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Alabama

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Generally speaking, federal safety regulations are admissible in Alabama, and experts are permitted to testify as to the content of those safety regulations. *See, e.g., Alabama Power Co. v. Marine Builders*, 475 So. 2d 168, 177 (Ala. 1985) (citing and discussing cases in which the Alabama Supreme Court approved the admissibility of certain safety regulations “published by federal agencies under the authority of Congress”). The Court has also indicated that an instruction that a jury could consider FMCSRs in determining the standard of care would be appropriate. *Osborne Truck Lines v. Langston*, 454 So. 2d 1317, 1326 (Ala. 1984). However, while the Alabama Supreme Court has not directly addressed the issue of whether an expert may apply the FMCSRs to a particular set of facts, at least one federal district court in Alabama has held that an expert may not testify that a defendant violated the FMCSRs, as it would contravene the “well-established principle that an expert may not testify as to a legal conclusion.” *Nicholson v. McCabe*, Case No. CV-02-H-1107-S, 2003 U.S. Dist. LEXIS 27589, at *4 (N.D. Ala. July 18, 2003).

Arkansas

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Whether a witness may give expert testimony rests largely within the sound discretion of the trial judge. The trial judge will determine if the proposed expert testimony will aid the trier of fact in understanding the evidence or in determining a fact in issue. A qualified expert may testify and explain the FMCSR (or other “industry standards”) if the Court finds that an expert would explain a complicated issue. However, the admissibility and proper expert witness would be subject to a *Daubert* analysis. Additionally, an expert witness could not testify to legal conclusions, or submit an opinion on the “ultimate issue” of the lawsuit. At least one federal district judge has barred an expert from opining that the motor carrier or driver violated the FMCSRs.

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California

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Generally, yes. California Evidence Code section 720(a) states that a “person is qualified to testify as an expert if (s)he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.” There are not any rules or statutes prohibiting expert witnesses from testifying as to the content of the FMCSRs or their applicability to a case’s facts

However, in a recent trial in San Bernardino Superior Court, the Court prohibited any witness, including expert witnesses, to testify regarding whether the trucking company complied with the FMCSRs in the specific case. The Court explained that compliance with the law is a legal question, and therefore, only an attorney witness would be able to testify to such. However, the Court permitted the defendant trucking company to submit special jury instructions that expressly stated the FMCSR provisions at issue for the jury to have during deliberations.

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Colorado

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

A court's determination regarding whether an expert witness is permitted to testify at trial as to the content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts is based on the Colorado Rules of Evidence governing the admissibility of evidence and expert testimony including C.R.E. 401, 402, 702 and 403. The court is the gatekeeper to determine whether proposed expert testimony is both sufficiently relevant and reliable to be admitted and whether any probative value of the testimony is substantially outweighed by the danger of unfair prejudice.^x Colorado courts regularly preclude expert testimony regarding FMCSRs based on the lack of relevance when the party fails to establish the applicability of the regulations.^{xi}

Additionally, Colorado courts may exclude expert testimony regarding FMCSRs which usurp the function of the court or the jury. An expert cannot tell a jury what the law is, or apply the law to the facts and provide a conclusion as to which party should prevail on the claims in the case.^{xii} Although C.R.E. 704 permits admissible testimony in the form of an opinion or inference even when it embraces an ultimate issue to be decided by the jury, an "expert may not usurp the function of the court by expressing an opinion of the applicable law or legal standards."^{xiii} Moreover, "[a]n expert testifying as to issues of law may not ... simply tell the jury what result to reach."^{xiv}



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Connecticut

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Connecticut holds the FMCR do not create a private cause of action but will allow an expert to refer to a violation of a standard as evidence of negligence.

Delaware

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Delaware Courts have not yet directly addressed this issue. However, in at least one case, an expert on federal regulations and industry standards testified as to whether the retention of driver was grossly negligent. *Smith v. Williams*, 2007 WL 2677131 at *4 (Del. Super. Ct. Sep. 11, 2007).

