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Federal Motor Carrier Safety Administration (FMCSA)

2020 Duluth-Superior Transportation Association



Agenda:

- Who is FMCSA
- Regulatory Updates
 - CDL Military Pilot Program
 - Entry-Level Driver Training (ELDT)
 - Drug and Alcohol Clearinghouse (DACH)
 - Hours-of Service Proposed Rules (Update)
- Other Updates (If time allows)

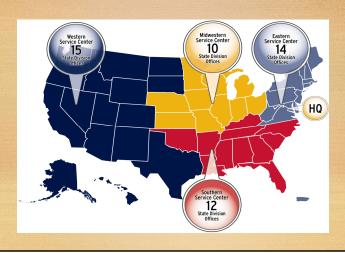
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What to expect **from** FMCSA

- Open Communication:
 - Open dialog to all carriers regardless of size, and the our strong ability to work in harmony with carriers
- Technical competency and problem-solving skills:
 - We'll provide every carrier the regulatory information, and the understanding as to 'how to comply' to federal regulations
- Excellent service during our interactions:
 - We deal with different sorts of carriers, our customer-centric approach is
 of utter importance, remembering that we are the face of FMCSA
- Free from harassment, bullying and discrimination during our interactions/interventions:
 - This is prohibited conduct

The Federal Motor Carrier Safety Administration (FMCSA) is the Federal agency within the U.S. DOT responsible for safety oversight of commercial motor vehicle (large truck and bus) operations.



Our Mission

Placing safety as our highest priority:

✓ Reduce crashes, injuries, and fatalities involving CMV transportation through <u>education</u>, innovation, regulation, enforcement, financial assistance, partnerships, and full accountability.

Strategic Plan

Our strategic plan establishes a framework that places safety as the highest priority and employs three core principles:

- Raising the safety bar to <u>enter</u> the motor carrier industry
- 2. Requiring motor carriers and drivers to comply with rigorous safety standards
- 3. Removing high-risk motor carriers, and unsafe companies, drivers and vehicles from the road

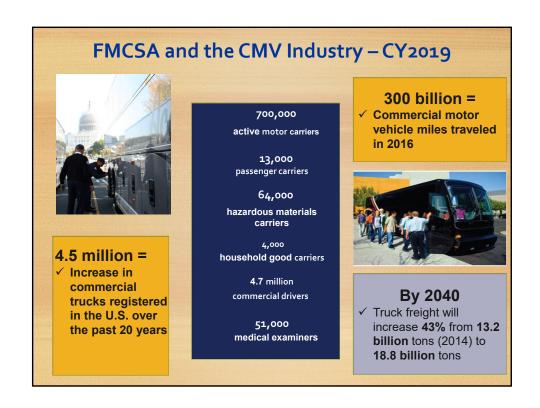
FMCSA Primary Activities

Commercial Drivers' Licenses

 FMCSA develops standards to test and license commercial motor vehicle drivers

Regulatory Compliance and Enforcement

 The Administration operates a program to improve safety performance and remove highrisk carriers from the Nation's highways



FMCSA's Regulatory Oversight

Regulated Entities:	National:	State of Minnesota:
CDL Drivers	3.2 Million	√ 213,409
Power Units	6.5 Million	125,696
Interstate Carriers	674,000	18,296
Bus Carriers	14,000	345
HM Companies	23,000	184

*Minnesota CDL Drivers: (2019)

- ✓ Class A = 150,687
- ✓ Class B = 60,197
- ✓ Class C = 2,525

Education and Outreach Initiatives

- National events widely attended
- Outreach email distribution list:
 - Requests for distribution list: matthew.marrin@dot.gov
- Statewide outreach events in Minnesota 10 to date!
- Improve driver knowledge and behavior by <u>educating</u> young passenger vehicle drivers
 - Incorporating: How to function around large trucks and buses
- Your Ideas?

