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MISSOURI Memo

MISSOURI TRUCKING ASSOCIATION June 2014 • NO. 7

Mid-Month Update

New Members

Castle Contracting LLC
760 South 2nd St
St Louis, MO 63102
Mr. Matt Cox
(314) 421-0046

Convoy of Hope
330 South Patterson Ave
Springfield, MO 65802
Mr. Roger Estebo
(417) 851-4460

Penske Truck Leasing
14528 South Outer Forty, Ste 424
Chesterfield, MO 63017
Mr. Jerry Newman
(314) 851-0716

Welcome New Members!

Upcoming MoTA Events . . .

June 19 ~ **Night at the Ballpark**
Cardinals vs. Phillies

June 24 ~ **Board Meeting**
(prior to golf tournament)

June 24 ~ **Sitton-Babcock PAC Golf Tournament**
Old Kinderhook Golf Club
Camdenton, MO

July 17 ~ **Safety Council Meeting**
(location TBD)

August 29 ~ **Safety Rest Stops**
Boonville
Joplin
Cape Girardeau

Sept 16-18 ~ **Annual Convention**
Big Cedar Lodge
Ridgedale, MO

President's Message

In light of the important August 5 election for infrastructure funding in Missouri, MoDOT Director Dave Nichols provided this article for distribution to the Missouri Trucking Association and its members. Please be on the lookout for several items in the coming months as we work together to push FOR this investment in Missouri's infrastructure needs. As leaders in the industry that provides one out of every 16 jobs in Missouri, transports 81% of the total manufactured tonnage in Missouri, and is the exclusive provider of goods for 72% of Missouri's communities, your support and leadership on this issue is critical to its success. Now is the time for us to do our part for the future of our state, our communities, and the industry that supports us all.

Moving Missouri Forward

By Dave Nichols, Director of the Missouri Department of Transportation

At the Missouri Department of Transportation, we spend every day taking care of Missouri's roads and bridges. We also make sure Missourians can get safely from one place to another, by car, plane, bus, bike, foot or train. We help businesses move their products across the state and across the country.

Missouri's transportation system is huge. We have more state highway miles than Kansas and Illinois combined. We rank sixth nationally in number of bridges. We are fourth in the nation for tons of freight carried by rail.

It's a tall order to keep all that running smoothly, to keep everyone safe, and to help businesses prosper. And right now, Missouri faces an impending crisis. In a matter of just a few years, the transportation system we've come to rely on may fail us.

How did we get here? With people driving more fuel efficient vehicles and driving fewer miles, the fuel taxes that fund transportation now represent a declining revenue stream. Even as the price of gas rises, Missourians still only get 17 cents per gallon to support transportation, and that amount hasn't changed in 20 years. Worse yet, the purchasing power of that 17cents is only worth 8 cents today!

As the director of MoDOT, it's my job to figure out how to make that revenue stretch as far as it can. Over the last three years, MoDOT has made some tough cuts to personnel, facilities and equipment and has saved more than $500 million. But we know we cannot cut our way to a functional, safe and prosperous transportation system.

We know it takes about $485 million every year to maintain the system of highways and bridges we have now. If nothing changes, by 2017, the revenue will drop to $325 million and Missouri's roads and bridges will deteriorate. That's why we support any additional funding that allows us to deliver the types of transportation improvements that Missourians want and need.

This spring, the Missouri General Assembly passed legislation that would allow Missouri voters to approve a temporary ¾-cent sales tax for transportation. On August 5, Missourians will go to the polls and decide if we should keep our families safe, create jobs and boost our economy by investing in much-needed transportation improvements.

New revenue from this temporary 10-year sales tax would be used for all transportation purposes. Decisions on how it would be spent are being prioritized at the local level, so every region of the state will see the benefits they need most.

The tax would not be collected on food, medicine or gasoline, and the state could not implement toll roads or raise fuel taxes during the 10-year period. Cities and counties would get their share too, splitting an estimated $54 million per year.

It takes a great deal of support to keep Missouri moving forward. As the director of MoDOT, I take great pride in the way the department operates, and I am proud that despite our challenges, MoDOT is a leader in transportation innovations. We strive to work faster, safer and more efficiently. With additional resources, we will be able to preserve the system and services we enjoy today, make all Missouri travelers safer, provide the types of transportation improvements that spur economic growth and create jobs, and give Missourians more transportation choices.