Georgia

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

While Georgia's state courts have not provided substantial guidance on whether an expert witness may testify as to the content and applicability of the Federal Motor Carrier Safety Regulations ("FMCSR"), Georgia's federal courts have held that "it is inappropriate to allow [an expert] to testify as to what the Federal Motor Carrier Safety Regulations provide and mean, or to allow him to opine expressly that the conduct of Defendants violated certain Federal Motor Carrier Safety Regulations." *Ricker v. Southwind Trucking, Inc.*, 2006 U.S. Dist. LEXIS 97161, *22, 2006 WL 5157692 (N.D. Ga. July 13, 2006). For example, in *Grange Indem. Ins. v. Conger*, the Southern District of Georgia found that it was "inappropriate to allow an expert witness...to testify on the content and meaning of federal regulations and to expressly conclude whether a particular federal regulation applies to a particular case." *Grange Indem. Ins. Co. v. Conger*, 2019 U.S. Dist. LEXIS 230188, *12-13, 2019 WL 8376242 (S.D. Ga. Dec. 27, 2019). The court explained:

Plaintiff's expert's] report and deposition testimony demonstrate that he identified certain component weights and ratings for [Defendant]'s vehicle, read 49 C.F.R. § 390.5, and concluded that the weights and ratings, taken together, did not satisfy the classifications in that regulation for identifying a 'commercial motor vehicle.' In reaching that conclusion, [Plaintiff's expert] made express determinations about which weights and ratings should be considered and aggregated under § 390.5. Those determinations were based on his reading of § 390.5. Such testimony is not proper expert opinion testimony under Federal Rule of Evidence 702. This portion of Mr. Roberts' testimony is simply a reading of the law and application to the facts and should be excluded.

Conger, 2019 U.S. Dist. LEXIS 230188, at *13-14.

While the Georgia federal courts apply the Federal Rules of Evidence, Georgia's appellate courts have held that "if a rule in the [Georgia's new] Evidence Code 'is materially identical to a Federal Rule of Evidence, we look to decisions of the federal appellate courts construing and applying the Federal Rules, especially the decisions of the United States Supreme Court and the Eleventh Circuit, for guidance.'" *Williams v. Harvey*, 311 Ga. 439, 445 (2021) (quoting *Harris v. State*, 310 Ga. 372, 378 n.14 (2020)). As to the admission of expert testimony at trial, Georgia courts look to the standard employed by Eleventh Circuit federal court under the federal rules of evidence. See *Bowers v. CSX Transportation, Inc.* 369

Georgia

Ga. App. 875, 878 (2023) (excluding a plaintiff's expert pursuant to O.C.G.A. § 24-7-702 by analyzing federal cases under Fed. R. Evid. 702).

However, not all testimony regarding the applicability of the FMCSRs to the facts of a particular case is inadmissible. Georgia's federal courts have held that an expert may use legal terminology and cite the FMCSRs when the expert does not express an opinion on the ultimate legal issue. See *Karr v. Celadon Trucking Servs.*, 2017 U.S. Dist. LEXIS 224731, *10, 2017 WL 10942181 (N.D. Ga. Dec. 20, 2017) (admitting an expert's "statement that [the defendant truck driver] violated Federal Motor Carrier Safety Regulation 392.7(a) which deals with the use of brakes.... because whether [the truck driver] violated the regulation is not the ultimate legal issue in the case[.]"). In addition, while Georgia's federal courts generally prohibit expert testimony regarding what the FMCSRs mean, the courts have permitted experts to offer testimony regarding the applicable standard of care based on the standards set by the regulations and the model CDL manual. See *Ricker v. Southwind Trucking, Inc.*, 2006 U.S. Dist. LEXIS 97161, 2006 WL 5157692, *6-8 (N.D. Ga. July 13, 2006). In short, Georgia's federal courts have permitted expert testimony on the Federal Motor Carrier Safety Regulations when the testimony does not go to the ultimate issue in the case.

