



► **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 November 2018:** • *TRAINING CENTER - 1760 BROAD ST, UNIT H, MILLIKEN, CO 80543* • [read more...](#)



OSHA / CONSTRUCTION NEWS SUMMARY

► **National Emphasis Program on Trenching and Excavation Safety**

According to the **Bureau of Labor Statistics**, excavation and trench-related fatalities in **2016** were nearly **double** the average of the **previous five years**. [read more...](#)



►  **Daylight Savings Sunday Nov 4th** [read more...](#)

► *Take time to thank a Veteran, not just on November 11th, Veteran's Day, but every opportunity you get!* [read more...](#)



TRANSPORTATION NEWS SUMMARY

► **Beef, Bee Orgs Petition FMCSA to Allow Livestock Drivers 16-Hour On-Duty Period, 15-Hour Drive Time**

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► **Winter Driving Preparedness** [read more...](#)

CDOT Winter Driving Assistance Programs [read more...](#)

► **DOT Begins Congressionally Required Audit of FMCSA's Outline for Overhauling CSA**

The **Federal Motor Carrier Safety Administration's** punch list for how it intends to reform the **Compliance, Safety, Accountability (CSA)** program is now under an internal audit by the **U.S. DOT**, as required by Congress in the **2015 FAST Act**. [read more...](#)

► **FMCSA Approves Vision Requirement Exemptions for 88 Drivers**

Eighty-eight drivers with vision impairments in one eye will be allowed to operate **commercial trucks** across state lines, the **Federal Motor Carrier Safety Administration** announced **Oct 25**. [read more...](#)

Wishing you all the best this holiday season!

▶ **Industry Comments Lean Toward Adjusting HOS Rules, FMCSA's Jim Mullen Notes**

Jim Mullen, chief counsel for the **Federal Motor Carrier Safety Administration**, indicated that the **bulk** of the more than **5,000 online comments** the agency received **regarding** potential changes to **hours-of-service rules** supported **tweaking** the **regulations** to increase **flexibility**. [read more...](#)

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▶ **Court Says Pre-employment Screening Data Lawsuits Must Show 'Concrete Damage'**

A federal appeals court has ruled that **truck drivers** cannot be **awarded legal damages** merely because there is **inaccurate** information about their **safety violations** and **crash data** listed in the federal **Pre-employment Screening Program** database. [read more...](#)

▶ **Trucking rap sheet: Drivers busted with drugs, CDL testing schemes, more**

Action in five trucking-related crimes - including drug busts, CDL schemes and DOT medical exam fraud - has recently been reported by the **Department of Transportation's Office of Inspector General**; the **Norman (Oklahoma) Police Department**; and **Indiana State Police**. [read more...](#)

▶ **Marijuana Legalization Poses Perplexing Issue for Industry**



There is a great unknown for how federal and state enforcement authorities as well as trucking companies will come to grips with the proliferation of state laws permitting medical and recreational use of marijuana, a panel of trucking executives said. [read more...](#)

MORE FMCSA EXEMPTIONS

▶ **FMCSA Grants Short-Haul Concrete Pumpers Waiver For 14-Hour Work Day** [read more...](#)

▶ **FMCSA Grants Fuel Tank Drivers 5-Year Rest-Break Exemption** [read more...](#)

▶ **FMCSA Grants Waste Management HOS Exemption** [read more...](#)

MSHA NEWS SUMMARY

▶ **MSHA begins enforcing new Workplace Exams Rule**

On **Oct. 1, 2018**, the **Mine Safety and Health Administration (MSHA)** began actively enforcing the new **Workplace Examinations Rule** requirements that technically went into effect on **June 2**. [read more...](#)



▶ **MSHA Serious Accident Alert - Plant - Structural**

Sand and Gravel – On September 19, 2018, **two miners** were **injured** when a building **partially collapsed** during **construction**. One miner was **transported** to a **local hospital** and the other **miner** was treated at the mine and released. [read more...](#)

Best Practices:

MONTHLY SAFETY & HEALTH TIP NEWS SUMMARY

▶ **PREP YOUR HOME FOR WINTER WITH THESE 16 LOW-COST TRICKS**

Using these tips to fix gaps, cracks and inefficiencies will make your home cozier and more affordable in cold weather.

Heating costs can **throw a wrench** into your **winter budget** — and the **cold** can make you **cranky**. But you can **limit** the **discomfort** by addressing the **gaps**, **cracks** and **waste** that drive up **fuel costs**. Such **fixes** are available at a **lower price** than you might imagine. [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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- ~PEC SafelandUSA Basic Orientation
- ~OSHA 10 Hour General Industry
- ~OSHA 30 Hour General Industry
- ~NUCA Confined Space
- ~Hydrogen Sulfide [H₂S] - Awareness
- ~Respirator: Medical Evaluation & Fit Testing
- ~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
- ~Instructor Development for Medic 1st 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**

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

- **PEC Safeland Basic Orientation: November 8, 16, 27; 8 – 4:30**
- **First Aid/CPR/AED/BLOODBORNE PATHOGENS: November 15; 8 – noon**
(We offer MEDIC FIRST AID)
- **TEEX H2S Operator Training – Awareness (ANSI Z390-2017 Course): November 15; 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

— FEATURED TRAINING PROGRAMS —

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

— ALSO OFFERING —

- PEC Basic 10 — 2 days that cover both Safeland and OSHA 10 for General Industry in 1 class

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OSHA/CONSTRUCTION

National Emphasis Program on Trenching and Excavation Safety

According to the **Bureau of Labor Statistics**, excavation and **trench-related fatalities** in 2016 were nearly **double** the average of the **previous five years**. The **U.S. Department of Labor's Occupational Safety and Health Administration (OSHA)** has made **reducing trenching and excavation hazards** the **Agency's Priority Goal**. Trench collapses, or **cave-ins**, pose the **greatest risk to workers' lives**. It is **highly likely** that an **inspector** may be **visiting your jobsites soon**.

