



## New Members

**Cretcher Heartland LLC**  
4551 West 107<sup>th</sup> Street  
Overland Park, KS 66207  
Mr. Michael A. Badami  
(913) 341-8998

**McCoy Scrap Processing Co.**  
635 South Sixth Street  
Poplar Bluff, MO 63901  
Mr. Brian K. McCoy  
(573) 785-5725



*Happy Thanksgiving  
from the MoTA Staff!*

**MoTA office will be closed  
November 24 & 25.**

## In This Issue



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## President's Message

My grandmother was one of the spiritual leaders in my life. I am sure you had one in your life as well. Growing up in a small town, my grandmother and grandfather were fairly well known. Mamaw was active in the local church and was a school teacher for many years. She was known by generations as “purple grandma” and was the original “church lady” before the Dana Carvey skit from Saturday Night Live made it a household name.

What I always found intriguing about Mamaw was her ability to get anybody, even the rough and tough crowd, to talk to her. Even if they didn't want to, and even if they were not necessarily “religious.” It was an easy, simple question, and I watched it time after time work wonders for decades – “did you read your Bible today?” she would ask. Every time she asked one of the “rough crowd” I would cringe while waiting for their response. It never failed. Mamaw had chipped through the rough exterior in one simple question. She never turned against them, but she had an uncanny ability to put just the right amount of pressure on the person who needed it, and would just let it drop for the others. But they knew she cared. And they knew she would ask again the next time she saw them.

As I get older, the wisdom from long deceased grandparents seems to echo more and more in my mind. Particularly during this time of year. And particularly during these trying times.

If you are not careful, it is easy to get caught up in all the negatives going on in our world today. Within our own industry it seems everywhere we turn is another rule, regulation, law, proposal, order, tax, fee, or toll that we have to comply with, pay or both.

Mamaw had a saying for these times as well, and if we had known back then, perhaps we would have trademarked it (at least the last part) – “Don't waste time worrying. If you can't do anything about it, pray about it. If you can do something about it, just do it!”

We have many issues as an industry that we can and are doing something about. Driver shortages, changes in the hours of service, electronic on board recorders, size and weight, fuel taxes, unemployment taxes, toll roads, workers' compensation, to name just a few of the issues we are working on as we wind down 2011 and begin 2012. You can learn more about these issues in the following pages.

I hope that you will “just do it” and join us as we continue to work on these and other issues in 2012.

As for the other issues that are out of our control, I continue to follow Mamaw's advice as well.

Have a Safe and Joyous Thanksgiving!

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### Mark your calendar . . . 2012 MoTA Meetings / Events

- March 21-22 ~ *Spring Safety Conference*  
Lake Ozark, Missouri
- June 8-9 ~ *Truck Driving Championships*  
Kansas City, Missouri
- September 26-28 ~ *Annual Convention*  
St. Louis, Missouri



## 2011 MoTA Drivers of the Month

January .....	<b>Robert Miller</b> Transport Distribution Company Joplin, Missouri
February .....	<b>Henry Grider</b> TCSI-Transland, Inc. Springfield, Missouri
March .....	<b>Ronald Hoover</b> Prime, Inc. Springfield, Missouri
April .....	<b>Chester Surface</b> Jack's Truck Rental Holts Summit, Missouri
May .....	<b>Mark Bramel</b> O & S Trucking, Inc. Springfield, Missouri
June .....	<b>Glen Horack</b> Prime, Inc. Springfield, Missouri
July .....	<b>Charles Mason Conlee</b> Prime, Inc. Springfield, Missouri
August .....	<b>Thomas E. Miller</b> Prime, Inc. Springfield, Missouri
September .....	<b>Larry Thurman</b> Walmart Transportation St. James, Missouri

*Nominate a driver . . .  
Send in a nomination form today!*

## Be Wary of Aggressive Marketing - Supervisor Training

A MoTA member warns that a confusing fax aggressively marketing Supervisor Training required for Reasonable Suspicion Testing is going around again.

49 CFR Section 382.603 of the regulations requires supervisors of CDL drivers subject to drug and alcohol testing complete 60 minutes of training for drug abuse and 60 minutes of training for alcohol misuse. The purpose is to qualify supervisors to determine when reasonable suspicion testing is needed.

Compliance Educators, LLC is notifying companies that if the supervisors have not been trained, the company is out of compliance. This is true. However, they are not saying that **regulations require that the training be completed only once** and that FMCSA does not specify **how** the training is to be completed.

HireRight and MoTA have partnered to offer this training on-line. HireRight has a program that ensures compliance with FMCSA rules and regulations. They have trained enforcement personnel and are leaders in the drug and alcohol testing industry.

If you require training, please contact Darla Feyen at the MoTA office for information. ▲

### Member Cancellations November 2011

Name of Company	Class	Dues
Ace Nextday LLC	For Hire	\$300
Atwill & Montgomery	Allied	\$300
Calhoun Trucking	For Hire	\$300
Frazier-Farris Inc.	For Hire	\$300
Heil Trailer International	Allied	\$200
IdleAire Inc.	Allied	\$350
Kenworth of St. Louis	Allied	\$200
MedDirect	Allied	\$350
Mike Kehoe Ford	Allied	\$200
Millstone Bangert Inc.	Private	\$310
Pratt Industries Inc.	Allied	\$350
Randy Mickelberry Trucking	For Hire	\$300
Robertson-Williams Transport Inc.	For Hire	\$550
St. John's Mercy Corporate Health	Allied	\$200
The Spark Agency	Private	\$300
Utility Consultants Inc.	Allied	\$250

## MISSOURIMemo

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## Federal Exemption Defines Metal Coils Securement

The Federal Motor Carrier Safety Administration issued a temporary exemption for cargo securement rules, specifically dealing with the way metal coils are secured when rows of metal coils with eyes crosswise are transported. The exemption is outlined in the April 14, 2011 *Federal Register*.

