



## Transportation Updates and Regulatory News (TURN)

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### FMC Provides Guidance To Address Supply-Chain Challenges at San Pedro Bay

On June 17, The Federal Maritime Commission (FMC) issued a four-part guidance to address supply-chain challenges at the ports of San Pedro Bay, CA. One part of the guidance recommends that truckers “should be directed to return empty containers to the terminal where they were picked up, allowing [truckers] to make dual moves and reduce the number of chassis required.” FMC also suggested terminals allow appointment-free returns during slow periods, such as nighttime, while noting that some terminals are already following these practices. Other recommendations are notices of cancelled sailings, timelines for receiving export cargo, and creation of an advisory board among carriers, ports, and marine terminal operators. The recommendations are the result of [Fact Finding 29](#) discussions, in which the FMC is using a regional approach to alleviate freight

challenges that have arisen because of the COVID-19 pandemic.

### ASCE Releases Report on the Effects of COVID-19 on America’s Infrastructure

On June 24, the American Society of Civil Engineers (ASCE) released [COVID-19’s Impacts on America’s Infrastructure](#), a status report on the pandemic’s effects on the Nation’s bridges, dams, inland waterways, ports, and roads. ASCE projects a 30-percent revenue decline in the next 18 months for State Departments of Transportation (DOTs) because of declining gas tax revenue. To maintain bridges, roads, and transit systems as safe and reliable and aid the Nation’s long-term economic recovery, ASCE recommends Congress provide \$50 billion in immediate, short-term relief for State DOTs. ASCE’s recommendations to Congress include quickly enacting various other long-term infrastructure-enhancing measures as well. The



2021 ASCE [Infrastructure Report Card](#) will be released in February 2021.

### California Approves World's First Electric Truck Sales Mandate

On June 25, 2020, the 12-member California Air Resources Board (CARB) unanimously approved an electric truck mandate that will require medium- and heavy-duty truck manufacturers to sell a larger percentage of zero-emission vehicles in the State starting in 2024. The [Advanced Clean Truck rule](#), the first of its kind in the world, establishes different sales targets based on the vehicle class. By 2035, about 75 percent of Class 8 big rigs sold will need to be electric. According to CARB, about 8,000 trucks in the Southern California ports will be out of compliance with California emissions regulations by 2022.

### ATRI Releases Report on the Effect of Large Verdict Awards on the Trucking Industry

On June 29, the American Transportation Research Institute (ATRI) released a comprehensive study tracking large verdict awards against the trucking industry and the awards' effects on safety and insurance. Titled [Understanding the Impact of Nuclear Verdicts on the Trucking Industry](#), the report took its data partly from ATRI's new trucking litigation database containing detailed information on 600 cases from 2006 to 2019. The researchers found large verdicts against trucking fleets increased substantially over this period, both in number and in size of awards. In the first 5 years of data, there were 26 cases over \$1 million, versus 300 cases of that size in the last 5 years of data. The research also shows, from 2010 to 2018, verdict awards grew 51.7 percent annually as standard inflation grew 1.7 percent and healthcare costs grew 2.9 percent. The researchers conducted a qualitative analysis based on surveys and interviews with defense

and plaintiff attorneys, as well as insurance and motor carrier experts. The study provides recommendations for modifying pre-trial preparations, litigation strategies, and mediation approaches.

### FMCSA To Provide Flexibility for Random Drug Testing

On July 6, the Federal Motor Carrier Safety Administration (FMCSA) announced that it will [exercise case-by-case discretion](#) about whether or not to enforce its minimum annual percentage random drug-testing rates. The flexibility is to accommodate States' differing responses to COVID-19, including different staffing levels and reopening timetables. The agency will also decide, case by case, whether to enforce its requirement for testing dates to be spread throughout the calendar year. For calendar year 2020, the standard required driver selection rates remain at 50 percent of employers' average number of driver positions for controlled-substance testing and 10 percent for random alcohol testing. Late last year, FMCSA increased the annual random selection rate for drug testing from 25 percent to 50 percent. To be considered for an exemption, carriers must document in writing their reasons for noncompliance. FMCSA stressed the current random testing requirements are not suspended, and employers who can meet them must continue to do so. The enforcement change applies to 2020, but FMCSA may also exercise discretion in motor carrier investigations occurring in 2021.