OSHA has updated the [National Emphasis Program \(NEP\)](#) on **preventing trenching and excavation collapses** in response to the **recent spike in trenching fatalities**.

OSHA's NEP will **increase education and enforcement efforts** while its **inspectors** will record **trenching and excavation inspections** in a **national reporting system**, and each area **OSHA** office will **develop outreach programs**. **Increased inspections and enforcement are expected**.

"**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**."

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

OSHA has **developed a series of [compliance assistance resources](#)** to help **keep workers safe from trenching and excavation hazards**.



Overview

To prevent cave-ins:

- **SLOPE** or bench trench walls
- **SHORE** trench walls with supports, or
- **SHIELD** trench walls with trench boxes



Employers should also ensure there is a safe way to enter and exit the trench. Keep Materials away from the edge of the trench. Look for standing water or atmospheric hazards. Never enter a trench unless it has been properly inspected.

[29 CFR 1926.650](#), [29 CFR 1926.651](#), and [29 CFR 1926.652](#) are applicable OSHA standards.



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 help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance.

Daylight Savings Sunday Nov 4th

Beef, Bee Orgs Petition FMCSA to Allow Livestock Drivers 16-Hour On-Duty Period, 15-Hour Drive Time

A group of organizations representing cattle farmers and honey bee producers has filed a petition with the **Federal Motor Carrier Safety Administration** asking the agency to allow drivers hauling livestock, bees and fish 16 hours of on-duty time and 15 hours of drive time per shift.

Current [hours of service regulations](#) limit livestock drivers to 14 hours on duty and 11 hours of drive time after a 10-hour off-duty period, but their clock begins only after they have left a 150-air-mile radius of the source of the livestock (such as a ranch or sale barn). The petition filed to FMCSA would retain the 10-hour off-duty period but extend their work days from the current limits. These hours limits would also only begin after a driver hauling livestock leaves the 150-air-mile radius of the stock's source.

The groups write that, if the petition is granted, drivers wanting the extended allotment of hours would need to complete training on pre-trip planning and fatigue management.

The National Cattlemen's Beef Association announced the petition mid-October. Other groups signing off on the petition include the Livestock Marketing Association, the American Farm Bureau Federation, the American Beekeeping Federation, the American Honey Producers Association and the National Aquaculture Association.

FMCSA has not yet published the petition, though it could publish it in the *Federal Register* and accept public comments on the proposal.

Livestock and bee haulers have been exempt from ELD compliance so far, with the most current waiver allowing them until Dec. 7 to continue to run on paper logs. However, Congress could extend that until the end of September 2019.

"We are concerned that the 11- and 14-hour rules were not drafted with livestock haulers in mind and thus do not accommodate the unique character of their loads and nature of their trips," the organizations wrote in their petition. The current requirements "place the well-being of livestock at risk during transport and impose significant burdens on livestock haulers, particularly in rural communities across the country."



Take time to thank a Veteran, not just on November 11th, Veteran's Day, but every opportunity you get!

ATRI Looking to Create Database of ELD Data, Soliciting Participants

The American Transportation Research Institute, a non-profit research arm of the American Trucking Associations, announced recently it is looking for fleets and owner-operators to share logging data from their electronic logging devices in hopes of creating an ELD database. The group says the data will be kept anonymous.

ATRI says it would “collect and warehouse” the data as a means to

conduct research and add “scientifically valid analysis” to studies it undertakes.

“The new data generated by ELDs can provide a wealth of insight and research support to our industry,” said a Co-President of Boyle Transportation and ATRI Board Member.

“But we clearly need a trusted third-party facilitator to manage and monitor how the information is used. ATRI is uniquely suited to serve that role. In the right context, ELDs can provide the real-world data needed to guide future regulations and initiatives.”

To learn how to participate in the clearinghouse by providing ELD data, [visit this link](#).

ATRI will also host a webinar in November with more information on how to participate.



Winter Driving Preparedness

Automotive Checklist

Before you leave on a road trip, make sure all of the following are in safe operating condition:

- Windshield Wiper Fluid
- Heater/Defroster
- Wiper Blades Antifreeze
- Lights
- Fuel System and a Full Tank of Gas
- Ignition
- Exhaust System
- Tire Tread
- Battery Brakes



- Flares/reflectors to signal for help and warn other motorists
- Sturdy scraper/snow brush/snow shovel to clear snow
- Battery or crank-powered radio to listen to emergency broadcasts
- Flashlight with extra batteries or crank-powered flashlight
- Survival blanket or sleeping bag
- Chemical hand warmers
- Extra set of clothes, including coat, hat, mittens, boots, etc.
- Gallon jug of water and nonperishable food
- First Aid Kit and essential medications
- Tire chains and tow strap
- Non-clumping kitty litter/sand for traction
- Jumper cables
- Extra cloth or paper towels for cleanup if necessary
- Deck of cards or board game for entertainment

Safety Checklist

Make sure you have the following items in your vehicle in case of an emergency:

CDOT Winter Driving Assistance Programs

CDOT's Heavy Tow or Quick Clearance winter program provides standby heavy wreckers at strategic locations along I-70, between Floyd Hill and Vail Pass, allowing stalled and spun-out commercial vehicles to be moved quickly from traffic lanes to a safe location. This program, which began in 2008, continues to be successful at reducing traffic congestion and delays along the Interstate 70 West corridor. Quick Clearance begins each year during the Thanksgiving weekend and ends in late April. It can also be implemented during holidays or other occasions, such as severe storms. Before implementation of the Quick Clearance program, the average time to clear a commercial vehicle from a traffic lane was approximately 50 minutes.

