



New Members

Kraft Foods

2035 East Bennet
Springfield, MO 65804
Mr. Donald R. Kinder
(417) 823-4376

Power Hauling, Inc.

5467 Edelweis Lane
St. Louis, MO 63129
Mr. James Power
(314) 280-7209

Transportation Specialists Ltd

9902 South 148th Street
Omaha, NE 68138
Ms. Pam Hook
(402) 895-9610

Update . . .

In early April, the Wentworth Military Academy from Lexington, Missouri asked that we assist them with finding a container. They are on a mission to build a school for underprivileged children in Cancun, Mexico. The container will be used to store building materials and items they are collecting while the school is being built.

We are happy to report that a container has been donated by a Missouri Trucking Association member. The container, that is currently residing at the academy, will be leaving for Mexico after Christmas and the cadets will follow in March to build the school.

Thanks to those who called volunteering containers and trailers. The generosity of the MoTA membership was overwhelming.

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President's Message

Elections have consequences.

In a previous job, my end of session report to the membership said it another way – we need more friends.

Whichever way you say it, the end result is that for those working in an industry as regulated as trucking, it matters who we elect to be our representatives. And it matters in elections from the local level all the way to the federal level.

In the coming months, you will hear many promises from candidates looking to represent you. I encourage you to get engaged in that process. Educate yourself on the candidates, and then support the candidate who aligns with your beliefs. For many areas of Missouri, your local and state races may be decided at the Primary Election on Tuesday August 3, so time is short for you to do your homework! If you need assistance educating yourself and your employees on a candidate, we can help. Missouri Trucking Association will be providing more election information in the coming months, but please feel free to contact me or Ross Nichols for more detailed information about specific races and candidates.

As one who is employed to counsel and advocate on your behalf, I am of the strong opinion that it is time for the trucking industry to renew our efforts to take control of our own destiny. Our efforts at the Association began two years ago with the birth of our 24 Hour Program. That program has been an overwhelming success and it has afforded our industry with positive relationships on both sides of the aisle in the Capitol. We are looking to expand those efforts in the months and sessions to come.

As the economy begins to turn around, the industry will be tempted to fall into the same patterns of behavior as before. Those who will be successful in the new economy will be those who remember the lessons we learned in the latest downturn. One of those lessons in the political arena is for the need to be proactive. Your best opportunity to be proactive comes in an election year. Don't fall back into the old habits of taking whatever you're given. Get involved and help get your candidates elected!

At the Board Meeting in March, the Board of Directors unanimously elected Stone Manes as an Honorary Board member for life. According to our records, Stone's first Board Meeting was February 17, 1964 in Jefferson City. I was fortunate to be able to travel in late April to Cape Girardeau and visit Stone, Alice and daughter Myra. Myra had returned home from Spain for a period to help her parents recover from some health issues. Both Stone and Alice are doing well and were honored to receive the recognition for his decades of service to the industry.



During our visit, Myra asked me why a company like Ceramo, a maker of ceramics, would join a "trucking" association. Stone happened to be in ear shot of Myra's question and before I could answer, proceeded to give her a 15 minute response on all the reasons they joined and the benefits they received. After hearing Stone's response, I signed him on as a sales agent for the Association!

Thanks Stone & Alice for your years of support for the industry and the Missouri Trucking Association!

MoTA Annual Convention

Mark your calendars for October 6-8, 2010

Chateau on the Lake in Branson, Missouri will be the setting for the Missouri Trucking Association's 73rd annual convention. The agenda is coming together and we welcome your ideas for educational programs, speakers or fun events. Also, if you are interested in serving on the convention committee, please contact the MoTA office at mota@motrucking.org.

The golf tournament will be held at the Payne Stewart Golf Club Friday morning, Oct. 8th.

A complimentary gift will be offered to the first 40 ladies to register for the convention, so watch for registration materials in your mailbox and on the MoTA website.

Special hotel reservation rates available - first **log on** to the MoTA website. On the home page, click on the Green Leaf icon at the bottom of the page for the Chateau on the Lake. Enter promotional code and book your room. Availability is limited, so make your reservations as soon as possible.

An important note to those of you who would like to take advantage of the special rate at the Chateau on the Lake. An additional day or two prior to or after the convention dates of October 6, 7 & 8 can qualify for the MoTA special rate of \$124. Make your reservations by **phone** right away if you would like additional nights. The hotel has a large group prior to our meeting and another immediately following, so those room nights may disappear fast. Call the Chateau now at 888-333-LAKE (5253). ▲

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Member Cancellations May 2010

Name of Company	Class	Dues
D & D Trucking	For Hire	\$300.00
Insituform Technologies Inc.	Private	\$493.50
Michelin North America Inc.	Allied	\$350.00
Safety Management Services Inc.	Allied	\$125.00
Thorco Industries Inc.	Private	\$300.00
Transportation Capital Mergers	Allied	\$350.00

NEWS GOVERNMENTAL AND REGULATORY



FEDERAL GOVERNMENT

Safety Programs Must Focus on Risky Behaviors, ATA Tells Senate

The trucking industry has made great strides to improve safety and is now the safest it has ever been, but "we can do more," the American Trucking Associations (ATA) told a subcommittee of the Senate Committee on Commerce, Science and Transportation on April 28.

"Improving motor carrier and highway safety is about understanding the behaviors that cause crashes and addressing the factors that raise crash risk," said ATA Senior Vice President Dave Osiecki during the Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Subcommittee hearing on Oversight of Motor Carrier Safety Efforts.

