MONTHLY NEWSLETTER JULY 2016 VOLUME 8 ISSUE 7

▶ MJS SAFETY TRAINING ANNOUNCEMENT

MJS SAFETY LLC is proud to announce that we are now available to perform Operator Qualification [OQ] Performance Evaluations under the MEA EnergyU system as well as Veriforce. *read more…*

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The new penalty levels are effective no later than August 1, 2016. *read more…*

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▶ Cracking the 'Pencil Whip': *Developing and Managing Pre-Trip Inspections*

Pre-trip **inspections** are one the **first things** listed in the **Commercial Driver License** manual, **hammering home** the importance of the **process.** *read more…*

▶ San Antonio Inspector Charged for Taking Bribes from Trucking Co. for Clean Inspections

A former San Antonio police officer who worked in a unit that performs inspections on trucks was arrested and indicted in June on bribery charges, according to a report from San Antonio news station KSAT. *read more…*

▶ Delays in Approving Hair Testing Aid Drug Abusers, Officials Warn

Delays in **adopting federally mandated pre-employment hair drug-testing standards** potentially have **allowed hundreds** of **truck drivers** who **failed hair drug tests** to drive for **another carrier,** according to **fleet** and **medical executives.** *read more…*

▶ DOT Chief: CSA Scores Likely to Remain Hidden for Two Years Pending Required Changes

The **reforms required** by **Congress** to the federal **Compliance, Safety, Accountability** carrier **ranking system** will take about **two years** to **complete,** Transportation Secretary Anthony Foxx told a **Senate panel.** *read more…*

▶ Listening sessions and comment period done…

SLEEP APNEA RESEARCH: Truck operators must spend average of $1,200 for testing when apnea suspected *read more…*

▶ FMCSA Raises Fines for Some Violations, Lowers Fines for Others

The fines for violations of federal safety regulations underwent a makeover this year during the adjustment for inflation process. *read more…*

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"Big trucks rule the road, they're dangerous, and they can cause big, bad injuries"… *read more…*

ELD NEWS

- ▶ **ELD Market: THE 'WAIT-AND-SEE' APPROACH TO IMPLEMENTATION** *read more…*
- ▶ **FMCSA on ELDs: LONGTIME 'GOVERNMENT SUPERVISION' OF TRUCKING JUSTIFIES PRIVACY INTRUSION** *read more…*
- ▶ **Post-Crash Litigation: CAMERAS AND ELD EVIDENCE** *read more…*
- ▶ ***so, in review…a little 'food for thought'***

  Protect yourself *read more…*

▶ Improving Safety and Health…

Workplace exams may thwart mining injuries, deaths: Michael Jay Nickels was driving a truck at a sand and gravel mine in Valley County, Neb., in March 2015, when the vehicle left an elevated roadway on an embankment and headed into a pond – leaving him injured seriously. *read more…*

▶ MSHA issues "Cell Phones and Mobile Equipment Don't Mix" safety alert

The **Mine Safety and Health Administration** (MSHA) has issued a **metal/non metal safety alert** titled "**Cell Phones and Mobile Equipment Don't Mix**." *read more…*

▶ MSHA issues "Close Call Alert" after excavator slips into lake…offers Best Practices

The **Mine Safety and Health Administration** (MSHA) issued a "**close call alert**" after an excavator slipped into a lake while excavating sand at a surface crushed, broken limestone operation. *read more…*

▶ Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments

The new penalty levels are effective no later than August 1, 2016. *read more…*

▶ HEAT ILLNESS CAN BE DEADLY

Unusually hot temperatures in June have been a good reminder that we need to be mindful of negative side effects. *read more…*

MJS SAFETY TRAINING ANNOUNCEMENT

MJS SAFETY LLC is proud to announce that we are now available to perform Operator Qualification [OQ] Performance Evaluations under the MEA EnergyU system as well as Veriforce.

MJS SAFETY has "Authorized" Performance Evaluators on staff that can perform this service for specific "Covered Tasks."

MJS SAFETY is also available to assist with the Knowledge Based Training for these tasks. Knowledge-based training is designed to help personnel successfully pass the OQ Performance Evaluations.

The Operator Qualification Rule – commonly referred to as the "OQ Rule" addressed in Title 49 of the Code of Federal regulations, mandates that individuals who perform "Covered Tasks" on pipeline facilities be qualified through the Operator Qualification Process.

The intent of the OQ rule is to ensure protection of both pipeline personnel and the public at large. Providing individuals with the necessary knowledge and skills is an essential element of any Operator and Contractor OQ plan.

Acceptable requirements for qualification are determined by the operator. The quality and validity of data related to OQ training, testing, and performance is critical to meet these requirements.