One Million Safe Driving Mile Achievers

We need your help assembling a database of professional drivers from throughout the industry who have achieved at least one million safe, accident –free miles. As you will see in the attached letter, FMCSA has a poster in their main lobby in DC that depicts victims of truck-involved crashes. This poster was given to FMCSA by an anti-truck group. This poster sheds a negative light on the trucking industry and does not accurately portray the safety-first mentality of the overwhelming majority of the fleets and drivers in the industry. ATA would like to take the data they receive and present FMCSA Administrator Anne Ferro with a poster listing the thousands of professional truck drivers who have achieved at least one million safe, accident-free miles who are presently moving America's goods on our nation's highways. Their hopes are to have Administrator Ferro post this in the Agency's lobby to demonstrate the trucking industry's commitment to safety.

Please forward your drivers' name, company and million miles achieved to mota@motrucking.org by August 1st. We greatly appreciate your time in assisting MoTA and ATA with this project. ▲

ATA Members Meet with FMCSA Leadership to Explain Real-World HOS Impacts

On Thurs, May 8, ATA Chairman Phil Byrd, other ATA leaders, members and staff met with FMCSA Administrator Ferro and members of her leadership team to provide examples of real-world impacts of the recent changes to the hours of service restart provision. Specifically, ATA members and staff demonstrated that the new restart restrictions are impacting safe, responsible drivers who work reasonable weekly hours, not just the small minority who work long hours as the Administrator had previously contended. A major domestic automobile manufacturer also participated in the meeting and explained the dramatic effects the HOS changes are having on others in the supply chain. ▲

Member Cancellations June 2014

Name of Company	Class	Dues
Deffenbaugh Industries Inc	Private	$1,392
Pasha Distribution Services LLC	For Hire	$4,455
Sport & Spine Rehab	Allied	$ 350

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The newsletter for the Missouri Trucking Association is published monthly.

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ATA Seeks Feedback on National Medical Registry of Certified Medical Examiners

Beginning on May 21, all drivers seeking new (or renewed) medical examiner's certificates may do so only through an examiner listed on FMCSA's National Registry of Certified Medical Examiners. ATA supports the registry program and the need to ensure that drivers are medically qualified.

However, ATA also has concerns about the number and availability of certified examiners, geographic coverage, and related issues that may be impacting drivers and carriers. To help better understand these impacts and necessary improvements, ATA is seeking detailed feedback.

Fleets and drivers are encouraged to share specific examples of experiences with the registry such as: long driving distances to reach an examiner; difficulties getting appointment; higher costs for exams; and additional diagnostic tests being required. Examples may be sent via email to MedicalRegistry@trucking.org. Please be sure to provide specific examples, not simply views or opinions. Submitted comments will not be forwarded or distributed with attribution (will be kept anonymous). ▲

ATA Invites Fleets to Participate in 2014 Driver Compensation Study

ATA invites all for-hire and private motor carriers to take part in its 2014 Driver Compensation Study. The purpose of this project is to provide accurate information on one of the trucking industry's largest expenses—driver pay.

By participating in this confidential survey, fleets receive: an exclusive executive summary, free of charge, prior to the official release of the report; a 50% discount on the published report ($150 for ATA member participants and $300 for non-member participants); and an invitation to a participant-only, free-of-charge webinar hosted by ATA Chief Economist Bob Costello to discuss the results of the study and answer your questions.

For more information and to participate, please visit http://drivercompstudy.trucking.org. ▲

Study: Video Monitoring May Halt Some Crashes

Lytx Inc. said a study by Virginia Tech Transportation Institute found that more than 25,000 collisions could be prevented and more than 800 lives saved annually if all heavy trucks and buses were equipped with the company's DriveCam video and safety compliance technology.

The study was conducted by Jeffrey Hickman at the Center for Truck and Bus Safety at Virginia Tech and was commissioned by San Diego-based Lytx.

Hickman reviewed crash data from 2010 to 2012 and concluded that use of in-vehicle video to monitor driving behaviors could prevent 35% of all collisions involving trucks and buses, saving 801 lives and preventing 39,066 injuries. ▲

~ Transport Topics ~

FMCSA to Raise Minimum Levels for Carriers' Required Insurance

The Federal Motor Carrier Safety Administration said it plans to raise the required $750,000 insurance minimum for interstate motor carriers because the amount is not adequate to cover the cost of some serious crashes.