Osiecki addressed several issues, including the Federal Motor Carrier Safety Administration (FMCSA) Comprehensive Safety Analysis 2010 (CSA 2010) program; federal Hours of Service (HOS) rules, which govern the durations a commercial driver can be on duty and behind the wheel; FMCSA's oversight of new carriers; and ATA's recommendation to return to a national maximum speed limit of 65 miles per hour for all vehicles, outlined in its safety agenda.

Osiecki said ATA shares FMCSA's goals for its CSA 2010 initiative, which is more sophisticated than the current safety scoring system, but the system can be improved. ATA has offered three specific recommendations to FMCSA to help better target carriers and drivers most in need of intervention:

- * Make crash causation determinations on truck-involved crashes before entering them into a carrier's profile so drivers and carriers are held accountable for crashes they cause.
- * Use vehicle miles traveled, not number of trucks, as a carrier's exposure measure.
- * Focus on using actual citations and not unadjusted "warnings" from law enforcement.

Osiecki told the subcommittee that the current HOS rules are working and should be retained. However, the sleeper berth rule should be modified to allow for limited flexibility to encourage greater use of circadian-friendly naps, which promote safety and driver health. ATA supports targeting companies that do not comply with HOS regulations with a remedial directive to use electronic logging devices. The regulation requiring this is a good first step and will allow FMCSA and the industry to capture additional data on the benefits of the devices.

Osiecki also told the subcommittee that FMCSA should require new carriers to complete a safety training class, including an exam, before commencing operation. The initial safety audit conducted by FMCSA should also take place within 6 months of start-up, rather than 18 months, as is required now. ▲



FEDERAL GOVERNMENT

Tax Credit Available for Propane Used in Forklifts

A generous federal tax credit offered to those using propane in forklifts and other motor vehicles expired at the end of 2009, but those eligible may still claim the credit, at 50 cents per gallon of propane used, for calendar years 2007, 2008, and 2009.

Users must first register as alternative fuel users with the Internal Revenue Service on IRS Form 637, and, once they receive a registration number, may file for the credit on IRS Form 4136.

Claimants must also have records to support their claims for propane purchases for use in forklifts. ▲

Ag HOS Clarification

With the recent decision by FMCSA regarding transportation of anhydrous ammonia for use on farms during planting season, questions have arisen about the agricultural exemption to hours of service (Ag HOS).

The main question concerns situations when a driver transitions from operating under the exemption to activity that does not qualify for the exemption. If the driver has driven for whatever number of hours while operating under the exemption and then begins operating in a manner that requires complying with the hours of service regulations, some have wondered how the exempt hours of driving time should be considered.

An informal inquiry has occurred on this issue with FMCSA staff and they have received clarification that you should be aware of. FMCSA has indicated that hours spent operating under the exemption are considered "off duty" and do not affect subsequent calculations of the 11, 14, or 60/70 hour limitations. The agency suggests that any logbook or company records be clearly annotated in the remarks to explain that the hours of driving were operating under the Ag HOS exemption.

Further, while the above explanation is from a strict regulatory standpoint it is important for all carriers to fully consider the practical aspects of managing the driving time of your drivers. The "Manager's Guide to Safe Trucking During Agricultural Planting and Harvest Season," that was produced by the Agricultural Food Transporters Conference (AFTC), is important to refer to in regard to practical guidance to manage your business during this busy time. It is posted on AFTC's website and can be accessed through this link: <http://www.truckline.com/Federation/Conferences/AFTC/Documents/Safe%20Trucking%20Guide.pdf>. An exemption from a regulation does not relieve you of the responsibility to operate safely. ▲

Another Scam Letter Surfaces, Do Not Act on this Letter

Several motor carriers in North Dakota and Minnesota have received a letter from FMCSA requesting financial information. The letter indicates that the motor carrier has registered as a prospective contractor for procurements issued by the U.S. Department of Transportation. This letter is signed by a Senior Procurement Officer.

Should you receive this letter; DO NOT RESPOND. Send the letter, any attachments and envelope to Joe Boyd FMCSA Division Administrator, 3219 West Edgewood, Suite N, Jefferson City, MO 65109. ▲

Safety Advisory Notice Issued for Cargo Tanks

The Pipeline and Hazardous Materials Safety Administration (PHMSA) published "Safety Advisory Notice: Use of Composite Cargo Tanks Manufactured Under DOT Special Permits" in the *Federal Register* on March 3.

The advisory was issued to remind manufacturers or users of composite cargo tanks on motor vehicles authorized under U.S. Department of Transportation special permits of the requirement to conduct testing to ensure that the material to be transported in the cargo tank is compatible with the construction materials of the cargo tank.

Test reports must be maintained by the owner or manufacturer for as long as the cargo tank remains in active service.

The advisory was prompted by a December 30, 2009 accident that resulted in the failure of a glass-fiber reinforced plastic composite cargo tank manufactured in accordance with a special permit (DOT-SP 11903).

PHMSA's investigation of the accident concluded that the failure resulted from the carriage of a material in the cargo tank that was incompatible with the materials used in the manufacture of the cargo tank.

Hazardous Materials Regulations (HMR), 49 CFR parts 171-18, contain specifications for the design and construction of cargo tank motor vehicles in Part 178, Subpart J.

The compatibility of the commodities and the composite cargo tank must be based on ASTM C 581 "Standard Test Method for Chemical Resistance of Thermosetting Resins Used in Glass Fiber Reinforced Structures.

