



## Mid-Month Update

### Mid-Session Update . . .

The 2014 legislative session has reached its unofficial halfway mark. This week is spring break and many legislators and other staff have plans to take a trip to somewhere away from Missouri. Much has been done so far and here is a look at some of those items.

This year the focus seems to be on taxes, labor, and education and by the number of bills filed in each of those categories they are areas that will be addressed this session. Taxes have been a huge issue since the Governor vetoed HB 253 last year and the Republican super majorities could not override the veto. Sen. Will Kraus has taken an interesting tact this session as he negotiated a compromise with the Governor without the support of the Republican caucus and has caught a little grief because of it. Many tax relief bills are moving, but it is too early to tell which of them may be headed to the Governor's desk.

On the issue of labor, like taxes many pieces of legislation have been filed and many have been passed out of committee. Issues like workers' comp, unemployment comp, and right to work have all been heard and passed out of committee, but it is hard to tell which of these issues will make it to the finish line. MoTA has been very involved in these issues and will report soon which of them seem to be headed to the Governor. In an interesting side note, just today Senator Brian Nieves pulled out of his senate race leaving Rep. Dave Schatz, current Transportation Committee chair, as the only candidate currently in that race. The Speaker of the House, Tim Jones, is also in that district and has made some inclinations that it is a seat he has an interest in. He is an open advocate for right to work and has stated it is something he would like to see happen in Missouri but it is not something the Senate district is that excited about. MoTA is keeping a close eye on this and will report to the membership what happens. It is something we are advocating for, but may not have much of a chance now.

The other issue of importance this session is education and, as the previous issues, many bills have been filed to address the concerns over Missouri's education system. The major issue is the ability for kids who are enrolled in non-accredited school to attend an accredited school in their proximity. The Senate has already addressed this and MoTA is watching what the House will do.

On the transportation front, the 1 cent sales tax increase for 10 years dedicated to transportation has again found its way onto the House calendar. This issue is one MoTA has been in support of and will work very hard to make sure it gets on the ballot this year. This has already been used in the Senate race for the 26<sup>th</sup> district. Rep. Dave Schatz, who is also chair of the House Transportation Committee, has been accused of supporting a very large tax increase. The House should not be a problem this year. Last year they passed it with 100 votes, but it died in the Senate, due to a filibuster by a couple of Senators who ended up blocking the passage of this bill the last week of session.

Make sure you keep up with what is going on at the Capitol and if you would like to come down to let your legislators understand how you feel about any of these issues, please let us know and we can help make your visit successful. Give the MoTA office a call and we will set up a 24 hours that you and your legislators won't forget.



### Top-Selling Driver Books Now Available in Convenient Compliance Kits

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Jefferson City, MO 65102-1247

## 2014 MoTA Drivers of the Month

January ..... **Howard Hall**  
Buchheit Trucking  
Scott City, MO

February ..... **Leon Heater**  
TCSI-Transland  
Springfield, MO

*Congratulations, Drivers!*

### Safety & Maintenance Conference April 22-24, 2014



Registration is now open for the Safety & Maintenance Conference in Branson at the Hilton Branson Convention Center on April 22-24. The SuperTech competition will also be held at the convention center on April 23rd. Conference information

has been mailed or you can go to [www.motrucking.org](http://www.motrucking.org) and download the registration form, agenda, sponsorship form and exhibition contract.



To make your hotel reservation, contact the Hilton directly at 1-800-445-8667 and refer to the MTA block at a rate of \$109 + tax. The room block is currently at 90% sold so make your reservation today!

For exhibitors, reserve your space.

We are expecting a record turnout and space is limited. This is a great opportunity to showcase your products for the companies who use them.





## DOT Proposes Use of Electronic Logbooks to Improve Efficiency, Safety in Commercial Bus & Truck Industries

### *Updated rule would slash highest federal paperwork burden after taxes and prevent fatigued drivers*

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) recently announced a proposal to require interstate commercial truck and bus companies to use Electronic Logging Devices (ELDs) in their vehicles to improve compliance with the safety rules that govern the number of hours a driver can work.