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~NUCA Confined Space
~Hydrogen Sulfide [H_2S] - Awareness
~Respirator: Medical Evaluation & Fit Testing
~Hazard Communication – GHS Training
~Teens & Trucks Safety
~1st Aid/CPR Course- Medic 1st Aid
~HAZWOPER 8, 24 & 40 Hour
~PEC'S Intro to Pipeline
~Confined Space Rescuer Training
~PEC Core Compliance
~OSHA 10 Hour Construction
~OSHA 30 Hour Construction
~NUCA Competent Person for Excavation & Trenching
~Hands-on Fire Extinguisher training
~DOT Hazmat Training
~MSHA Sand & Gravel Training **[Part 46 only]**
~Fall Protection for the Competent Person
~Defensive Driving Safety for large and small vehicles
~Instructor Development for Medic 1st Aid/CPR
~Bloodborne Pathogens Compliance Training
~Respiratory Protection Training

► *MJS SAFETY offers these courses as well as custom classes to fit the needs of your company* ◄

Schedule of classes July 2016: ● *Training Center – 246 Basher Drive #1, Johnstown, CO 80534* ●

- **PEC Safeland Basic Orientation: July 8, 20**
- **First Aid (MEDIC 1st Aid) /CPR/AED / BLOODBORNE PATHOGENS: July 11 - 8 a.m.**
- **ANSI Z390 H2S Awareness Training: July 11 - 1 p.m.**
- **CONFINED SPACE ENTRY – Entrant, Attendant & Supervisor Duties: July 19**

► NEED ANY OF THESE CLASSES IN SPANISH? CONTACT carriejordan@mjssafety.com TO SCHEDULE TODAY ◄

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To sign up for one of these classes, or inquire about scheduling a different class
Call Carrie at 720-203-4948 or Jeremy at 720-203-6325 or Mike at 303-881-2409

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●OSHA 10 Hour for General Industry or Construction ●Confined Space for Construction

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SOURCES FOR THIS ISSUE INCLUDE
OSHA
FMCSA
MSHA
Overdrive
CCJ
truckinginfo.com
Aggregates Manager
Transport Topics
Psychemedics
Quest Diagnostics
KSAT-San Antonio
USDOL
Federal Register

OSHA Whistleblower Rights…

Trucking Company Fired Driver for Refusing to Violate Safety Regulations

OSHA orders NFI Interactive Logistics Inc. to reinstate, pay employee $276K

A truck driver **concerned** he **couldn't complete** his **delivery** from **Massachusetts** to **New Jersey** and back without **violating** federal **safety regulations** and putting himself and **others** at **risk** thought he'd **devised** a **solution** to deliver his **cargo on-time** and **comply** with the **regulations.** Instead of **thanking him,** his employer **fired him.**

In so doing, **NFI Interactive Logistics Inc.** violated the **anti-retaliation provisions** of the Surface Transportation Assistance Act, an **investigation** by the U.S. Department of Labor's **Occupational Safety and Health Administration** has found. **OSHA** is ordering the **Cherry Hill, New Jersey-based company** to reinstate the **driver,** pay him more than **$276,000** in **back wages** and **damages** and take other **corrective action.**

NFI assigned the driver to **deliver** a **truckload** of Poland Spring **bottled water** from **Northborough, Massachusetts** to **Jersey City, New Jersey,** on Aug. 15, 2012. Due to a **severe thunderstorm,** flooded roads, **heavy traffic** and **motor vehicle accidents,** the trip took **significantly longer** than normal. He **believed** that he **lacked sufficient time** to complete the **delivery** and **return home** without **violating** the hours of service restrictions contained in the U.S. Department of Transportation's **Federal Motor Carrier Safety Administration** regulations.

To **address** the situation, he **delivered** the load to a **closer customer facility** in nearby **Kearny, New Jersey.** NFI **objected** to the **driver delivering** the load to Kearny. **Shortly** after the **delivery arrived** in Kearny, **arrangements** were made to have a **different NFI driver** drive the load to **Jersey City.** Both **NFI** and the **customer** approved the new **arrangement.** The load was **delivered** and the **driver** was able to **return** to Northborough **without violating** the **hours of service restrictions** or posing a risk. **NFI** fired him the **next day** for **insubordination.** The driver **subsequently filed** a **whistleblower complaint** with **OSHA.** The **agency investigated** and found **merit** to the **driver's complaint.**

"This **driver found** a way to **do his job** and **ensure motor carrier safety.** Rather than **receiving credit** for doing the **right thing,** he received a **pink slip,"** said Kim Stille, **OSHA's** New England **regional administrator.** "The **law is clear:** Drivers have the **right** to **raise legitimate safety concerns** to their **employer –** including **refusing** to violate **safety regulations –** without **fear** of **termination** or **other** retaliation. **NFI must reverse** its **actions** and **compensate** this **driver** for the **financial** and **other losses** he has **suffered** as a **result** of his **illegal termination."**