### FWHA Awards \$15.1 Million in Surface Transportation Alternative Grants

On July 9, the Federal Highway Administration (FHWA) [awarded](#) \$15.1 million in Surface Transportation System Funding Alternatives grants. Enacted in 2015, the program supports States in exploring user-based revenue mechanisms for funding highway infrastructure



projects, such as miles-based user fees (MBUF) and road user charges. The MBUF system uses technology to tabulate how far a vehicle has traveled, which helps determine how much it is charged. The funding represents seven projects including: Delaware (\$3.35 million); Oregon (\$5.25 million for two projects); Utah (\$7.45 million for two projects); Washington (\$5.5 million); and Wyoming (\$250,000).

### **KDOT Selects 24 Transportation Projects for Cost-Share Awards**

On July 9, Kansas State Department of Transportation (KDOT) [announced](#) the award of almost \$20 million statewide for 24 projects as part of KDOT's Cost Share Program. The program provides funding to local groups for transportation projects to improve safety, support job growth, enhance mobility, and relieve congestion. The selected projects include road improvements in Logan County and three bridge replacements in Kingman County. Given Kansas' status as a major source of agricultural products, the KDOT projects could benefit the movement of agricultural products, such as wheat to elevators or millers.

### **Fifteen States Sign MOU To Accelerate Truck Electrification**

On July 14, the District of Columbia and 15 states (California, Connecticut, Colorado, Hawaii, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington) released a joint [memorandum of understanding](#) (MOU). These jurisdictions will work together to accelerate the market for electric medium- and heavy-duty vehicles, including long-haul delivery trucks (big-rigs). The long-range goal is for 100 percent of all new medium- and heavy-duty vehicle sales to be

zero emission by 2050, with a provisional target of 30 percent of sales to be zero emission by 2030.

### **FMCSA Launches Online Database for Reporting Drug and Alcohol Violations**

On July 21, the Federal Motor Carrier Safety Association (FMCSA) launched an online database for reporting violations and other information about commercial driver's license (CDL) holders, related to FMCSA's drug and alcohol testing program. FMCSA's CDL [Drug and Alcohol Clearinghouse](#) serves as a central location to help employers quickly identify drivers with possible violations of drug and alcohol programs. The database also helps law enforcement officers identify drivers with such violations—giving access to this information when drivers are stopped for traffic violations. FMCSA partnered with the U.S. Department of Transportation's [Volpe Center](#) to design and develop the web system, including the requirements, system architecture, and user interface.

### **Survey Highlights COVID-19's Impact on Owner-Operators**

On July 23, the American Truck Business Services (ATBS)—a tax and accounting firm for owner-operator truck drivers—released results from a [survey](#) of more than 300 owner-operators to assess the impacts of COVID-19, as well as effects of Federal relief programs and relaxed regulations. ATBS found 81 percent of owner-operators received the Government's \$1,200 economic impact payment; 53 percent applied for a Paycheck Protection Program loan; and 30 percent received some other type of funding. Regarding relaxed regulations, a majority of respondents have not had to operate outside of normal regulations during the crisis. Further, 87 percent reported their hours have not exceeded standard hours-of-service rules; 95 percent have not had to



operate with an expired CDL; and 96 percent have not had to haul a load above weight limits. Of the owner-operators surveyed, 35 percent experienced a decline in freight volumes of 50 percent or more; 47 percent had a decline of 30 percent or more; and 11 percent said freight was nonexistent. ATBS also found 65 percent of truck businesses are still operating during the pandemic, while 6 percent have had to furlough employees or independent contractors.

### **U.S. DOT Creates Toolkit To Help Rural Grant Applicants**

On July 27, the U.S. Department of Transportation (DOT) [released a toolkit](#) designed to help stakeholders participate in the Rural Opportunities to Use Transportation for Economic Success (ROUTES) program. The program aims to collect input on rural infrastructure needs and share user-friendly information on applying for DOT discretionary grants. Designed for applicants with varying levels of experience, the toolkit aims to help rural applicants understand and navigate DOT's discretionary grant funding opportunities. Specifically, the toolkit outlines applicant requirements and sorts grant programs by applicant type and eligible project activities.