Failure to perform required testing and maintain the test reports can result in the suspension or termination of the special permit as well as civil or criminal penalties of up to \$100,000 for a civil penalty and \$500,000 and 10 years in jail for a criminal penalty. ▲

Hours of Service Waiver Issued for Trucks Carrying Oil Spill Relief

On April 30, 2010, the Federal Motor Carrier Safety Administration's (FMCSA) Southern District office declared a regional emergency in response to the April 20 Deep Water Horizon Oil Spill in the Gulf of Mexico. The resulting oil slick now threatens the coastlines of Louisiana, Mississippi, Alabama, and Florida. Motor carriers hauling relief goods are immediately exempted from 49 CFR Parts 390-399, including hours of service regulations. Acceptable goods include: equipment to seal or repair the damaged well head and pipelines, booms, skimmers, chemical dispersants, flammable liquids, other containment equipment, and other equipment and supplies used to provide direct assistance for emergency relief efforts.

The waiver began on April 30 and will last through 11:59 p.m. on May 14, 2010. Hours of service and other regulatory relief does not exempt motor carriers from following applicable rules governing alcohol/drug use and testing, having a CDL, insurance requirements, operating authority, or size and weight requirements. Motor carriers and drivers currently out of service may not utilize this provision until returned to service. Drivers must carry a copy of the declaration in their tractor cab. A copy can be found at <http://www.fmcsa.dot.gov/rules-regulations/Oil-Spill-Emergency-Declaration.aspx>. ▲



FEDERAL GOVERNMENT

FMCSA Publishes Final Rule on Electronic Logging Devices

The Federal Motor Carrier Safety Administration (FMCSA) published in the Federal Register the Final Rule on the use of electronic logging devices for tracking hours-of-service compliance by the trucking industry. Please note that while FMCSA refers to such devices as electronic on-board recording devices, or EOBRs, this term is commonly used to describe comprehensive fleet management systems that do far more than simply monitor hours of service compliance. To distinguish these more comprehensive systems from the ones that FMCSA addresses in this final rule, ATA uses the term electronic logging devices to describe devices that merely track hours of service compliance.

FMCSA's final rule differs from the 2007 proposed rule in that it includes broader criteria for identifying non-compliant carriers that will be required to install such devices. With the use of broader criteria, more carriers will be required to install electronic logging devices. The Final Rule has three major components which are summarized below:

Regulatory Incentives to Encourage Greater Voluntary Adoption of Electronic Logging Devices

The rule does not mandate the use of devices by safe and compliant motor carriers, but instead attempts to encourage voluntary adoption. FMCSA has offered two primary incentives for motor carriers to voluntarily adopt electronic logging devices for HOS compliance.

a) Compliance Review Record Sampling

– When conducting a Compliance Review on carriers that have voluntarily adopted electronic logging devices, FMCSA will permit its investigators to review a random sample of hours of service records after reviewing an initial, selective, sample of drivers' records. Under the current process, investigators deliberately choose a selective sample for review in an attempt to find violations. If 10 percent or more of the records examined show a pattern of violations of the same regulation (the 11 hours of driving rule, for instance) the carrier is found to have violated a "critical" regulation. Under the new rule, a motor carrier voluntarily using electronic logging devices could request that FMCSA examine a random sample of records that provides a representative picture of its entire operation, not just selected terminals, locations, or drivers.

b) Partial Relief from HOS Supporting Documents Requirements

– Since electronic logging devices will capture sufficient data on vehicle movement required for verification of HOS compliance, some of the currently required, voluminous, supporting documents will be rendered redundant and unnecessary. Hence, FMCSA will relieve motor carriers voluntarily adopting the use of the devices from having to retain supporting documents that are retained to verify driving time. These carriers would still be required to retain supporting documents to verify non-driving time.

Mandatory Adoption of Electronic Logging Devices for Motor Carriers with a Documented History of Severe Non-Compliance with Hours of Service Rules

While the new rule does not mandate electronic logging devices for

all motor carriers, those who are found by FMCSA to have a pattern of non-compliance with a critical HOS regulation (10 percent or more of records checked reflect the same violation) during a single compliance review would be required by FMCSA to install and use electronic logging devices for two years. This requirement would also extend to owner-operators under lease to the non-compliant motor carrier. FMCSA's intent is to focus on carriers with severe problems, while at the same time encouraging others to adopt and use this new technology.

Device Performance Specifications

The final rule includes technical specifications/performance standards setting forth what data the electronic logging devices need to capture, how frequently, with what degree of accuracy, and how the data will be available for law enforcement review. Under these standards, the devices must include Global Positioning System technology or other location tracking system technology to automatically identify the location of each truck and must be "integrally synchronized with the" CMVs in which they are installed in order to record engine use, road speed, and miles driven. As with the requirements for systems in use today, the new rules require that electronic logging devices record the basic information needed to document a driver and his or her workday, such as: the identity of the driver, duty status time data, location of the truck, distance traveled during operation, etc.

Current FMCSA regulations already allow the use of certain recording devices for HOS compliance. Under the new rule, existing devices can continue to be used for the life of the vehicles in which they are installed. However, new devices must meet updated technical specifications consistent with today's electronic engine and digital/wireless communication systems.