As a **result** of its **findings, OSHA** is ordering **NFI Interactive Logistics** to take the following **corrective actions:**

- ***Immediately reinstate the driver to his former position, with all rights, seniority, pay raises and benefits to which he was entitled absent the discharge.***
- ***Pay the driver $126,870 in back pay and interest covering the period from August 17, 2012 to June 7, 2016, plus additional amounts accruing up to the day the company makes the driver a bona fide offer of reinstatement.***
- ***Pay him $50,000 in compensatory damages for pain and suffering, including emotional distress, depression, mental pain, humiliation and embarrassment.***
- ***Pay him $100,000 in punitive damages and also pay his reasonable attorney fees.***
- ***Expunge from all of its files any reference to the discharge, or the driver's exercise of his rights under STAA.***
- ***Make no adverse statements about the driver's termination and/or any of the facts at issue in this case in response to any inquiry regarding his employment with NFI.***
- ***Not retaliate against the driver in any manner for his instituting or causing to be instituted any proceeding under or related to STAA.***
- ***Immediately post in a conspicuous location in its workplace a signed and dated notice to employees informing them of the order and their rights under STAA.***

The **driver** and **NFI** each have **30 days** from **receipt** of **OSHA's findings** to file **objections** and **request** a hearing before the **Labor Department's Office of Administrative Law Judges.**

OSHA enforces the **whistleblower provisions** of the STAA and 21 other statutes protecting **employees** who **report violations** of **various** airline, **commercial motor carrier,** consumer product, **environmental,** financial reform, **food safety,** health care reform, nuclear, **pipeline,** worker safety, **public transportation agency,** railroad, maritime and **securities laws.**

Employers **are prohibited** from **retaliating** against **employees** who **raise various protected concerns** or provide **protected information** to the **employer** or to the **government.** Employees who **believe** that they have been **retaliated against** for **engaging** in **protected conduct** may file a **complaint** with the **Secretary of Labor** to request an **investigation** by **OSHA's Whistleblower Protection Program.**

See detailed information on **employee whistleblower rights,** including **fact sheets.**

Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments

The U.S. Department of Labor published an interim final rule to adjust the amounts of civil penalties assessed or enforced in its regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (*Inflation Adjustment Act*) requires agencies to adjust the levels of civil monetary penalties with an initial catch-up adjustment, followed by annual adjustments for inflation. The Department is required to calculate the catch-up and subsequent annual adjustments based on the Consumer Price Index for all Urban Consumers.

The new penalty levels are effective no later than August 1, 2016.

► *more whistleblower news…*

Whistleblower — Severe Violator Pilot Program Further Protects Workers Who Report Violations of Law, Safety and Health in Kansas City Region

Nation's first-of-its-kind program will subject employers to additional scrutiny

To further protect workers who report violations of law, safety and health, the U.S. Department of Labor's **Occupational Safety and Health Administration** is launching a pilot for its first severe violator enforcement program for employers that continually and willfully disregard the **rights of whistleblowers**.

OSHA's "Whistleblower-Severe Violator Enforcement Program" will be similar to its enforcement **Severe Violator Enforcement Program** which includes employers that routinely ignore federal workplace safety and health regulations. **W-SVEP** became effective on May 27, 2016, in the agency's Kansas City Region, which includes employers in Kansas, Missouri and Nebraska, and those companies under federal enforcement in Iowa.

"W-SVEP will focus on employers that engage in egregious behavior and blatant retaliation against workers who report unsafe working conditions and violations of the law," said Karena Lorek, **OSHA's** acting regional administrator in Kansas City. "When employers retaliate against workers who exercise their legal rights, other workers may suffer a chilling effect and fear exercising their rights to speak up. Problems don't get fixed, and workers get hurt. Employers that act in that manner deserve greater public scrutiny and a powerful response from **OSHA.**"

The criteria for inclusion on the W-SVEP log will include:

- *All significant whistleblower cases.*
- *Cases deemed worthy of either litigation or the issuance of merit Secretary's Findings in connection with egregious citations, a fatality, or a rate-based incentive program for work-related injuries.*
- *A merit whistleblower case where the employer is already on the enforcement **SVEP** log.*
- *A company with three or more merit whistleblower cases within the past three years.*

Once an employer is determined to have met one of the criteria listed above, **OSHA** will place them on the **W-SVEP** log. After three years, a company may petition the regional administrator for a follow-up visit and removal from the program. At that time, **OSHA** will complete a comprehensive review of the company's policies and practices to determine if they have addressed and remedied the retaliation and its effects sufficiently.