The proposed rulemaking would significantly reduce the paperwork burden associated with hours-of-service recordkeeping for interstate truck and bus drivers – the largest in the federal government following tax-related filings – and improve the quality of logbook data.

"Today's proposal will improve safety while helping businesses by cutting unnecessary paperwork - exactly the type of government streamlining President Obama called for in his State of the Union address," said Transportation Secretary Anthony Foxx. "By leveraging innovative technology with Electronic Logging Devices, we have the opportunity to save lives and boost efficiency for both motor carriers and safety inspectors."

The proposed rule will ultimately reduce hours-of-service violations by making it more difficult for drivers to misrepresent their time on logbooks and avoid detection by FMCSA and law enforcement personnel. Analysis shows it will also help reduce crashes by fatigued drivers and prevent approximately 20 fatalities and 434 injuries each year for an annual safety benefit of \$394.8 million.

"By implementing Electronic Logging Devices, we will advance our mission to increase safety and prevent fatigued drivers from getting behind the wheel," said Federal Motor Carrier Safety Administrator Anne S. Ferro. "With broad support from safety advocates, carriers and members of Congress, we are committed to achieving this important step in the commercial bus and truck industries."

The Supplemental Notice of Proposed Rulemaking, which was sent to the Federal Register to publish on March 12, supersedes a prior 2011 Notice of Proposed Rulemaking related to electronic on-board recorders. It includes provisions to:

- **Respect driver privacy** by ensuring that ELD records continue to reside with the motor carriers and drivers. Electronic logs will continue to only be made available to FMCSA personnel or law enforcement during roadside inspections, compliance reviews and post-crash investigations.
- **Protect drivers from harassment** through an explicit prohibition on harassment by a motor carrier owner towards a driver using information from an ELD. It will also establish a procedure for filing a harassment complaint and creates a maximum civil penalty of up to \$11,000 for a motor carrier that engages in harassment of a driver that leads to an hours-of-service violation or the driver operating a vehicle when they are so fatigued or ill it compromises safety. The proposal will also ensure that drivers continue to have access to their own records and require ELDs to include a mute function to protect against disruptions during sleeper berth periods.
- **Increase efficiency for law enforcement personnel and inspectors who review driver logbooks** by making it more difficult for a driver to cheat when submitting their records of duty status and ensuring the electronic logs can be displayed and reviewed electronically, or printed, with potential violations flagged.

In developing the updated proposal, FMCSA relied on input from its Motor Carrier Safety Advisory Committee, feedback from two public listening sessions and comments filed during an extended period following the 2011 proposed rule. The proposal also incorporates the mandates included in the most recent transportation bill, the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) Act, and other statutes.

Impaired driving, including fatigue, was listed as a factor in more than 12 percent of the 129,120 total crashes that involved large trucks or buses in 2012.

New federal regulations designed to improve safety for the motoring public by reducing the risk of truck driver fatigue took effect on July 1, 2013: <http://www.fmcsa.dot.gov/about/news/news-releases/2013/fmcsa-40-13.aspx>.

On August 1, 2013, the Obama Administration announced another proposal to eliminate a burdensome daily paperwork requirement for professional truck drivers, daily vehicle inspection reports, and reduce costs to the industry by an estimated \$1.7 billion annually while maintaining safety standards: <http://www.fmcsa.dot.gov/about/news/news-releases/2013/FMCSA-46-13.aspx>

For more information on the Supplemental Notice of Proposed Rulemaking on Electronic Logging Devices, see: [www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/rule-programs/rule\\_making\\_details.aspx?ruleid=475](http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/rule-programs/rule_making_details.aspx?ruleid=475). ▲



## Changes to the Medical Certification Requirement for Commercial Driver's License

During the past two years carriers and CDL drivers have been working toward the FMCSA goal of driver self-certification and supplying a copy of their latest valid medical examiner's certificate to the state driver licensing agency before the January 30, 2014 deadline.

