also shows the number of overdoses on the job increased by 32 percent in 2016, and the number of fatalities has increased by at least 25 percent annually since 2012. ([See more report details](#))

Loren Sweatt, Deputy Assistant Secretary for OSHA, issued the following statement regarding the report:

"This occupational fatality data shows a tragic trend with the third consecutive increase in worker fatalities in 2016 – the highest since 2008. America's workers deserve better.

"The Occupational Safety and Health Administration is committed to finding new and innovative ways of working with employers and employees to improve workplace safety and health. OSHA will work to address these trends through enforcement, compliance assistance, education and training, and outreach.

"As President Trump recognized by declaring opioid abuse a Nationwide Public Health Emergency, the nation's opioid crisis is impacting Americans every day at home and, as this data demonstrates, increasingly on the job.

"The Department of Labor will work with public and private stakeholders to help eradicate the opioid crisis as a deadly and growing workplace issue."

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance.

Breaking: D.C. Circuit Upholds Silica Standard

Source: Sherman & Howard

This morning (Dec 22) the United States Court of Appeals for the D.C. Circuit issued a long-awaited opinion in a case involving numerous challenges to OSHA's silica in construction standard. The opinion deals a blow to industry challenges and largely upholds the standard. Industry challenges focused on issues such as whether there was substantial evidence to support the rule's finding that the new exposure limits will reduce health risks, whether there was substantial evidence to find that compliance with the standard is technologically and economically feasible, and whether OSHA violated the Administrative Procedure Act in promulgating the standard. There were also challenges to specific parts of the standard such as confidentiality of medical examinations and the prohibition against dry cleaning methods. The court rejected all of these challenges in a lengthy and detailed opinion.

Union groups also challenged certain aspects of the standard, such as the requirement to only provide for medical examinations in cases where employees are required to wear a respirator for 30 days or more per year and the absence of medical removal protections. The court rejected the challenge to the 30-day trigger for examinations. However, it did conclude that OSHA did not adequately explain why it omitted medical removal protections from the standard. More specifically, the court ruled that OSHA acted arbitrarily in declining to require medical removal for some period in cases where a doctor recommends permanent removal, when a doctor recommends temporary removal due to COPD symptoms, and when a doctor recommends removal pending a specialist's determination. The court remanded the matter to OSHA to reconsider or further explain these issues.

This decision means that pending an additional requirement for medical removal, OSHA's silica in construction standard will remain in effect as written. Employers are again encouraged to make sure that they are in compliance with the rule, which is now in effect. We will continue to monitor new developments with the standard.

HAZARD ALERT RELEASED FOR AIR MONITORS

The National STEPS Network has released a Hazard Alert for Air Monitor Limitations - Click the Link Below

[Limitations of Monitors Hazard Alert](#)

Congressional Dems want to Force FMCSA to Resume Sleep Apnea Screening Rule

Following the **Federal Motor Carrier Safety Administration's** announcement this summer that it had **tabled a rule** meant to **implement screening criteria and treatment protocol** regulations for **obstructive sleep apnea**, Congressional Democrats **aim to press the agency to resume working on the rule.**



Recently **bills were filed** in both the **House** and the **Senate** to force **FMCSA** to produce and **administer a sleep apnea screening rule.**

Democrats in **both chambers** of Congress want to **require federal trucking regulators institute** a rule that sets **steadfast criteria** by which **medical examiners** would refer **truck operators** for **apnea testing**. **FMCSA** worked on the **rule** throughout 2016, including **fielding rule suggestions** from its **Medical Advisory Board** and seeking **input from trucking industry stakeholders** via **public meetings** and a **pre-rule notice.**

A **sleep apnea rule** would give **clarity to medical examiners**, carrier employers and **drivers themselves** about what **criteria or combination of criteria** would **prompt** a driver to be **referred** for an **in-lab apnea test**, as well as **treatment protocol**. Currently, **medical examiners** rely on any one of **several different** sets of **screening protocols** to determine **apnea test** referrals. The policy has caused **confusion** industry-wide, in some cases **bringing charges** of unwarranted **referrals** from drivers, who see **apnea testing** companies, treatment **device manufacturers** and **doctors** cashing in on a **gray area in regulation.**

The **Senate's** sleep apnea bill was **introduced** by Sen. Cory Booker (D-N.J.) and is being **co-sponsored** by Senate Minority Leader Chuck Schumer (D-N.Y.) and Robert Menendez (D-N.J.). The **House** bill was **introduced** by Rep. Bill Pascrell (R-N.J.) and is being **co-sponsored** by Albio Sires, another New Jersey Democrat.

DOT to Require Testing for Synthetic Opioids Beginning Jan. 1

For the first time, **beginning Jan. 1**, truck drivers being administered **random pre-employment and post-accident drug tests** will be screened for **four additional synthetic opioids**, the highly addictive drugs that likely will require medical experts to consider prescriptions that balance pain mitigation with safety performance.

While indications are that most of the private drug-testing labs are ready to conduct the four additional **Department of Transportation-mandated tests**, the new requirement likely will slow down the process for medical review officers to screen an increasing number of positive test results, according to Barry Sample, senior director of science and technology for **Quest Diagnostics**, a leading U.S. drug test provider.

Testing for **hydrocodone, hydromorphone, oxycodone and oxycodone** could result in drivers — **even with prescriptions** for the pain killers — **failing their tests** and those positive test results being referred to a medical review officer to determine if a driver should be **allowed** to get **behind the wheel.**

The **primary responsibility** of a medical review officer is to verify if an employee has an alternative medical explanation for **a lab-confirmed positive test result.**

A lab sends **all test results, positive or negative**, to an MRO, Sample said.

"We fully expect to have more laboratory positives," Sample stated. "And, I would expect there will be more **medical review officer positives** as well. There will be additional specimens that screen positive that in the past would have been verified negatives. So those will have a longer turnaround time."

Abigail Potter, manager, safety and occupational health policy at **American Trucking Associations** said, "If someone gets dinged as positive, an MRO reviews it, and if the MRO finds that the person had a **legitimate prescription** under the controlled substance act, then it will most likely be marked negative.

"But someone who has a **valid prescription** for one of these drugs may not be considered medically qualified by the medical review officer. He might be able to pass a DOT test, but he **may not be medically certified to drive.**"

She added, "These are very potent drugs, and some of them have addiction qualities similar to heroin. They are **very, very dangerous.** We as an industry are focused on preventing these drugs being used by drivers."

The DOT final rule, announced Nov. 9, would continue to make medical review officers the **ultimate decision-makers** of whether a driver, with or without a legal opioid prescription, is **fit to drive**. If the driver with a prescription for an opioid passes the drug test but still is not deemed fit to drive, the medical review officer can still forward a "**safety concern**" letter to the driver's employer, but only after a five-day waiting period, Sample said. The waiting period would allow the driver's physician to further discuss the matter with the officer.

During the comment period for the proposed rule earlier this year, **several commenters expressed concerns** that adding the opioid tests will increase circumstances in which drivers **innocently using opioids** would be unfairly treated as drug abusers, with consequent positive tests harming their careers.

In response, DOT said it **added language** in the final rule to **prohibit an MRO** from denying a legitimate explanation based on whether the officer thinks the prescribing physician should **not have prescribed the medication** to the driver.

Yet, the agency said in its final rule that it's important to note that when there is a valid concern about whether the employee can continue **performing safely**, the prescribing physician still may be asked to reconsider the employee's use of the prescription. And, even when a **prescription is legitimate**, the MRO can forward a "**safety concern**" letter to the driver's employer.