Regulatory Updates

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Under 21 Military CDL Pilot Program

Effective Date: TBA (3 Year Pilot Program)

Program allows 18-20 year-old drivers to participate in this Pilot, if they:

- Have received heavy-vehicle driver training and experience while in military service,
- Carry a designated MOS or job rating approved for this Pilot, and
- Are sponsored (hired) by a participating motor carrier
 - ✓ Currently approximately 29 companies are enrolled, two (2) in Minnesota (FMCSA is still accepting applications)







Entry-Level Driver Training (ELDT):

Compliance date of February 2020: (New Compliance Date: February 7, 2022)

- Originally an implementation date of February 2017, but delayed until May 22 due to Executive Order delaying new regulations pending review by the new Administration
- ELDT is the product of a negotiated rulemaking FMCSA, Industry, law enforcement partners
- Requires minimum curriculum standards for training new drivers, BTW and classroom instruction
- Approved providers will be listed in a Registry (not completed)
- No mandated BTW / Classroom hours instructor decision
- Key: 'Proficiency'

Entry-Level Driver Training (ELDT):

Federal Register: Vol. 84, No. 44 / Wednesday, March 6, 2019:

- Affects: Upgrade from Class B to Class A
- The Agency believes the change in the Class A theory training requirements for Class B CDL holders upgrading to a Class A CDL maintains the same level of safety established by the ELDT final rule, and
- The regulatory burden reduction will result in annualized cost savings of \$18 million.
- In essence: Class A CDL applicant who possess a valid Class B CDL may complete the "Theory Instruction Upgrade Curriculum" in lieu of the "Theory Instruction Standard Curriculum"; which removes eight instructional units involving Non-Driving Activities.

Entry-Level Driver Training (ELDT):

Recap:

The ELDT rule will be implemented on February 7, 2022:

- Reminder: Individuals who obtain a CLP on or <u>after February 7</u>, 2022, would have to satisfy the applicable requirements.
- Individuals who obtain a CLP <u>before</u> February 7, 2022 are not required to comply with the new ELDT rule as long as they obtain the CDL or endorsement before the CLP (or renewed CLP) expires.

Drug and Alcohol Clearinghouse

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Drug and Alcohol Clearinghouse

Quick Overview: Establishes an 'electronic clearinghouse' of drug and alcohol violations of CLP/CDL holders:

- The 'Final Rule' has 3 main elements:
 - 1. MRO's and employers <u>must</u> report positive tests and refusals to the Clearinghouse
 - 2. Employers must check Clearinghouse at time of hire, and annually
 - 3. SDLA's must check Clearinghouse before issuing or renewing a CDL
- Driver records will be <u>retained</u> 5 years if Return-to-Duty tests are completed, indefinitely otherwise
- Key: Motor carriers will be required to conduct both
 Clearinghouse and Previous Employer checks for D&A violations
 for 3 years; after 3 years Clearinghouse checks only!

The Clearinghouse Final Rule

- Published December 5, 2016
- Mandated by Congress (MAP-21, Section 32402)
- Established requirements for the Clearinghouse
- Identified January 6, 2020 as the Clearinghouse implementation date

Drug and Alcohol Clearinghouse

Compliance date was January 7, 2020

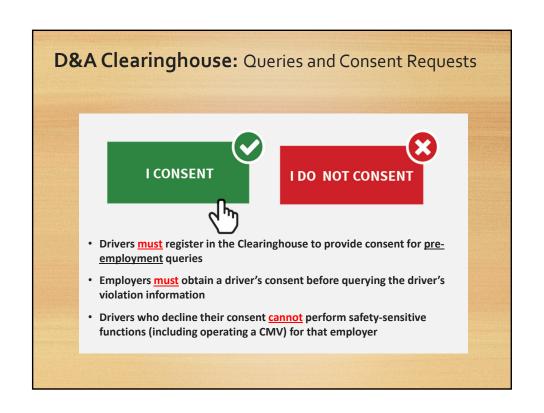
- State driver licensing agencies (SDLA) will be required to query the Clearinghouse when a State-licensed driver obtains, renews, upgrades, or transfers his or her CDL. (Postponed)
- Violations that occur will be posted in the Clearinghouse in near real-time – the driver will be notified (Change)
- No employer may allow a driver to perform any safetysensitive function if the results of a Clearinghouse query demonstrate that the driver has a violation (382.701)



The Drug & Alcohol Clearinghouse? Who will be required to use the Clearinghouse? Drivers who hold CDL's or CLP's Employers of CDL drivers who operate CMV's Consortia/Third-Party Administrators (C/TPA's) Medical Review Officers (MRO's) Medical Review Officers (SAP's) Substance Abuse Professionals (SAP's) State Drivers Licensing Agencies (SDLA's)