Statistics:

November 2008 - April 2009

- 184 commercial vehicles relocated
- 217 lanes were cleared
- Average clearance time – 23 minutes (reduced from 27 minutes during January-April 2008, the program's first season)

November 2009 - April 2010

- 212 commercial vehicles relocated
- 245 lanes cleared
- Average clearance time – maintained at 23 minutes

November 2010 - April 2011

- 193 commercial vehicles relocated
- 214 lanes cleared
- Average clearance time – reduced to 22 minutes

The program provides benefits that far outweigh the cost, which is about \$500,000 a year. Studies have shown that for every hour the I-70 West Corridor is closed to traffic, it can have an economic impact of up to \$800,000, with a majority of those revenues affecting surrounding communities. To help truckers comply with [Colorado's chain law](#), CDOT's Chain Assistance Program is operating for the fourth straight year. When the chain law is in effect, it allows drivers to *purchase* chains and chain-up service when approved vendors are present at any one of the 21 chain stations along I-70 between Dotsero and Denver West Boulevard. CDOT representatives frequently visit the stations when assistance is taking place, inspecting and assuring quality service is being provided. Outside of Colorado...check with the local authority.

DOT Begins Congressionally Required Audit of FMCSA's Outline for Overhauling CSA

The **Federal Motor Carrier Safety Administration's** punch list for how it **intends** to reform the **Compliance, Safety, Accountability** (CSA) program is now **under** an **internal audit** by the **U.S. DOT**, as required by **Congress** in the **2015 FAST Act**.

FMCSA released its **reform plan** in **July** and filed it to **Congress** in **August** — both **requisites** of the **FAST Act**, which also **required** the **U.S. DOT's** Office of Inspector General (**OIG**) to assess the **agency's plan**. The **DOT OIG** said **Oct. 15** that it **“plans to begin** the audit **immediately.”**

The so-called **corrective action** plan for **CSA** is based on a **report** issued by the **National Academies of Science** and **recommendations** it offered the **agency** for how to fix the **data** and scoring **calculation issues** that plagued the **program** from its **2011 onset**. The **NAS report** was also **required** by **2015's FAST Act**.

In short, **FMCSA's** 10-page report **calls** for **replacing** the existing **CSA Safety Measurement System** with a new **scoring** system and **improving** the quality of **data** the **agency** uses to **score carriers**. The **agency** also says it **wants** to make it **easier** for carriers to **calculate** their **scores**. It may also **add** an **absolute scoring** system, instead of **relying solely** on **relative** scores that compare **carriers** to their **peers**.

The **goal** of the **reforms** is to better achieve **FMCSA's** goal of **identifying unsafe** carriers and **intervening**.

The **agency** said in **July** it planned to **begin testing** a new scoring **method** in September on a **small scale**.

The **OIG's** review seeks to **determine** “the **extent** to which **FMCSA's** **corrective action** plan addresses the **NAS recommendations** and other **relevant recommendations** and identify challenges **FMCSA** may **face** when **implementing** the **corrective action plan,**” according to an **OIG memo** issued **Oct. 15**.

FMCSA Approves Vision Requirement Exemptions for 88 Drivers

Eighty-eight **drivers** with **vision impairments** in **one eye** will be **allowed** to operate **commercial trucks** across state lines, the **Federal Motor Carrier Safety Administration** announced **Oct 25**.

The **agency** indicated in the **Federal Register** that the **drivers demonstrated** an **ability** to **properly operate** the **vehicles** and met **requisite medical** standards. The **exemptions** will **expire** in **two years**.

Per the **announcement**, the **agency** said it had **“evaluated** the **eligibility** of these **applicants** and **determined** that **renewing** these **exemptions** would **achieve** a level of **safety equivalent** to or **greater than** the level that would be **achieved** by **complying** with the **current regulation.”**

On **Oct, 24**, the **agency** announced it had **received** applications from **11 drivers** requesting an **exemption** from the federal **vision requirement** to **operate** a commercial motor **vehicle** in **interstate commerce**. The **public** may comment about their applications through **Nov. 23**.

“We will **consider** all **comments** and **material** received before the **close** of business on the **closing date** indicated in the **dates section** of the **notice,**” **FMCSA** noted in the **Federal Register**.

If **granted**, the **exemptions** would **enable** the **drivers** to **operate commercial** motor **vehicles** in **interstate commerce** without meeting **prescribed vision** requirements.

Industry Comments Lean Toward Adjusting HOS Rules, FMCSA's Jim Mullen Notes

Jim Mullen, chief counsel for the **Federal Motor Carrier Safety Administration**, indicated that the **bulk** of the more than **5,000 online comments** the agency received **regarding** potential changes to **hours-of-service rules** supported **tweaking** the **regulations** to increase **flexibility**.

FMCSA published an **Advance Notice of Proposed Rulemaking** on Aug. 23 concerning the **shorthaul HOS limit**, the **HOS exception** for **adverse driving** conditions, the **30-minute rest-break** provision and the **split sleeper-berth rule** to allow **drivers** to divide their **required rest** time in the **sleeper berth**. The agency then **hosted five** listening sessions around the **country** to get **industry feedback** on these **rules**.

The **ANPRM** garnered **thousands** of **comments** by the time it closed Oct. 10. **FMCSA** officials are **sifting** through them to determine **potential changes** and **assess** the safety **implications** such changes would **entail**.