Sample said the odds of failing an opioid test with a valid prescription are "**very dependent**" on the pattern of use, dosage, frequency of use and an **individual's metabolism.**

The detection window for the new opioid tests is shorter than for many other drugs, Sample said.

"We generally say that most drugs on the **opioid urine screen** will be able to detect use **within the last 72 hours**," he added.

Sample said **opioids are sedating**, may cause **decreased reaction time and increase sleepiness.**

"But, for some individuals, they may actually be more effective in carrying out their duties if they are **not debilitated by pain**," he said. "So it's somewhat of a **balancing act** in trying to ensure that the individual is being treated for their pain, but **might impact their ability to work.**"

OOIDA, FMCSA Offer Oral Arguments in Case Over Sleep Apnea Guidance

Attorneys for the **Owner-Operator Independent Drivers Association** argued recently in court that the **U.S. DOT** illegally altered **sleep apnea screening** guidelines for truck drivers by slipping an appendix into the **larger rule** after the **public comment period** had ended.

OOIDA's lawyers also claim the **sleep apnea provision** within the rule violates a **Congressional** statute established in 2013, when Congress passed a law **forbidding** the **Federal Motor Carrier Safety Administration** from instituting formal sleep apnea testing and **treatment guidelines** without using the **rulemaking process**, which requires a **public notice** and a **public comment period**.

The **DOT**, whose lawyers also gave **oral arguments** in Omaha, Neb., to the **8th Circuit Court** of Appeals on Nov. 15, refuted **OOIDA's** claims. The appendix did not change the **protocol** medical examiners use to determine whether to refer drivers for **sleep apnea screening**, said **DOT** attorney Sushma Soni. The rule only moved the **questions regarding** respiratory and sleep disorders on the form that **medical examiners** use during **DOT** physicals, Soni argued.

OOIDA's lawsuit centers on a **2015 FMCSA rule** that altered the form used by **medical examiners** in **DOT** physicals and required **examiners** to upload the results of the **examination** to **FMCSA** within 24 hours. Soni told the panel of judges that the rule **did not alter** existing guidance related to **screening drivers** for sleep apnea, as **OOIDA** claims. **DOT** also claims **OOIDA** did have the opportunity to **file public comments** on the rule during the **rulemaking process**.

Paul Cullen Jr., representing **OOIDA** in the case, told the court that **FMCSA** added the **sleep apnea provision** to the final rule, but that no such provision was included in the **proposed rule**, meaning **OOIDA**, nor others, had the opportunity to file comments on the **sleep apnea appendix**, Cullen said in court.

The rule's appendix on sleep apnea states "if the **medical examiner** detects a **respiratory dysfunction** that in any way

is likely to interfere with the **drivers' ability** to safely control and drive a **commercial motor vehicle**, the driver must be referred to a specialist for further evaluation and **therapy.**" Soni said the appendix did not "**substantively change**" the agency's guidance to medical examiners regarding which drivers should be **referred** for an **in-lab** sleep study.

"The **regulatory** standard is the same," Soni said in court.

She also argued that if the rule were vacated, as **OOIDA** has requested, it would **not change** the sleep apnea screening **protocol** used by **medical examiners**. "When they say now they're **potentially subject** to more tests — the answer to that is **no**. The regulatory standard was always that a person is **physically qualified** to operate a **commercial motor vehicle** if they have no established medical history or clinical diagnosis of a **respiratory dysfunction**. Medical examiners collect the same type of information, they ask the same types of questions to get at the **regulatory standard**. The guidance didn't change. It's exactly the same."

Cullen, however, argued otherwise, saying the agency **added questions** that, in effect, change the federal guidelines. He contends those changes are a **clear violation** of Congress' **2013 sleep apnea** law. "This is an important function of the rulemaking process — that **truck drivers** know what kind of tests will be expected of them and what they will cost," he said. "Without a **rulemaking**, the result is that truck drivers face unpredictable, expensive and **unreliable medical examinations** regarding sleep apnea."

Absent the formal rulemaking process, "this sort of **evolved** into a solid regulation that's **mandatory**," Cullen said, with **FMCSA** "making all these changes and decisions without **public notice** and comment period — and **accountability.**"

The court has not said when it will issue a ruling in the case.

FMCSA earlier this year **withdrew** a rulemaking intended to institute hard and fast sleep apnea **screening criteria**, which would have provided greater clarity to **medical examiners** and drivers about the **screening process**, which is as of now mostly left up to the discretion of **medical examiners**.

Will Enforcement Use ELD Data for Purposes Beyond Hours of Service?

Some in the industry have worried **ELD data** would be used at **roadside** or, more likely, by **compliance-review** auditors to **uncover violations** other than just **hours of service** infractions. Their thinking was that **GPS** position data **recorded** by an **ELD** would make **speeding infractions** easy pickings after the fact based on **average speed** over a stated **route**.

However, Congress' **codification** of the **ELD mandate** in the **2012 MAP-21** highway bill expressly forbid this practice. The bill says the **federal government** was required to "institute **appropriate measures** to ensure any **information collected** by electronic logging devices is used by **enforcement personnel** only for the purpose of determining compliance with **hours of service** requirements."

This notion of **enforcement** drift with **ELD data** was brought up by a **Seventh Circuit** appeals-court judge who was **part** of the panel that heard **oral arguments** during September 2016 in the **Owner-Operator Independent Drivers Association's** lawsuit against the **U.S. Department of Transportation** over the **ELD mandate**. Joshua Waldman, **DOT** attorney, said the **department** had issued an **official policy** on Dec. 4, 2015, that **expressly** limits **ELD data** use to **hours**.

"State partners who **enforce** the **federal regulations** are subject to the **policy guidance**" too, Waldman said.

With ELD Mandate Here, FMCSA Looks to Clarify Personal Use of Trucks

The **Federal Motor Carrier Safety Administration** has released a proposal to slightly alter the guidance issued to carriers and drivers involving the use of their truck as a personal vehicle to travel to their home or to restaurants and motels along their route. The guidance, though related to hours of service regs in general and not specifically the use of electronic logging devices, stems from questions surrounding the use of trucks as personal conveyance vehicles that have arisen as the **ELD mandate** put more focus on the special driving category.

The agency [published a notice](#) in the **Federal Register** to announce the proposed changes and field comments for 30 days from industry stakeholders.

The key change to the personal conveyance guidance is the removal of the requirement that trucks be unladen to be used for personal conveyance. **FMCSA** says the change is mostly meant to allow straight truck drivers the opportunity to use their truck, even if it is laden with work- or load-related materials or tools, for personal use.

The agency appears to envision drivers of tractor-trailer combination vehicles dropping their trailer before using the truck as a personal conveyance vehicle. The proposed update to the guidance does nothing to change that interpretation, only removing the requirement that the vehicle be unladen.

As proposed, the guidance would allow drivers to use their truck for personal conveyance when off duty in "time spent traveling from a driver's en route lodging," like a motel or truck stop, "to restaurants and entertainment facilities and back to the lodging," according to the agency's notice. Also included is "commuting from the last location where on-duty activity occurred to the driver's permanent residence and back to the last on-duty location," as well as driving from trailer-drop lots to a driver's residence and between work sites and residences.

Personal conveyance under the changed guidance would not cover "movement of a truck to enhance operational readiness," such as moving closer to a pick-up or drop-off point, the agency says.

Also forbidden from personal conveyance use are (1) driving bobtail or with an empty trailer to a location to pick up another load, (2) driving an unloaded truck to a designated parking area after being unloaded and (3) "repositioning a CMV and or trailer at the direction of the motor carrier."