Illinois

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

The FMCSRs, themselves, are generally admissible, but experts should not be allowed to testify as to the meaning of FMCSRs or the applicability of the FMCSRs to a particular set of facts. *See, e.g., Kucharski v. Orbis Corp.*, 2017 U.S. Dist. LEXIS 68611 (N.D. Ill. May 5, 2017), and cases cited therein. Unfortunately, this principle is not consistently applied throughout our courts. Further, we consistently argue that the Interstate Transportation Act and the regulations promulgated thereunder do not apply to create an individual cause of action for personal injury claims. *See, e.g., Lynch v. Collins*, No. 20-cv-2477, 2022 U.S. Dist. LEXIS 106700, *7 (N.D. Ill. June 15, 2022) (rejecting plaintiff's argument that the FMCSR definition of "statutory employer" does not provide basis for liability of party where there was no evidence of an actual employer-employee relationship).

Indiana

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

If an expert's specialized knowledge of the FMCSRs will help the trier of fact, they should be allowed to testify.

An expert is permitted to testify so long as their "scientific, technical, or other specialized knowledge will help the trier of fact understand the evidence or determine a fact at issue" per Indiana Rule of Evidence 702. The expert's testimony "must meet that standard, must rest upon reliable scientific principles, and must not be more prejudicial than probative." *Thevenot v. State*, 121 N.E.3d 679, 686 (Ind. Ct. App. 2019).

The subject matter of the expert's testimony must be "distinctly related to some scientific field, business, or profession beyond the knowledge of the average layperson." *Riley v. St. Mary's Med. Ctr. Of Evansville, Inc.*, 135 N.E.3d 946, 951 (Ind. Ct. App. 2019). Further the expert "must be shown to have sufficient skills, knowledge, or experience in that area so that the opinion will aid the trier of fact." *Id.* at 951.

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Iowa

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Although Iowa district courts have yet to address this specific issue, they “are committed to a liberal view on the admissibility of opinion testimony.” *Ranes v. Adams Labs., Inc.*, 778 N.W.2d 677, 685 (Iowa 2010). Relevance of information and qualification of the witness are crucial to admissibility. Expert testimony is admissible only if it will “assist the trier of fact in understanding the evidence or to determine a fact in issue” and the witness is qualified to testify as an expert. *Ranes*, 778 N.W.2d at 685 (internal quotations omitted).

One important limitation on expert testimony involves an expert’s ability to testify to legal conclusions. In most cases, an expert may not testify to a legal conclusion. *Terrell v. Reinecker*, 482 N.W.2d 428, 430 (Iowa 1992). In *Searcy v. Anderson Erickson Dairy Co.*, the Southern District of Iowa allowed an expert to testify as to how the industry applies the FMCSRs, reasoning that “the FMCSRs could assist the jury in its ultimate determination.” *Searcy v. Anderson Erickson Dairy Co.*, 2017 WL 11180255 (S.D. Iowa 2017). However, the Court excluded the expert’s testimony as it related to whether AE Dairy’s drug and alcohol testing policy violated the FMCSR’s policy as this represented an impermissible legal conclusion. *Id.*



Kansas

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Kansas Courts have not specifically addressed the issue of whether an expert may testify to the contents of the FMCSRs or the applicability of the FMCSR to a set of facts. However, experts generally may provide testimony in the form of inferences or opinions, including testimony that embraces the ultimate issue or issues to be decided by the trier of fact. K.S.A. § 60-456(d).

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Kentucky

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Kentucky courts certainly do not require an expert to explain the FMCSRs or the applicability of the FMCSRs to a certain set of facts. Such expert testimony may be admissible as long as the proposed expert is qualified and the testimony otherwise meets the requirements of Kentucky Rules of Evidence 702, 703, and the United States Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993). Witnesses are not generally permitted to testify to conclusions of law, *Tamme v. Commonwealth*, 973 S.W.2d 13, 32 (Ky. 1998), but a properly qualified expert may be permitted to testify about trucking industry standards and whether particular conduct comported with those standards.