"What we're **doing now** is going through all **5,200 comments**," Mullen said before a crowd of **industry members** at **American Trucking Associations' Management Conference & Exhibition** on Oct. 28. "We **must** and we **will** respond to **all 5,200 comments**."

In its ANPRM, the agency sought answers from stakeholders in four general areas:

- Should the agency expand the current 100 air-mile "shorthaul" exemption from 12 hours on-duty to 14 hours on-duty, to be consistent with the workday rules for longhaul truck drivers?
- Is there adequate flexibility in the adverse driving exception that currently expands driving time by up to two hours?
- If the 30-minute rest break after eight hours of driving did not exist, would drivers obtain adequate rest breaks throughout a daily driving period to relieve fatigue?
- Do you have information that would support reinstating the option for splitting up the required 10-hour off-duty rest break for drivers operating trucks with sleeper-berth compartments?

The **majority** of **responders** recommended **eliminating** the **30-minute rest break**. Mullen said **many drivers** claimed they **don't mind** taking **30-minute breaks** but would **rather not** be told when to **take them**.

Commenters also **responded** in favor of **allowing** sleeper berth **drivers** to **divide** their rest time instead of **resting** for **10 hours straight**. The top vote among **responders** was for dividing **rest hours** into a **5/5 split**. Mullen **acknowledged** the plethora of **sleep studies**, which run the **gamut** of defending both long, **restorative rest** and **short sleep breaks**.

The **responses** reflected a **strong desire** to extend the **100 air-mile "shorthaul" exemption** to **150 air-miles**.

Respondents also supported adding **two hours** of driving time in the **case** of **adverse conditions**. Mullen said the **agency** also has **decided** to **reassess** what constitutes **adverse conditions**.

Mullen said the **electronic logging device** mandate, which took effect in **December**, was a **key step** in **considering** possible **changes** to **HOS rules**.

"The **ANPRM** is not **definitive**," Mullen said. "These are the **issues** we wanted **feedback** on. We want to **get it right**."

For **most** of the **hourlong session**, Mullen took **questions** from **audience** members. Kevin Stewart, president of the **Pennsylvania Motor Truck Association**, said he **appreciated** the session because it **allowed drivers** and trucking executives to get an **idea** of the **comments** without having to **read thousands** of them. "I thought the **session** was **excellent**. Unless you sit there and **read** through all **5,000 comments**, it's kind of **nice** to know where those **comments** are **ranked**."

Houston Brittain, director of **risk management** for Miller Truck Lines, **attended** the **session** to learn about **possible changes** to **HOS rules**, which his drivers **frequently ask** him about. Miller is **based** in Tulsa, Okla.

Brittain said **FMCSA's** openness to **hearing** from **industry representatives** through **listening sessions** is a **positive sign**. "It seems to me we have a **pretty good** relationship with **FMCSA** that they're **willing** to sit and **listen** to us. I feel **very confident** that they're **listening** to us and doing **everything** they can to **help us**."

Hair Testing Provisions Enacted as Part of Opioid Measure



President Trump, on Oct. 24, signed into law legislation aimed at tackling opioid abuse.

The law includes provisions on hair testing that were advocated by **American Trucking Associations**.

The legislation also directs the **Substance Abuse and Mental Health Services Administration** to report to Congress on **issuing guidelines** for **hair testing**. The **secretary of health and human services** must report to **House and Senate commercial transportation committees** on the **status** for **hair testing** guidelines.

Also, reporting **requirements** on the **development** of the **Drug and Alcohol Clearinghouse** are part of the law.

"Our **fleets** need to **depend** on the **most accurate, reliable** and **fail-safe** drug testing **methods** available today, and this **legislation** pushes the **federal government** to **recognize** those means of **testing**," said Bill Sullivan, **ATA's** executive vice president of **advocacy**. "We thank our **champions** in **Congress**."

"The **opioid crisis** is a **nationwide epidemic** that needs to be **fought** on all **fronts**, which means **Congress** has a **critical role** to play in providing **important tools** to **communities** that are **facing** this issue **head-on**," **Commerce Committee Chairman John Thune** (R-S.D.) said after the **chamber's passage** of the **bill** in **September**. "I'm **proud** of the **collective effort** that **senators** from both sides of the **aisle** have dedicated to **finding common ground** to address this **ongoing problem**."

Court Says Pre-employment Screening Data Lawsuits Must Show 'Concrete Damage'

A federal appeals court has ruled that truck drivers cannot be awarded legal damages merely because there is inaccurate information about their safety violations and crash data listed in the federal Pre-employment Screening Program database.

The U.S. Court of Appeals for the District of Columbia decision recently came in a six-year-old lawsuit involving five drivers seeking damages for inaccuracies in the Federal Motor Carrier Safety Administration's database that provides employers with reports containing crash data from the previous five years and inspection data from the previous three years.

The appeals court sent two of the drivers back to the lower court on remand to seek monetary damages because some of the inaccurate data was disseminated to prospective employers, but said the other three drivers did not suffer "injury sufficiently concrete to confer standing to seek damages."

Maintaining the data contained in the Motor Carrier Management Information System database used for the Pre-employment Screening Program requires collaboration among state and federal authorities, the appeals court said.

"States serve as the primary reporters of information — they are obligated by statute to collect and report accurate, complete and timely motor carrier safety data," the court said. "For its part, the department [FMCSA] must ensure, to the maximum extent practical that all the data is complete, timely and accurate, and prescribe technical and operational standards to ensure uniform, timely and accurate information collection and reporting by the states."

The court said that motor carriers, shippers and other firms looking to hire truck drivers can access the driver information in the database.