The rule includes a few other matters that will be of particular interest to motor carriers:

While this rule only mandates electronic logging devices for a relatively small number of motor carriers, FMCSA intends to initiate a rulemaking later this year that will consider a mandate for a broader population of motor carriers. In particular, FMCSA will likely propose a mandate for carriers it feels have "higher potential risks," such as passenger carriers, hazardous materials carriers, and new motor carriers initiating operations.

Supporting Documents – In addition to including violations of the 11, 14, and 60/70 hour rule, the list of violations that could trigger a mandate also includes "failing to preserve driver's records of duty status supporting documents for six months." As a result, a carrier not found to have violated the driving and on-duty time regulations (e.g., 11 hour driving rule) could still be required to install electronic logging devices in its vehicles, merely for improper recordkeeping.

Existing Fleet Management Devices – It is important to note that the final rule addresses the use of devices that can capture the data necessary for verification of HOS compliance. It does not speak to more comprehensive fleet management systems that also capture engine and driver performance data. However, motor carriers can use such devices to meet the requirements and conditions of the Final Rule if their devices also include a component that meets the specifications for capturing required HOS compliance information.

Compliance is mandated beginning on June 4th, 2012. The two-year phase-in period will allow motor carriers, manufacturers, and law enforcement groups time to make adjustments and conduct training before the final rule is enforced. ▲



FEDERAL GOVERNMENT

Health Care Bill Expands Form 1099 Reporting

The new 2,400-page federal health care act has a tax provision that will affect nearly every business and greatly add to the tax compliance burden of many of them. Section 9006 of the bill requires all businesses, sole proprietors, partnerships, and corporations alike to issue a Form 1099 report to any entity, corporate, individual, or other, to which they have paid \$600 or more during the tax year. A copy will go to the Internal Revenue Service. This represents two major changes from current requirements for 1099s. Now 1099s are required only for payments for services, not for purchases of property, and the reports are now required only for payments to individuals, not corporations. The new requirements will go into effect January 1, 2012, and will cause the issuance of many millions of additional 1099s. Concern over the federal “tax gap” presumably drove inclusion of these requirements in the health act, since the IRS has made it clear that income tax compliance is better when the transactions concerned are reported to the Service. Rep. Dan Lungren, R-Calif., has introduced the Small Business Paperwork Mandate Elimination Act, which would remove Section 9006. “Large corporations have whole divisions to handle such transaction paperwork but for a small business, which doesn’t have the manpower, this is yet another brick on their back,” Lungren said. ▲

HOS Rules are Working but Need Flexibility, ATA Tells FMCSA

Current federal Hours of Service (HOS) rules, which govern the durations that a commercial driver can be on duty and behind the wheel, have played a role in improving highway safety. However, the Federal Motor Carrier Safety Administration (FMCSA) should modify the sleeper berth provision to allow for additional flexibility to further improve driver alertness, the American Trucking Associations (ATA) said this week in comments submitted to FMCSA.

Extensive federal data shows that trucking industry safety performance has improved substantially since 2004, when the basic framework for the current HOS regulations took effect. The most recent figures from the U.S. Department of Transportation (DOT) indicate that the truck-involved fatality rate declined 12.3 percent in 2008 to 1.86 per 100 million miles, from 2.12 per 100 million miles in 2007. This decline marks the largest year-to-year drop ever and the fifth consecutive year the fatality rate has dropped. Persons injured in large truck crashes went from 44.4 per 100 million miles to 39.6, an 11 percent reduction. Since 2004, the number of large truck crash injuries per 100 million miles has dropped 25 percent and the truck-involved fatality rate has dropped 22 percent. The fatality rate has dropped 66 percent since the DOT began keeping those records in 1975 is now at its historical low. ▲

DOT Looks to Improve Road Safety through New Weather Data

Stressing the need to provide timely, high-quality road weather information to the American public, Research and Innovative Technology Administrator (RITA) Peter Appel recently announced that the Department of Transportation will sponsor up to seven innovative ideas for using the Clarus weather information system to improve roadway safety during severe weather. The Department intends to provide up to \$80,000 per award in an open competition.

“Nearly a quarter of all vehicle crashes happen when severe weather strikes, and many of those crashes can be prevented using available technology,” said Transportation Secretary Ray LaHood. “Having access to highly accurate, live weather information will raise the level of safety on our roads and save lives.”

Launched in 2004, Clarus provides near real-time atmospheric and pavement observations from more than 2,000 environmental sensor stations and 45,000 road sensors deployed by state departments of transportation. The result is a comprehensive picture of the weather along the nation’s roads that is available to any user, at anytime, anywhere in the U.S.

Transportation managers and weather providers in 36 states and three Canadian provinces currently contribute data to Clarus and use it to make critical decisions. Appel believes that by offering researchers and other innovators full access to Clarus’ unparalleled, live weather data, the Department can tap into the program’s vast potential.

“Applications developed using Clarus data could help someone decide not only whether to grab an umbrella, but also when they should travel and what routes they should take,” he said. “This competition will lead to new safety products and ideas that are bound only by the limits of our imagination.” ▲

GAO to Study Problems Related to Truck Detention at Loading Docks

At the request of the House Transportation and Infrastructure Committee, the Government Accountability Office (GAO) is researching ongoing operational and safety problems associated with detention of trucks at loading docks. Within the next year, GAO aims to learn the extent of the problem and recommend steps to improve it. Among GAO’s questions to industry are:

- To what extent does detention time affect commercial vehicle drivers’ ability to adhere to the hours of service requirements?
- To what extent does detention time have an effect on driver compensation based on the category of commercial motor vehicle?
- Would uniform federal guidelines for compensation of drivers’ detention time reduce inefficiencies or enhance safety?
- Could you provide examples of best practices within the industry that mitigate detention times? ▲

TWIC Site Closing

The North Kansas City TWIC fingerprinting site will be closed all day on May 27th and will reopen on May 28th.