FMCSA says it is seeking feedback from **industry** stakeholders regarding other scenarios in which personal conveyance would be appropriate.

When **ELDs** are placed into personal conveyance mode, their location functionality changes, tracking the truck only within a 10-mile radius via **GPS**, rather than the one-mile radius required for on-duty recording.

Trucking Rap Sheet: Clean Inspection Bribes, CDL Schemes and Fraudulent Drug Tests

Action in **four trucking-related crimes** has recently been reported by the **Department of Transportation's Office of Inspector General**, including two **CDL schemes**, an **inspection bribery scheme** and a **drug testing scheme**.

A **California DMV employee** pleaded guilty to conspiracy to commit bribery, identity theft and unauthorized access of a computer for altering records to show **CDL** applicants had passed written **CDL** tests when they had not.

Between April 2016 and July 2017, the **DMV employee** and co-conspirators reportedly entered passing scores for written **CDL** tests, **OIG** reports. He was **responsible** for the issuance of at least **57 fraudulent licenses**.

Ten other California DMV employees and trucking school owners and employees were also recently charged, with two more pleading guilty, on charges related to a conspiracy to produce or obtain fraudulent **CDLs**.

Five were California DMV employees. Between July 2016 and May 2017, one employee allegedly paid another to access and alter **DMV** records to fraudulently show passing scores for potential truckers who had not taken the written test.

Additionally, between September 2014 and June 2017, an owner of a truck school, and a school employee; an owner of another truck school, and a trucking company owner in Southern California, bribed **DMV** employees to change the records. The owner of the truck school and the school employee reportedly conspired with and bribed the **DMV** employee to obtain commercial permits for applicants. The employee also reportedly received a fraudulent **CDL**.

Between September 2015 and June 2017, a person affiliated with a truck school allegedly paid a **DMV** employee to change **DMV** records to show **CDL** applicants had passed written **CDL** exams.

Finally, between July 2016 and June 2017, truck school owners/employees solicited payments from students and others to avoid taking the written **CDL** exam. They then reportedly conspired with two **DMV** employees to obtain the commercial driving permits for those who had not taken the written exam.

A Texas trucking company owner was charged for his role in bribing state troopers in exchange for favorable safety inspections.

The owner of 30-truck fleet company, allegedly paid a **Texas Department of Public Safety** trooper \$4,000 to receive favorable **Level I inspections**. The trooper reportedly submitted **39 false truck inspection reports** to **FMCSA** for the fleet.

The owner of a Washington state-based drug testing company was recently **charged for her role in a scheme to defraud companies that hired her to administer their DOT drug testing programs**. She was supposed to collect urine specimens from employees and ship them to certified labs for testing.

Instead, the owner allegedly fabricated **DOT** drug test reports to make it look like the specimens had been tested.

Between 2009 and 2015, **OIG reports** only **94** of the **592 samples** collected by this drug testing company were tested by labs.

TRUCKING IN 2017: MAJOR FLEET MERGER — 34-HOUR 'RESTART ROLLBACK' — ANTI-REGS PUSH — ELD COMPLIANCE HIGHLIGHT BUSY YEAR

2017 started with President Donald Trump being sworn into office in January and ended with the electronic logging device mandate going into effect in December. In between those two major events were plenty of headlines regarding both, along with other stories that affected the trucking industry in 2017, including the end of the Safety Fitness Determination rule, the end of some of 2013's 34-hour restart regulations and more.

Below is a monthly look at the biggest stories of the year.

JANUARY

Trump freezes regulations: In his first order of business as President, Donald Trump issued a regulatory freeze pending further review by him and his team. The order stifled a few trucking regulations in the works under the prior administration (see more on those below).

Trump orders "two for one" on regs: Following his first order to freeze new regulations, Trump issued another order that directed federal agencies to eliminate two existing regulations for every new one put into place. The move was intended to help small businesses, Trump said. This order seemingly hasn't yet affected the trucking industry.

FMCSA uses new techniques for on-site compliance reviews: The U.S. DOT began expanding how it conducts on-site compliance reviews of trucking companies by expanding the number of interviews performed with carrier employees and checking carriers' social media accounts.

FEBRUARY

FMCSA clarifies ELD 'grandfather' clause: Carriers using older ELDs that don't meet the compliance requirements of the mandate were given two more years to fully comply with the mandate, FMCSA clarified in February.

Trump's regulatory freeze likely kills speed limiter mandate: Joe Rajkovicz, head of regulatory affairs for the Western States Trucking Associations, said he believes Trump's order to freeze new regulations would be the end of any potential speed limiter mandate in the works. Rajkovicz was proven right later in the year, when FMCSA did place the speed limiter rule on the backburner, though it did not rescind the rule outright, meaning it could resume work on the rule at any point.

ELD compliance all about the data: While complying with the ELD mandate from a device standpoint may not be too difficult, knowing what to do with the data is another story for carriers.

MARCH

34-hour restart regulations permanently rolled back: A study by the DOT revealed the some of the changes instituted by the 2013 hours-of-service rule showed no additional safety benefits. The results of the study meant truckers' 34-hour restarts no longer required two 1 a.m. to 5 a.m. periods and would not be limited to just once a week — the conclusion of a saga four years in the making.

FMCSA withdraws Safety Fitness rule: The Safety Fitness Determination rule meant to revamp FMCSA's carrier rating system was withdrawn in March. The rule had drawn concern over its reliance on the Compliance, Safety, Accountability program's Safety Measurement System.

APRIL

CCJ's ELD Buyers' Guide: CCJ released its [comprehensive guide](#) to give fleets the information they need to purchase the right device for their operation.

Swift, Knight announce merger: Trucking giants Swift Transportation and Knight Transportation announced a merger that would give Swift shareholders 54 percent of the company and Knight shareholders the remaining 46 percent.

FMCSA issues update on split sleeper berth flexibility study: FMCSA's Kelly Regal told attendees at the Managing Fatigue conference the agency's study on split sleeper berth flexibility would likely enter the data collection phase in 2017.

MAY

Covenant subsidiary asks courts to limit liability in cargo theft claim: Covenant Transportation Group's Southern Refrigerated Transport asked a federal judge in May to reconsider a judgment that put the carrier on the hook for \$6 million for a claim against a stolen load of pharmaceuticals.

Supreme Court to decide whether or not to hear ELD lawsuit: The Owner-Operator Independent Drivers Association petitioned the U.S. Supreme Court to hear its lawsuit against the ELD mandate. The nation's high court, as noted below, declined to hear the lawsuit, leaving in place the lower court's ruling to uphold the mandate.

Uber launches Uber Freight brokerage app: The ride-sharing giant launched officially entered the trucking industry with a freight matching app aimed at the owner-operator market with a focus on dry van and reefer loads.

JUNE

Supreme Court declines to hear OOIDA's ELD lawsuit: The U.S. DOT earned another victory in June in the ongoing ELD saga when the U.S. Supreme Court decided not to hear OOIDA's case against the mandate, upholding the mandate's Dec. 18 compliance date.

Department of Labor rescinds memo affecting owner-operators: The Trump administration rescinded a 2015 memo that classified leased owner-operators as employees, allowing carriers to classify them as independent contractors.

Class-action lawsuit over pre-employment reports stalls: A class-action lawsuit brought by six truckers against FMCSA and the pre-employment reports it distributes to carriers was refused by the U.S. Supreme Court. The lawsuit alleged FMCSA shared too much information about drivers' violation history to prospective employers in the Pre-Employment Screening Program reports.