A change to record retention was also part of the updated regulations scheduled for the January deadline, e.g. CDL drivers would no longer be required to carry a medical card and carriers will be required to retain copies of the driver's MVR (showing the driver is medically qualified) rather than a copy of the medical certificate. These changes were based on the assumption that all state driver licensing agencies would be fully compliant with their new systems.

Unfortunately, that is not the case, and FMCSA is amending its regulations to keep in effect until January 30, 2015, the requirements that CDL drivers must retain paper copies of their medical examiner's certificate when operating a commercial motor vehicle.

Motor carriers are also required to retain copies of their drivers' medical certificates in their driver qualification files through January 30, 2015.

This action is being taken to ensure that the medical qualifications are documented adequately until all state driver licensing agencies are able to post: (1) the drivers' self-certification; and (2) the medical examiner's certificate information, on the Commercial Driver's License Information System (CDLIS) driver record.

This rule does not, however, extend the compliance dates for the state driver licensing agency to collect and to post to CDLIS a CDL driver's self-certification and current medical examiner's certificate.

Also remember, beginning May 21, 2014, all drivers' required medical examinations must be performed by examiners who have successfully completed the required training and testing and have been placed on the National Registry of Certified Medical Examiners. This requirement has NOT been delayed.

For a current list of medical examiners see the following website: <https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam>. ▲

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## FMCSA to Hold Listening Sessions on New Entrant Motor Carrier Knowledge Testing

The Federal Motor Carrier Safety Administration (FMCSA) announced that it will host two listening sessions to gather information from interested parties concerning its plan to require that all new motor carrier, freight forwarder and broker authority applicants complete a written proficiency exam requirement. The new entrant rulemaking, required under MAP 21 legislation, is designed to "assess motor carrier registration applicants' knowledge of applicable safety regulations, standards and orders of the Federal Government." Among other topics, FMCSA asks listening session witnesses to comment on whether the exam should be limited to applicable FMCSA regulations or whether it should also include industry best practices. The listening sessions will be held on March 28 at the Mid America Trucking Show in Louisville, Ky. and April 7 at the Commercial Vehicle Safety Alliance Workshop in Los Angeles, Calif. ▲

## FMCSA to Begin Deactivating DOT Numbers of Carriers Without Updated Registration Information

Last week, the Federal Motor Carrier Safety Administration (FMCSA) began deactivating the U.S. DOT numbers of motor carriers who have failed to update their MCS-150 registration information, as part of the biennial update requirement. The requirement, part of the Unified Registration System process, is an effort by FMCSA to maintain more accurate information on motor carriers subject to FMCSA's jurisdiction. In November 2013, FMCSA notified by email and via warning letters those required to update their registration information by January 2014 that they would be deactivated beginning in March. Motor carriers, freight forwarders, and brokers who do not fulfill their biennial update requirement on time can face penalties of up to \$1,000 per day with a maximum of \$10,000 total in addition to having their operating authority deactivated. FMCSA will continue to deactivate U.S. DOT numbers for those who fail to update their MCS-150 forms within two months of their assigned biennial update deadline. Motor carriers can reference 49 C.F.R. 390.19(b) to determine their biennial update deadline. Motor carrier registration updates can be completed online at [https://li-public.fmcsa.dot.gov/LIVIEW/pkg\\_registration.prc\\_option\\_decision](https://li-public.fmcsa.dot.gov/LIVIEW/pkg_registration.prc_option_decision) ▲

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## IRS Releases Memo on Glider Kits