The current specific securement requirements for different configurations of steel coils are in Section 393.120 of the Federal Motor Carrier Safety Regulations.

FMCSA's exemption addresses the fact that the existing rules do not address how to secure a row of metal coils if each coil touches another. In short, the exemption states that only the foremost and rearmost coils must be secured with 4x4 or larger timbers which extend to at least 75 percent of the width of the coil or row of coils.

The timbers must be placed tightly against both the front and rear sides of the coil or row of coils preventing movement in the forward or rearward direction. The first and last coil or row of coils must be secured as outlined in section 393.120(c). Each additional coil or row of coils situated between the first and last coil must be secured to the trailer with a tiedown assembly.

The FMCSA granted the temporary exemption for a two year period beginning on April 12, 2011 and ending on April 12, 2013. The exemption still requires that carriers meet the aggregate working load limit requirements of 393.106(d). ▲

## FMCSA Extends Medical Certification Card Requirement

On November 15, 2011, the Federal Motor Carrier Safety Administration published a final rule that extends the requirement that drivers maintain a copy of their medical certificate on their person. The requirement was scheduled to expire on January 30, 2012, but has been extended until January 30, 2014. The January 2012 date was originally chosen because on that date drivers are also required to submit a copy of their medical certification to their State Licensing Agency, which should then incorporate the medical information into the Commercial Driver Licensing Information System (CDLIS) database used by licensing and enforcement officials. Unfortunately, several State licensing agencies will not be ready to transmit that information to CDLIS in time. Therefore, drivers will need three copies of their medical certifications now: one on their person, one in their employer motor carrier's driver qualification file, and one deposited at the State licensing agency. Intrastate and exempted intracity zone drivers are not required to provide medical certificate information unless State law requires them to do so. ▲

## Unemployment Taxes Likely to Rise

The Tax Foundation has issued a report that says that employers in most states may anticipate increases in unemployment compensation taxes still this year. Given as slow an economic recovery as the U.S. is seeing, and with lingering high unemployment, the Foundation says the unemployment benefits system is stressed. Most states have borrowed money from the federal government over the past couple of years to keep their funds solvent and to avoid raising taxes, but now the feds are requiring the states that have not paid off their loans to pay interest on them, and that alone, according to the U.S. Department of Labor, will mean that 33 states are likely to raise their unemployment taxes this fall. ▲

~ State Laws Newsletter ~

## FMCSA Improves CSA Safety Measurement System for Haz Mat Carriers

Carriers that haul any quantity of hazardous materials are likely to see a change in their CSA scores. The Federal Motor Carrier Safety Administration recently revised its Compliance, Safety, Accountability program. In August, FMCSA refined the criteria that determine which motor carriers are subject to the more stringent Hazardous Materials intervention threshold. This allows FMCSA to more accurately identify those motor carriers that transport placardable quantities of HM, ensuring that enforcement resources are deployed as effectively and efficiently as possible.

Motor carriers that transport placardable quantities of HM are subject to more stringent BASIC thresholds because of the higher safety risk placardable HMs pose to the public in the event of a crash or a spill. Prior to the change, the HM intervention threshold was applied to motor carriers based solely on their registration information. If a carrier reported transportation of any quantity of HM, they were often subject to the lower HM threshold when, in fact, they did not carry placardable quantities of HM. The HM intervention threshold now applies to motor carriers that transport placardable quantities of HM based on operational evidence. These are motor carriers that meet one of the following criteria:

- Inspection in the last 24 months during which the motor carrier was identified as carrying placardable quantity of HM
- Review or safety audit in the last 24 months during which the motor carrier was identified as carrying placardable quantity of HM
- Motor carrier has a HM permit

For more information, visit FMCSA's CSA website – <http://csa.fmcsa.dot.gov/default.aspx>. To stay up-to-date, subscribe to the CSA RSS feed or email list at [http://csa.fmcsa.dot.gov/stay\\_connected.aspx](http://csa.fmcsa.dot.gov/stay_connected.aspx). ▲

## FMCSA Will Not Appeal EOBR Ruling

The Federal Motor Carrier Safety Administration will not appeal a court order to vacate the rule requiring electronic logs for carriers with significant Hours of Service violations.

FMCSA's decision was included in an October 7 official notice about an upcoming meeting of the Motor Carrier Safety Advisory Committee. Rather than appeal the ruling, FMCSA is pushing forward with a rule that would require EOBRs of all interstate carriers. ▲

## Medical Examiner Rule Sent to White House

A regulation that would set accreditation standards for medical professionals who certify truck drivers has been sent to the White House Office of Management and Budget for review.

The rule will set certification, training and testing standards to ensure medical examiners are qualified to perform physicals on truck and bus drivers and to judge whether they can drive. It also will create a registry of certified examiners on the Web.