As a further way to guarantee the accuracy of the database, FMCSA established the DataQs web-based dispute resolution procedure to allow drivers to challenge data.

The lawsuit was filed by the Owner-Operator Independent Drivers Association on behalf of the five drivers. It established that the drivers all challenged their situations in court — one driver was found not guilty and the others had their citations dismissed. Four of the five drivers asked that their inaccurate records be removed from the database, but the requests were rejected by the agency, according to court documents.

At the federal district court level, FMCSA argued that the lawsuit lacked jurisdiction and that the drivers had failed to prove they were damaged. The lower court dismissed the lawsuit on a summary judgment motion by FMCSA attorneys.

The appeals court said the Supreme Court standard requires drivers to prove "concrete injury," not just a procedural violation.

"To begin with, the drivers have identified no historical or common-law analog where the mere existence of inaccurate information, absent dissemination, amounts to concrete injury," the appeals court wrote.

"To be sure, it is possible that the mere existence of inaccurate information in a government database could cause concrete harm depending on how that information is to be used. We conclude only that, under the specific circumstances of this case, the drivers have failed to show standing for all of the relief they seek."

"OOIDA is pleased that the D.C. Circuit has agreed with its position that FMCSA, and not the states, bears responsibility for the accuracy of driver safety records available for dissemination from its databases, and has recognized the real-world damage that these inaccurate records pose to the employment prospects for drivers," OOIDA said in a statement. "OOIDA is evaluating the opinion to determine its options on remand."

Trucking rap sheet:

Drivers busted with drugs, CDL testing schemes, more

Action in five trucking-related crimes - including drug busts, CDL schemes and DOT medical exam fraud - has recently been reported by the Department of Transportation's Office of Inspector General; the Norman (Oklahoma) Police Department; and Indiana State Police.

► Driver busted in Indiana with \$5 million worth of drugs

A California-licensed truck driver was arrested by Indiana State Police on Oct. 30 after inspection officers found approximately \$5 million worth of drugs in the trailer during an inspection.

ISP reports the truck was pulled in for a routine DOT inspection, and officers noticed several "criminal indicators" in conversation with the driver. A search of the tractor-trailer yielded 220 pounds of suspected cocaine and 65 pounds of suspected methamphetamine.

Ravninder Singh Kaler, age 22, of Bakersfield, California, was arrested and charged with a felony count of dealing narcotics and a felony count of possession of narcotics.

► Trucker caught with \$4.4 million in liquid meth in fuel tank

A truck driver and passenger were arrested Monday, Oct. 22 when police found \$4.4 million worth of liquid methamphetamine in the passenger side fuel tank of a parked tractor-trailer. The Norman Police Department says it's among the largest drug seizures in Oklahoma state history.

The Norman Police Department reports its officers found 1,262 pounds of liquid meth inside the semi-truck in the parking lot of a hotel.

Arrested were 36-year-old Enrique Lara and 21-year-old Jasmine Morales for aggravated trafficking. They were booked into the Cleveland County Detention Center.

► Mississippi CDL examiner sentenced in fraud scheme

Derrious Dillon was sentenced Oct. 2 to two years in prison, one year of supervised release, a \$1,500 partial fine and a special assessment of \$100 for his role in a fraudulent CDL skills testing scheme.

According to OIG, Dillon worked for a company that provided training and certification for drivers seeking CDLs. He was fired in 2014, and he obtained a list of CDL instructors authorized in Mississippi, along with their identification numbers. He used that information to prepare fraudulent paperwork, which he gave to people looking to obtain a CDL in exchange for between \$200 and \$400 each.

The drivers used the fraudulent paperwork to obtain CDLs, and some CDL holders admitted they never took the skills test.

► California man sentenced in fraudulent CDL scheme

Damanpreet Singh was sentenced Sept. 14 to two years in prison, three years of supervised release and a \$100 special assessment fee after pleading guilty to one count of conspiracy to commit bribery.

Singh allegedly conspired with two California DMV employees, Lisa Terraciana and Aaron Gilliam, to accept bribes to alter DMV records to show people had passed tests needed to obtain a CDL.

OIG reports at least 60 drivers' records were fraudulently updated. Singh reportedly received approximately \$90,000, some of which he paid to his co-conspirators.

► Pennsylvania doctor charged in DOT medical exam fraud case

Dr. Michael A. McCormick, a DOT-certified medical examiner, has been charged with making a false writing or document and aiding and abetting others in the making of a false writing or document that contained a materially fake statement.

OIG reports that in April 2017, McCormick caused staff at his business, Express Med Urgent Care, to conduct a DOT physical on a patient wanting to drive a commercial vehicle. The staff members were not certified medical examiners but completed the exam and issued a DOT Medical Examiner's Certificate under McCormick's name.

McCormick allegedly knew the certificate and report were false because he didn't perform the exam.

Marijuana Legalization Poses Perplexing Issue for Industry



There is a great unknown for how federal and state enforcement authorities as well as trucking companies will come to grips with the proliferation of state laws permitting medical and recreational use of marijuana, a panel of trucking executives said.

“The legalization of marijuana is an issue that is not really an if, but a when,” said Abigail Potter, manager of safety and occupational policy for American Trucking Associations. “This really has opened up the accessibility of marijuana, and has really started to break down the stigmas of marijuana use.”

Potter and two other trucking executives spoke at an Oct. 28 session at ATA’s 2018 Management Conference & Exhibition.

Currently, 31 states and the District of Columbia have medical marijuana statutes on the books while nine states and the District have laws permitting the recreational use of the Schedule 1 drug, Potter said.