### **OOIDA Seeks a 1-Year Suspension of the Heavy Vehicle Use Tax**

On July 30, the Owner-Operator Independent Drivers Association (OOIDA) in an [open letter to Congress](#) asked for a 1-year waiver of the heavy vehicle use tax—[an annual fee that costs about \\$550 per truck](#). OOIDA asserts the waiver would help all trucking businesses, irrespective of size. OOIDA's request is posed as an alternative to the [proposed suspension](#) of the Federal excise tax of 12 percent on the purchase of new trucks led by the National Automobile Dealers Association and supported by trade groups and other private companies.

### **TSA Extends HME Exemption for an Additional 90 Days**

On October 16, the Transportation Security Administration (TSA) [again extended](#) an exemption that gives commercial drivers with expired hazardous materials endorsements (HMEs) additional time to initiate the agency's security threat assessment (STA). Originally due to expire on July 31, the exemption is now extended through December 31, unless otherwise modified by TSA through a notice published in the Federal Register. The agency's decision to extend the exemption is based on the continued challenges faced by State drivers licensing centers due to public health emergency and the inability to predict how or where the novel coronavirus may spread in the future. The extension will help ensure that drivers can continue to perform critical services during the pandemic.

### **FMC Research Finds COVID-19 Has Minimal Impact on Port of NY/NJ—More Serious Impacts in CA**

On August 4, after investigating the effects of COVID-19 on container shipping operations, the Federal Maritime Commission (FMC) reported the Port of New York and New Jersey experienced only minimal difficulty in the first half of 2020. However, during the same period, the ports of Los Angeles and California contended with more serious disruptions. The San Pedro Bay port complex exemplifies many of California's challenges: as a result of COVID-19, the port complex faced operational challenges related to terminal-closure notifications, cancelled vessel calls, and poor communication of earliest return dates for export containers. An ongoing challenge shared by the West and East Coast ports is the need to improve chassis pickups and returns. Truckers would like to be able to return containers to one location and pick up an outbound





container, a process known as a “double move.” For FMC’s research on both the East and West port complexes, the agency spoke with port and shipping industry officials and other stakeholders. More information is available [here](#).

### **New Study Finds Trucking Industry Key to Evaluating Fuel Tax Alternatives**

On August 11, the Eastern Transportation Coalition (ETC) published a final report of its pilot study conducted from October 2018 to March 2019, to evaluate the effect on the trucking industry of implementing a model of mileage-based user fees (MBUF). Charging motorists for their road use instead of the amount of fuel they purchase, MBUF are advanced as an alternative to declining State and Federal fuel tax revenue. As the first MBUF research to bring a major focus to trucks, the ETC study surveyed over 50 tractor-trailers traveling more than 1.4 million miles across 27 States. ETC’s researchers concluded the trucking industry’s perspective was vital in MBUF discussions and trucks could not be treated simply as “big cars” in an MBUF system. Likewise, the researchers concluded one rate for all trucks would not work. Also, the researchers found existing regulations provided guidance for implementing MBUF. Finally, the study identified a need for further education and outreach. The study can be viewed [here](#).

### **Lawsuit Filed Alleging Overcharges and Restrictions for Chassis at Ports and Inland Terminals**

On August 17, the American Trucking Associations’ Intermodal Motor Carriers Conference (IMCC) [filed a lawsuit](#) against the Ocean Carrier Equipment Management Association (OECMA) and 10 international ocean carriers. The suit alleges the defendants illegally colluded to manipulate the intermodal

chassis market at dozens of ports across the country. Filed with the Federal Maritime Commission (FMC), the lawsuit seeks up to \$1.8 billion in damages. In the complaint, IMCC alleges OCEMA denies choice by trucking companies in leasing chassis. The complaint further contends OCEMA forces trucking companies to pay unjust and unreasonable prices. The lawsuit comes after months of unsuccessful negotiation between the two parties. FMC [stated](#) it will make a final decision on the case by March 10, 2022.