The Federal Motor Carrier Safety Administration also will require examiners to submit records of their exams electronically to the agency.

FMCSA expects to issue the final rule Dec. 14, it said in its most recent report on rulemakings. ▲

~ Transport Topics ~



## IRS Issues Guidance on Fuel Tax Penalty

By a memorandum from the office of the chief counsel at the federal Internal Revenue Service to the chief of its excise tax program, IRS has offered guidance on how the Service imposes penalties for the taxable use of dyed diesel fuel. Federal law allows IRS to penalize the highway use of dyed fuel at \$10 per gallon or \$1,000, whichever is more. The specific kind of case addressed by the guidance concerns a farmer caught using dyed fuel in a pick-up truck on the highway, having fueled it on his farm from a bulk-storage tank with a capacity of 10,000 gallons. The memo says it's not improper for IRS agents to presume that the penalty should apply to the tank's full capacity, but that this is a rebuttable presumption. The taxpayer has an opportunity to provide evidence that the fuel, or some of it, was used in an exempt manner, and if the evidence is "credible and convincing," the penalty should be reduced. For more details, see the text of the guidance here: <http://www.irs.gov/pub/irs-wd/1132023.pdf>. ▲

~ State Laws Newsletter ~

## IRS Publicizes Credit for Small Businesses

The federal Internal Revenue Service is reminding small businesses that there's a new tax credit to help such companies provide their employees with health insurance. The credit, enacted as a provision of last year's federal health care act, is limited to businesses that employ no more than the equivalent of 25 full-time workers, and that pay wages averaging not more than \$50,000 a year. A firm also needs to cover at least half the cost of health insurance to get the credit. The credit starts, with the smallest businesses, at 35 per cent of its cost of premiums, and phases out for companies with more than 10 full-time equivalent employees or that pay an average wage of over \$25,000. There are more details; go here <http://www.irs.gov/newsroom/article/0,,id=223666,00.html>, to see them. ▲

~ State Laws Newsletter ~

## Deaf Truck Drivers now Eligible for CDL Exemptions

The National Association of the Deaf is claiming victory as more than 20 deaf and hard-of-hearing truck drivers who submitted applications for an exemption from the DOT hearing requirements are now being considered for full Commercial Driver's Licenses.

As a result of ongoing advocacy, the NAD has convinced the U.S. Department of Transportation to consider waiving its hearing requirements for deaf drivers. The DOT has long required individuals seeking CDLs to satisfy physical qualification standards before becoming eligible to earn a CDL, including meeting a hearing requirement.

The 20 drivers submitted applications for an exemption from the DOT hearing requirements through the NAD in July 2011 and are now being considered for full CDLs including CDL A and B to drive vehicles with and without airbrakes.

The exemption program is offered free of charge by the NAD to deaf and hard-of-hearing drivers. The NAD will submit applications to DOT on behalf of qualified drivers. Each driver will be asked to complete an application, and provide a copy of their state driving record and state driver's license. ▲

## DOT Transmits Draft Final HOS Rule to OMB

On Tuesday, November 1, the U.S. Department of Transportation officially transmitted FMCSA's draft final hours of service rule to the White House's Office of Management and Budget (OMB) for review. OMB's review is the final step in the government's regulatory process, and it normally lasts between 30 and 90 days. Early last month, even though the rule was not yet officially at OMB, ATA staff met with OMB officials to express the industry's serious concerns with the proposed changes and FMCSA's cost-benefit analysis accompanying them. During that meeting ATA requested that OMB not approve any of the proposed changes should they be included in FMCSA's draft final rule. ▲

## Mexican Trucking Companies Waiting for Certainty in Cross-Border Program

Most Mexican trucking companies are not willing to make the long-term investments to participate in the latest cross-border pilot program with the United States, in part because of uncertainties over the program's future, Bloomberg reported Tuesday.

Companies are reluctant to invest in technology to meet tougher U.S. pollution controls, Jose Refugio Munoz, CEO of the Mexican trucking association Camara Nacional del Autotransporte de Carga, known as or Canacar, told Bloomberg.

The current 18-month pilot program followed a prior similar pilot program, which ran 2007 to 2009 before it was canceled after President Obama took office.

The Transportation Department's Federal Motor Carrier Safety Administration resumed the program after Mexico said it would put more than \$2 billion in tariffs on U.S. goods in protest of the suspended program, first outlined under the 1994 North American Free Trade Agreement.

FMCSA last month issued the first permit to a Mexican trucking company, Transportes Olympic, and a lone truck from that carrier remains the only cleared truck for U.S. entry under the program.

Some 27 companies and 101 trucks hauled cargo into the United States under the previous program, Bloomberg said. Only one other company, Tijuana, Mexico-based Grupo Behr de Baja California, has applied to follow Transportes Olympic, according to FMCSA.

Six others are preparing to apply, according to Mexico's transport ministry, Bloomberg reported. The largest owns 15 trucks, while most have 1 or 2 rigs, according to FMCSA records.

