

Brian Brandt Law Firm

In-depth article about commercial truck accidents in Inland Empire and San Gabriel Valley areas of California

Impact of Increased Efforts to Identify High-Risk Truck Drivers Nationwide on Inland Empire, San Gabriel Valley

Introduction

The following article analyzes the potential impact of increased efforts to identify dangerous commercial truck drivers nationwide on motorists in the Inland Empire and San Gabriel Valley regions of Southern California.

The Federal Motor Carrier Safety Administration (FMCSA) recently changed its definition of what constitutes a “high risk” truck driver. The change was made in an effort to reduce the number of motor vehicle accidents caused by drivers with commercial driver licenses (CDL).

Additional federal mandates have been enacted to reduce accidents involving commercial trucks, including requiring all commercial vehicles to be equipped with electronic logging devices (ELD) that track a driver’s Hours of Service (HOS) starting in December 2017. However, an organization representing more than 160,000 independent, commercial truck drivers has filed a lawsuit against the requirement to install ELDs, claiming the federal mandate violates a truck driver’s constitutional rights.

Such issues are of particular interest to residents in the Inland Empire and San Gabriel Valley regions. These are growing regions where a significant number of commercial trucks operate. Numerous warehouses and other businesses in both regions rely heavily on commercial trucks to deliver their products.

Geographic Focus

This article focuses geographically on the Inland Empire and San Gabriel Valley regions in California. The Inland Empire area includes the western part of Riverside County and the southwestern portion of San Bernardino County.¹ Cities located in the Inland Empire include San Bernardino, Riverside, Rancho Cucamonga, Ontario, Chino and Upland. The San Gabriel Valley is a section of Los Angeles County located west of the Inland Empire and northeast of the City of Los Angeles.² Cities located in the San Gabriel Valley include Pomona, Covina and Pasadena.

Background

Accidents caused by large trucks remain one of the leading causes of injuries and deaths in the United States. The FMCSA defines large trucks as trucks with a gross vehicle weight rating (GVWR) greater than 10,000 pounds. According to the most recent statistics compiled by the FMCSA, the number of fatalities involving large trucks and buses increased five years in a row and by 17 percent overall between 2009 and 2013.³ In 2013, a total of 4,186 large trucks or buses were involved in fatal crashes resulting in 4,251 deaths and an estimated 133,000 injuries. In 2009, a total of 3,432 large trucks or buses caused accidents involving 3,619 deaths and 93,000 injuries.

In contrast, the total number of fatalities nationwide involving car accidents during the same time period (2009 – 2013) decreased by 3 percent from 33,883 deaths in 2009 to 32,719 deaths in 2013, according to the Insurance Institute for Highway Safety, Highway Loss Data Institute.⁴ That means truck accidents represent a significantly increasing percentage of overall traffic fatalities.

Efforts to reduce the number of injuries and fatalities caused by large trucks have been ongoing for several years. In December 2010, the FMCSA launched an initiative to reduce the number of large truck traffic fatalities. Known as the Compliance, Safety, Accountability (CSA) program, the initiative was created to “improve large truck and bus safety” and to introduce “a new

enforcement and compliance model that allows FMCSA and its State Partners to contact a large number of carriers earlier in order to address safety programs before crashes occur.”⁵

As part of the CSA program, the FMCSA began using the Safety Measuring System (SMS) to identify high-risk truckers.⁶ The SMS classifies a truck driver as being potentially dangerous based on seven BASIC criteria. BASIC stands for Behavior Analysis and Safety Improvement Categories. The seven BASIC criteria are:

- **Unsafe driving** – FMCSA defines “unsafe driving” as speeding, reckless driving, distracted driving and changing lanes without warning.
- **Hours-of-service (HOS) compliance** – Truck drivers who violate federal HOS regulations are considered high risk.
- **Driver fitness** – Drivers medically unqualified to operate a commercial motor vehicle (CMV).
- **Operating a truck under the influence of alcohol or a controlled substance.**
- **Vehicle maintenance** – Independent truck drivers and trucking companies are legally obligated to properly maintain a truck’s brakes and lights and to make required repairs.
- **Hazardous materials (HM) compliance** – Truck drivers must secure HMs during transit and have the truck clearly marked so the public knows the vehicle is carrying HMs.
- **Crash indicator** – History or pattern of high crash involvement.

The SMS then creates a score for each driver based on the three following measurements:

- Number of adverse safety events
- Severity of violations
- When events occurred

The FMCSA then ranks drivers by percentiles from 0 to 100 to determine the worst-performing truck drivers who pose the highest risk to the public. The 100th percentile includes the highest risk drivers. The zero percentile includes the lowest risk drivers.