JULY

Legislation introduced in House to delay ELD mandate: Texas Rep. Brian Babin filed the ELD Extension Act of 2017 that, if enacted, would delay the ELD mandate for two years until December 2019. The bill ultimately saw no action in 2017.

House bill shields carriers from court-ordered payouts to drivers: The U.S. House unveiled a bill that would, if passed, prohibit states from requiring carriers to give drivers paid meal and rest breaks, as well as exempt livestock and insect haulers from the ELD mandate. Congress will likely resume work on the bill in the upcoming months.

Trump administration backs off of speed limiter, sleep apnea rulemakings: The U.S. DOT signaled it would no longer pursue a rulemaking to mandate the use of speed limiters for the trucking industry. The DOT's regulatory calendar update in July also hinted at the end of a sleep apnea rulemaking that had been in the works. The agency later rescinded the sleep apnea rulemaking, though it did not rescind the speed limiter rule, meaning the DOT can resume work on it at any point.

AUGUST

Walmart institutes new fees for early, late deliveries: Walmart began a new policy in August called "On-Time, In-Full" in which carriers will be charged extra fees for deliveries that are late, mispackaged or delivered earlier than the scheduled delivery time.

Navistar ordered to pay fleet \$31M over MaxxForce engines: Navistar was ordered by a Tennessee jury to pay trucking company Milan Supply Chain Solutions \$30.8 million in damages related to alleged defects in the company's MaxxForce engine line. The jury concluded Navistar violated consumer protection laws by selling the engines without proper testing.

FMCSA holds impromptu meetings on trucking regs: FMCSA began a three-stop tour to gather input from the industry on regulations, including CSA, ELDs and more, without informing the public the meetings would be taking place. Questions swirled around whether the agency had given proper legal notice for the meetings.

SEPTEMBER

Attempt to delay ELD mandate flops in House: An amendment to a 2018 appropriations package to stall the ELD mandate for at least 10 months was voted down by the House, therefore it was not added to the package. Rep. Brian Babin filed the amendment as a follow-up to his standalone bill from July.

Natural disasters lead to suspension of hours regs in 26 states: FMCSA suspended hours-of-service regulations for truckers in 26 states hauling gasoline, diesel, aviation fuel, propane and other home heating fuels in the wake of Hurricane Harvey in Texas and Louisiana.

Trucker partly to blame in fatal 2016 Tesla crash: The National Transportation Safety Board determined that while the Tesla driver's reliance on the autonomous driving mode was mostly to blame in the high-profile crash, the trucker had also failed to yield the right-of-way to the oncoming car.

OCTOBER

Week-long inspection spree set to begin: CCJ readers in October were on top of the Commercial Vehicle Safety Alliance's annual Operation Safe Driver Week, which ran from Oct. 15-21. During the week, enforcement officers were watching for speeding, distracted driving, seatbelt usage and more.

EPA to rescind glider kit emissions regs: The Environmental Protection Agency proposed in October to repeal the emissions regulations placed on glider kits. The regulations would have forced glider kit manufacturers to dramatically change their operations to meet the new standards.

Fleet involved in deadly human smuggling operation shut down: Pyle Transportation, based in Schaller, Iowa, was shut down by FMCSA following a compliance review that was triggered by a grisly human smuggling operation that left 10 people dead in San Antonio in July.

NOVEMBER

FMCSA announces ELD violations won't ding carriers' CSA scores until April: The agency that oversees the trucking industry announced in November that carriers hit with violations of the ELD mandate would not have points recorded against them in the CSA rating system until April.

Babin asks Trump directly for ELD mandate delay: Rep. Brian Babin was still fighting with just over a month before the ELD mandate took effect, as he wrote a letter requesting President Trump issue an executive order to delay the mandate until at least April 1.

Tesla Semi unveiled: The Tesla Semi made its debut in November at an event in Hawthorne, Calif. Tesla promises a range of up to 500 miles at maximum weight and highway speed.

DECEMBER

Truckers rally in opposition to ELDs: Owner-operators and other drivers gathered as part of a so-called “ELD Media Blitz” two weeks before the mandate took effect. The rallies were held across the country in an attempt to bring attention to what drivers said were security, economic and safety issues associated with the mandate.

FMCSA clarifies personal use of trucks with ELD mandate: FMCSA released a proposal to alter guidance issued to carriers and drivers involving the use of their truck as a personal vehicle to travel home or to restaurants and motels along their route. The key change in the personal conveyance guidance is the removal of the requirement that trucks be unladen to be used for personal conveyance.

FMCSA issues waiver to delay ELD mandate for ag, livestock haulers: The U.S. DOT granted drivers hauling livestock and other agricultural commodities a waiver from compliance with the ELD mandate until March 18. The extension gave these drivers an extra 90 days to comply and gave FMCSA extra time to consider other ELD-related exemptions requested by drivers in the ag industry.

ELD Face-off: Two Sides of the Looming Mandate

Just a week before the much debated electronic logging device rule kicked in on Dec. 18, *Heavy Duty Trucking* asked top officials of two trucking associations that have been outspoken in their support or criticism of the far-reaching mandate to weigh in on several key aspects.

Replying for the *Owner-Operator Independent Drivers Association* is **Todd Spencer**, executive vice president of the group that has represented the interests of individual professional truckers for over 40 years.

Replying for the *Alliance for Driver Safety & Security*, also known as the *Trucking Alliance*, is **Lane Kidd**, managing director of the coalition of freight and logistics companies that supports various safety and security reforms.

Neither party was privy to the replies of the other before this article was posted.

HDT: Will ELDs truly stop cheating on hours of service?

Kidd: Yes, ELDs will effectively catch commercial drivers who ignore federal hours-of-service rules. And any driver who thinks he's smart enough to simply manipulate the software is in for a rude awakening. Paper log books are like a horse and buggy, while an ELD is a Maserati, and you'll not be able to simply alter the technology. But it begs the question – why would a company or driver go to such trouble to cheat, when ELDs will improve his lifestyle, his work day, and his pay.

Spencer: Not likely. The only thing an ELD can do is tell if a vehicle is moving. People are creative. Technology can always be tweaked for a different outcome. With ELDs, a driver can easily log off when [the vehicle is] stuck in traffic – something you would never do with paper.

HDT: If you could emphasize the single most important reason you're for or against ELDs, what would it be?

Spencer: While the government-required monitoring and tracking should be a broadly shared concern, and drivers do say ELDs are used to prod and push, we are not opposed to ELDs per se – simply the mandate and associated costs not justified by improved efficiency or any credible safety data.

Kidd: ELDs will save lives. Trucking companies and their drivers have a moral and ethical responsibility to protect the general public. A motorist should be assured that the truck driver operating that semi within a few feet of his car is properly rested, drug- and alcohol-free, well-trained, and complying with the law. Consider there are 400,000 accidents, 115,000 injuries, and more than 4,200 deaths that occur each year on our industry's watch. Who is at fault in those large truck crashes is *not* the issue. Drivers must be prepared and equipped with technologies to avoid those crashes, and ELDs are a significant tool to achieve that objective. ELDs can help verify that our drivers are well rested and not fatigued from too many hours behind the wheel.



HDT: Given there are widely stated issues around enforcement, why or why not should the rule's implementation be delayed... even at this late date?

Kidd: The only industry segments crying for more time are those companies that want to avoid the law. Congress passed the ELD mandate in 2012, and trucking companies have had more than two years since the rulemaking to install a device. Our law enforcement officers have the tools to enforce the mandate now. For example, I witnessed a “go live” demonstration in Virginia last week between carriers, truck drivers, the U.S. DOT and Virginia State Police. The officer stood on the truck's running board while the driver transferred his ELD data to the officer's laptop. The officer uploaded the data from his laptop using the web to the U.S. DOT platform. Within the time you could place an order through a drive thru, the officer received the information back from U.S. DOT as to whether the driver was in compliance. One officer commented to me that what takes him at least an hour to do in a roadside compliance check will take about five minutes with ELDs. ELDs are the game changer.