Louisiana

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

While there is no explicit case law prohibiting or allowing expert testimony on the FMCSR, Louisiana Courts have generally allowed the testimony to be presented if the testimony speaks directly to the question of legal cause for the accident. For example, it may be permissible in an instance where plaintiff contends that a company's negligent hiring or supervision contributed to and/or caused the subject accident. However, it may not be permissible to address vicarious liability. For example, in *Saldana v. Larue Trucking, LLC*, 52,589 (La. App. 2 Cir. 4/10/19), 268 So. 3d 430, 442, *writ denied*, 2019-00994 (La. 10/1/19), 280 So. 3d 159, expert reports were presented addressing whether an employee was a statutory employee under the FMCSRs and thus making the company vicariously liable for the accident. The Louisiana Second Circuit Court of Appeal noted that the FMCSRs do not address tort liability. More specifically, it does not address issues of vicarious liability. As such, expert reports or testimony could not be used to support the proposition that the FMCSR made the defendant a statutory employee of the defendant company. Rather, the court required that a review of the applicable state law should be conducted to determine whether a company is vicariously liable. *See Generally, Saldana v. Larue Trucking, LLC*, 52,589 (La. App. 2 Cir. 4/10/19), 268 So. 3d 430, 442, *writ denied*, 2019-00994 (La. 10/1/19), 280 So. 3d 159.

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Maryland

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Experts are allowed to testify to FMCSRs if the court determines that “the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue” in the case.^{xxii}

To make that determination, there are a series of factors that a court must utilize in Maryland Rule 5-702: “(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education; (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.”^{xxiii}

Further, in August 2020, the Maryland Court of Appeals adopted the standard for the admissibility of expert testimony announced by the United States Supreme Court in the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).^{xxiv} Maryland's *Rochkind II* specifically tied the popular *Daubert* standard to Maryland Rule 5-702's analysis and held that trial judges do not have to make an ultimate determination on the validity of an expert's testimony, just on whether it is sufficiently legitimate to support a conclusion that may be helpfully considered by the jury at trial.^{xxv}

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Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

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It is within the discretion of the trial judge to allow or preclude an expert from testifying at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts.



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Michigan

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Yes. FMCSRs were codified in Michigan Law by MCL 480.11a. Subject to qualification as an expert witness, a transportation expert would be expected to testify regarding a defendant-driver's violation or adherence to the regulations as part of the expert's liability analysis.



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Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

An expert is generally permitted to testify about regulations if it is relevant to the standard of care. *See, e.g., O'Neil v. Wells Concrete Prods. Co.*, 477 N.W.2d 534, 537 (Minn. Ct. App. 1991). However, an expert should not be allowed to give their opinion on whether regulations have been violated because legal analysis by an expert is ordinarily inadmissible. *Id.* (citing *Behlke v. Conwed Corp.*, 474 N.W.2d 351, 359 (Minn. App. 1991), pet. for rev. denied (Minn. Oct. 11, 1991)).

Mississippi

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

The legal standard is that the testimony must be based on scientific or specialized knowledge that will help the trier of fact understand the evidence; the testimony must be based on sufficient facts or data; the testimony is the product of reliable principles and methods; and the expert has reliably applied the principles and methods to the facts of the case. MRE 702. The testimony must also meet Daubert criteria to be admissible. Application of these factors to an expert's proposed opinions would be addressed on a case-by-case basis.

Missouri

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

In *Johnson v. ABF Freight Sys., Inc.*, 2021 U.S. Dist. Lexis 264201 (October 22, 2021), the District Court for the Western District of Missouri admitted evidence of the FMCSRs as being helpful to the trier of fact in determining the standard of care. *Id.* at p.6. However, the Court refused to allow the expert to opine the driver's conduct fell below the applicable driving standard because that opinion was based solely on witness testimony, rather than the expert witness' expertise. *Id.* Therefore, the jury was capable of drawing its own inferences from the FMCSRs and the witnesses' testimony. The Court distinguished its decision from *Kruse v. Darrell Ellis Trucking, LLC*, 2010 U.S. Dist. Lexis 148458 (W.D. Mo. 2010), where an expert's opinion that a driver was following too closely was based on an accident reconstruction, in addition to reference to the FMCSRs. *Id.* at 7. In *Kruse*, the opinion regarding the failure to meet the standard of care was based on scientific, technical, and specialized knowledge. *Id.*

Similarly, FMCSRs may be admitted in Missouri state Courts as being helpful to the trier of fact in determining the industry standard of care. *See, e.g. Coon v. Am. Compressed Steel, Inc.*, 207 S.W.3d 629, 638 (Mo. Ct. App. 2006) (allowing Plaintiff's expert to opine the load should have been tarped, strapped, chained, or otherwise secured, relying on applicable FMCSRs and other authorities).