Last month, the federal Internal Revenue Service (IRS) released to the public a memo from its Chief Counsel's Office on the application of the 12 percent federal excise tax (FET) to trucks in transactions involving glider kits. This new memo explicitly supersedes one on the same subject released by IRS early last year, and appears to represent a change in position on IRS's part. The general rule has been – or understood by many in the industry to be – that the assembly of a vehicle using a glider kit was exempt from the FET if the cost of the transaction was no more than 75 percent of the price of a comparable new vehicle. In its memo, however, IRS lays out several fact situations, and holds that all of them yield a taxable result, unaffected by the 75-percent rule. The memo points out that the statutory provision setting out the rule (26 U.S. Code sec. 4052(f)) speaks in terms of "repairs or modifications to" the vehicle. The fact situations in the memo, on the other hand, all involve what IRS characterizes as the assembly of automotive components, some new and some used, into a new vehicle. None of them, says IRS, involves repairs or modifications to any identifiable original vehicle. This makes the 75-percent rule inapplicable and the transaction subject to FET, no matter how the cost of the transaction compares to the price of the resulting vehicle. Moreover, and this is also new, IRS holds that the tax base is the price of the resulting vehicle, minus the value of used parts contributed to the transaction by the vehicle's owner, *plus a 4 percent mark-up*. We emphasize that all the situations included in the memo result in taxable transactions; IRS does not indicate what transactions it might consider exempt, either under the 75-percent rule or for other reasons. Nevertheless, the memo probably indicates that IRS auditors will now be more aggressive about glider-kit transactions, and that at least some transactions that have been regarded as exempt may turn out not to be. *Office of Chief Counsel IRS Memorandum* no. 201306019, dated October 31, 2013, and released January 17, 2014; available on-line here: <http://www.irs.gov/pub/irs-wd/1403014.pdf>. ▲

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## U.S. Court Rules out IRS Preparer Regs

The U.S. Court of Appeals for the D.C. Circuit has ruled that the federal Internal Revenue Service (IRS) had no statutory authority to regulate tax return preparers. In 2011, IRS issued rules requiring anyone paid to prepare a federal tax return or application for a tax refund to register with IRS, pass a test, and fulfill annual continuing-education requirements. Several preparers argued that the law on which IRS relied for authority to promulgate those rules – an 1884 statute allowing IRS to regulate persons who practiced before the Treasury Department – was insufficient. The federal District Court had agreed, and refused to allow the regulations to stay in effect pending the final outcome of the case. The Circuit Court had similarly denied a stay, and has now affirmed. Among other things, the court didn't buy IRS's characterization of preparers as taxpayer "representatives," like the attorneys and accountants clearly covered by the statute. Nor, said the court, could a preparer, *per se*, be said to "practice" before Treasury or the IRS. The court found nothing in the history or context of the statute, or in IRS's own prior interpretation of it, that would support the agency's arguments for expanded regulatory authority. *Loving, et al., v. Internal Revenue Service, et al.*, docket no. 1:12-cv-00385, decided February 11, 2014. ▲

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## Taxpayer Beats IRS

The U.S. District Court for the Eastern District of New York has awarded nearly \$700,000 in compensatory damages to a man for injuries he suffered from a fall at an office of the Internal Revenue Service (IRS). The plaintiff had gone to see an IRS auditor to settle a tax delinquency and while there had tripped over an electrical cord. Although there was testimony at the trial that the plaintiff's injuries might not be as severe as he claimed, the judge didn't buy it, and awarded the plaintiff his medical costs and a substantial amount for pain and suffering and other noneconomic damages. *Berroyer v. U.S.*, docket no. 10-CV-3888, decided January 2, 2014. It might be noted that awards of compensatory damages are ordinarily tax-exempt. ▲

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## IRP Adds Q&A for FRP

The Full Reciprocity Plan (FRP) is a feature that IRP, Inc., the repository of the International Registration Plan (IRP), has just added to its website <http://www.irponline.org/?page=FullReciprocity>.

The site contains a set of questions and answers concerning the implementation and operation of the FRP amendments to IRP that become effective next year. The FRP will automatically grant carriers registering under IRP the authority - for purposes of vehicle registration, that is - to travel in all of the 48 states and the ten Canadian provinces.