Clearinghouse: Queries and Consent Requests Employers will be required to query the Clearinghouse for: 1. PRE-EMPLOYMENT SCREENING to ensure 2. ANNUAL VERIFICATION to ensure that a driver is the prospective employee is eligible to perform still eligible to perform safety-sensitive functions safety-sensitive functions The type of consent request will depend on the type of query: Specific consent: Required for each full **Pre-employment** query; provided electronically in the Full query: Access full violation details screening Clearinghouse General consent: Done <u>outside</u> the Clearinghouse; can be one-time or Limited query: Verify presence of driver Annual information in the Clearinghouse. If verification information is discovered, a full query is Specific consent required: If limited query required results in a full query; provided electronically in the Clearinghouse



The D&A Clearinghouse - Recap

Effective Date: January 6, 2020

New Regulation (Location): 382.701 to 382.727

Motor Carrier's Role and Responsibilities:

- Register with D&A Clearinghouse
- Query 'new' CDL drivers for drug and alcohol violations (i.e. full query)
- Annually query current CDL drivers (i.e. limited query)
- Report positive drug and alcohol test, refusals, drug and alcohol violations, follow-up and return to duty test. (within 3 business days)
- Previous employer inquiries must be done until January 6, 2023

Drug and Alcohol: Cannabidiol (CBD) Reminder

- We have had inquiries about whether the Department of Transportation, regulated safety-sensitive employees, can use CBD products.
 - Safety-sensitive employees who are subject to drug testing specified under 49 CFR part 40 (Part 40) include: pilots, school bus drivers, truck drivers, train engineers, transit vehicle operators, aircraft maintenance personnel, fire-armed transit security personnel, ship captains, and pipeline emergency response personnel, among others.
- The Department of Transportation requires testing for marijuana and not CBD...

Drug and Alcohol: Cannabidiol (CBD) Reminder

- The labeling of many CBD products may be misleading because the products could contain higher levels of THC than what the product label states.
- The Food and Drug Administration (FDA) does not currently certify the levels of THC in CBD products, so there is no Federal oversight to ensure that the labels are accurate.
- The FDA has cautioned the public that: "Consumers should beware purchasing and using any [CBD] products."
- The FDA has stated: "It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement."
- Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label.

Drug and Alcohol: Cannabidiol (CBD) Reminder

Key:

- It remains <u>unacceptable</u> for any safety-sensitive employee subject to the Department of Transportation's drug testing regulations to use marijuana.
- Since the use of CBD products could lead to a positive drug test result, Department of Transportation-regulated safety-sensitive employees should exercise caution when considering whether to use CBD products.







HOS Background

- FMCSA began work on an Advanced Notice of Proposed Rulemaking (ANPRM)
 in 2018 in response to widespread Congressional, industry, and citizen
 concerns surrounding existing hours-of-service (HOS) rules.
- The purpose of the ANPRM was to seek feedback from the public to determine if HOS revisions may alleviate unnecessary burdens placed on drivers while maintaining safety on our nation's highways and roads.
- ANPRM was published and open for comment:
 - More than 6,000 comments were received
 - Used to develop the Notice of Proposed Rulemaking (NPRM)

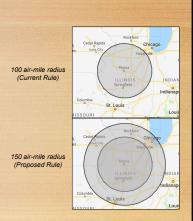
Hours-of-Service Rulemaking

- Advance Notice of Proposed Rulemaking (ANPRM) Information Sought
 - 1. Short Haul Period extending form 12 to 14 hours
 - 2. Adverse driving conditions expanded to include the 14 hour rule to 16 hours
 - 3. 30 minute break looking for feedback
 - 4. More flexibility with split sleeper-berth
 - 5. Modification to the 14-hour rule
 - o (i.e. Time-off during the middle of the day, up to 3 hours)
- ANPRM Comment period was extended to November 19, 2018
 - FMCSA did not propose definitive regulatory text in the ANPRM
 - The ANPRM requested comments: 1) short-haul HOS limit, 2) HOS exception for adverse
 driving conditions, 3) 30-minute rest break provision, and 4) rule allowing drivers to split
 their required off-duty time in a sleeper berth
 - FMCSA received more than 6,000+ public comments

Short-Haul Operations

FMCSA is proposing to change the short-haul exception time period from 12 to 14 hours and extending the distance the driver may operate from 100 air-miles to 150 air-miles.