Mexico is the second-largest market for U.S. exports, and about 70% of the \$400 billion in annual trade between the countries travels by truck, Bloomberg said, citing Mexico's embassy in Washington. ▲

~ Transport Topics ~

## Full Write-Offs Expire 12/31

Currently, federal tax law allows businesses of all sizes to take a full write-off (termed 100% bonus depreciation) of almost any capital equipment, including rolling stock, placed into service during calendar year 2011. But this provision expires at the end of December, and Congress may not extend it. As it stands now, the law will allow smaller businesses to take only a 50% bonus depreciation on new equipment next year, and there are certain limits on that. ▲

~ State Laws Newsletter ~



### FMCSA Spokesperson offers Some New Info

As reported by Steve Bryan on the Vigillo blog November 14, Jack Van Steenberg, assistant FMCSA administrator, says the agency is assembling a “crash accountability panel.” The panel, made up of employees the agency is in the process of hiring now, will analyze crash data and determine a level of accountability. They’ll work the system for two years before the crash BASIC goes public. This may involve reviewing as many as 120,000 crashes a year. The agency believes 40 percent will be determined to be the fault of the truck driver. Crash panel challenges will be handled through DataQs.

Van Steenberg provided the information as part of a CSA presentation he made at the National Industrial Transportation League’s Transcomp exhibition in Atlanta. Van Steenberg also said FMCSA will release guidelines within the next two months for shippers to use when selecting carriers. ▲

### FMCSA Figures Show Improved Trucking Safety Record

The number of large truck-involved fatal crashes declined by nearly one-third from 2007-2009, according to a new Federal Motor Carrier Safety Administration statistical report.

The most recent fatality rates and numbers — which were quietly posted on FMCSA’s website last month — showed that crashes declined to 3,215, from 4,633.

It also said that number of large trucks in fatal crashes per 100 million vehicle miles traveled dropped in those same years from 1.32 to 1.12 — a downturn of 26%.

Fatalities per 100 million vehicle miles traveled declined to 1.17 in 2009, from 1.59 in 2007.

Since 2000, the fatal crash rate for large trucks has fallen 54.5% - more than twice as much as the passenger vehicle fatal crash rate, which dropped just 25% in the same time period. ▲



### Unemployment Compensation: Defining Misconduct

Employers throughout Missouri sometimes learn the hard way that a former employee may still qualify for unemployment compensation after being fired for completely legitimate reasons. This drives up experience ratings of employers even in situations where an employee was terminated for good cause or violation of a reasonable workplace rule. To put forward the best case in a protest or appeal regarding unemployment it is important to have a solid grasp of the legal standards of what constitutes a disqualifying event for the purposes of unemployment compensation.

The threshold question of whether a claimant has a right to benefits must be proven by the claimant. *O’Dell v. Div. of Employment Security*, 376 S.W.2d 137, 142 (Mo.1964). Yet, when the employer alleges the employee was terminated for misconduct the employer bears the burden of proof. *Kansas City Club v. Labor & Industrial Relations Comm’n*. 840 S.W.2d 273, 275 (Mo.Ct.App 1992). Proving misconduct is not as straightforward as one may think.

The basis for determining what constitutes workplace misconduct is found in statute to include:

*an act of wanton or willful disregard of the employer’s interest, a deliberate violation of the employer’s rules, a disregard of standards of behavior which the employer has the right to expect of his or her employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to the employer*

RSMO, § 288.030.1(23). Misconduct must be “connected with the claimant’s work . . .” RSMO, § 288.050.2. The standard set forth in section 288.30.1(23) requires the employer prove the Claimant, “deliberately or purposefully erred.” *Hoover v. Cmty. Blood Ctr.*, 153 S.W.3d 9, 13 (Mo.App. 2005).

For a Claimant to willfully disregard an employer’s interests the claimant must be aware of the work requirements and knowingly or consciously violate those work requirements. *See, McClelland v. Hogan Personnel, L.L.C.*, 116 S.W.3d 660, 664 (MoApp.2003). Disregard to an employer’s standard of behavior requires an “intentional slight.” *Sakagucki v. Mo. Dept. of Corrections*, 326 S.W.3d 890, 895 (Mo. Ct.App. 2010). A poor attitude leading to “specific conduct adverse to an employer’s interests or resulting in detriment to an employer can justify a finding of misconduct.” *Powell v. Div. of Employment Security, et al.*, 669 S.W.2d 47, 51 (Mo.Ct.App. 1984). Yet poor attitude, poor performance, tardiness, or poor attendance alone are insufficient to constitute misconduct. *See, Williams v. Enterprise Rent-A-Car Shared Services, LLC*, 297 S.W.3d 139, 9Mo.Ct. App. 2009).

Thus, given the state of law today, an employer must show the claimant was terminated for misconduct which involved a deliberate and purposeful violation of the known standard of behavior which resulted in a detriment to the employer. This, frankly, is not an easy standard to meet. Unemployment cases turn on being able to prove facts leading up to the termination.

To be better prepared, here are some general practice tips that may help in proving workplace misconduct was the reason for terminating an employee. First, provide as much documentation as possible. Provide an employee handbook and secure signed receipt forms from the employees that they received the handbook. Second, hold employees to the terms of the handbook. Evidence of a given standard with competing evidence that the standard was not applied will destroy the reason for having a handbook in the first place. Third, employees should be given written proof of discipline, signed by the employee and then placed in the employee file for future reference. Fourth, keep good records in a central location and document the detrimental effects of the employee conduct. Fifth, designate one person in the office to keep employee files and to respond to claims for unemployment compensation. While it may seem time consuming to provide consistent and clear documentation of the employer’s conduct it is much more time consuming to respond to a claim for compensation when the documentation is lacking or disorganized. Sixth, respond on time to the protest or appeal and with as much information as possible to prove workplace misconduct occurred. Failing to timely file a protest or appeal are surefire ways to lose an unemployment compensation claim. ▲

~ Missouri Chamber of Commerce ~

## New Transportation Worker Identification Credential Location

For your convenience, a new TWIC enrollment center has been opened at the Memphis USCG REC, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103. The hours of operation are: Monday through Friday: 8:00 AM - 12:00 PM and 1:00 PM - 4:00 PM.