Redefining “High Risk” Truck Drivers

In March 2016, the FMCSA updated its definition of “high risk” truck drivers and its investigation procedures. The change was made as part of continued efforts to reduce the number of accidents caused by drivers of large commercial trucks. The FMCSA announced the change March 7, 2016, and is accepting comments on the document until May 6, 2016.⁷

Previously, high risk truck drivers were judged based on a criteria defined as “Current Mandatory.” Under the previous system, high risk truck drivers were defined as those in the 85th percentile and one BASIC “at or above ‘all other’ motor carrier threshold” or a driver with four or more BASICS at or above the 65th percentile. On-site investigations of non-passenger truck drivers previously took place every 24 months.

Under the new system, high risk truck drivers are judged based on similar criteria now defined as “New High Risk.” Under the new system, high risk drivers are defined as drivers with two or more BASICS in the 90th percentile. And instead of 24 months, on-site investigations of non-passenger truck drivers will take place every 18 months.

The other parts of the FMCSA’s program to identify high risk drivers will remain the same. Such criteria include classifying drivers as high risk if a non-passenger carrier violation occurs in two consecutive months or a passenger carrier violation occurs in one month.

The FMCSA explained the new guidelines in its March 7, 2016, announcement published by the Office of the Federal Register:

The new definition will identify a smaller number of carriers, but this group of carriers will have a higher crash risk than the group of carriers identified under the current High Risk definition. This newly defined High Risk list will be the Agency's investigative priority. It will allow the Agency to more promptly conduct investigations of carriers that pose the greatest risk to public safety, rather than placing carriers at high crash risk in a longer queue of investigations.

Identifying High Risk Truckers

The FMCSA uses a variety of methods to identify high risk truck drivers. Working with federal, state and local law enforcement officials, the FMCSA compiles data based on roadside inspections, state-reported crashes, safety violations and the federal motor carrier census, which is the FMCSA's method for keeping track of all registered commercial vehicles nationwide.⁸ Under the new FMCSA criteria announced in March, the data about trucking companies and truck drivers will be updated on a monthly basis.

Starting Dec. 18, 2017, commercial truck drivers will be required nationwide to install electronic logging devices (ELD) that track their Hours of Service (HOS).⁹ Currently, truck drivers use paper logs to track how many hours they work each day. The current HOS rules for drivers of non-passenger carrying trucks that weigh 10,001 pounds or more include:

- 11-hour driving limit (including a 30-minute break) after 10 hours off duty
- 14-hour driving limit (including a 30-minute break) during a 24-hour period
- Mandatory 30-minute rest breaks every 8 hours
- May not drive more than 60 hours in 7 days after taking 34 consecutive hours off duty
- May not drive more than 70 hours in 8 days after taking 34 consecutive hours off duty

However, the HOS rules could change. As part of the United States House of Representatives' 2015 Omnibus Appropriations Bill, the requirement that truck drivers take a 34-hour break every 7 or 8 days was suspended. Specifically, the 2015 Appropriations Bill approved in December 2014 temporarily suspended enforcement of the so-called 34-hour restart rule until a study had been conducted to determine the "operational, safety, health and fatigue aspects of the restart provisions." The suspension of enforcement of the 34-hour restart rule was continued for another year in December 2015 when the U.S. House of Representatives voted in favor of the 2016 Omnibus Appropriations Bill.^{10 11}

More recently, the Owner-Operated Independent Driver Association (OOIDA), which represents more than 160,000 independent truck drivers, filed a lawsuit on March 31, 2016, challenging the legality of the federal-mandate requiring all truck drivers to install an ELD in their vehicles.

The OOIDA claims the federal requirement violates a driver's constitutional rights. The OOIDA's lawsuit was filed in the Seventh U.S. Circuit Court of Appeals in Chicago, Illinois.¹²

"There is simply no proof that the costs, burdens and privacy infringements associated with this mandate are justified," said Jim Johnston, OOIDA president and CEO, in a statement published by The Wall Street Journal on March 31, 2016. "This mandate means monitoring the movement and activities of real people for law enforcement purposes and is an outrageous intrusion of the privacy of professional truckers."

Whether such efforts to identify "high risk" truck drivers are working will be the focus of an upcoming federally mandated study. Specifically, the National Academy of Sciences will lead a study mandated by the United States House of Representatives to determine the CSA's effectiveness in identifying "high risk" commercial truck drivers and bus companies, according to an announcement in March issued by the FMCSA.¹³

Potential Impact on Inland Empire, San Gabriel Valley

California remains the most populated state in the country. More than 12 percent of the entire population of the United States lives in California.¹⁴ Within California, nearly half (46 percent) of the state's residents live in the Greater Los Angeles Area, which includes the Inland Empire and San Gabriel Valley regions.¹⁵