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Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Industry experts are generally permitted to testify about the FMCSRs. This includes testimony related to a violation of the FMCSRs. This assumes that the expert is qualified on the FMCSRs.



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Nebraska

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Nebraska state courts have not addressed whether experts may testify as to the content of the FMCSRs or their applicability to a certain set of facts. But our federal district court has barred proffered expert testimony that the FMCSRs were violated in a particular set of facts based on the “general rule” that “expert testimony on legal matters is not admissible.” *Kabasinskas v. Haskin*, No. 8:10CV111, 2011 WL 2118641, *5 –*8 (D. Neb. May 27, 2011). Given the similarity between the federal and Nebraska standards for expert testimony admissibility, we would expect our state courts to follow suit. See *Schafersman v. Agland Coop*, 262 Neb. 215 (2001) (adopting the federal Daubert standards).

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Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

New Hampshire courts have not explicitly addressed expert testimony in the context of FMCSRs, but it is likely courts would address this issue as they do expert testimony in general. Under RSA 516:29-a, generally speaking, courts are required to exclude unreliable expert testimony.

RSA 516:29-a indicates that a court shall not allow a witness to offer expert testimony unless the court finds that the testimony is based on sufficient facts and data, is the product of reliable principals and methods, and that the witness has applied the principals and methods reliably to the facts of the case. RSA 516:29-a, I. In evaluating expert testimony, the court must consider whether the expert's theories and techniques have or can be tested, have been subjected to peer review, have a known or potential error rate, and are generally accepted in the appropriate literature. RSA 516:29-a, II (a).

Similarly, New Hampshire Rule of Evidence 702, regarding reliability of experts, accords with the requirements of *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993). See *Baker Valley Lumber, Inc. v. Ingersoll-Rand Company*, 148 N.H. 609, 611 (2002). Thus, Rule 702 demands that an expert's opinion be based on the "'methods and procedures of science' rather than on 'subjective belief or unsupported speculation'; the expert must have 'good grounds' for his or her belief." *In Re: Paoli Railroad Yard PCB Lit.*, 35 F. 3d 717, 742 (3rd Cir. 1994) (citations omitted).

If appealed, a court's findings regarding the reliability of expert testimony will not be reversed absent abuse of discretion. See, e.g., *Baker Valley Lumber, Inc. v. Ingersoll-Rand Co.*, 148 N.H. 609, 614 (2002).

New Jersey

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

N.J.S.A 13:60 was enacted in NJ to maintain compliance with the Federal Motor Carrier Safety Administration Regulations. Thus, NJ enforces the FMCSRs and to participate in the Federal Safety enforcement programs and to receive Federal aid for doing so.

N.J.R.E. 703 addresses the foundation for expert testimony and mandates that expert opinions must “be grounded in ‘facts or data derived from (1) the expert’s personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts.’” *Townsend v. Pierre*, 221 N.J. 36, 52 (2015). The net opinion rule directs that experts be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable. *Townsend*, 221 N.J. at 55. An expert’s conclusion must be excluded if it is based merely on unfounded speculation and unquantified possibilities.

A proffered expert opinion should be closely reviewed to ensure any expert opinion regarding the contents and/or applicability of the FMCSRs will be admissible.



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New Mexico

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Yes, judges in New Mexico permit a qualified expert to testify as to the content of the FMCSRs as well as the applicability of the FMCSRs to the case-specific facts at issue.