Spencer: There is way too much confusion across the board. State enforcement officials are all over the place on what to enforce on which trucks and drivers, and may not even have the backing of their own state laws, [or know] which trucks and operations are exempt. While you can point to FMCSA for the tardiness of their just-in-time training, I don't think they ever imagined how broadly this rule could be applied and how many crucial sectors of our economy use and depend upon trucks.

HDT: Do you think ELD suppliers should have raised the alarm months ago about the lack of government or third-party certification of the devices they say comply with the rule?

Kidd: Our smart phones don't have a third-party certification. I buy a flat screen based on my faith in the brand. Why should an ELD be any different? If the ELD doesn't work, people won't buy it. That's the way an open market works. Carriers and drivers should do their homework and study which ELDs are receiving the highest marks and reviews. The best ELD companies will survive. And you won't have ELDs that easily allow drivers to alter the programming, because the honest players won't let that happen. The Federal Motor Carrier Safety Administration did the best it could to develop a self-certification system, because Congress didn't give the agency enough time to do it any other way. Most importantly, improving safety shouldn't bog down in bureaucracy.

Spencer: It's been buyer beware from the start.

CVSA Asks for Updates to Inspection-Report Processes for the Digital Age

In a letter to **Federal Motor Carrier Safety Administration** Deputy Administrator Kathy Gautreaux dated Dec. 12, the **Commercial Vehicle Safety Alliance** has requested attention be paid to an “unnecessary administrative burden that is impacting both the enforcement community and the motor carrier industry,” partners that make up the alliance.

Namely, they’re referencing the current processing of **inspection reports** that happens after an inspection by **law enforcement** during which **defects** are found. As specified in **Code of Federal Regulations 396.9(d)(3)**, motor carriers are required to certify issues noted in violations on the report have been completed and to return the report to the issuing jurisdiction, **within 15 days**. This happens today mostly on paper, **CVSA** notes, and represents an **administrative burden** that could be eased by allowance for an **electronic process of repair/correction certification**.

Many jurisdictions, too, **CVSA** says, “do not have the **manpower** to follow up on unreturned inspection reports. For these jurisdictions, the practice of **receiving returned inspection reports** creates a paperwork burden with no clear value or purpose. Meanwhile, motor carriers **spend time and resources** certifying, returning and storing inspection reports that are not being used by many of the **recipients**.”

An **electronic system** for the process could make for one more useful to all, and could relieve some of the **paperwork burden** of the current system. “We believe that more **jurisdictions** would be able to use the information if it were more readily accessible through an **electronic system**,” **CVSA** says. “It is possible that there are models already in place for such a system – it is our understanding that the **Intermodal Association of North America (IANA)** has built a system that may meet the needs of this program – and **CVSA** encourages the agency to reach out to the **motor carrier industry** for input on how best to **structure** such a **system**.”

Read a [full copy](#) of **CVSA’s** letter to regulators.

WINTER DRIVING MISTAKES YOUR DRIVERS SHOULD AVOID

Winter is officially here in the U.S. and that means snow-covered roads and icy conditions. Here’s a look at common winter driving mistakes your company’s drivers need to avoid.

[Weather.com](#) has a list of 14 mistakes all drivers need to avoid, including:

- **Skipping the routine maintenance.** *When the temperatures are ready to drop, change your wiper fluid from a 50/50 mixture of wiper fluid and water to all fluid (and carry an extra bottle of fluid in your vehicle). Add Anti-Freeze to Your Radiator and don’t skip your regularly scheduled oil and filter change*
- **Not testing your vehicle.** *Checking your battery, headlights and taillights and replacing windshield wiper blades should be part of your winter prep for personal and company vehicles.*
- **Not keep a winter driving kit in your vehicle.** *Shovels, blankets, flashlights, emergency snacks – they can be lifesavers.*
- **Not focusing on your winter driving skills.** *There’s a good chance your drivers are driving too fast, too Close to Other Cars and may need to brush up on their ice-handling skills.*

Big rigs hauling heavy loads require even more winter driving skill.

[Fueloyal.com](#) offers 15 tips for truckers, including:

- *Don’t get complacent or overly confident*
- *Accelerate and brake more slowly*
- *Clear your windshield, mirrors and lights*
- *Always keep your tanks as full as possible*
- *Never drive tired, especially in bad weather*



Truckers Rack Up Nearly 39,000 Warnings, Citations During Operation Safe Driver Week

Law enforcement officers issued nearly 39,000 citations and warnings to truck drivers during the **Commercial Vehicle Safety Alliance’s Operation Safe Driver Week**, held Oct. 15-21, across North America.

During the week, officers issued a total of **59,193 warnings and citations** to both **commercial and passenger vehicle drivers** for **unsafe driving behaviors**, including state and **local moving violations**, speeding, failure to use a seatbelt, **failure to obey a traffic control device**, using a **handheld phone** and more. The majority of those – **38,878** to be exact – were issued to **commercial vehicle drivers**.

“Countless lives are **tragically lost** on our roadways due to unsafe, risky, **inattentive** or **careless acts** by drivers,” said **CVSA** Executive Director Collin Mooney. “In fact, **driver behavior** is often the **most important factor** in crashes. **Operation Safe Driver Week** raises awareness about safe driver operations in and around trucks and buses.”

Truckers were given **30,714 warnings and 8,164 citations** during the enforcement blitz, **84.2 percent** of which were for state and local moving violations. **Speeding** accounted for **7.4 percent** of violations, followed by **failure** to use a **seatbelt** (2.6 percent), **failure to obey a traffic control device** (2.5 percent) and using a **handheld phone** (0.8 percent). Only a **tenth of a percent** of violations for truckers were for **texting**, **CVSA** says.

Additionally, **16 truckers** received a warning or citation for using a **radar detector**, **19** received a citation and **86** received a **warning for operating while ill or fatigued**.

ELD-Day: On the Ground with Enforcement in Kentucky as Truckers, Officers Adjust to New Logs Reality

Northbound on I-65 coming out of the Nashville, Tenn., Cherokee Marine Terminal, “**Trucker Ted**” had a feeling he was going to get pulled in by the Kentucky State Police at their scale just across the **state line** in Simpson County near Franklin, Ky. **Why?** Because “I came by here today **without an ELD**,” he noted, though he hasn’t been even keeping a **logbook** very often over the last year, hauling the **second truck** in a two-truck owner-operator operation.

“**Trucker Ted’s**” typical three trips between the river terminal, hauling steel on a flatbed, and Bowling Green, Ky., keep him within the **100 air mile short haul exception** to the hours of service. The only time he’s required to keep a logbook is on the occasion he runs out of Nashville to Memphis, which might happen twice a month, three times at most.

It wasn’t his lack of an **ELD** that he had to worry about today — problems with the trailer brakes, however, sidelined the trucker for longer than he’d hoped when he got the **pull-in indicator** at the weigh station.

“**Trucker Ted’s**” truck marked the third inspection of the morning for the Sergeant of the Kentucky State Police Commercial Vehicle Enforcement unit, on a day he hoped to get in as many as **13 inspections** to count toward the total **32 annually** he needs to keep up his **CVSA** credentials. The Sergeant works in the public affairs unit of the state police and spends much of the year doing **outreach** to trucking companies, members of the **general public** and others about safety and **enforcement**.

