



MARCELLO & KIVISTO

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TRANSPORT CENTER UPDATE

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FMCSA eyes Changes to Treatment of Adjudicated Citations

FMCSA has announced proposed changes to the treatment of adjudicated citations in the Motor Carrier Management Information System. The proposed changes will allow a motor carrier to file a Request for Review in the DataQ system when a citation is adjudicated in the courts.

Depending on how the citation was adjudicated in the courts the systems will be modified to accommodate data concerning how the citation was adjudicated, i.e. dismissed, finding of not guilty, conviction of a lesser charge or different charge and a conviction of the original charge.

If the charge is dismissed or a finding of not guilty is entered the charge will be removed from SMS and PSP. If the conviction is for a lesser charge or different charge the original charge will be documented with a notation that it resulted in a conviction to a different charge.

To view the proposed changes click [here](#). [Here](#) is an article written by Land Line Magazine regarding the changes.

FMCSA Publishes Extension for Certificate Retention Requirements in Connection with Medical Certification



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M&K Upcoming Events:

For more current updates on events, follow M&K on [Facebook](#) and [Twitter](#).

On January 14, 2014, FMCSA published a final rule regarding the Medical Certification Requirements as Part of the Commercial Driver's License; Extension of Certificate Retention Requirements. Pursuant to the new final rule, interstate commercial drivers who are subject to CDL requirements and the physical qualification requirements, must retain paper copies of their medical certification card until January 30, 2015.

You can see a copy of the final rule by clicking [here](#).

HOS Exemptions

Since the new HOS rules came into effect on July 1, 2013 many specialized haulers in the industry have sought exemptions. Similar to CSA, which has been a work in progress, it appears as though the new HOS rules are also a work in progress. Since July 1, 2013 the following exemptions have been sought and/or received:

7/12/13 - Regulatory guidance regarding off-duty time was published that eliminated prior regulatory language that discouraged drivers from taking breaks during their day and/or documenting those breaks in their logbook. Click [here](#) to view the regulatory guidance.

8/2/13 - FMCSA published enforcement policy exempting Short Haul Operations from the 30 minute break and indicates that the rulemaking process will be initiated to include similar language in the text of the HOS regulations. To see the Enforcement Policy click [here](#).

8/12/13 - Regulatory guidance for Oilfield operations published. To view click [here](#).

8/12/13 - National Pork Producers Council Application for Exemption to HOS rules published. To view click [here](#).

8/12/13 - Dept. of Defense Application for Exemption to HOS rules published. To view click [here](#).

Upcoming Events in the Industry:

Jan. 27th-31st - COHMED Conference - Sarasota, FL - for more information click [here](#).

Mar. 18th - PMTA SMC Safety Conference - Camp Hill, PA for more info click [here](#).

FMCSA Cab Card on New HOS

FMCSA has put out an updated cab card with information on the HOS rule changes that occurred in February and the ones that became effective July 1st. You can get a printable version of the cab card by clicking [here](#).

Webinars On-Line

Several 20 minute webinars on key issues in the trucking industry have been posted to our webpage. These are audio/video presentations that explain the issues and the challenges they present to the trucking industry.

The topics are as follows:

8/20/13 - National Ready Mixed Concrete Association Application for Exemption to HOS published. To view click [here](#).

To stay current as new guidance and/or application for exemptions to the new HOS rules are published check out FMCSA's website on the HOS. You can get there by clicking [here](#). FMCSA has also put together a cab card on the HOS so that drivers can have easy access to the rules. You can find a copy of the cab card [here](#).

More Weight Restrictions to Come to PA Bridges

PennDOT will be adding new weight restrictions or lowering the current weight restrictions on about 1,000 bridges throughout Pennsylvania. To find more information from PennDOT on the restrictions including a full list of the bridges that will be affected you can click [here](#). The new or revised restrictions include approximately 111 bridges located in Central Pennsylvania. *Pennlive* provided a list of the bridges to be affected in Central Pennsylvania, you can view the article by clicking [here](#).

What do the restrictions mean for you? Drivers more than ever need to be aware and watch for signs indicating a roadway and/or bridge has a weight restriction. A bridge that a driver has taken numerous times in the past may soon, if not already, have a new weight restriction.

As a company, dispatcher and/or driver you should review the list of proposed weight restriction changes, so that you can plan ahead and avoid any areas that may be restricted before your truck is driving down the road and suddenly face to face with a weight restriction sign.

If a weight restriction sign is posted, do not cross the bridge. A weight restriction sign should be posted in an area that will allow a driver to avoid the restricted roadway and/or bridge.

An overweight violation for a driver can result in a hefty fine because the fine amount is based upon how much the offending vehicle is overweight. If an overweight sign is encountered it is recommended that the driver find an alternate route and if necessary contact local law enforcement for assistance. Better to go a bit out of the way than to be slammed with a huge fine.

Aggressive Defense of Trucking Accidents

New Hires and PSP

CSA

We also have two 5 minute PowerPoint presentations posted to our website regarding information concerning the HOS changes effective in July.

You can view the webinars by clicking [here](#).

Documents and Resources Available From M&K

If you are interested in obtaining copies of the following, please call or email.