ATA & 17 State Trucking Associations Join Coalition

On March 26, the Commodity Markets Oversight Coalition sent a letter to the members of the U.S. Senate Agriculture, Nutrition and Forestry Committee expressing support for federal regulation of the commodity futures market. ATA, along with state trucking associations including NYSMTA, whose Senators serve on the Ag Committee, joined more than 75 other industry and consumer groups as signatories to the letter.

In 2008, excessive speculation in commodities pushed crude oil to \$147 a barrel, exposing the trucking industry, consumers and the national economy to crippling fuel prices.

The letter states that beginning in the mid-1990s, financial speculation began to dwarf the physical value of commodities these markets were meant to represent. Commodity trading grew from two times the size of the traditional exchanges to more than 12 times between 1998 and 2008. As a result, the markets saw unprecedented volatility and inexplicable price shocks. Crude oil reached \$147 a barrel in July of 2008 and consumers were paying more for fuel, food and home energy bills.

Additionally the letter advocates for new legislation to reform the U.S. derivatives markets including the following positions:

- Mandatory exchange trading for standardized derivatives contracts to ensure adequate transparency and federal oversight, and to reduce systemic risk;
- Mandatory clearing requirements for all other contracts that are not being utilized by bona-fide commercial hedging interests to manage risks, but rather by swap dealers, banks, or other purely financial market participants;
- A narrow end-user exemption to clearing and collateral requirements that will allow bona-fide non-financial hedgers continued flexibility and choice in hedging products; however this exemption should be written so as to avoid any new "loophole" to truly non-physical market participants;
- CFTC authority to establish speculative limits on all markets and in the aggregate across all markets, and to access activity on foreign boards of trade that allow U.S. access or that trade derivatives on commodities destined for U.S. delivery;
- New CFTC enforcement authority so regulators may prosecute "reckless" manipulation; and
- Give additional financial and personnel resources to federal regulators to implement and enforce new mandates and authorities. ▲

Truck Regulation Upload, Compliance, and Reporting System (TRUCRS) Available

The TRUCRS online reporting system is now available for fleets to upload their fleet information for the Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulation (Tractor-Trailer GHG Regulation). Fleets that wish to participate in the large fleet compliance option must register their trailers by July 1, 2010. Fleets that are using the Excel spreadsheet may now upload their fleet information into TRUCRS.

Create an account and login to the TRUCRS system by going to <http://www.arb.ca.gov/cc/hdghg/hdghg.htm> and clicking on the yellow button titled "Reporting Forms." ▲

CVSA pushes 2010 Roadcheck Dates back a Week

The Commercial Vehicle Safety Alliance, the organization representing North American commercial motor vehicle enforcement agencies, has delayed this year's Roadcheck Inspection effort to June 8-10 (originally scheduled for June 1-3). CVSA made the change because the original dates fell just after the Memorial Day holiday, which created manpower and scheduling difficulties for many enforcement agencies. Roadcheck is a coordinated, 72-hour, targeted enforcement program where inspectors from various agencies nationwide focus on particular elements of commercial motor vehicle safety. Last year's Roadcheck was the safest ever for the trucking industry, with 95 percent of truck drivers in the U.S. successfully passing inspection. ▲

U.S. Supreme Court Defines Principal Place of Business

On February 23, the U.S. Supreme Court, in the case of HERTZ CORP. v. FRIEND ET AL, ruled that a corporation's principal place of business is in the state where its headquarters is located rather than where the corporation does the most business. The question arose when the Hertz Corporation was sued in California state court by former employees under that state's wage and hour law. Hertz moved to have the case transferred to federal court under the rule of the U.S. Constitution that cases between citizens of different states may be considered by the federal court system. Under federal law a corporation is for this purpose the citizen of the states in which it is incorporated and in which its principal place of business is located. The plaintiffs argued that since Hertz did more business – from 17 to 20 percent, by various measures – in California than in any other state, its principal place of business was there, and that the case should therefore remain in state court. In light of the implications for the entire transportation industry, American Trucking Associations, along with the Truck Renting and Leasing Association, U.S. Chamber of Commerce, and the Business Roundtable filed an amicus brief with the Court in support of Hertz Corp. In its unanimous opinion, the Court reviewed the history of the constitutional rule, and concluded that the simpler the solution in this area the better. Many lower federal courts, it noted, had concluded that a company's principal place of business is "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities," in other words, its headquarters. The decision may prevent a multitude of cases involving corporations from landing in the California's court system. ▲

D.C. Circuit Courts Rules OSHA Can Cite Employers for Each Affected Employee

The U.S. Court of Appeals for the District of Columbia Circuit ruled April 16 that the Occupational Safety and Health Administration (OSHA) has the authority to impose on employers separate penalties for each employee affected by a violation of federal safety and health law. The National Association of Home Builders, with backing from the U.S. Chamber of Commerce and the National Association of Manufacturers, had challenged this authority when OSHA amended its standards in a final rule, effective January 2009, which clarified that employers could be held liable on a per-employee basis for failing to provide training and respirators for employees. The rule amended 35 standards in Title 29 of Federal Regulations. The National Association of Home Builders is reviewing the decision to determine what action to take next. ▲



CARB Announces Changes to Truck Replacement and GHG Rules

The California Air Resources Board (CARB) has issued regulatory guidance announcing several administrative changes to the implementation of its Truck and Bus Regulation, which requires motor carriers to retrofit or retire older vehicles that do not meet California's stringent emissions standards. As a result of this guidance, the deadline for fleets to report early compliance has been changed to Jan. 31, 2011. For fleets using the agricultural vehicle provisions, the current March 31 reporting deadline remains unchanged. The first deadline for complying with the engine emissions requirements (Jan. 1, 2011) will also be delayed for several months pending further consideration by the Board.