### **FMCSA Seeks Comments on Broker Transparency Regarding Transaction Records**

On August 19, the Federal Motor Carrier Safety Administration (FMCSA) solicited [public comments](#) on rulemaking regarding broker transparency. The request for comments follows petitions filed by the Owner-Operator Independent Drivers Association (OOIDA) and the Small Business in Transportation Coalition (SBTC) to amend access requirements of certain records for property brokers. Among other requests, OOIDA asked FMCSA to require brokers to automatically provide carriers with an electronic copy of transaction records within 48 hours of a load being completed. FMCSA asked for public comments on requiring that brokers disclose certain financial details about transactions to carriers and whether a regulatory action would solve the problem. Comments can be submitted [here](#) through [November 18](#). Also, FMCSA held a [listening session](#) on October 28, to hear directly from truckers, brokers, and motor carrier stakeholders on the broker transparency question. The submitted comments can be viewed [here](#).



## California Adopts Omnibus Rule for Trucks, Phasing in Lower Oxides of Nitrogen Levels

On August 28, the California Air Resources Board (CARB) unanimously voted to adopt the [“Heavy-Duty Low NOx Omnibus Regulation”](#) rule. The phased-in regulation will require current oxides of nitrogen (NOx) levels be reduced from the current standard by approximately 75 percent starting in 2024 and by 90 percent in 2027. The rule requires California truck manufacturers to comply with the stricter emissions standards, overhaul engine testing procedures to better reflect real-world traffic conditions, and further extend engine warranties to ensure limited emissions of NOx. Trucking groups [commented](#) the new rule does not give manufacturers sufficient time to develop technologies to meet the standards, and that the industry will now be required to manufacture trucks for two different markets—California and the rest of the country.

## USDOT Guidance on the Revised Federal Drug Testing Custody and Control Form

On August 31, the U.S. Department of Transportation (DOT) issued [guidance](#) discussing changes to the revised Federal Drug Testing Custody and Control Form (CCF) for administering drug tests to holders of commercial driver’s licenses—approved by the Office of Management and Budget on August 17. Most changes adopted in the revised CCF were made to accommodate testing of oral fluid specimens, which DOT’s current drug testing program does not authorize. To avoid confusion over whether DOT’s program authorizes oral fluid testing and to allow supplies of old CCFs to be depleted, DOT recommends, as a best practice, that laboratories not mail any of the revised CCFs to DOT-regulated clients or their service agents until after June 1, 2021 (or until supplies of the old CCFs have been depleted).

## FMCSA Announces Pilot Program To Probe More Flexibility in HOS

On August 28, the Federal Motor Carrier Safety Administration (FMCSA) [requested comments](#), on a proposed pilot program for commercial driver’s license (CDL) holders who meet specified criteria. The Split Duty Period Pilot Program would temporarily modify the hours-of-service (HOS) requirement that drivers of property-carrying commercial motor vehicles (CMVs) must complete all their driving within 14 hours of their coming on duty. CMV drivers in the pilot would have the option to pause their 14-hour on-duty period (driving window) with one off-duty period not less than 30 minutes and not more than 3 hours. The program aims to collect hard evidence on how to align HOS flexibility with the scheduling preferences of employers, shippers, and receivers—i.e., how to optimize productivity, while ensuring safety is as good as or better than without the HOS modification. The comments can be viewed [here](#).

## USDOT Releases National Freight Strategic Plan

On September 4, the U.S. Department of Transportation released its first [National Freight Strategic Plan](#) (NFSP). According to DOT, NFSP assesses the system’s current conditions and performance barriers, defines the agency’s vision and goals for the national multimodal freight system, and defines strategies toward achieving DOT’s vision and goals. NFSP emerged through a multiagency effort involving consultation with freight stakeholders in both the public and private sectors. DOT plans to use NFSP to guide national freight policy, programs, initiatives, and investments; inform State freight plans; identify freight data and research needs; and provide a framework for increased cross-sector, multijurisdictional, and multimodal coordination and partnerships.



### **FMCSA Seeks Comments on Pilot Program**

On September 10, the Federal Motor Carrier Safety Administration (FMCSA) requested [public comments](#), by November 9, on a proposed pilot program that would allow drivers ages 18-20 to operate commercial motor vehicles (CMVs) in interstate commerce. The pilot program proposes to allow drivers to participate if they fit at least one of two categories. First, a participant could be an 18 to 20-year-old commercial driver's license (CDL) holder who operates CMVs in interstate commerce while taking part in a 120-hour probationary period and a subsequent 280-hour probationary period under an apprenticeship program established by an employer. Alternatively, a participant could be a 19- or 20-year-old commercial driver who has operated CMVs in intrastate commerce for at least 1 year and at least 25,000 miles. The pilot's drivers would not be permitted to operate special configuration vehicles or vehicles hauling passengers or hazardous materials.