North Dakota

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

North Dakota courts have not specially addressed whether an expert may testify at trial as to the content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts. The admission of expert testimony is governed by N.D. R. Ev. 702, which provides a witness who is qualified as an expert with knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

Rule 702 envisions generous allowance of the use of expert witnesses who are shown to have some degree of expertise in the relevant field. *Praus ex rel. Praus v. Mack*, 2001 ND 80, ¶ 34, 626 N.W.2d 239. Although expert testimony is admissible whenever specialized knowledge will assist the trier of fact in understanding the evidence or determining a fact in issue, whether expert testimony is useful falls within the trial court's sound discretion. *Id.*

In *Mack*, the trial court admitted OSHA regulations into evidence for the jury to consider but did not allow the experts to specifically testify whether there were violations of OSHA and state safety regulations because the trial was not a Federal OSHA enforcement proceeding. 2001 ND 80 at ¶ 35. The North Dakota Supreme Court concluded the trial court was not required to allow the negligence action to become even more complicated and protracted by focusing on possible OSHA violations. *Id.* The trial court appropriately allowed the admission of evidence of custom and practice at trial and the parties argued those issues before the jury. *Id.* The Court further concluded the trial court's refusal to permit the experts to testify whether there were violations of OSHA and state safety regulations was not an abuse of discretion where the experts were permitted to testify about customs and practices in the industry. *Id.*

Ohio

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

The Ohio Supreme Court has yet to address this question, therefore, there are no binding holdings that set precedent. However, the Twelfth Appellate District permitted an expert to testify as to the content of the FMCSA regulations in *Davis v. Royal Paper Stock Co., Inc.*, 201 N.E.3d 506 (Ohio Ct. App. 2022). In that case, an expert witness who was a commercial transportation specialist, explained that there were no FMCSA regulations that imposed an obligation to use jack stands. The court eventually determined the witness' overall testimony about the cause of the injury to be speculative but did not rule that testimony about the FMCSRs was prohibited.

Oklahoma

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Although the Oklahoma state courts have not prohibited parties from presenting expert testimony regarding the content or applicability of the FMCSRs across the board, the courts have put constraints on such testimony. Although experts may testify to the “ultimate issue,” (see Fed. R. Evid. 704(a)), the expert “may not testify to the legal implications of conduct.” *Le v. Total Quality Logistics, LLC*, 431 P.3d 366, 379. An expert cannot testify to the applicability of the FMCSRs in such a way that they are merely “opin[ing] as to the legal consequences of those facts in a manner that requires no expertise beyond that of a judge or jury looking at the *same facts*.” *Id.*

Oregon

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An expert may testify as to the content of regulations but may not testify as to whether the statutory elements are met by the relevant facts. *See Yeatts v. Polygon Nw. Co.*, 313 Or. App. 220, 237-38, 46 P.3d 1060 (2021). Expert testimony that embraces the ultimate facts at issue is not in itself objectionable. Or. R. Evid. 704; *see Madrid v. Robinson*, 324 Or. 561, 931 P.2d 791 (1997). But an opinion that “merely tells the jury which conclusion to reach” is not admissible because it is not helpful to the jury and may cause confusion or delay violative of Or. R. Evid. 701 and 702, respectively. *See French v. Barrett*, 84 Or. App. 52, 54, 733 P.2d 89 (1987).

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Pennsylvania

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Yes. The Superior Court of Pennsylvania has found that, “relevant laws and regulations should be admitted to establish a duty of care and any breach of that duty as evidence of negligence.” Christiansen v. Silfies, 667 A.2d 396 (Pa.Super. 1995). In Christiansen, the trial court allowed Trooper Crossley, an expert on safety inspections of motor carriers, to testify about the application of certain safety regulations, including the tractor-trailer’s braking mechanisms, which he inspected after the accident, and the driver’s logbook. Id. However, Trooper Crossley was not permitted to give his opinion as to the standard of care that the driver should have used while driving the tractor-trailer under conditions such as those present at the time of the accident. Id. The Superior Court found no error in the trial court’s ruling, as Trooper Crossley’s expertise was limited to the application of certain regulations pertaining to inspections of truck equipment and documentation, and he was not qualified to opine about any other regulations which may have involved driving standards. Id.

The Superior Court in Christiansen discussed,

An expert may indeed offer an opinion as to the ultimate issue, in this case, whether truck driver . . . complied with the applicable standards of care. But such opinion testimony is not proper where it requires a credibility assessment by the expert witness. . . Therefore, it would have been proper to have a qualified expert describe what the applicable standard of care is in a case such as this, but to allow the jury to apply the standard to the facts as they find them.