In a separate notice, CARB announced that changes to its Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Measure will also be considered in August. The regulation requires the use of aerodynamic technologies on 53-foot trailers and the tractors pulling these trailers when in California. Proposed changes include: (1) adding a second optional large fleet phase-in schedule that would delay initial compliance (until July 1, 2011) but accelerate the pace of compliance; (2) allowing fleets to report the specific trailers brought into compliance at the end of each year; and (3) adding an exemption for storage trailers. ▲

D.C. Circuit Rejects TRU Appeal

In a 2-1 decision, the District of Columbia Circuit of the United States Court of Appeals denied ATA's appeal of an Environmental Protection Agency (EPA) ruling that allows California to enforce its Transportation Refrigeration Unit (TRU) regulation. The regulation requires all TRUs more than 7 years old to meet emission standards more stringent than federal requirements.

ATA argued that by applying the TRU regulation to any unit that entered the State even once in its useful life, California was creating a *de facto* national standard that would effectively regulate the vast majority of TRUs nationwide. ATA submitted that this virtually national impact of the regulation violated the Clean Air Act (CAA), which mandates that other states must have the option of either adopting or not adopting this type of unique California air-quality requirement. Despite recognizing that the effect of the TRU regulation would be "that TRUs carried on vehicles based primarily in another state must comply with the California rule," the majority found that the fact that other states retained the option of not formally adopting the regulation was all that was necessary.

Referring to the sweeping application of the TRU rule, the dissenting Judge agreed with ATA that it "would effectively vitiate other states' prerogative to choose whether to embrace" the TRU regulation themselves. He then opined that the regulation should be sent back to the EPA for it to determine whether in its view rules that create *de facto* national standards are consistent with the CAA and if not, the permissible level of "spillover effects on other states" that a unique California rule may have. ATA has 45 days to decide whether to seek an *en banc* rehearing before the full Court of Appeals. ▲

Editor's Note: ATA filed a petition for review the week of May 17.

Indiana State Police Start Using Performance Based Brake Testers

On April 19, the Indiana State Police Commercial Motor Vehicle Division officially unveiled a new Performance Based Brake Tester (PBBT) that is being used to confirm commercial vehicle brake systems are operating within acceptable parameters, according to an article the next day in the *Muncie Free Press*. The PBBT units enable officers to go beyond a visual inspection and actually test the stopping power of each brake on each tire of a commercial vehicle power unit and trailer.

Two PBBT's were purchased with a \$310,000 grant provided by the Federal Motor Carrier Safety Administration. One of the units is in a fixed location at the WB I-70 Scale House inbound from Ohio at Richmond, Ind. The second unit is portable and will be used around the state. Inspections on 17 trucks on April 19 revealed 43 violations, with seven vehicles taken out of service and the issuance of five tickets and seven warnings. ▲

CARB Considers Options for Additional Flexibility in Diesel Control Regulations

The California Air Resources Board began the formal process to revise its strategy for the clean-up of on- and off-road diesel engines by directing staff to return in September with specific proposals to provide additional flexibility.

"We fully recognize that the economy has had an effect on the owners and operators of big rigs, buses and construction equipment, and has also resulted in emissions from these vehicles being lower than we expected," said ARB Chairman Mary D. Nichols. "We are committed to taking those impacts into consideration for our diesel clean-up program. The direction by the Board will result in additional flexibility to affected companies and individuals, while still continuing to achieve the significant air quality and health benefits these diesel controls will deliver."

The Board has asked staff to draft changes to the regulations that will mitigate the potential effects of an unfavorable economy on affected businesses, while keeping in mind the need to protect public health, meet federal clean air deadlines, and continue moving forward even through uncertain times. The Board also directed staff to consider approaches to give credit to firms that have already complied with the regulations, and to examine the possibility of additional loans and incentive funding for the program.

Staff presented an update on diesel emission estimates, and the approach for incorporating new information on diesel fuel use, emission factors and equipment use. A new emissions estimate will be used in the rule revision process.

ARB staff will conduct a series of workshops in May and June in Los Angeles, Sacramento and Fresno with stakeholders and the public to solicit information about proposed revisions to the regulations that will be presented to the Board in September.

ARB has already extended deadlines for off-road equipment owners through AB8 2X (signed by the Governor in February 2009), including delayed compliance and credits for those who have reduced their fleet size or operating hours in response to the recession. ▲

Editor's Note: The May 26 workshop has been rescheduled to July 8 in Sacramento.



N.J. to Close Rest Stops on Two Interstates

New Jersey plans to close bathrooms at two more highway rest stops due to budget cutbacks this year, a move that has renewed calls to allow states to lease rest areas to private truck stop operators.