The basis of the IRP fees of carriers already registering under IRP will not be affected at all; the fees will still depend on where the fleet vehicles traveled during the preceding year. ▲

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## White House Issues Executive Order to Implement International Trade Data System

On Feb. 19, President Obama issued an Executive Order (EO) to streamline the import/export processes primarily through the implementation of the International Trade Data System (ITDS). American Trucking Associations (ATA) has long supported and has been working for many years with federal agencies to finalize and implement the ITDS. The primary goal of ITDS is to function as a "single window" for the trade community, including motor carriers, to transmit a single set of data to satisfy the regulatory requirements for all federal agencies, thus minimizing the number of entries and separate notifications to each individual agency. For motor carriers, the electronic manifest established under the Automated Commercial Environment will serve as the single data interface system. The EO requires all federal agencies to finalize their requirements and be ready to utilize the ITDS by December 31, 2016. For a copy of the EO please go to <http://www.trucking.org/article.aspx?uid=1d7ab818-a1b1-4d2a-bb07-c7ba0f6fe385>. ▲

## IFTA Amendment on CNG Adopted

Voting closed the end of January on the current proposals to amend the International Fuel Tax Agreement (IFTA). Only three ballots were up this time for the states and provinces to vote on. Two got the requisite 75 percent approval for adoption, and one failed. Those passing were the critical amendment for IFTA to adopt a standard conversion factor for a gallon of compressed natural gas (CNG). The amendment defines a CNG gallon for purposes of IFTA reporting at 126.67 cubic feet of gas at standard temperature and pressure, or 5.66 pounds of gas (and the metric equivalents). These are the same factors used by the federal Internal Revenue Service, and represent an amount of CNG that contains the energy in a standard gallon of gasoline. Without such a standard, the reporting of CNG for IFTA would be practically impossible. The new definition becomes effective July 1, 2015. The other proposal that was adopted prescribes certain features and data that jurisdictions must have for their on-line IFTA reporting systems. That amendment was also needed, but doesn't go quite far enough, as it omits to require states and provinces to provide some means for an IFTA licensee to report non-taxed or non-receipted fuel. The ballot which failed would have altered the definition of a "qualified motor vehicle," in an attempt to clarify for a few states just what configurations are subject to IFTA reporting. Evidently many of the jurisdictions felt this change would be ill-advised. Earlier this fall, a fourth ballot, proceeding under a different IFTA procedure, was defeated. It would have allowed an IFTA jurisdiction to provide its licensee carriers with electronic credentials. ▲

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## ATA Tells DHS No More Duplicative Background Checks

On March 3, 2014, American Trucking Associations (ATA) filed comments responding to the proposed background check provisions of the Chemical Facility Antiterrorism Standards Personnel Surety Program (CFATS-PSP). Although truck terminals are excluded from CFATS, drivers visiting chemical facilities regulated under CFATS are subject to background checks as unescorted visitors. Department of Homeland Security (DHS) has proposed a lengthy background check process that would require submitting background information on drivers to the regulated facilities (who would then have to submit it to DHS) within 48 hours of the expected delivery. The CFATS-PSP background check is name-based only and is inferior to the checks performed to get a hazmat endorsement on a CDL, a TWIC card, or a FAST card. Because many of our drivers already possess credentials with a superior background check to that proposed by DHS, [ATA submitted comments](#) stating that drivers with these credentials should be exempted from the CFATS-PSP background check by presenting a valid credential with a background check. ▲

## COST Ranks States on Administration

The Council on State Taxation (COST), a business group, has issued a report that ranks the states according to the quality of their tax administration. COST last issued such a study in 2010. Among the criteria COST uses to judge a state are the transparency of its letter rulings and decisions, its tax appeals processes, even-handed statutes of limitations, reasonable due dates and other time limits, and access to an independent state tax appeals body. Maine and Ohio come out best in this report, and California, Louisiana, Alabama, and Colorado show up worst. Doug Lindholm, *et al.*, *The Best & Worst of State Tax Administration*, COST, Washington, D.C., December 16, 2013, available here: <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=85976>. ▲