### **FMCSA Extends Emergency HOS Waiver for Livestock and Feed**

On September 11, the Federal Motor Carrier Safety Administration (FMCSA) [extended](#) the waiver on hours-of-service (HOS) requirements for trucks transporting livestock and feed. The waiver is based on the national emergency declared for COVID-19, and the extension is valid through December 31. The waiver specifically does not cover drivers carrying mixed loads with only a "nominal quantity" of a waiver-qualifying item.

### **DOT Awards \$20.8 Million to St. Louis Bi-State Regional Ports Improvement Project**

On September 16, the U.S Department of Transportation (DOT) announced the award of

\$1 billion in grants to [70 infrastructure projects](#) in 44 states. These include barge loading and rail upgrades for three ports under the St. Louis Bi-State Regional Ports Improvement Project. With such upgrades as new grain storage, conveyer equipment, and additional railroad track, the facilities will expand capacity, reduce wait times, and attract more traffic. Known as Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary grants, the grants fund planning and capital investments in surface transportation infrastructure. To better address the needs of rural America, 50 percent of BUILD Transportation grant funding will be awarded to projects that benefit rural communities.

### **FMCSA Extends Waiver for Commercial Driver's License/Learner's Permit Holders**

On September 18, the Federal Motor Carrier Safety Administration (FMCSA) [extended its waiver](#) from certain regulations affecting holders of interstate and intrastate commercial driver's licenses (CDL) and commercial learner's permits (CLP), as well as other interstate drivers operating commercial motor vehicles (CMVs). FMCSA originally initiated this action in response to the COVID-19 pandemic on June 9, 2020. The waiver recognizes, as part of States' phased reopenings, most State Driver Licensing Agencies (SDLAs) have resumed only limited operations. These service limitations may hinder drivers' attempts to renew CDLs and CLPs or provide SDLAs with medical certificates. Also, because of limited operations or backlogs, drivers may not be able to schedule physical examinations to comply with the Federal Motor Carrier safety regulations. Effective October 1, 2020, the waiver expires on December 31, 2020.



### **FMCSA Launches New Panel To Collect Feedback on Drivers' Concerns**

On September 18, the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) [launched](#) a new panel of its Motor Carrier Safety Advisory Committee (MCSAC). Hailing from all sectors of the commercial motor vehicle (CMV) industry, the panel will comprise 20 to 25 drivers, including tractor trailer drivers, straight truck drivers, motor coach drivers, hazardous materials drivers, and agriculture haulers. The panel will give FMCSA direct feedback on the driving community's concerns, such as safety, hours-of-service regulations, training, parking, and driver experience. The panel aims to capture the CMV community's varied viewpoints and experiences.

### **U.S. DOL Proposes Independent Contractor Rule**

On September 25, the U.S. Department of Labor (DOL) announced a [proposed](#) rule to clarify the distinction between "employee" and "independent contractor" under the Fair Labor Standards Act (FLSA) for consistent definitions in public policy. DOL's proposal would not immediately affect trucking companies subject to California's Assembly Bill 5 (AB-5) law enacted earlier this year. AB-5 prohibits companies from using independent contractors unless their work is "outside the usual course of the hiring entity's business." However, because of a preliminary injunction granted by the U.S. Southern District Court in January, California's

AB-5 law does not yet affect owner-operators or motor carriers. This Notice of Proposed Rulemaking (NPRM) was available for review and public comment through October 26, 2020. Filed comments may be viewed [here](#).

### **FMCSA Launches Online Tool To Answer HOS Questions**

On September 29, the Federal Motor Carrier Safety Administration (FMCSA) launched its [Educational Tool for Hours of Service \(ETHOS\)](#), an online tool for carriers and drivers to help them better understand FMCSA's revised hours-of-service (HOS) regulations, effective since September 29. Once a driver or carrier keys in duty-status information, ETHOS identifies potential violations to the following HOS rules for transporting non-passenger cargo: an 11-hour driving limit; 14-hour driving window; 30-minute break; and sleeper berth provision. The website notes ETHOS does not cover the 60/70-hour limit regulations, which have not changed under the new rules.

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