The rest stops in question are on Interstate 80 at the Pennsylvania state line and on Interstate 295 where it meets the Delaware Memorial Bridge. Truck drivers will still be allowed to park in both places but, "What's the point," without bathrooms, said Gail Toth, executive director of the New Jersey Motor Truck Association. Leases would be a "win-win for everyone," Toth said. "Unless you're on a toll road there's no longer going to be any facilities," she added.

The New Jersey Turnpike and the Garden State Parkway are supported by tolls, and full service rest areas on both roads are leased to private operators. The federal government, however, does not allow private operators to run rest stops on the interstate highway system. Toth said truckers in New Jersey are pressing the state to ask the federal government for an exemption given that truckers have no options in the heavily-urbanized Northeastern states. Local towns do not want trucks getting off the highways and land is too expensive in those areas for private truck stop operators to buy. ▲

~ Transport Topics ~

Nashville Planning Survey

The Nashville Metropolitan Planning Organization (MPO) is a transportation planning agency that is in the midst of an update to its regional transportation plan that will propose mobility improvements for roads and bridges over the next 25 years. In order to better understand the needs of the more than 50,000 trucks that travel in and through their region every day, an interactive survey has been developed. They are asking all motor carriers who operate in and around Nashville on a daily basis to have as many drivers, dispatchers and operations personnel as possible fill out the survey that can be located at www.nashvillempo.org/docs/FreightSurvey_051910.pdf. The survey is interactive and when complete can be immediately emailed by pressing the appropriate button. To encourage participation the MPO has offered a \$100 fuel card to one randomly selected participant. Please make sure to include your contact information to be eligible for the drawing. If you have any questions, please contact Dave Huneryager at 615-777-2882 or at dhuneryager@tntrucking.org. ▲

Alabama & West Virginia are Latest to Allow 400 lb APU Weight Exemption

On March 20th West Virginia Governor Joe Manchin (D) signed into law SB 183, legislation that would establish idling restrictions on diesel powered vehicles while also allowing for weight adjustments for vehicles equipped with idle reduction technologies. Additionally, Alabama Governor Bob Riley (R) signed SB 288 into law on April 20th. ▲

VDOT Submits I-95 Tolling Proposal

On May 10, Virginia Governor Bob McDonnell announced that the state's Department of Transportation (VDOT) submitted an application to the Federal Highway Administration to toll Interstate 95 on the Virginia/North Carolina border. The proposed toll rate would be between \$1 and \$2 per axle. The American Trucking Associations and the Virginia Trucking Association both strongly oppose the proposal and will be taking appropriate steps to address it. ▲

New Mexico Seeks Your Input on Proposal to go Electronic for Filings

The New Mexico Taxation and Revenue Department has issued a proposed rule that would require any taxpayer paying the state's weight-distance tax for more than one truck to file its tax return electronically. If it is adopted, the rule would be effective for weight-distance returns due after August 1, 2010. The rule says that returns that should be filed electronically **and** those that are filed by some other means the state will consider not to be filed at all—for which there are stiff penalties. The rule also provides for waivers or exceptions for hardship. The New Mexico Trucking Association wants to know if this requirement would be overly burdensome. Comments on the rule are due by June 2, 2010. For more information, contact Vic Sheppard at New Mexico Trucking Association, 505-884-5575. ▲

~ State Laws Newsletter ~

Connecticut Passes Snow-Removal Law

Connecticut lawmakers have adopted a measure that could net drivers of trucks and cars \$75 fines for not removing snow and ice from their vehicles — and fines of as high as \$1,250 if ice or snow flies off and causes damage or injury. The measure, which would take effect in December of 2013, was passed by the House on May 1 and unanimously adopted by the Senate before the legislature adjourned on May 5. Fines for automobile drivers could be as high as \$1,000 if snow and ice from their cars cause damage or injury, but for commercial drivers, fines as high as \$1,250 if flying snow or ice cause damage or injury. ▲

~Transport Topics~

*See you in Springfield
for the
2010 Truck Driving Championships!*

~
June 4 - 5



Driver Monitoring Marks Future Trend for Transportation Industry

With the new carrier rating system under Comprehensive Safety Analysis (CSA) 2010, it is more important than ever for carriers to regularly monitor the performance of their drivers. While ratings for individual drivers are not yet being implemented under CSA, every violation by every driver negatively impacts the carrier's BASIC rating.

Although drivers are required to report every traffic violation within 30 days and CDL suspensions within one day, few do so because the fundamental fear of losing a job is stronger than the commitment to "play by the rules." This puts carriers in a difficult position, having drivers on the road without full knowledge of their safety records and license status until the annual MVR review. To use an extreme example, a driver could have a major moving violation the day after his annual review and the carrier would not know about it for the next year...leaving that driver on the road as a potential liability.

Recognizing the importance of this issue, the American Trucking Associations (ATA) has petitioned the Federal Motor Carrier Safety Administration (FMCSA) to allow motor carriers to register their drivers with state licensing agencies which, in turn, would notify a trucking company when a driver receives a traffic violation, conviction or change in commercial driver's license status. This notification process would allow trucking companies to take timely action to address any unsafe driving behaviors without the need to conduct annual motor vehicle checks. ATA is proposing establishing a mandated national Employer Notification System in which all states must participate. Clearly this is a serious concern for the trucking industry.

As a trusted partner with the ATA, HireRight has been on the leading edge of this issue since 2006, when it developed its **Driver Violation Alert (DVA)** program. Currently available for 30 states, with more to be added this year, DVA provides a monthly report of traffic violations and changes in CDL status (in most states) for all fleet drivers who are licensed in the covered states.