The developments have had implications for truckers understanding the scope of the new laws, and also the effect on employment and business issues, she said.

For the industry, interstate truck drivers are outright not permitted to use marijuana, much less have certain levels in their system while driving.

In addition, federal laws do not permit trucking companies to transport marijuana, nor do law enforcement officers currently have equipment to field test drivers for marijuana, other than taking drivers into their stations and conducting blood tests if they appear impaired at roadside, Potter said.

“Right now, there really isn’t a test that can be done to detect actual influence for marijuana,” she said. “That’s a problem.”

In Colorado, one of the states that allows medical and recreational use, there were 500,000 medical permits issued before recreational use became law, Colorado Motor Carriers Association President Greg Fulton said.

“Little did we know at that time how much pain our young people were in,” he said, tongue-in-cheek.

Fulton said there has been a proliferation of marijuana dispensaries in the state, one located even directly across the street from his office. “In Denver right now, we have more dispensaries than we have McDonald’s, Starbucks or Taco Bells combined,” Fulton added. “We’ve been challenged.”

In Canada, where the recreational use of marijuana was made legal effective Oct. 17, officials are seeing the immediate impact on the trucking industry, said Jonathan Blackham, director of policy and public affairs for the Canadian Trucking Alliance.

“It’s just been a huge game changer for us,” Blackham said.

“Going back three years, whenever we had questions related to drug and alcohol or cannabis they were almost exclusively within the context of U.S. DOT regulations,” he added. “Now, we look back over those days as the easy times, the golden days.”

As a result of the new law, the problem for Canadian truck drivers traveling into the United States has become even more complex, Blackham said.

He said the legalization has created a patchwork of rules and regulations in Canada’s 10 provinces and three territories.

“On the work front, what some have been focusing on is trying to strengthen the connection between recent use and likely impairment,” Blackham said.

MORE FMCSA EXEMPTIONS

FMCSA Grants Short-Haul Concrete Pumpers Waiver For 14-Hour Work Day

The **Federal Motor Carrier Safety Administration** has granted a waiver that will allow **concrete pump operators** utilizing the **short-haul log** book exemption to work a **14-hour day** rather than **12 hours**.



The **American Concrete Pumping Association** requested the waiver for all **concrete pump operators** in June. **ACPA** asked the agency to give **concrete pumpers** the same **flexibility** as **ready-mixed concrete** truck drivers who **operate** under the **short-haul exemption**.

ACPA added in its request that allowing **concrete pumpers** to **return** to their **work-reporting location** within **14 hours** instead of **12 hours** **harmonizes hours of service rules** for **concrete pump drivers** with the rules for **drivers** of the **trucks** that supply the **concrete**.

In its decision to **grant** the **waiver**, **FMCSA** says most **drivers** are **allowed** a **14-hour driving window** “with no **evidence of adverse effects**,” and **notes** that **concrete pump drivers** only drive for a **small portion** of their **work day**.

The **waiver** went into **effect on Nov. 1** and will **expire on Oct. 31, 2023**.

FMCSA Grants Fuel Tank Drivers 5-Year Rest-Break Exemption

The **Federal Motor Carrier Safety Administration** has granted a five-year exemption from the 30-minute rest-break requirement for trucks hauling petroleum products and will allow fuel trucks to operate 12 hours a day without triggering the requirement under certain conditions.



FMCSA said that the exemption from the rest break was granted because fuel-truck drivers “receive several short breaks each day when they unload” at service stations.

“This is a great development for our fuel haulers and a shining example of association partnership for trucking advocates,” **National Tank Truck Carriers** President Daniel Furth said in a statement. “We are thrilled that the agency agrees that this relief will lower costs for carriers and prices for consumers without compromising safety on our nation’s roadways.”

Federal regulations require a 30-minute rest break for drivers once they reach eight consecutive hours.

NTTC and the **Trucking Association** of Massachusetts jointly applied for the exemption in September.

The organizations requested that **FMCSA** exempt the fuel-truck drivers who would be on duty more than 12 hours as long as their vehicles were carrying petroleum products and were equipped with an electronic logging device.

NTTC’s membership consists of more than 600 companies that specialize in bulk transportation services by cargo tank throughout North America. The tank truck industry generates about 6% of all truck freight revenue,

but that represents 30% of all truck freight in terms of tonnage due to the heavy nature of the liquid bulk products it handles, **NTTC** said.

FMCSA agreed that the time these drivers spend unloading provides rest that is equivalent to, and often greater than, rest from the traditional 30-minute rest break. For that reason, the exemption allows the drivers a 14-hour window to make their fuel runs.

In the exemption request, the groups said that tank trucks normally are loaded with products in the morning and deliver them to three or more service stations during the rest of the duty day.

“Most of the estimated 38,000 vehicles engaged in such transportation each day qualify for the 100 air-mile radius exception, but on rare occasions, they do not,” the April 9 **Federal Register** announcement said.

FMCSA said it received nine public comments on the exemption request, four in favor of the application and five opposed. **American Trucking Associations** was in favor, citing the similarity of these operations to other hazardous material transporters that previously were granted a more limited exemption from the rest-break requirement.

The **Transportation Trades Department** of the **AFL-CIO** and the **International Association of Firefighters** opposed the **NTTC** application, arguing that allowing the drivers to operate without a rest break imposes unnecessary risks upon the motoring public.

But **FMCSA** said it had tailored the exemption so that it would not lead to abuse of hours-of-service rules.

FMCSA Grants Waste Management HOS Exemption

FMCSA announces its decision to grant Waste Management Holdings, Inc.'s (WMH) request for exemption from the requirement that short-haul drivers utilizing the records of duty status (RODS) exception return to their normal work-reporting location within 12 hours of coming on duty.