Too often, he says, **time gets away** from him for his inspections and he spends several days in Simpson County **finishing out** the total.

Among those first three power units, **none** was utilizing an **ELD**. The first was a combination tractor-trailer run by an owner-operator who’d waited until **just two weeks ago** to finally put in an order for an **ELD** to comply with the **mandate**. Two weeks later, the unit had apparently shipped, but the trucker had not been home to retrieve it. The trucker said he “**was told** by the **ELD maker** that he could use a **piece of paper** that showed he’s ordered the **ELD** and that would make it **OK**,” the Sergeant says, but that’s **not the case**. “This isn’t something we **concocted last night**,” referencing the long advance period of **years** since the **ELD mandate** was issued as a **final rule**, likewise the more than **six months** since the last step in the **Owner-Operator Independent Drivers Association’s** legal challenge to the rule **concluded**.

That driver wasn’t the only one who was in **similar straits** at the scale house this morning. A Toronto-area headquartered **company driver** was not yet utilizing an **e-log system** the fleet had begun to equip its trucks with, noting that he’d not yet been supplied a **login** or told how the device was used. The company “**should have done** it a month ago,” he said, though he **wasn’t much worried** about it, given officers in many states around the nation are in the same position as he is and are **still getting used** to a **new system**.

That **first violation**, for instance, that the Sergeant was **documenting** for not having an **ELD system**: encoding the violation **wasn’t even an option** for him in the state’s **central computer system**, as it hadn’t yet been **updated** to reflect the new **ELD violations**. He got on the phone to **headquarters** in state capitol Frankfort to see when that might be an **option**. For the time being, he said, it **wasn’t going to happen**, though he suggested it could be in place by the **end of the day**.

Some **states** who have chosen **not to issue citations** (*which come with a court summons/associated fine*) for **ELD mandate noncompliance** in the **interim period** between now and April 1, 2018, when the **CVSA out-of-service criteria for ELDs will be enforced** are Florida, Illinois, Iowa, **Kansas**, Kentucky, Missouri, Nebraska, **Nevada**, New Jersey, North Dakota, Ohio, **Oregon** (*ODOT not issuing citations, encouraging law enforcement — highway patrol, local departments — to follow along*), South Carolina, **Tennessee**, Texas, Wisconsin.

A Captain with the Kansas Highway Patrol notes that **FMCSA** “only put out the **violation code**” for **ELD-related violations** in the central enforcement system a **week ago**. “We won’t even really be writing the warning,” or **documenting** the violation in inspection reports, “until a few weeks from now. There’s going to be a **learning curve**, and I think most states are trying to err on the side of **caution**.”

In Minnesota, an approach is being taken that is in **one way contrary** to that of Kansas and other states adopting **no-cite policies** before April 1. A Captain there notes the decision to issue a **citation** is being “**left to the individual officer**.” At once, he adds, “we all realize this is a monumental change for the **CMV industry**, and people have waited until the last minute in hopes that something would have changed. Given that, I **don’t anticipate** you will see inspectors from Minnesota scratching out **criminal citations** on Monday (*Dec 18*) to drivers for failing to comply with the **ELD mandate**. Conversely, if a driver is stopped in February or March and has no **ELD** as required, has **some falsification issues**, and etc., I can certainly see and support one of our inspectors giving a **criminal citation** to the driver for failing to comply with the **ELD requirement**.”

Many other states echoed this sentiment in noting they would **leave the decision** to cite to officers from **ELD Day 1**. Those among such states who’d responded to queries include California, **Colorado**, Delaware, Idaho, **Indiana**, Minnesota, **New Hampshire**, New Mexico, Vermont, Washington, West Virginia, **Wyoming**.

In at least one of those that aren’t writing citations, for now a **little tough love** is on offer as “**encouragement**.” At the **scale house counter** in Kentucky recently, an inspector could be heard asking a **driver** if he was utilizing an **ELD** — he wasn’t. The reality — he hadn’t bothered to plug it in yet, **given expectation** of **soft enforcement** and no actual training from his fleet to speak of as yet. As he **exited** to get his truck and pull it into the **scale’s inspection barn**, the officer noted **he had better plug the ELD in** before he **pulled** the truck around.

Shaking his head later out by his truck and **powering up** a tablet he’d been given to **pair** with the **ECM plug-in device**, the driver, who declined to be named for this report, said simply, “**I’d better roll down there. I think he’s mad at me.**”

ELD Compliance Extension for Ag/Livestock Haulers Formally Issued by FMCSA

Just shy of a month after announcing it would give **drivers hauling livestock** and other **agricultural commodities** a brief reprieve from compliance with the **electronic logging device mandate**, the **U.S. DOT** has officially released the waiver granting such haulers until **March 18, 2018**, to switch from paper logs to **ELDs**. The document is available on the [DOT's website](#).

The **compliance extension** gives drivers covered by the waiver an **extra 90 days** beyond the standard **December 18 ELD mandate compliance** deadline. The **DOT's Federal Motor Carrier Safety Administration** says the delay for ag and livestock haulers will also give the agency time to consider other **ELD-related exemptions** requested by drivers who work in the **ag industry**, the agency says.

The waiver **does not change** the **hours of service regs** that **livestock** and **ag haulers** operate under. Drivers covered by the waiver include those hauling **"any agricultural commodity, non-processed food, feed, fiber, or livestock."** Livestock is defined as **"...cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food and other animals designated...that are part of a foundation herd or offspring."** The waivers apply to all drivers hauling the aforementioned loads, regardless of their **distance traveled** or whether they **cross state lines**.

"Agricultural commodity" is defined in the waiver broadly with reference to the **description** in portions of the existing **ag short-haul exemption** to the hours of service. For the purposes of the **ELD waiver**, however, **FMCSA** is explicit in granting it to ag haulers **"regardless of the distance traveled."** Those exempt from **ELDs** include truckers hauling **"agricultural commodities from the source"** to any location.

Drivers operating under the **compliance extension** must have a copy of the [waiver](#) with them. The agency's decision to grant the compliance extension stems from **multiple requests** from trade groups representing the **ag and livestock businesses**, who said the **ELD mandate** "exposed incompatibilities between the **HOS rules** and the" **ag hauling industry**. The **National Pork Producers Council**, for instance, said the strict adherence to hours of service rules prompted by the **ELD mandate** would **"endanger the health and welfare of animals transported."**

Carriers operating under the **90-day waiver** must notify the agency within **five business days** if they are involved in a **crash** and relay details of the crash and their **driving day** to the **agency**.



The waiver for **livestock haulers** was published in the **Federal Register** on Dec 20, which **legally codified** the waiver. Also slated for publication in the coming days is a proposal by **FMCSA** to expand and **clarify** the hours of service **exemptions** granted to **truckers hauling ag products**.

Drivers operating in the **ag industry** already have an **hours of service exemption** that clears them from maintaining records of duty status if they drive within a **150-air-mile radius** of the source of their **ag products** or **livestock**.

The agency's new proposal would **expand** that to include **ag haulers** operating **unladen vehicles** within a **150-mile radius** of the **load's source point** and after its delivery, meaning the exemption would apply to **ag haulers** operating an **unloaded vehicle** on their way to pick up a load and after they've delivered their load, in addition to while they are loaded and in transit. **FMCSA** defines this change as applying to **"a driver operating an unladen commercial motor vehicle ... either to a source to pick up an agricultural commodity or on a return trip following delivery of an agricultural load."**

The agency is also **accepting comments** from industry stakeholders for **30 days** — after the date of its **publication** — regarding whether **livestock sale barns** and **grain elevators** should be considered a **source of agricultural commodities**. "While these facilities are originating points for many **agricultural commodity loads**, they are not **expressly encompassed** within the statutory or regulatory terminology of the **short-haul ag exception**," says **FMCSA**.