Not surprisingly, the number of registered vehicles in California continues to be the most for any state in the country. Within California, roughly 1 out of 4 vehicles is registered in Los Angeles County, which includes parts of the San Gabriel Valley.¹⁶ Similar statistics about the number of registered vehicles in Riverside County and San Bernardino County, where the Inland Empire is located, were not available. However, the population of the Inland Empire region has increased by more than 24 percent every decade since 1910, according to U.S. Census data for the Riverside-San Bernardino-Ontario, CA Metropolitan Statistical Area. According to the most recent census data, 4.2 million people live in the Riverside-San Bernardino-Ontario, CA area, which comprises the bulk of the Inland Empire.¹⁷

As a result of continued growth in the Inland Empire and San Gabriel Valley regions in California, both areas contain some of the most heavily-traveled highways in California and the United States.¹⁸ These highways include several freeways located in these regions: the San Bernardino Freeway (Interstate 10), the Ontario Freeway (Interstate 15), Interstate 210, Interstate 215 and Interstate 605.

The number of large commercial trucks has also likely increased on these roads due to an increase in the number of warehouses in the Inland Empire and San Gabriel Valley regions. The Inland Empire region in particular contains an increasing number of warehouses. In a recent article about Amazon.com's plans to build a 5th distribution warehouse in the Inland Empire region, The Los Angeles Times noted that warehousing and storage jobs accounted for 12 percent of job growth in 2015 in Riverside County and San Bernardino County. The same Los Angeles Times article noted that the Inland Empire "has morphed into a warehouse hub for trucks arriving daily from ports and rail yards."¹⁹

As more cars and trucks travel on the same highways in the Inland Empire and the San Gabriel Valley regions, the potential for more accidents involving large trucks has become an even greater concern. That's why the FMCSA's increased efforts to identify high risk truck drivers must remain a priority for the safety of all drivers in both regions in Southern California.

Each year, the FMCSA identifies truck drivers throughout the country as high risk drivers using its CSA program and Safety Measuring System (SMS). Some of the most recent commercial truck drivers in California identified as high risk drivers using this system include:

- California-licensed truck driver Yakov Zaverukha – The FMCSA deemed Mr. Zaverukha "an imminent hazard to public safety" and on March 25, 2016, ordered him not to operate a commercial motor vehicle. The FMCSA issued its order in response to Mr. Zaverukha being cited on March 21, 2016, by the Illinois State Police for "driving under the influence of alcohol with a blood alcohol level of 0.308 percent – nearly seven times the limit set by federal statute."²⁰
- California-licensed truck driver Edward Herbert Crane – The FMCSA on Feb. 9, 2016, ordered Mr. Crane not to operate a commercial motor vehicle after the federal agency

declared him to be an imminent hazard to public safety. The FMCSA issued its order in response to an investigation involving Mr. Crane, which revealed he tested positive for use of a prohibited controlled substance three times since 2012. Mr. Crane was then involved in an accident on Jan. 8, 2016, and refused to submit to a post-crash drug and alcohol test.²¹

Legal rights

Drivers or passengers in motor vehicles involved in an accident caused by a commercial truck driver in the State of California have the right to take legal action against the truck driver, trucking company or any entity deemed responsible for the accident. The injured party has up to two (2) years in most cases to file a lawsuit against the truck driver, trucking company or another responsible party, according to California's Statute of Limitations for truck accident lawsuits. However, the Statute of Limitations is different if the injured party was under 18 years old at the time of the accident. In such instances, the injury party has until his or her 20th birthday to file a lawsuit to recover damages (financial compensation) for injuries sustained in a truck accident.

The amount of money an injured party or immediate family members can obtain in a truck accident claim varies from case to case. The largest verdict in the history of California involving a truck accident was \$150 million. In 2013, a California jury awarded that amount to the family of Kylie Asam and her brother, who survived a Nov. 22, 2009, accident in which their mother, father and brother were killed in a collision with a tractor-trailer driver parked illegally on California Interstate 210. The Asam family was represented by attorney Brian Brandt in its wrongful death case against the trucking company.²²

Conclusion

While the FMCSA's new criteria will ideally identify the most dangerous truck drivers, more research clearly needs to be done to determine the effectiveness of such enforcement efforts.

The increase in the number of accidents involving commercial truck drivers between 2009 and 2013 nationwide illustrates that previous enforcement efforts did not “reduce crashes, injuries, and fatalities that are related to commercial motor vehicles,” the stated desired effect of the FMCSA’s CSA program.²³

Such efforts to remove high risk commercial truck drivers from the road are especially important in the Inland Empire and San Gabriel Valley regions of Southern California, where the population continues to grow and there are an increasing number of warehouses and other business which rely heavily on commercial truck drivers.

If more effective ways cannot be found to reduce the number of accidents caused by commercial truck drivers, more motorists in the Inland Empire and San Gabriel Valley regions could potentially be put at risk on the road.

For more information

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