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## Updated ATA State Laws and Regulations Charts Available

As a service to its members, American Trucking Associations (ATA) tracks certain state laws of particular interest to the trucking industry such as snow removal requirements and mud flap laws. Updated tracking charts reflecting these various laws and regulations charts regarding state mud flap requirements, state chain laws, and state snow removal laws are now available at <http://www.trucking.org/ATA%20Docs/What%20We%20Do/Trucking%20Issues/News/Engineering/State%20Charts%20Update%20March%202014.htm>. ▲

## ATA Urges OSHA to Abandon Electronic Reporting Proposal

Recently, American Trucking Associations (ATA) filed comments opposing the Occupational Safety and Health Administration's (OSHA) proposal to require employers to electronically file injury and illness records with the agency. ATA is particularly troubled by OSHA's plan to post the records publicly (e.g., via the Internet), despite the fact that the records are prone to misinterpretation. Currently, employers are required to record all work-related events, including those beyond their control. ATA joined a large Washington, D.C. based coalition of businesses and trade groups that is calling for OSHA to abandon this proposal. ▲

## ID Court Rules O-O's Independent Contractors

In an important decision for the trucking industry, the Idaho Supreme Court has ruled that owner-operators used by a motor carrier were independent contractors and not employees covered by state unemployment taxes. In 2008, the same court had ruled that since owner-operators leased to a motor carrier rely on that carrier's interstate operating authority, the o-o's could not, under Idaho law, show themselves to be independently established businesses, a necessary factor if they were to be considered independent contractors exempt from unemployment tax. That case was *Giltner, Inc. v. Idaho Dept. of Commerce & Labor*, 179 P.3d 1071. The court now reconsidered that case, and reversed it, holding that, "[I]t fails to consider the nature of the owner/operator's business, which serves a distinct market in the interstate trucking industry.... The fact that an owner/operator may or may not have his own DOT authority is completely inconsequential and irrelevant for him to provide his services to a motor carrier...." Since the state had already determined that the owner-operators here were free from the control of the carrier in how they performed their duties – the other requirement of the statute – the court held them to be independent contractors. *Western Home Transport, Inc. v. Idaho Dept. of Labor*, docket no. 40462, decided February 11, 2014. ▲

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## TMC Pilots Industry Data Scorecard Service

American Trucking Associations' Technology & Maintenance Council (TMC) is piloting a new scorecard service for capturing and reporting on key industry data and trends. The TMC Scorecard Service, which is supported by a relationship with Decisiv, Inc., a leading provider of Service Relationship Management platforms for fleet maintenance, will be introduced during TMC's 2014 Annual Meeting and Transportation Technology Exhibition, to be held March 10-13 in Nashville, Tenn. TMC Scorecard Service participants will be able to see how their service and maintenance data compares to similar companies based on type and size of fleet, industry/SIC code, cargo type, and other parameters. This type of service, which has been used successfully in other industries, is expected to deliver value beyond typical surveys for truck fleets in many market segments. Once launched, fleets signing up for the subscription-based TMC Scorecard Service will be sent questionnaires every 4-8 weeks throughout the year. Fleets interested in participating in the pilot can go to <http://lsurvey.vivosuite.com/index.php/515871/lang-en> (a DOT# is required). ▲

## ATRI Seeks Additional Input on Driver-Assistive Truck Platooning

The American Transportation Research Institute (ATRI) is part of a team researching the potential use and benefits of Driver-Assistive Truck Platooning (DATP) for commercial trucks. As part of this work, ATRI is conducting a brief follow up survey of motor carriers to further explore specific operational requirements needed by the trucking industry for potential DATP adoption. The findings of this survey will support development of this technology in order to best meet the needs of the trucking industry. Go to <https://www.research.net/s/DATP-Carrier> to take the survey. ▲

# MoTA Photo Album



*Check back . . .  
you could be in  
our next album!*