The exemption enables all of WMH's drivers who operate commercial motor vehicles (CMVs) to collect waste and recycling materials to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours.

FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

This exemption is effective October 22, 2018, through October 22, 2023.

[Read more](#) in the **Federal Register**.



MSHA begins enforcing new Workplace Exams Rule

On Oct. 1, 2018, the **Mine Safety and Health Administration (MSHA)** began actively enforcing the new [Workplace Examinations Rule](#) requirements that technically went into effect on June 2.

The **National Stone, Sand & Gravel Association (NSSGA)** reports that there are some key differences between the old rule and the new rule, which can be found on a [chart](#) on **MSHA's** website. They include:



- *Conducting exams at least once each shift, before work begins or as miners begin work in a working place;*
- *Recording on the workplace examination form a description of each adverse condition found that is not corrected promptly;*
- *Promptly notifying miners in affected areas of such conditions; and*
- *Recording the date such conditions were corrected.*

The rule broadens the time in which a competent person can conduct workplace exams from just before the shift to “as work begins.” It also only warrants documentation of those hazards that cannot be “promptly” corrected. **MSHA** defined “promptly” as “before miners are potentially exposed to adverse conditions.”

Additional information, including [FAQs](#) and sample templates for examinations, can be found on **MSHA's** website.

The **NSSGA** says it is somewhat pleased with relatively positive changes proposed last September, but remains concerned that the rule over-reaches by dictating specific times for conducting workplace exams or documentation requirements. The **NSSGA** is also not convinced that the agency ever credibly demonstrated a need for changes to the decades-old workplace exams rule.



MSHA Serious Accident Alert - Plant - Structural

Sand and Gravel – On September 19, 2018, two miners were injured when a building partially collapsed during construction. One miner was transported to a local hospital and the other miner was treated at the mine and released.

Best Practices:

- Construction should sequence in a systematic manner according to the design drawings.
- Ensure a competent person conducts structural inspections periodically to identify hazards.
- Temporary bracing should be provided at all times during construction to resist wind, earthquake, and other construction loads.
- Routinely examine metal structures for indications of structural deficiencies (corrosion, fatigue cracks, bent/buckling structural members, loose/missing connectors, broken welds, etc.).
- Report structural damage to the engineer overseeing the construction project.
- Any modifications to column base plates and anchors should be approved by the engineer of record.
- Train all persons to recognize and understand safe job procedures before beginning work. Be alert for hazards created while the work is performed.
- Wear fall protection where there is a danger of falling.
- Remove personnel from the structure when there are high wind speeds or gusts.

PREP YOUR HOME FOR WINTER WITH THESE 16 LOW-COST TRICKS

Using these tips to fix gaps, cracks and inefficiencies will make your home cozier and more affordable in cold weather.

Source: Money Talks News

Heating costs can **throw** a wrench into your **winter budget** — and the **cold** can make you **cranky**. But you can **limit** the **discomfort** by addressing the **gaps**, cracks and **waste** that drive up **fuel costs**. Such **fixes** are available at a **lower price** than you might imagine.

Run through this checklist of fixes to make your house cozier and your heating more affordable this year.

1. Install weatherstripping

Check your home's exterior doors for cold air leaks. Do this from inside the house. The high-tech approach is to use a laser infrared thermal gun to detect cold drafts. The low-tech way is to move a lit candle around the door frame; the flame will blow toward you when there is a draft.

Seal a drafty door by installing foam or felt weatherstripping inside the door frame. Ask at your hardware store for the correct products and installation instructions.

► **Cost:** \$10 to \$20 per package for most standard products.

2. Install a door sweep

Use a door sweep to stop drafts from entering your home under an exterior door. A sweep is a flexible piece of rubber or plastic that's held to the door's lower edge by a strip of aluminum.

► **Cost:** \$5 to \$35.

3. Seal attic air leaks

Find and seal gaps that could be allowing as much as 30 percent of your heated or cooled air to leak outdoors. These leaks can add up to \$300 a year to heating and cooling costs, HouseLogic says.

Pull back attic insulation to find and seal cutouts in drywall for electrical fixtures, pipes, fans and outlets. Also check wiring, chimneys, flues, vent stacks and ducts, and seal them on the inside. Use caulk to fill smaller gaps and pressurized expanding foam for bigger openings.

► **Cost:** Caulk costs about \$2 to \$3 per tube. Expanding polyurethane foam runs less than \$5 for a 12-ounce can.

4. Close the damper

Heated or cooled air flies up the chimney when you leave the fireplace damper open. Make it a habit to shut the flue after the fireplace has cooled.

► **Cost:** \$0

5. Add attic insulation

Insulation keeps warm air inside in the winter and expensively cooled air inside in the summer.

"Typically, houses in warm-weather states should have an R-38 insulation in the attic, whereas houses in cold climates should have R-49," says [This Old House](#), explaining how to install batting-type insulation.

Insulating an attic, basement or crawl space is moderately difficult, and beginners should hire a professional. If you do, ask if you can perform parts of the job to reduce the cost.

Admittedly, insulating is not a cheap job. But the payback can be huge, and you may find rebates and financial incentives. See [Energy.gov's guide](#) to sources and to a calculator to estimate the return on an insulation investment.

► **Cost:** Prices vary, depending on factors such as insulation type, local labor costs and size of the attic.

6. Install a programmable thermostat

A programmable thermostat can save up to \$180 a year on fuel costs, according to EnergyStar. The thermostat can save fuel by automatically lowering (or raising) your home's temperature while you're away. It also keeps temperatures consistent, saving fuel.