- Hours-of-Service Rules Safety Impact 2010 Analysis compiled by ARTI in May 2010

- Accident preparedness DVD and/or forms

- Powerpoint presentation regarding CSA 2010 presented by ATA

- Powerpoint presentation by Dr. Hickman regarding Distracted Driving Study presented at M&K Seminar

To see M&K's recent case results and articles click [here](#).

It is in your driver's best interest to avoid the bridge. After all, he/she will be the one listed on the ticket as the defendant and it will be him/her who will ultimately be responsible for payment of the fine. I have seen overweight fines ranging in total amount of \$1,500-\$82,000.

Therefore, it is important that all drivers and companies be aware of any restrictions on the roadway and/or bridge before crossing.

Mark Your Calendar! PMTA SMC Safety Conference

On March 18, 2014, PMTA's Safety Management Council will be hosting a safety conference at the Radisson in Camp Hill, Pennsylvania. The conference will focus on regulatory challenges, successes and upcoming changes.

The conference will start at 8am with registration and vendors available. Speakers include Dennis Shinault of Baldwin & Lyons, Ron Uriah of Pitt Ohio and the keynote speaker is Larry Minor of FMCSA.

The conference will run until approximately 3:15pm and a question and answer session will conclude the conference.

The \$20 registration fee includes continental breakfast, lunch and all events. You can click [here](#) to register or contact PMTA.

Interested in being a vendor please contact PMTA. There is still room available, and attendees will have opportunities to visit with vendors throughout the day.

Final Rule Published on New Unified Registration System

On August 23, 2013, FMCSA published a final rule that will establish a new Unified Registration System for DOT Operating Authority. The new registration system will combine 16 different forms that are used by carriers, freight forwarders and brokers to update and register their information with FMCSA into a single electronic form. The new streamlined form will be implemented in 2015 and it will be required that all new application and updates be submitted

Other Resources

FMCSA Distracted Driving Instructional Videos click [here](#).

[PA Motor Trucking Association](#)

[American Trucking Association](#)

[Trucking Industry Defense Association \(TIDA\)](#)

[Federal Motor Carrier Safety Administration](#)

[PA Travel InformationTo-Go](#)

[National Traffic and Road Closure Information](#)

For more resources click [here](#)

About Our Firm

Founded in 2005, **M&K, LLC** is dedicated to and focused upon transportation law and the needs of their transportation clients. Since opening in 2005, **M&K, LLC** has expanded its office to provide clients with the attention and availability they deserve.

through the new system at that time. To view the final rule you can click [here](#).

M&K Truck News Blog

Truck News now includes a blog by Doug Marcello. Check out his most recent blog post regarding potential legal issues winter may cause by clicking [here](#). You can find the blog at <http://blog.trucknews.com/author/doug>. Truck News blog provides other writers with insight and perspective of the various challenges of our industry.

M&K Rewind

We find that some issues we have covered in previous newsletters may come up again for our clients. Therefore this section will provide information on topics we have previously covered but are still relevant today.

Liability When Illegally Parked

If a vehicle is parked illegally, due to the violation of a statute, regulation or ordinance, it raises a question of negligence per se. If the doctrine of negligence per se is applicable, the party who is found to have violated a statute is negligent as a matter of law due to their violation of that statute.

However, even if a statute is violated, negligence per se does not automatically apply to the case. In order for negligence per se to apply, the purpose of the statute that was violated needs to be to protect against the harm that was suffered by the plaintiff in the case.

For instance, a statute that prohibits parking in front of fire hydrants has the purpose of assuring access to a fire hydrant in the case of a fire. Therefore, if a vehicle is illegally parked in front of the fire hydrant and is struck by another vehicle causing injuries, it does not mean that the driver of the illegally parked vehicle is negligent per se, because the injury caused by the violation of the statute was not the harm sought to be protected by the statute.

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Quote of the Month:

"Football is like life - it requires perseverance, self-denial, hard work, sacrifice, dedication & respect for authority."

~ Vince Lombardi



Even if the violation of a statute is found to be negligence per se, it does not necessarily mean that the defendant will be liable. The violation of the statute still needs to be found to have been the cause of the plaintiff's injuries. If the injuries to plaintiff were caused by something other than the violation of the statute, the defendant will not be liable despite being negligent per se.

If the court would find that the defendant was not negligent per se, this does not end the inquiry. The next consideration will be whether or not the defendant was negligent. A defendant is negligent when he/she fails to act with reasonable care and his/her actions cause injury to the plaintiff. Therefore, it will be a question of whether or not it was reasonable for the defendant to park in the manner that he/she parked.

Although illegal parking does not necessarily mean a defendant was negligent based on the facts of the accident, all drivers should still practice safe driving and heed all traffic signs. An illegally parked vehicle adds another level of potential liability when attempting to defend a negligence action.

Free Presentations for Your Driver Meetings

We provide FREE presentations at driver's meetings geared toward our client's topics of interests. Recently, we finished filming a mock trial cross-examination of a driver as part of a new presentation.

Please let us know if you are interested.

DISCLAIMER: The Information Contained in this Newsletter is NOT Legal Advice.