For additional information and updates on the TWIC program, please visit <http://twicinformation.tsa.dhs.gov>. ▲

## Mandatory Use of the New Federal Drug Testing Custody And Control Form (CCF)

Reminder: Use of the new CCF will be required starting December 1, 2011. The DOT's extension for use of the old form through November 30, 2011, can be found in the September 27, 2011 Federal Register. The link to this is: <http://www.gpo.gov/fdsys/pkg/FR-2011-09-27/pdf/2011-24818.pdf>. ▲

## Federal District Court Finds Federal Law Preempts California Rest Break Rules

On October 19, the U.S. District Court for the Southern District of California issued an order granting Penske Logistics, LLC summary judgment on claims that the company had violated California's meal and rest break laws. Those laws require employers to provide a 30-minute meal period to employees for every five hours worked and a 10-minute rest period for every four hours worked. Former Penske drivers and installers brought a class action against Penske seeking, among other relief, to recover wages for missed meal and rest breaks they claim Penske prevented them from taking.

Jim Hanson of the law firm of Scopelitis, Garvin, Light, Hanson & Feary argued on behalf of Penske that the Federal Aviation Administration Authorization (FAAA) Act preempted the application of California's meal and rest break laws to Penske's operations. When enacting the FAAA Act in 1994, Congress found that state regulation of intrastate trucking imposes an unreasonable burden on interstate commerce and thus prohibited the states from enacting or enforcing laws "related to a price, route or service of" any property-carrying motor carriers. Penske demonstrated that complying with the strictures of California's meal and rest break rules would have impermissibly forced its drivers to "take shorter or fewer routes" to ensure that the drivers had "adequate locations" to stop and take the mandated breaks. Penske also demonstrated that the impact of ensuring that every employee took the proscribed breaks at the time required by the statutes, "would require one or two less deliveries per day per driver."

The Court agreed with Penske's analysis, finding that the FAAA Act preempted California's meal and rest break laws. "Penske's victory, which is the first of its kind declaring the California meal and rest break rules preempted as applied to motor carriers, should afford truckers operating in California critically important relief," noted the *Scopelitis Transportation Law Alert*. "While this unprecedented decision will almost certainly be appealed, we expect the Penske decision to be cited in courts throughout California as persuasive authority in support of the trucking industry's position on this important issue." ▲

## ATA, TCA Forge United Front on Increasing Truck Weights

American Trucking Associations and the Truckload Carriers Association created a united front in the industry's drive to raise truck weight limits by endorsing both an 88,000-pound limit for 5-axle tractor-trailers and a 97,000-pound limit for 6-axle configurations.

The new policy, approved by both groups' boards during industry meetings, supplants a divided approach that has been in place for five years.

ATA's board added the 88,000-pound, 5-axle approach to its proposal, while TCA's leadership adopted the 97,000-pound, 6-axle setup.

The approach gives Congress options as it once again weighs enhancements to trucking productivity.

Two decades ago, the railroad industry succeeded in convincing Congress to impose a nationwide 80,000-pound truck weight limit except where states already had a higher standard.

ATA has supported the 97,000-pound, 6-axle approach since 2006; TCA has backed the 88,000-pound, 5-axle option since 2009.

ATA's action on the 88,000-pound option was approved with a provision that would require enhanced braking power to assure stopping distances that comply with federal brake rules, which set a maximum stopping distance of 250 feet at 60 mph.

"With possible hours-of-service changes threatening to limit capacity, congestion choking our highways and the driver shortage worsening, we need to find ways to improve our industry's productivity," said ATA Chairman Dan England, who also is chairman of C.R. England Inc.

England said the harmonized approach will improve the industry's position before Congress, as trucking maintains that "more productive trucks are safer, more efficient and greener than conventional combinations without causing more wear and tear on our roads."

The main opponent of increasing truck sizes and weights is the Coalition Against Bigger Trucks, which is partly funded by the railroads and has backing from the American Automobile Association and the Teamsters. That group questions the safety of heavier trucks and maintains that those vehicles don't pay enough taxes to cover damage to roads.

The Coalition for Transportation Productivity (CTP), a shipper-backed group with about 200 members, praised the trucking groups' agreement.

"CTP is obviously pleased to see the transportation community coming together to support [increasing truck weights] at such a critical time," said John Runyan, executive director of the group.

The approach favored by trucking groups and CTP would give the states the option to increase weight limits - a power they had before the 80,000-pound federal limit was imposed.

"Given the advances in brake technology, an 88,000-pound, 5-axle truck using enhanced brakes will meet federal rules limiting commercial vehicle stopping distance," said TCA Chairman Gary Salisbury, chief executive officer of Fikes Truck Line, Hope, Ark. "By amending our policies and compromising, TCA and ATA have set the trucking industry on the road to success."