• Example: The driver in this example is based out of Peoria. Under the current rules, the distance the driver could go in a day would not include Chicago or St. Louis. The new proposal would allow that driver to service those two cities, as well as an additional 2 hours.



Adverse Driving Conditions

FMCSA is proposing to change the adverse driving conditions exception by extending the duty day by 2 hours. This is in addition to the additional two (2) hours of driving time already allowed. The proposed change would apply for both property-carrying (14-hour "driving window") and passenger-carrying (15-hour on duty) operators.

Example: A driver is 15 miles from his destination when he hears of a gravel spill on the bridge ahead (the bridge is the only access to the destination). He has 1 hour left of driving time and 1 hour left in his "driving window" / duty time. Under the new proposal, this driver can stop at the rest stop at the next exit (for up to 2 hours) to wait for the road cleanup crew to complete work and still have time to get to his destination without violating the HOS rules.



30-Minute Break

FMCSA is proposing to change the 30-minute break rule by allowing the requirement to be satisfied by an on-duty break (in addition to an off-duty break). The requirement for property-carrying drivers would be applicable in situations where a driver has driven for a period of 8 hours without at least a 30-minute interruption.

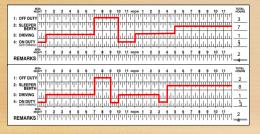
• Example: The examples below assume the driver has driven for 8 hours and needs to take a 30-minute break. Currently, only the log on the left is in compliance with the HOS rules. Under this proposal, both examples are compliant.





Split-Sleeper Berth

FMCSA is proposing to change the sleeper berth exception so that neither part of the split would count against the 14-hour driving window. Drivers would be required to have at least 7 consecutive hours in the sleeper berth and the other period be at least 2 hours off duty (in or out of the sleeper berth) and must total a minimum of 10 hours in the two periods (e.g., 7/3 or 8/2 split).



■ Example: This example assumes the driver starts day 1 having just come off a 10-hour consecutive off duty period. In this 2-day example, none of the 4 qualifying break periods count against the driver's 14-hour driving window under this proposal. In this example, the driver uses both a 7/3 split and an 8/2 split to meet the requirements.

Split Duty Period

FMCSA is proposing to allow one offduty break of 30 minutes up to a maximum of 3 hours, that would "pause" a driver's 14-hour driving window, provided the driver takes 10 consecutive hours off duty at the end of the work shift.

• Example: The example assumes the driver has just come off of a 10-hour consecutive break. The driver takes a 3-hour break from 10 am to 1 pm. This break "pauses" the 14-hour driving window. Under this new proposal, as long as the driver takes 3 more hours off duty on the next day between midnight and 3 am to obtain the 10-consecutive hours off duty, the driver will not be in violation of the 14-hour rule using this new provision.







Hours-of-Service: Other Topics

- List of ELD Providers:
 - North of 400+ (only two decertified)
 - The list is a randomized sort
 - Report the device to eldtech@dot.gov if the device appears to be noncompliant and/or for reporting IT issues
- Yard Moves:
 - Employer option on device is not required
 - Simply: on-duty, not driving
- Installed and Utilized
 - Be knowledgeable of the device mode (driver's don't know device type)
 - Ensure device is utilized; lots of excuses not to use, going to paper logs
 - o 7 days, if not functional, 395.34 extension letter required!

Electronic Logging Device (ELD)

- ELD Rule: Sets standards for 'devices'
 - o Key: No Hours-of-Service Rules were changed
- Compliance dates: (Now!)
 - o December 17, 2019 AOBRD users must migrate to ELD standard
- ELD Resources: (FMCSA Website)
 - List of registered devices (400+)
 - ELD Checklist
 - Revoked devices list
 - o FAQ's
- Educate, educate, educate your drivers now!
- Carrier Recommendation: Establish a monitoring and validation plan, have a disciplinary policy to deal with tampering, unauthorized edits, other abuses.

National Registry II (NRII):

- 'New' Compliance Date: June 22, 2021
- FMCSA will transmit exams directly to SDLA offices
- Rule will require medical examiner's to report results of physicals within '24 hours'

FMCSA Medical Programs:

- Exam Forms: (MCSA-5876 Medical Certificate)
 - Current form expires 11/30/2021
 - Use current forms (depleting inventory 'stock' is not applicable)
- National Registry II: ('New' Extension date)
 - Published June 21, 2018, (83 FR 28774)
 - New Compliance Date: June 22, 2021 (for most provisions)
- Medical Examiner 2nd Opinions:
 - We don't discourage this!