"A variety of recent studies indicate that inflation has greatly increased medical claims costs and related expenses," FMCSA said in a report mandated by Congress. "In conclusion, FMCSA has determined that the current financial responsibility minimums are due for re-evaluation."

The agency, which released the insurance report April 18, said it has appointed a special rulemaking team to determine the "appropriate level of financial responsibility" and that a new mandate for minimum cost will be "among the agency's high-priority rules."

FMCSA cited multiple other studies, but said one January 2013 review by the Volpe Transportation Systems Center provided its primary evidence of the need to increase the current minimum insurance levels.

The increased minimums also could apply to hazmat motor carriers, which already carry higher minimums than general freight carriers.

The rates have remained the same since 1985, despite legislative attempts as recent as last year to raise the minimums. For most interstate carriers, the minimum financial responsibility level is $750,000, but hazardous materials carriers must meet financial minimums of either $1 million or $5 million, depending on what they are hauling.

For example, fleets carrying "any material, oil, substance or waste" require a minimum of $1 million, while those carrying all other hazardous materials require $5 million," FMCSA said.

Efforts to include a provision to raise the minimums in the 2012 highway funding law, known as MAP-21, failed. At the time, American Trucking Associations opposed those attempts, but the federation is expected to reconsider its position at the organization's leadership meeting May 18-21, said Prasad Sharma, ATA's senior vice president and general counsel.

"At the time, we opposed those provisions because we did not believe the data justified an increase in the current minimums," Sharma said. "But in light of the FMCSA and Volpe study, we're going to reexamine whether the situation has changed."

Rep. Matt Cartwright (D-Pa.) last year introduced legislation that would raise the minimum insurance requirement to $4.4 million. However, it failed to clear the House Subcommittee on Highways and Transit.

FMCSA said the increases in minimum liability insurance are intended to "assure that public safety is not jeopardized" and to ease concerns that safe operators will not cut costs to meet the prices of their competitors.

Michael Card, president of Combined Transport Inc. in Central Point, Ore., and chairman of ATA's executive committee, said he favors raising the minimum. His company, which does not haul hazmat, currently carries $5 million in insurance.

"I don't believe $750,000 is enough," said Card, who previously headed ATA's insurance task force. "So my personal feeling is that it's probably time to raise the minimum."

The Owner-Operator Independent Drivers Association, however, contends that an increase in insurance would be a death knell for the small businesses.

"The amount of insurance carried by motor carriers has never been shown to have a correlation with safety," said Todd Spencer, executive vice president at OOIDA.

Michael Barry, a spokesman for the Insurance Information Institute, said that the FMCSA report offers a foundation for federal lawmakers to review the minimum.

"Given that it has been nearly 30 years since the current minimum responsibility levels for motor carriers went into effect, and legal, medical and property claims costs have risen dramatically over that time, Congress may want to revisit this issue," Barry said.

Mike Natalizio, CEO of HNI Risk Services, said he would favor raising the minimum limit if it would help cover the cost of serious crashes. More than 65% of HNI's clients are motor carriers.

"My concern with an increase in the requirement lies in the probability of raising the value of all claims simply because the pockets become deeper," said Natalizio. "I would favor an increase of doubling the minimum to $1.5 million to $2 million only if we could get some type of reform to allow this coverage only to those deserving."

FMCSA said the Volpe study revealed that severe crashes, although relatively rare, yield damages of more than $1 million. It also said insurance rates for the same level of minimum coverage have declined slightly, "hovering around $5,000 per power unit."