The brake changes would be focused on drum brakes, which would need to be altered with features such as enhanced brake pads to remain within the 250-foot stopping distance when an 88,000-pound load is being carried. ▲

~ Transport Topics ~

## Does your Company have a SuperTech?

The Association has been approached by members to hold a Professional Technician Skills Competition.

A SuperTech is North America's premier skills competition for professional commercial vehicle technicians. The SuperTech contestants come from all segments of the trucking industry.

During the competition the contestants take a written exam covering eight competition areas and are evaluated based on troubleshooting, servicing and repairing specific components of a commercial vehicle, their ability to prepare a work order or locate service information from industry sources during the skills competition. The winners achieving the highest scores will be recognized during an awards ceremony and the Grand Champion will have the opportunity to compete during the National SuperTech Competition held by The Maintenance Council.

If you have a SuperTech, please contact Ron Breau at [ronb@motrucking.org](mailto:ronb@motrucking.org) or 573-634-3388. ▲

## Wreaths Across America Ramps Up for 2011

Wreaths Across America is the organization that arranges to place evergreen wreaths on the graves of U.S. military veterans. This year's official ceremony at Arlington National Cemetery will be December 10 and organizers hope to decorate all 220,000 headstones at Arlington. In addition, there are nearly 700 locations across the country that sign up with Wreaths Across America to decorate military graves.

The organization is accepting volunteer truckers willing to transport wreaths. It also is accepting donations for the wreaths themselves. If you'd like to get involved in some way, go to <http://www.wreathsassamerica.org> or call 877-385-9504. You can sponsor a wreath for as little as \$15. ▲

## Alabama Plans Hard Enforcement of Metal Coil Driver Certification

The Alabama Department of Public Safety (DPS) has announced it plans hard enforcement of the metal coil law driver certification, beginning January 1, 2012. DPS already maintains a database of every driver that has completed the certification process and will soon introduce a "self-certification" program.

Companies wanting to self certify their metal coil-securement program will be able to download a self-certification affidavit from the DPS website ([www.dps.alabama.gov](http://www.dps.alabama.gov)), complete and return the form to DPS headquarters for approval. Once approved, the company will be notified and assigned a password, which can be used to enter certified drivers names into the database. DPS troopers will check the database during traffic stops and roadside inspections to determine if the driver has been certified to haul metal coils into or out of Alabama. ▲

## Cell Use near Schools Outlawed in AR

Arkansas authorities are warning drivers that according to the recently amended Arkansas Code 27-51-1609 drivers can be ticketed for "use of a handheld wireless telephone while operating a motor vehicle when passing a school building or school zone during school hours when children are present and outside the building." That same use is illegal in a construction zone with workers present. While the state has a primary safety belt law, policy can't stop a driver for driving and texting or driving and talking on a handheld device unless he or she has committed another vehicle violation. ▲

## California Deadline for Diesel Filters

The Air Resources Board is reminding owners of heavier diesel trucks that they need to act now in order to comply with California's Truck and Bus regulation, which has its first diesel filter deadlines in January 2012.

The regulation provides owners of heavier trucks and buses (those with a Gross Vehicle Weight Rating greater than 26,000 lbs.) with two options to reduce diesel emissions. They can:

- Follow a staggered implementation schedule that requires 1996-1999 model engines be retrofit with a diesel particulate matter (PM) filter by January 1, 2012, or
- Use a flexible phase-in option that requires any 30 percent of vehicles in the fleet to have a PM filter. (Note: this option requires fleet owners to report information about all their heavier vehicles to ARB by January 31, 2012. Fleets that report can also take advantage of credits and special provisions.)

Owners of small fleets (defined as one to three trucks with a GVWR greater than 14,000 lbs.) can postpone the January 2012 compliance requirement for their heavier trucks until 2014, but must report their fleet information to ARB by January 31, 2012 in order to receive the extension.

Lighter diesel trucks with a GVWR of 14,001 to 26,000 pounds have no compliance requirements until 2015.

Business owners may find funding opportunities to upgrade their fleets through either the Carl Moyer Program, which offers incentive grants for buying cleaner-than-required engines yielding early or extra emission reductions, or by using Proposition 1B funds, which are available under the Goods Movement Emissions Reduction Program.

Truck owners seeking more information on compliance assistance and funding opportunities can visit ARB's Truck Stop, call the Diesel Hotline at 866 6 DIESEL (866- 634-3735), or review the Truck and Bus Regulation Fact Sheet.

Approved in 2008 and later amended in 2010 to provide more flexibility for businesses, the Truck and Bus Regulation will significantly reduce emissions from the nearly one million heavy duty diesel trucks that operate in California. The regulation is one of several emission control measures that aggressively target diesel pollution, which is associated with a host of health ailments including cancer. Diesel particulate filters remove 85 percent of the fine particle pollution found in diesel exhaust. ▲



## California Truckers Face Jan. 1 Fuel-Efficiency Equipment Deadline

Many large carriers operating in California face a Jan. 1 deadline to have SmartWay-approved fuel efficient aerodynamic technology equipment installed on 15% of their pre-2011 trailer fleet.

Others that signed up late for a phase-in option must have 20% of their 53-foot or longer dry van or refrigerated trailers equipped with the technology by Jan. 1.

To comply with the California Air Resources Board's regulation, all carriers that operate box van trailers in California must install one or more of SmartWay-approved technologies such as side skirts, front gap fairings, or rear trailer fairings that are rated to improve fuel efficiency by at least 5%.