New Diabetes Standard:

- Diabetes Rule:
 - Effective: November 19, 2018
 - Webinars (i.e. training) were conducted for medical examiners
 - 'New' form: MCSA-5870 (4 pages)
- Letters sent to all exempted drivers
 - Encouraging to certify under the 'new standard'
 - One-year MEC expires
 - 2-year exemption
- Medical Examiner: Issues the Medical Certificate (MCSA-5876) with the exemption box checked

What is Personal Conveyance?

- Personal conveyance is the movement of a commercial motor vehicle (CMV) for personal use while "off-duty".
 - A driver may record time operating a CMV for personal conveyance as 'off-duty', <u>only</u> when the <u>driver</u> is relieved from work and all responsibility for performing work by the motor carrier.
- The CMV may be used for personal conveyance even if it is <u>laden</u>, since the load is not being transported for the commercial benefit of the motor carrier at that time.
- Personal conveyance does not reduce a driver's or motor carrier's responsibility to operate a CMV safely.

Personal Conveyance

- Examples of Uses of a CMV that <u>Would Not Qualify</u> as Personal Conveyance:
 - The movement of a CMV in order to enhance the operational readiness of a motor carrier.
 - For example, bypassing available resting locations in order to get closer to the next loading or unloading point or other scheduled motor carrier destination.
 - After being placed out of service for exceeding the maximum periods permitted under part 395, or time spent driving to a location to obtain required rest, unless so directed by an enforcement officer at the scene.

Personal Conveyance - FAQ's

- Question: May a driver, who drops his or her last load at a receiver's
 facility use personal conveyance to return to their normal work location
 (i.e. home or terminal?)
 - Answer: No. Returning home or to the terminal from a dispatched trip is a continuation of the trip, and therefore cannot be considered personal conveyance.
- Question: The guidance allows for "authorized use of a CMV to travel home after working at an offsite location." What is meant by the term "offsite" when used in this context?
 - Answer: The term refers to a location, other than a carrier's terminal or a shipper's or receiver's facility, where a driver works for a temporary period for a particular job. Specifically, this term is intended for construction and utility companies that set up base camps near a major job and operate from there for days or weeks at a time. These remote locations are considered "offsite" locations.
 - Therefore, travel between home and that offsite location is considered commuting time, and qualifies as personal conveyance.

Personal Conveyance - FAQ's

- Question: Can a driver who claims the short haul exception use personal conveyance?
 - Answer: Yes, there is no connection between personal conveyance and the short-haul exception. As always, off-duty time does not extend the 12-hour duty time limitation.
- Question: How is personal conveyance time calculated in the hours-of-service rules?
 - Answer: Time spent under personal conveyance is off-duty time.
- Question: May a driver use personal conveyance when they run out of available (driving/on-duty) hours?
 - Answer: No, except for the one exception described in the guidance where a driver who runs out of hours while at a shipper's or receiver's facility may drive from that facility to a nearby, safe location to park, provided that the driver allows adequate time to obtain rest in accordance with daily minimum off-duty periods under the Hours of Service rules before beginning to drive. Personal conveyance is those times where a driver is operating solely for a non-business purpose and cannot be used to extend the duty day.
- Question: Are there maximum distance time or distance limits for the use of personal conveyance?
 - Answer: No. However, it is important to note that the provision in §392.3 of the FMCSRs, prohibiting the operation of a commercial motor vehicle while fatigued, continues to apply. Therefore, a driver must get adequate rest before returning to driving.

Compliance Investigation (Intervention's)

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FMCSA Investigations:

What is an Offsite Investigation? (Phased Implementation FY2019 & FY2020)

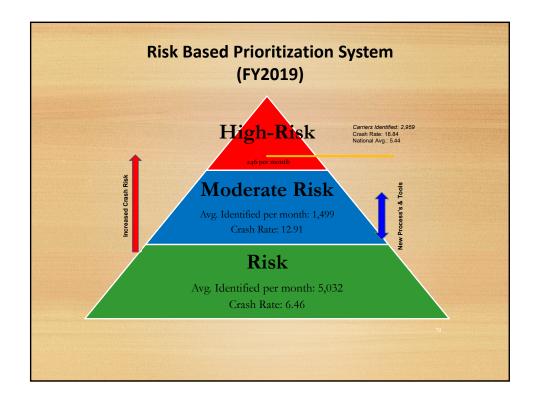
An Offsite Investigation is part of CSA's National Safety Interventions
package of intervention tools that help motor carriers comply with safety
regulations and improve safety performance.