"DVA is a proactive risk-mitigation tool," says HireRight Senior Product Manager Kim Bishop. "It enables the carrier to quickly identify potentially unsafe drivers and take corrective action or offer driver safety training. Another benefit is the reduction of the carrier's administrative time spent monitoring driver records. Yes, it is an expense, but if it prevents a single large liability claim, it more than pays for itself."

Carriers who are using DVA have seen substantial benefits. In a recent letter, the safety and security leader for one of HireRight's largest customers wrote:

HireRight's Driver Violation Alert (DVA) program has identified drivers for us that were operating on suspended licenses, drivers convicted for excessive speed and drivers convicted for not wearing their seatbelts in addition to other violations types...[This] program has become a critical part of our ongoing safety efforts and we appreciate HireRight for recognizing the need and developing a cost effective solution for monitoring our drivers' motor vehicle records on a more frequent basis. I highly recommend that all trucking companies take a serious look at HireRight's DVA program.

A number of states offer Employer Notification System (ENS) programs, and carriers can work directly with those states to monitor the records of their drivers who are licensed in those states. The cost of using state ENS programs varies, and the coverage is not as broad as HireRight's DVA. States with ENS programs include Arkansas, California, Maryland, Michigan, New York, North Carolina, Oregon, Virginia, and Wisconsin.

Understand Your CSA 2010 Score

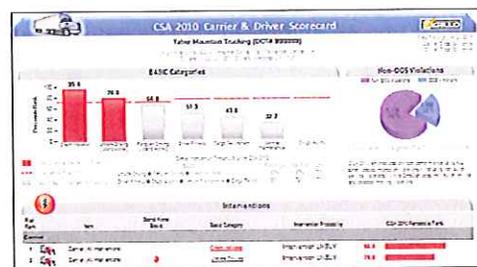


It's not enough just to know your company's CSA 2010 score. The Vigillo CSA 2010 Scorecard highlights what caused the score and how it can be improved.

That's why the American Trucking Associations and the Missouri Trucking Association have joined together to offer Vigillo's CSA 2010 Scorecard to our members.

Even companies in the nine CSA 2010 pilot states, who already have enjoyed access to their raw CSA 2010 data and scores as part of the pilot program, use the Vigillo CSA 2010 Scorecard to see the full picture. Unlike the carrier data currently available through FMCSA, the Vigillo CSA 2010 Scorecard offers Driver Scorecards and Root Cause/Map Scorecards, very significant value-adds even for the hundreds of Vigillo customers who are in pilot states. Those carriers who can currently access their BASIC Scores and percentiles look to Vigillo to give them the detail of what exactly to do about the CSA 2010 data, including:

- ▶ Problem drivers
- ▶ The most frequent violations
- ▶ The root cause of inspections
- ▶ Trends over time (carrier and driver)
- ▶ Geographic mapping of violations, inspections, and CSA 2010 points (mapped to USA Map)
- ▶ Tools to estimate the economic impact of CSA 2010



The Vigillo CSA 2010 Scorecard is available on a monthly basis to members of ATA and Missouri Trucking Association at a 10% discount. And, Vigillo offers a free one-month trial period.

For more information or to subscribe, just go to the following webpage, fill out the form, and submit it.

<http://www.atabusinesssolutions.com/t-csa2010scorecardstate.aspx>

Even if your company already signed up for the Scorecard earlier at the non-member rate, go to the webpage above and fill out the form. Vigillo will quickly and easily apply the member rate the following month.

Don't wait until FMCSA starts issuing CSA 2010 violation warnings in November.
Get the information you need to take action now.

www.ATABusinessSolutions.com/t-csa2010scorecardstate.aspx



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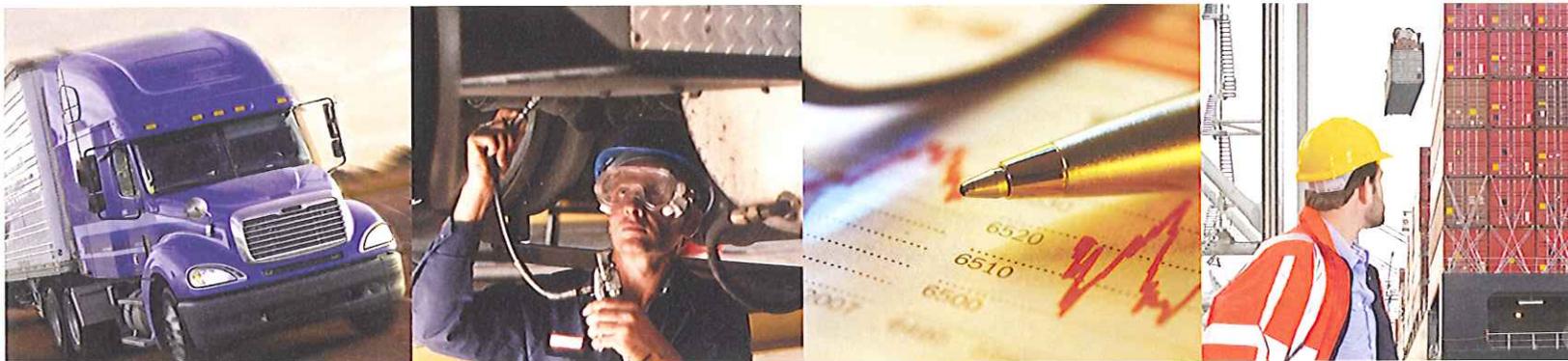
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