Refrigerated carriers must choose trailer aerodynamic technologies that improve fuel efficiency by 4% or more.

The SmartWay Transport Partnership is a U.S. Environmental Protection Agency program that certifies trucks and other equipment as being fuel efficient.

EPA this summer expanded the SmartWay program to include drayage trucks.

"What a fleet has to do is go to the SmartWay website that lists which technologies have been approved at different fuel saving levels," said Mike Tunnell, director of environmental affairs for American Trucking Associations.

"They'll need to pick from the menu one of the 5% or greater fuel-saving technologies," said Tunnell, who is based in California.

Carriers that did not register for a phase-in compliance plan will need to bring all of their pre-2011 trailers into compliance by Jan. 1, 2013.

Regardless of which option large carriers choose, they all must have 100% of their fleets equipped with the aerodynamic technologies by Jan. 1, 2016.

Small fleets - those with 20 or fewer trailers - have until the middle of 2012 to sign up for a phase-in plan, but must have 25% of their trailer fleet equipped with the technologies by Jan. 1, 2014, increasing to 100% by Jan. 1, 2017.

CARB estimates that the technologies will cost roughly \$2,100 for a sleeper trailer and \$2,900 for other trailers, but Tunnell said the cost could be higher.

ATA and other industry stakeholders have complained that the greenhouse gas regulation, first approved by CARB's board in 2008, does not offer enough flexibility for carriers to bring their fleets into compliance. ▲

~Transport Topics ~

## Canada's e-Manifest Requirements Mandatory

On Wednesday, October 12, the Canada Border Services Agency (CBSA) announced that eManifest requirements for motor carriers will be mandatory on November 1, 2012.

Now that all transmission options (Electronic Data Interchange and the eManifest Portal) are available and operating efficiently, the 18-month implementation timeline will begin November 1, 2011. In accordance with the eManifest implementation approach, the following key dates will apply to eManifest implementation in the highway mode:

- November 1, 2011, to November 1, 2012 - Highway carriers have 12 months to incorporate eManifest requirements into their business processes.
- November 1, 2012, to May 1, 2013 - eManifest requirements are mandatory. Highway carriers deemed to be non-compliant

will be denied entry to Canada and issued zero-rated penalties.

- May 1, 2013 - The implementation timeline is complete. Highway carriers deemed to be non-compliant will be denied entry to Canada and issued monetary penalties.

CBSA has also updated the eManifest section of their website to better organize the content, accommodate the posting of policy decisions and interim highway processes, and include user information on, and access to, the eManifest Portal. ▲

## Truck Routes Posted in Illinois

Illinois Governor Pat Quinn recently signed HB 1377 into law which sponsors say will increase truck safety; PL 97-0291 goes into effect January 1, 2012. Illinois Department of Transportation will be required to post on its official website the latest truck route data and include in its CDL curriculum, study guide and materials related to obtaining or renewing a CDL, the distinctions between utilizing a truck-specific global positioning system device and other non-truck-specific GPS devices. The law grew from recommendations of a state Task Force charged with investigating the use of GPS and compliance with the Designated Truck Route System (DTRS). ▲

## I-64 Bridge Linking IN and KY to Close for Repairs

The Interstate 64 bridge spanning the Ohio River between Louisville, Ky., and southern Indiana must be closed for six months, transportation officials said.

It will take that long to carry out the repairs to the span - the Sherman Minton Bridge - which was closed Sept. 9 after a routine inspection turned up a crack in a steel load-carrying joint.

The closing of the I-64 bridge has meant traffic in and out of Louisville and across the river must take detours, with the major detour route being the Interstate 65 bridge that also crosses the river at Louisville.

Before its closing, the I-64 bridge carried 70,000 to 80,000 vehicles a day. By comparison, the Interstate 65 bridge, which must now handle a large number of those detoured vehicles, usually carries about 180,000 vehicles a day but now is swollen with detoured traffic.

Truckers are more anxious than ever to avoid traveling in peak traffic times with the added detour traffic, trucking officials in both states have said.

The announcement that the bridge would require lengthy and major repairs was made Sept. 30 on the Indiana side of the river at the New Albany, Ind., fire station. The repairs are expected to cost \$20 million and last 20 years. ▲

~Transport Topics ~

## Maine Sets New 75 mph Speed Limit for I-95

The new 75-mph zone covers about 110 miles of road between Old Town, which is a few miles north of Bangor, and Houlton.

The higher limit sets Maine apart from other eastern states, none of which lets drivers go that fast. About a dozen western states have 75-mph limits along rural interstates, and Texas even allows 85 mph on some segments, according to the Insurance Institute for Highway Safety. ▲

~Transport Topics ~



## Maryland Court Rules Nonresident Tax OK

The Maryland Court of Appeals, the state's highest court, has held that an income tax levied specifically on individuals who neither lived nor worked in Maryland but who earned income from a Maryland source was constitutional. Maryland imposes a state income tax to generate state revenue and also a county tax, the revenue from which goes to local governments to pay for local services. The tax challenged here was enacted to impose an additional income tax on nonresidents who under prior law had been subject only to the state and not to any of the county income taxes. The level of the new tax in a given year was equivalent to the lowest tax rate in effect in any county. Nonresident partners of a Maryland law firm argued that the tax was contrary to several provisions of both the state and federal constitutions. The court found the tax passed the U.S. Supreme Court's test for a valid "compensatory tax"; that is, the state had to identify the in-state burden for which the challenged tax was compensating, the tax burden could not be greater for nonresidents, and the events on which the taxes were imposed had to be similar. The state met its burden in this test, the court held, and it likewise found against the plaintiffs on their other arguments. *Frey, et al. v. Comptroller of the Treasury*, docket no. 62, decided September 29, 2011. This decision could clear the way for local governments in other states to impose local income taxes on nonresident shareholders of closely-held corporations, limited liability companies, and the like, many of whom are already taxable at the state level by states where the businesses are located. ▲