Id. The court also found that an accident reconstruction expert was permitted to testify on the issue of accident reconstruction, his area of expertise. Id. However, the reconstructionist was not permitted to testify on the standards of care of commercial truck drivers operating in hazardous conditions that may be defined in the Pennsylvania Motor Vehicle Code and the Federal Motor Carrier Safety Regulations, as they were outside of his expertise. Id.

Rhode Island

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There is no current legal authority addressing this issue in Rhode Island. In considering generally when a party may introduce expert testimony, Rule 702 of the Rhode Island Rules of Evidence permits expert opinions “if scientific, technical, or other specialized knowledge will assist the trier of fact to understand or to determine the fact in issue” Further, “[e]xpert testimony may be admitted when such testimony will aid the trier of fact in understanding a subject matter beyond the ken of a layperson of ordinary intelligence.” *Kelly v. Rhode Island Public Transit Authority*, 740 A.2d 1243, 1248 (R.I.1999) (citing *Allen v. State*, 420 A.2d 70, 72–73 (R.I.1980)). Where a matter is not obvious to a lay person and lies beyond common knowledge, expert testimony is typically required. *Giron v. Bailey*, 985 A.2d 1003 (R.I. 2009). Thus, the determination of whether to allow expert testimony concerning the content of FMCSRs would likely be made on a case-by-case basis depending upon the specific facts and circumstances presented to the court.



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Tennessee

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Tennessee has no specific prohibition against expert testimony as to the content or applicability of the FMCSRs. Tennessee attorneys typically rely on cases from other jurisdictions in arguing to exclude a purported FMCSR expert. See, e.g., *Kucharski v. Orbis Corp.*, No. 14-cv-05574, 2017 U.S. Dist. LEXIS 68611, *20 (N.D. Ill. May 5, 2017) (“Other courts have applied the same reasoning to exclude testimony from trucking industry experts regarding the applicability of the FMCSR to a particular set of facts . . .”).

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Vermont

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In-depth knowledge of the FMCSRs are likely to be interpreted as specialized knowledge, and an expert who can meet the qualifications outlined in V.R.E. 702 and applies the principles of the FMCSRs to the facts of the case is likely to be permitted to provide expert opinions.

V.R.E. 702 states:

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Accordingly, such expert testimony is likely to be allowed.



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Washington

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Whether or not a provision of FMCSRs applies in a case is a question of law to be decided by the trial judge. This is normally handled in the Jury Instructions. Some judges are more lenient on this issue, since an expert is entitled to explain the basis of his or her opinion which may include reference to a specific section of FMCSRS.



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West Virginia

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West Virginia has not adopted any specific expert testimony standard as to the content of the FMCSR or the applicability of the FMCSR, therefore the standard requirements for expert testimony would need to be met to the introduction of such.

Wyoming

Does your state permit an expert to testify at trial as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

An expert is not ordinarily allowed to testify that the FMCSRs impose a higher standard of care on a trucking defendant. In Wyoming, the standard of care is always ordinary care under the circumstances, no matter what. The expert also cannot testify that the defendant violated the standard of care. See *Infiesta-Montano v. Cocca Dev., Ltd.*, 2019 U.S. Dist. LEXIS 225934 (The court held that an expert cannot testify to whether defendants violated OSHA regulations but can discuss his opinion about OSHA regulations relevant to the facts of the case.). One federal magistrate (now a federal district court judge) routinely held that an expert cannot testify that a defendant violated federal regulation or state statutes. *Infiesta-Montano v. Cocca Dev., Ltd.*, 2019 U.S. Dist. LEXIS 225806 (D. Wyo. May 31, 2019). Another federal district court judge, however, has allowed experts to testify that a defendant violated federal regulations or state statutes, but did not allow the expert to testify that the violation constitutes negligence or a breach of the standard of care. See, e.g., *Popovski v. Titan Transfer, Inc.*, 2022 U.S. Dist. LEXIS 213154 (D. Wyo. Jan. 25, 2022).