FMCSA is also accepting feedback on whether **ag haulers** who **pick up partial loads** at more than one location should have the **150-mile radius** extended from their **final pick up**, rather than their **load's origin**. "Previous informal guidance has been that the **air-mile radius** is based on the **first source**...and that additional stops to load **additional agricultural commodities** do not extend the **150-mile radius**," the agency notes.

Lastly, the agency clarifies that the **150-air-mile radius** covers drivers from the source of their load up to **150 air miles away**, regardless of whether their **destination** is beyond **150 miles** from their **load's source**. After a driver crosses the **150-mile mark**, however, they are then subject to **record-keeping requirements** and **hours of service regs**.

The current **air-mile radius exemption**, passed by Congress in the **MAP-21 highway** funding act, was meant mostly as a **reprieve** for those who **aren't drivers** by trade, such as **farmers transporting** their crops to other **destinations**. But it can apply to **truckers** who service farms and other **agricultural producers**, too.

Final Report - Fatality #3 - March 2017

MSHA POSTED ON: DECEMBER 05, 2017

Fatal Powered Haulage Accident

Los Lunas, New Mexico



A 54 year old plant operator was fatally injured on March 27, 2017. He was outside of the operator's cab of his personal service truck near a generator trailer when the service truck rolled forward and pinned him between the truck and the trailer. The accident occurred because management's policies and controls were inadequate to ensure proper parking procedures were followed.

The facility is a surface open pit crushed stone mine. Rock is removed from the pit by front end loaders and transported to the crushing plant. The front end loader then feeds the material into the plant for processing. The finished material is used in the company's hot mix plant.

The Mine Safety and Health Administration's (MSHA) last regular inspection at the plan was January 30, 2017.

Location of the Accident

The accident occurred at the generator trailer located on the north side of the crushing plant. The victim's truck was facing south towards the generator trailer. The ground in the area generally sloped north away from the generator trailer, for the exception of the area located approximately 72" from the generator trailer, where the ground was identified to slope south toward the generator trailer at an approximately 16 degrees.

Weather

The weather was not a factor in this accident.

Truck Information

The vehicle involved in the accident was a one-ton, Dodge Ram 3500, service truck. The victim had left the truck in a forward gear, according to the police report, without setting the park brake and chocking the wheels against movement. The truck rolled forward pinning the victim between the truck and trailer. The truck had run out of fuel by the time the accident scene was discovered.

Training and Experience

A representative of MSHA's Educational Field and Small Mines Services reviewed the Part 46 training records for the victim — he had received all of the required training. The victim had more than 30 years of mining experience.

ROOT CAUSE ANALYSIS

A root cause analysis was conducted and the following root cause was identified:

Root Cause: Management's policies and work practices were inadequate and failed to ensure parking procedures were followed when leaving mobile equipment unattended.

Corrective Action: Management has developed Standard Operating Procedures (SOP) on parking procedures for unattended mobile equipment. Mine management has provided training to all employees on the new SOP and will be including it in their Site-Specific Hazard Awareness Program to address all other vehicular traffic on the mine site.

CONCLUSION

Based on the investigation and statements gathered during interviews, the investigation team concluded that sometime after 7:40 pm on Friday, March 24, 2017, the victim drove to the generator trailer, exited the cab with the truck running and in gear, and walked between the truck and trailer with his back to the truck. Due to the slope of the ground in the area, the truck rolled forward and pinned him between the truck and the trailer resulting in his death.

ENFORCEMENT ACTIONS

Issued to the facility

Order No. 8972423 was issued on March 27, 2017, under the provisions of Section 103(k) of the Mine Act. This citation was issued as Non-Significant and Substantial.

A fatal accident occurred at this operation on March 27, 2017 when a miner was observed pinned between the Ram 3500 pickup and the generator trailer. This order is issued to assure the safety of all persons at this operation. It prohibits all activity at the generator trailer area until MSHA has determined it is safe to resume normal mining operations in the area. The mine operator shall obtain prior approval from an authorized representative for all actions to recover and/or restore operations to the affected area.

Citation No. 8959590 was issued on April 10, 2017, under provisions of Section 104(a) of the Mine Act for a violation of 56.14207. This citation was issued as Significant and Substantial.

A fatal accident occurred on March 27, 2017 when the operator of a 2012 Dodge Ram 3500 flatbed truck left the cab of his truck to stand between the front of the truck and the generator trailer. The victim had left the truck in a forward gear without setting the park brake and chocking the wheels against movement. The truck rolled forward pinning the victim between the truck and trailer.

Citation No. 8959591 was issued on April 10, 2017, under provisions of Section 104(a) of the Mine Act for violation of 50.10a. This citation was issued as Non-Significant and Substantial.

A fatal accident occurred at this mine at 5:45 a.m. on March 27, 2017. The mine operator failed to notify MSHA within 15 minutes after discovering the miner had suffered fatal injuries. MSHA was notified at 9:20 a.m. on March 27, 2017.

Cold Stress Guide

Anyone working in a cold environment may be at risk of cold stress. Some workers may be required to work outdoors in cold environments and for extended periods, for example, snow cleanup crews, sanitation workers, police officers and emergency response and recovery personnel, like firefighters, and emergency medical technicians. Cold stress can be encountered in these types of work environment. The following frequently asked questions will help workers understand what cold stress is, how it may affect their health and safety, and how it can be prevented.

How cold is too cold?

What constitutes extreme cold and its effects can vary across different areas of the country. In regions that are not used to winter weather, near freezing temperatures are considered "extreme cold." A cold environment forces the body to work harder to maintain its temperature. Whenever temperatures drop below normal and wind speed increases, heat can leave your body more rapidly.

Wind chill is the temperature your body feels when air temperature and wind speed are combined. For example, when the air temperature is 40°F, and the wind speed is 35 mph, the effect on the exposed skin is as if the air temperature was 28°F.

Cold stress occurs by driving down the skin temperature and eventually the internal body temperature (core temperature). This may lead to serious health problems, and may cause tissue damage, and possibly death.

What are the risk factors that contribute to cold stress?

Some of the risk factors that contribute to cold stress are:

- Wetness/dampness, dressing improperly, and exhaustion
- Predisposing health conditions such as hypertension, hypothyroidism, and diabetes
- Poor physical conditioning

How does the body react to cold conditions?

In a cold environment, most of the body's energy is used to keep the internal core temperature warm. Over time, the body will begin to shift blood flow from the extremities (hands, feet, arms, and legs) and outer skin to the core (chest and abdomen). This shift allows the exposed skin and the extremities to cool rapidly and increases the risk of frostbite and hypothermia. Combine this scenario with exposure to a wet environment, and trench foot may also be a problem.

What are the most common cold induced illnesses/injuries?

- Hypothermia
- Frostbite
- Trench Foot

What is hypothermia?

Hypothermia occurs when body heat is lost faster than it can be replaced and the normal body temperature (98.6°F) drops to less than 95°F. Hypothermia is most likely at very cold temperatures, but it can occur even at cool temperatures (above 40°F), if a person becomes chilled from rain, sweat, or submersion in cold water.

What are the symptoms of hypothermia?