~ State Laws Newsletter ~

## I-70 Blanchette Missouri River Bridge Contract Award

At its monthly meeting, the Missouri Highways and Transportation Commission awarded a contract to complete major repair and replacement work on the 1958 westbound Interstate 70 Blanchette Bridge over the Missouri River. The \$62.7 million contract was awarded to Walsh Construction Company of Chicago, Illinois. On average, this section of I-70 carries approximately 160,000 vehicles per day in both directions crossing between St. Charles and St. Louis counties.

Work will include the replacement of the truss sections of the bridge, replacement of the entire driving surface of the five-lane bridge, and repairs and replacements to many other major elements. Work could begin as early as January 2012 and must be complete by April 2014. Any impacts to traffic must be completed by December 31, 2013. The contractor will be allowed to close the westbound bridge for 12 months and detour all traffic onto the eastbound bridge. The timing of the closure will not be available for several more months.

"This project includes a major facelift for this bridge to enable it to last another 50 years. We are pleased to get a good contract and get the work underway," said MoDOT St. Charles Area Engineer Tom Evers. "Over the next couple of months, the contractor will be ordering steel and other supplies and working with us on their detailed schedule. We know there is concern over the timing of the 12 month closure and detour, and we hope to provide information on that in early 2012." ▲

## Efforts to Freeze Ohio Turnpike Tolls Fails

Despite efforts from the Ohio Trucking Association and others to delay toll hikes for at least a year, Ohio Turnpike toll increases will go into effect January 1, 2012, as planned. The increase in tolls will amount to approximately ten percent.

Trucks typically generate about 60 percent of the toll road's revenue, while they account for only 22 percent of its traffic – so trucking is being hit the hardest.

The Ohio Turnpike is 241 miles long and connects the Midwest and the East Coast. Rates for six-axle trucks will rise from \$45 to \$50 for trucks using E-ZPass. For trucks not using E-ZPass, the rates will be even higher. Ohio uses the reduced fees when using E-ZPass as an incentive for drivers and companies to switch to E-ZPass, believing that it allows traffic to move more quickly through the interchanges and lessens the need for toll collectors.

Ohio Governor John Kasich and the Ohio Department of Transportation have criticized the turnpike, citing an inflated payroll and costly operations. They have proposed leasing out the turnpike operations, which they believe would result in a more efficient operation and help in funding transportation projects around Ohio. ▲

## PA Becomes 35th State to Ban Texting

On November 9, Pennsylvania became the 35th state to ban texting while driving. Governor Tom Corbett (R) signed Senate Bill 314 into law to give police the authority to charge someone caught texting while driving with a primary offense and a \$50 fine, effective March 2012. Corbett said 13,790 crashes in Pennsylvania were caused in 2010 by distracted driving, which includes more than texting. He said 1,100 of those accidents involved drivers using a handheld cell phone, and 66 people died because they were not paying attention to how they were driving. ▲

## WA DOT Turns to Cameras to Enforce HOS

Twelve automated cameras installed by the Washington Department of Transportation at weigh stations and ports of entry take a time-stamped picture of a truck and its license plate as it goes by, according to a November 11 article in *Land Line*. The Washington State Patrol's Commercial Vehicle Division can then compare those times to a trucker's logbook to see if a driver is compliant with hours of service. In a test of the new system at the Nisqually Truck Scale on Interstate 5 in August, officers cited 98 drivers for serious logbook violations over a four-day period. Oregon already operates a similar system. ▲

## Auxiliary Power Unit Weight Exemption Not Honored in all States

The 400-pound weight allowance – signed into law in 2005 – that increases the maximum gross weight limit and axle weight limit for trucks equipped with Auxiliary Power Units was recently brought up in a question.

The sad part of this exemption is that it is not a "mandate." States have the option to honor the exemption, but it does not pre-empt state regulations or require the states to grant the increased weight allowance.

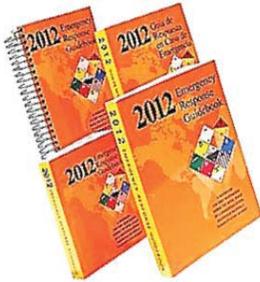
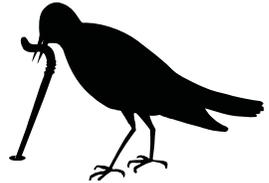
Despite the lack of a mandate, more and more states are adopting the weight exemption. As of October 1, 2011, a total of 44 states granted the exemption. Eighteen of those states have an allowance granted by enforcement policy rather than by state law. Of those 18 states, only four have legislation pending to make it a state law.

States that do not allow the exemption include: California, Hawaii, Kentucky, North Carolina, Rhode Island, Tennessee and the District of Columbia. ▲



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