Other studies referenced in FMCSA's report were conducted by the Pacific Institute for Research and Evaluation and the Alliance for Driver Safety and Security Inc. ▲

~ Transport Topics ~

ATA Comments on FMCSA's Drug and Alcohol Clearinghouse Proposal

On May 21, ATA filed comments on FMCSA's Notice of Proposed Rule Making to create a Commercial Driver's License Drug and Alcohol Clearinghouse. ATA has advocated for such a database to capture drug and alcohol violations since the late 1990s. Though supportive of FMCSA's proposal, ATA identified a number of ways that the clearinghouse could be more efficient and effective. These improvements include: capturing employer observations and employee admissions of drug and alcohol misuse; eliminating the required previous employer inquires for drug and alcohol violations; measures to control employer costs to conduct clearinghouse inquiries; a better process for timely employer notification of new violation records; and ensuring clearinghouse access by third party service agents acting on behalf of employers. ▲

FMCSA Issues Electronic Logging Device Guidance to Resolve Enforcement Issues

On Monday, May 12, FMCSA issued a regulatory guidance to clarify requirements of devices used to electronically track hours of service compliance under the existing standard in 395.15. Specifically, FMCSA made clear what information must be displayed on the devices in contrast to the information that must be recorded by the devices.

Some enforcement officials had erroneously issued citations to drivers if their devices did not reflect the vehicle's trailer number. Also, FMCSA clarified that the current standards do not require devices or drivers to provide hardcopies of their electronic records of duty status (e.g., printouts, faxes) to enforcement officials during roadside inspections, as some officials had required. However, an enforcement official may request that additional information be provided by email, fax or similar means within 48 hours of the inspection. ▲

FMCSA Issues Proposed Rule on Driver Coercion

In the May 13th Federal Register, FMCSA issued a Notice of Proposed Rulemaking to prohibit motor carriers, shippers, receivers, or intermediaries (i.e., brokers) from coercing a driver to violate many but not all of the Federal Motor Carrier Safety Regulations, CDL and drug and alcohol regulations, and/or the hazmat regulations. The proposed rule added a provision prohibiting entities that operate commercial motor vehicles from coercing drivers to violate the commercial regulations. The agency would define coercion as a threat to withhold, or the actual withholding of, current or future business, employment (i.e., termination) or work opportunities from a driver objecting to operate in violation of the covered regulations, such as the hours of service limits or vehicle maintenance requirements. The proposal adopts a "knows, or should have known" standard, noting that a carrier has an affirmative duty when assigning a trip to ensure it can be completed in compliance with the HOS rules. That standard is extended to shippers, receivers, and transportation intermediaries when they direct the completion of a run within a certain time. ▲

FMCSA Publishes ATA's Oilfield Exception Petition for Comment

On May 23, FMCSA published ATA's oilfield exception petition in the *Federal Register*. The oilfield exception allows drivers to log their time spent at a drilling site as off duty rather than as on duty, effectively extending the driver's available operating window past the normal 14 hours available to him or her.

ATA petitioned FMCSA to change the rule after it issued guidance changing its interpretation to exclude sand and water trucks used in hydraulic fracking from eligibility for the exception.

The May 27th edition of the *Federal Register* entry applies only to ATA's request for a two-year pilot project-type exemption. Rather than a return to "business as usual", ATA has petitioned FMCSA to rework the oilfield exceptions and base them around the ability for any driver to get adequate rest when servicing an oil or natural gas drilling operation. The comment period remains open until July 7. ▲

Senate Highway Reauthorization Bill Released

On May 13th the Senate Environment & Public Works Committee released its highway reauthorization proposal. Dubbed the "MAP-21 Reauthorization Act," the bill authorizes $265 billion in funding over six years for Federal Highway Administration programs, effectively maintaining funding levels authorized by the previous highway bill, with slight increases to account for inflation. In order to fully fund the program Congress will have to identify approximately $100 billion in revenue above what is projected to be raised by highway user fees. The bill keeps the basic structure of its predecessor, MAP-21, while adding two new major programs. The National Freight Program provides $6 billion over five years to states for projects on the National Highway Freight Network, a network of highways identified by USDOT and the states as critical to the movement of freight. Up to 10% of the funding can be used by states for non-highway freight projects. The Projects of National and Regional Significance Program is a $400 million per year grant program administered by USDOT for critical, high-cost projects. Highway, transit, rail and a wide range of other surface transportation projects are eligible for funding. The bill did not increase state flexibility to toll existing Interstates, as proposed by the Obama Administration. Nor did it make any changes to truck size and weight limits. The bill will be considered by the Committee on Thursday. Note that motor carrier, transit and rail programs fall under the jurisdiction of different Senate committees and were not included in this legislation. Neither the other committees with jurisdiction over the surface transportation bill in the Senate, nor the House committees of jurisdiction, have released their portions of the legislation or announced when they will release their bills. The current bill – MAP-21 – expires on October 1. ▲