Do not use a programmable thermostat with a heat pump unless the thermostat is meant for use with heat pumps.

► **Cost:** • Wi-Fi-enabled "learning" thermostats are expensive — \$250 and up.

• Simpler programmable thermostats start at about \$70.

7. Set the temperature manually — and leave it

You can enjoy fuel savings for free simply by setting your thermostat to one temperature in the morning, another at night and otherwise leaving the thermostat alone. If you're chilly, put on a sweater and warm socks instead of raising the heat.

► **Cost:** \$0.

8. Seal furnace ducts

Heating ducts typically waste 20 to 30 percent of the heated air they carry, losing it to leaks and poor conduction, says [EnergyStar](#). Leaky heat ducts mean higher utility bills and a house that's harder to keep warm.

Appliances like water heaters and furnaces can cause the buildup of dangerous gases like carbon monoxide through a process called backdrafting, according to [EnergyStar](#). Sealing leaks can reduce this risk, but before you start the job ask a heating contractor if you need to have a combustion safety test done first.

You won't be able to reach all of the ducts — some are hidden in walls, ceilings and floors. But you can improve performance by sealing exposed ducts in the attic, crawl space, unfinished basement and garage.

Focus on the places where ducts, vents and registers meet floors, walls and ceilings. Use mastic sealant or metal tape, which are more durable than duct tape, to seal the seams and connections.

► **Cost:** Cheap. A 10-foot roll of 3M rubber mastic tape costs \$12 or less.

9. Replace furnace filters monthly

Dirty furnace filters reduce furnace efficiency and push up heating bills. They also shorten the life of a furnace.

Check and replace the furnace filter monthly in winter or every three months while the system is in operation. Your owner's manual will tell you where it's located. Hold the filter up to the light: If you can't see light through it, you need a new one.

Pleated filters work best because they trap more dirt particles.

► **Cost:** Prices vary. Angie's List says filters cost:

- \$1 each for flat fiberglass
- \$10 each for pleated and polyester
- \$25 each for high-efficiency varieties

10. Keep your furnace running smoothly

Servicing your furnace regularly helps you catch problems before expensive breakdowns, prolong the furnace's life and keep it running more efficiently.

Newer furnaces need professional servicing every two years. Older units require annual servicing.

Check your furnace's manual to see which specific steps are recommended. Ask friends and colleagues for names of good technicians. Find one or two you trust and stick with them.

► **Cost:** This is not a DIY job. You'll pay \$80 to \$150, says a home inspector and Zillow blogger.

11. Insulate the hot water heater

Save on fuel by wrapping older water heaters in a blanket of insulation, an easy DIY project that even a beginner can do. Your utility company has instructions. When insulating a gas or propane water heater, do not cover the burner access.

Do *not* insulate:

- Pre-insulated water heaters. These are newer units with factory installed insulation of R-16 or better (check the manufacturer's label) under the metal shell.
- Water heaters located where the added heat is welcome.
- Water heaters whose manual or paperwork warns against insulating.
- Tankless (on-demand) water heaters.

► **Cost:** \$20 to \$30. Or possibly free: Ask your utility company for any rebates, discounts or freebies. Some utilities offer free insulation and may even install it.

12. Lower the hot water temperature

Hot water heaters typically are set at 140 degrees. Lower the temperature on yours to 120 for fuel savings. You'll reduce the chance of accidental burns, and the water still will be plenty hot for bathing, washing clothes and doing dishes.

► **Cost:** \$0.

13. Plug household leaks

Grab a tube of caulk, a can of spray foam gap-sealer, a pencil and notepad. Tour your home, inside and out, including the basement, to find and fill cracks and gaps in siding, windows and foundation. Note locations of problems you can't fix right away.

Use caulk for small cracks and the foam sealer for bigger gaps. Inside the home use a candle flame or digital thermometer to find where cold air is entering. Pay attention to door frames, windows, skylights, chimneys and vents. Also check openings around appliance vents, electrical and plumbing fixtures and furnace ducts and check the top of basement walls where the foundation meets wood.

► **Cost:** Caulk costs \$2 to \$3 per tube or less. Expanding polyurethane foam costs under \$5 for a 12-ounce can. Dummies.com tells which product to use where.

14. Insulate hot-water pipes

Insulate the hot-water pipes in your basement or crawl space by snapping foam sleeves on them. You'll find pre-slit, hollow-core, flexible foam pipe insulation at hardware stores. Make a note of your pipes' diameters and lengths, and bring the measurements when you shop.

Exposed pipes waste heat by cooling the water as it runs through them. Be sure to include pipes between the hot-water tank and wall. Also insulate cold-water pipes for the first 3 feet after they enter the house.

► **Cost:** Prices and products vary, but a 6-foot piece of half-inch foam insulation can be found for \$2 to \$3.

15. Set ceiling fan blades for winter

Set fan blades to move clockwise in winter, and run fans slowly. The idea is to lift cool air to the ceiling and push heated air down where you can enjoy it. Some fans have a remote control or remote switch. Otherwise, use a ladder and manually adjust the small toggle switch on the fan body. Now set the thermostat a notch lower and enjoy the warmth.

► **Cost:** \$0.

16. Use your window coverings

It's surprising how much insulation curtains, drapes, shades and even mini blinds can provide.

Draw window coverings at night and when you're away to conserve heat in the home. In hot weather, draw window coverings in the morning to keep the house cool, saving money on air conditioning.

► **Cost:** \$0.

(NOTE: These tips are guidelines. For any specific questions about To Do's and practices in your area, be sure to contact a local professional. Costs are approximate and may differ depending on your locale.)