- Mild symptoms:
 - An exposed worker is alert.
 - He or she may begin to shiver and stomp the feet in order to generate heat.
- Moderate to Severe symptoms:
 - As the body temperature continues to fall, symptoms will worsen and shivering will stop.
 - The worker may lose coordination and fumble with items in the hand, become confused and disoriented
 - He or she may be unable to walk or stand, pupils become dilated, pulse and breathing become slowed, and loss of consciousness can occur. A person could die if help is not received immediately.

What can be done for a person suffering from hypothermia?

- Call 911 immediately in an emergency; otherwise seek medical assistance as soon as possible.
- Move the person to a warm, dry area.
- Remove wet clothes and replace with dry clothes, cover the body (including the head and neck) with layers of blankets; and with a vapor barrier (e.g. tarp, garbage bag). **Do not** cover the face.
- If medical help is more than 30 minutes away:
 - Give warm sweetened drinks if alert (no alcohol), to help increase the body temperature. Never try to give a drink to an unconscious person.
 - Place warm bottles or hot packs in armpits, sides of chest, and groin. Call 911 for additional rewarming instructions.

- If a person is not breathing or has no pulse:
 - Call 911 for emergency medical assistance immediately.
 - Treat the worker as per instructions for hypothermia, but be very careful and do not try to give an unconscious person fluids.
 - Check him/her for signs of breathing and for a pulse. Check for 60 seconds.
 - If after 60 seconds the affected worker is not breathing and does not have a pulse, trained workers may start rescue breaths for 3 minutes.
 - Recheck for breathing and pulse, check for 60 seconds.
 - If the worker is still not breathing and has no pulse, continue rescue breathing.
 - Only start chest compressions per the direction of the 911 operator or emergency medical services —
(Chest compression are recommended only if the patient will not receive medical care within 3 hours)
 - Reassess patient's physical status periodically.

What is frostbite?

Frostbite is an injury to the body that is caused by freezing of the skin and underlying tissues. The lower the temperature, the more quickly frostbite will occur. Frostbite typically affects the extremities, particularly the feet and hands. Amputation may be required in severe cases.

What are the symptoms of frostbite?

- Reddened skin develops gray/white patches.
- Numbness in the affected part.
- Feels firm or hard.
- Blisters may occur in the affected part, in severe cases.

What can be done for a person suffering from frostbite?

- Follow the recommendations described above for hypothermia.
- Do not rub the affected area to warm it because this action can cause more damage.
- Do not apply snow/water. Do not break blisters.
- Loosely cover and protect the area from contact.
- Do not try to rewarm the frostbitten area before getting medical help; for example, do not place in warm water. If a frostbitten area is rewarmed and gets frozen again, more tissue damage will occur. It is safer for the frostbitten area to be rewarmed by medical professionals.
- Give warm sweetened drinks, if the person is alert. Avoid drinks with alcohol.

What is immersion/trench foot?

Trench Foot or immersion foot is caused by prolonged exposure to wet and cold temperatures. It can occur at temperatures as high as 60°F if the feet are constantly wet. Non-freezing injury occurs because wet feet lose heat 25-times faster than dry feet. To prevent heat loss, the body constricts the blood vessels to shut down circulation in the feet. The skin tissue begins to die because of a lack of oxygen and nutrients and due to the buildup of toxic products.

What are the symptoms of trench foot?

- Redness of the skin, swelling, numbness, blisters

What can be done for a person suffering from immersion foot?

- Call 911 immediately in an emergency; otherwise seek medical assistance as soon as possible.
- Remove the shoes, or boots, and wet socks.
- Dry the feet.

How can cold stress be prevented?

Although OSHA does not have a specific standard that covers working in cold environments, employers have a responsibility to provide workers with employment and a place of employment which are free from recognized hazards, including cold stress, which are causing or are likely to cause death or serious physical harm to them ([Section 5\(a\)\(1\) of the Occupational Safety and Health Act of 1970](#)). Employers should, therefore, train workers on the hazards of the job and safety measures to use, such as engineering controls and safe work practices, that will protect workers' safety and health.

Employers should train workers on how to prevent and recognize cold stress illnesses and injuries and how to apply first aid treatment. Workers should be trained on the appropriate engineering controls, personal protective equipment and work practices to reduce the risk of cold stress.

Employers should provide engineering controls. For example, radiant heaters may be used to warm workers in outdoor security stations. If possible, shield work areas from drafts or wind to reduce wind chill.

Employers should use safe work practices. For example, it is easy to become dehydrated in cold weather. Employers therefore, can provide plenty of warm sweetened liquids to workers. Avoid alcoholic drinks. If possible, employers can schedule heavy work during the warmer part of the day. Employers can assign workers to tasks in pairs (buddy system), so that they can monitor each other for signs of cold stress. Workers can be allowed to interrupt their work, if they are extremely uncomfortable. Employers should give workers frequent breaks in warm areas. Acclimatize new workers and those returning after time away from work, by gradually increasing their workload, and allowing more frequent breaks in warm areas, as they build up a tolerance for working in the cold environment. Safety measures, such as these, should be incorporated into the relevant health and safety plan for the workplace.

Dressing properly is extremely important to preventing cold stress. The type of fabric worn also makes a difference. Cotton loses its insulation value when it becomes wet. Wool, silk and most synthetics, on the other hand, retain their insulation even when wet. The following are recommendations for working in cold environments:

- Wear at least three layers of loose fitting clothing. Layering provides better insulation. Do not wear tight fitting clothing.
 - An inner layer of wool, silk or synthetic to keep moisture away from the body.
 - A middle layer of wool or synthetic to provide insulation even when wet.
 - An outer wind and rain protection layer that allows some ventilation to prevent overheating.
- Wear a hat or hood to help keep your whole body warmer. Hats reduce the amount of body heat that escapes from your head.
- Use a knit mask to cover the face and mouth (if needed).
- Use insulated gloves to protect the hands (water resistant if necessary).
- Wear insulated and waterproof boots (or other footwear).

Safety Tips for Workers

- Your employer should ensure that you know the symptoms of cold stress.
- Monitor your physical condition and that of your coworkers.
- Dress properly for the cold.
- Stay dry in the cold because moisture or dampness, e.g. from sweating, can increase the rate of heat loss from the body.
- Keep extra clothing (including underwear) handy in case you get wet and need to change.
- Drink warm sweetened fluids (no alcohol).
- Use proper engineering controls, safe work practices, and personal protective equipment (PPE) provided by your employer.

How to Recognize a Natural Gas Leak

Look for signs of a possible leak:

- Persistent bubbling in standing water
- Discolored or dead vegetation around the pipeline area
- Dense white cloud or fog
- Slight mist of ice
- Unexplained frozen ground near the pipeline

Listen for any unusual noise:

- Whistling, hissing or roaring sound

Smell:*

- Distinctive, strong odor, often compared to rotten eggs or sulfur

(*Some persons may not be able to smell the odor because they have a diminished sense of smell, olfactory fatigue (normal, temporary inability to distinguish an odor after prolonged exposure to it) or because the odor is being masked or hidden by other odors that are present in the area, such as cooking smells or damp, musty, or chemical odors.)

In addition, under certain rare circumstances, odor fade (the loss of odorant so that it is not readily detectable by smell) can occur. Odor fade is caused by physical and chemical processes. Other factors that may cause odor fade include: construction and configuration of the customer's gas facilities; presence of rust, moisture, liquids, or other substances in the pipe; gas composition, pressure, and flow; intermittent, little, or no gas flow over an extended period that normally lasts until the gas flow increases or becomes more frequent; new pipe installations; steel and larger pipes; and certain types of dry soil.)

If you have reason to believe that there is a gas leak, call 911, then the local utility company immediately.

Always Better To Be Safe Than Sorry!