Tax Court Rules on Estate Valuation

The U.S. Tax Court has issued an opinion in a case that required it to value a decedent's estate for purposes of the federal estate tax. The estate here consisted of the decedent's minority interest in a family holding company that held stocks in various publicly traded corporations. While she was alive, there were restrictions on the decedent's ability to market her share of the holdings. Moreover, the company turned over its holdings only very slowly, so that its value now consisted primarily – for tax purposes, that is – of unrealized capital gains. In some respects, therefore, the problems involved in the fund's valuation might resemble those encountered in valuing a closely-held family business. Faced with competing valuations from representatives of the estate and the Internal Revenue Service, the court constructed its own. It first determined that it would use a net-asset-value (NAV) method rather than a capitalization-of-dividends method, because, it said, the latter relied too heavily on predictions of future conditions, and was particularly sensitive to economic growth rates. NAV, on the other hand, escaped this problem, although there the value had to be discounted because of the restrictions the decedent had faced with respect to marketability and because of the built-in capital gains tax. Eventually, after a good deal more discussion, the court arrived at an evaluation of the estate that lay comfortably – we think not by coincidence – between the best estimates of the two parties. *Estate of Richmond v, Comm'r,* docket no. 21448-09, decided February 11, 2014 ▲

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Proposed IFTA Amendments Posted

This year there are four proposals to amend the International Fuel Tax Agreement. Three of them are probably of limited interest to motor carriers, but the other, which has to do with IFTA's rules for audit and record keeping, should be of great interest to the industry. That amendment is the third (**FTPBP #3-2014** in IFTA's code for these things). It's sponsored by IFTA's Audit Committee, and represents several years of work by representatives of IFTA's member jurisdictions and of the trucking industry, including this writer. This amendment also represents a more or less complete rewrite and rearrangement of IFTA's provisions in these two areas. One of the goals of the project was to make IFTA's rules in this regard as close as possible to those of the International Registration Plan following that organization's similar effort, which went into effect last year. Like IRP's, then, IFTA's new rules on record keeping are somewhat more flexible for carriers, allowing them to maintain their records in any format that allows an audit to be done, and specifically accommodating records created in part through the use of GPS or some similar vehicle-tracking technology. Provided a carrier's records are of the quantity and quality necessary for an audit to be done, the jurisdiction doing the audit may not impose a general penalty for bad records – although of course audit adjustments may still be made that may increase the carrier's tax liability. In the main, the proposed IFTA rules for auditing distance are to be the same as those in effect on the IRP side. Few changes are proposed with respect to the rules for fuel records, however, as these were on the whole found to be satisfactory as they stand currently. In addition to these changes, and incidental revisions of IFTA language to make it clearer, the project largely rewrote the IFTA Audit Manual, which provides the states and provinces guidance on audit programs and their auditors with procedures for auditing specific situations. These changes, it is hoped, will make IFTA audits on the whole somewhat more uniform, and prevent some questionable practices by a few states. *This is an amendment industry should strongly support*.

The other three ballots are as follows: **FTPBP #1** would change the cycle for IFTA program compliance (peer) reviews of the states and provinces from five years to four. If anything, this is a positive change, since it may help to ensure that instances of noncompliance with IFTA's rules on the part of a state or province will have less time to become significant. **FTPBP #2**, like No. 1, is sponsored by IFTA's Program Compliance Review Committee. No. 2 would make a state's noncompliance with (a) IFTA requirements to provide information to carriers or (b) the requirement for IFTA base-state audits even-handed for all jurisdictions grounds to take the offending state to IFTA Dispute Resolution Committee for potential disciplinary measures. Since we believe that all issues of noncompliance ought to be subject to such measures, we're for this one too. And **FTPBP #4**, sponsored by IFTA's Audit Committee, would make a definitional change that affects slightly the scope of an IFTA audit. From industry's point of view, this seems wholly a technical change.