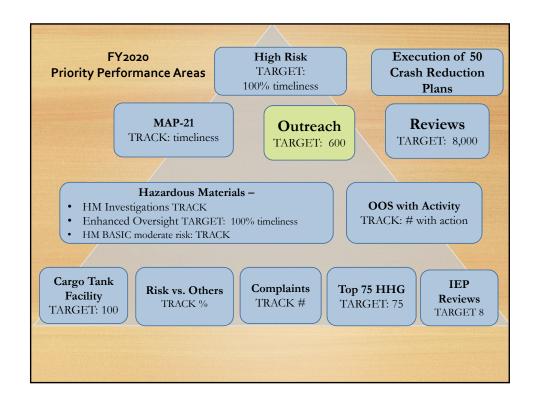
What is ACE Investigation Management (AIM) Tool?

 Software tool to conduct investigations and generate investigation reports – very similar to the reports issued today

Compliance, Safety, Accountability (CSA) Safety Interventions?

- 'Offsite' Investigation
- Comprehensive 'Onsite' Investigation
- Focused 'Onsite' Investigation

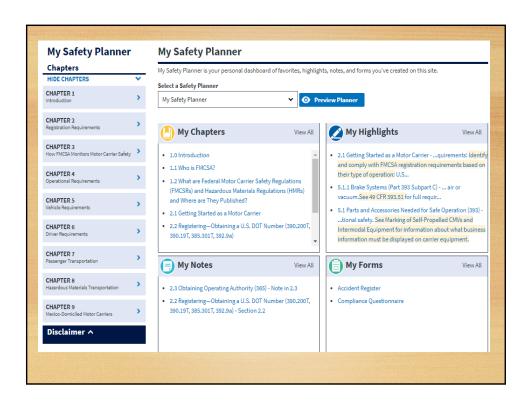




FMCSA Safety Priorities: Next Steps

- Re-examine investigation goals: Seeking balanced portfolio emphasizing industry outreach / industry collaboration
- Re-examine High Priority Carriers: Are we targeting the correct carriers?
- Ensure policies reinforce uniform enforcement throughout all four Service Centers
- Update 'OOS with Activity' Policy
- Update Unsafe Driving Enforcement' Policy
- Implement IT tools for OOS Carrier Enforcement and Vetting
- Identify and Execute CMV Crash Reduction Strategies (state-by-state)





Pre-Employment Screening Program (PSP)

FMCSA does not "rate" drivers

 Our investigators review drivers with more extensive violation histories during carrier investigations/interventions

Pre-Employment Screening Program (PSP):

- Is a Congressionally-mandated program
- Provides perspective employer with driver inspection, crash, and violation history if <u>driver signs release</u>
- No assessment or score provided with the data

Note: 3rd party vendors are aggregating PSP data for carriers and developing "CSA Driver scorecards"

Note: The Federal government <u>does not</u> endorse third-party driver "scores", the Federal government <u>does not calculate or issue a driver "score."</u>

Pre-Employment Screening Program (PSP)

- PSP helps carriers make more informed hiring decisions by providing secure, electronic access to a commercial driver's five-year crash and three-year inspection history
- Companies using PSP to screen new hires lower their crash rate by 8% and driver out-of-service rates by 17%, on average, compared to those that do not use PSP.
- https://www.psp.fmcsa.dot.gov

Work Zone Crash Data

- Safety Statistics (2017):
 - ✓ 710 fatal work zone crashes resulted in 799 fatalities
 - ✓ 222 (31%) of fatal work zone crashes involved large trucks or buses and resulted in 274 fatalities
 - 97% involve large trucks
 - 3% involve buses
- Between 2012 and 2017: Fatal work zone crashes involving large trucks and buses <u>increased</u> by 64 percent

*Data from Fatality Analysis Reporting System (FARS)

Questions?



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