All these ballots are posted on IFTA's website, at www.iftach.org, under IFTA Ballot Proposals, and are open for public comment through June 12. After that, they'll be discussed at IFTA's annual business meeting in August, and, if they survive that, will go out for a second comment period before being voted on this fall by the IFTA membership. ATA expects to file comments on the ballots during the first and possibly also the second period. ▲

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States Getting Much More Federal Money

The organization State Budget Solutions reports that U.S. Census data show that states generally are now receiving a good deal more federal aid than they did at the turn of the century, and that this seems to be a continuing feature of the federal system, not connected to the recent recession. In all, states have taken in $5.27 trillion since 2001; 34 states received 30 percent or more of all their general revenues from the federal government in the period 2001-2012; and that this percentage rose in 41 of the states during this same time. The largest category is welfare grants, including Medicaid money, followed by grants for education and the federal-aid highway program. The report goes on to say that while the federal stimulus package from 2009 did create a spike in federal money for the states, the amount they're receiving has not really declined. The increase, the report concludes, puts both levels of government in some fiscal jeopardy. It's a strain on the federal budget, but nearly any proposed decrease in federal spending puts the states at risk as well. For more, see www.statebudgetsolutions.org. ▲

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FMCSA Emails Carriers That Haven't Updated MCS-150s

In May, FMCSA emailed 6,000 carriers that did not complete their biennial update in April. We understand that many carriers may be skeptical of any email communication from FMCSA due to the number of fraudulent letters we've reported on in the past. If you are one of the 6,000 carriers that received the email you can verify the legitimacy by checking the "from" email address: usdotfmcsa@service.govdelivery.com. If you have received the notice, please respond accordingly. ▲

Will the Rails Switch to LNG?

The federal Energy Information Administration has issued a report suggesting that the railroad industry might benefit from changing its fuel from diesel to liquefied natural gas, and indicating how the rails might go about making such a change. ELA says the differential in cost between diesel and LNG, which is expected to continue for many years, must be a great temptation to make the switch in fuels, but lists as well the costs and operational adjustments that would have to be made in such an event. The report is interesting in itself, but may be instructive to motor carriers who are considering such a change in fuels themselves. Nicholas Chase, "Potential of liquefied natural gas use as a railroad fuel," ELA, Washington, D.C., April 14, 2014, available here: http://www.eia.gov/forecasts/AEO/section_issues.cfm#liq_nat_gas. ▲

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Courts in MO & OR Say Flashing Lights OK

Two courts have recently ruled that a driver's flashing his headlights to warn other drivers of a speed trap is constitutionally protected "speech." In the first case, the U.S. District Court for the Eastern District of Missouri so held, and issued a permanent injunction against the city of Ellisville in that state, prohibiting it from enforcing its ordinance that forbade the flashing of lights by any vehicles other than buses. The judge pointed out that the ordinance contradicted guidance by the state's department of transportation to the effect that drivers should be allowed to flash their lights to warn others of emergencies, and then went on to hold that, as in the case before him, warning of a speed trap was protected communication under the First Amendment to the U.S. Constitution. *Elli v. City of Ellisville*, docket no. 4:13-cv-711-HEA, injunction issued February 23, 2014 The Oregon case, in the Justice Court for Jackson County, involved a truck driver who flashed his lights to warn drivers ahead of him that he was being followed by a police car. The court found this to be protected "expressive conduct," under the state constitution. The driver had been issued a ticket for misuse of his high beams. The court found that rule invalid "as applied." *State v. Hill*, citation no. 034117, decided March 26, 2014 ▲

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22nd Annual Sitton - Babcock
MoTRUCK PAC Golf Tournament

Tuesday, June 24, 2014 ~ Tee time - 1:00 p.m.
Old Kinderhook Golf Club
20 Eagle Ridge Road
Camdenton, MO 65020

$150 per player

If you haven't had the opportunity to sign up for the golf tournament yet, there is still time.

Contact Ross Nichols at the MoTA office to sign up to play,
register a team or sponsor one of the options below.

Phone: 573-634-3388
Email: ross@motrucking.org

- ❑ **Hole Sponsor ~ $300**
- ❑ **Golf Awards Sponsor ~ $500**
- ❑ **Luncheon Sponsor ~ $1,500** SPONSORED
- ❑ **Scorecard Sponsor ~ $750**
- ❑ **Course Beverage Sponsor ~ $1,500** SPONSORED
- ❑ **Golf Cart Sponsor ~ $1,000**