Since **OSHA** implemented the severe violator program for health and safety enforcement cases in 2010, companies deemed as severe violators have made significant improvements.

"We hope that the **W-SVEP** pilot will be the catalyst that causes companies to change their behavior and instill a culture that restores employee confidence and reshapes the employer's perspective on whistleblowing," Lorek added. "In the past three years, four large regional employers would have met the criteria for inclusion in **W-SVEP.**"

OSHA Fines Grain Elevator Company for Willfully, Repeatedly Exposing Workers to Potentially Fatal Grain Engulfment Hazards

Citations issued: June 10, 2016

Investigation findings: The U.S. Department of Labor's **OSHA** investigated High Country Elevators Inc., on March 15, 2016, in Dove Creek as part of the agency's **Regional Emphasis Program for Grain Handling Facilities**. At the time of the inspection, an employee was inside one of the storage bins alone shoveling sunflower seeds; no protective measures were in place and no other employee was present to stop the elevator in an emergency. **OSHA** then cited the employer for **one willful violation** for having an employee working in a storage bin, and not locking-out energized unguarded equipment operating inside the same storage bin. The agency also issued **two repeat citations** because the employer did not issue a permit to an employee prior to entering a storage bin, a confined space, and the worker was not equipped with a body harness and lifeline. The employer was cited for these same or a similar violation on Aug. 15, 2011.

Additionally, **OSHA** issued **four serious violations** to High Country for:

- Not monitoring the air inside a confined space prior to allowing employees to enter them.
- Allowing employees to enter confined spaces without being connected to a rescue line, and failure to have a manual backup system or a means to adjust the force and speed of the electric winch used as part of the rescue equipment for employees who enter confined spaces.
- Not providing an observer outside of the storage bin to provide assistance in the event another employee entered the bin in an emergency.
- Allowing grain dust to accumulate greater than 1/8 inch.

Suffocation is a leading cause of death in grain storage bins. In 2010, 51 workers were engulfed by grain stored in bins; 26 of them died.

Proposed Penalties: $51,920

Quote: "Moving grain acts like 'quicksand', can bury a worker in seconds and, in many cases, leads to death by suffocation," said David Nelson, **OSHA's** Area Director in Englewood, Colorado. "Vertical piles of stored grain can also collapse unexpectedly if a worker stands on or near it. These types of incident can be prevented by following some basic rules."

Cracking the 'Pencil Whip':
Developing and Managing Pre-Trip Inspections

Pre-trip **inspections** are one the **first things** listed in the **Commercial Driver License** manual, **hammering home** the importance of the **process.**

However, with **fleet managers** outnumbered by **tractors** and **drivers** tens or even **hundreds** to one, the **inspection process** can be **one** of the **most challenging** to **organize.**

"It is **hard** to give **fleet managers** pointers on how to **manage** their people because **pre-trip inspections** are really a **people process,"** says Joe Puff, vice president of **technology** and maintenance, **NationaLease.** "We can have all of the **electronics** and all of the **behind-the-scenes telematics** at our **fingertips,** but at the end of the day, if the **driver** wants to **bypass** the **process** and '**pencil whip**' it, he or she can **make it look** pretty **good."**

Electronic systems like **Zonar's Electronic Vehicle Inspection Report** (EVIR) have **taken** the **pencil out** of the '**pencil whip**' by **forcing drivers** to scan a **radio-frequency identification** (RFID) bar code at each **inspection point.**

"It's **time stamped,** so you know **how long** that driver is in that **specific zone** and, over the **totality** of **it, how long** it took for them **to do** the **entire inspection,"** says Zonar's Vice President of Compliance, Fred Fakkema, who **estimates upwards** of **85 percent** of all **pre-trip inspections** are done **incorrectly** if they are **done at all.**

Once the **scanning tablet** is **returned** to its **cradle,** a **customizable inspection report** is **automatically synched** on a fleet's **Zonar platform** to **back office** and **maintenance personnel,** streamlining and **documenting** the **process** from **inspection** to repair to the **truck** being **placed back** in **service.**

For **fleets** who **still reply** on **pencil** and **paper,** Puff says **one** of the **best ways** to **measure** the **quality** of a driver's **pre-trip inspection** is to **periodically re-inspect** behind them.

"A **re-inspection** makes sure that **everybody** is doing things **by the book** and it **sends** a clear **safety commitment message.** It's a **no excuse** great **coaching opportunity,"** Puff says, adding that problems **rarely stem** from a **driver's unwillingness** to **perform** a **proper pre-trip.** Many times, he says, it **comes down** to **training** and **education.**

Dennis Abruzzi, **senior vice president** of enterprise solutions for **Penske Logistics,** says **pre-trip inspections** are a **key part** of the company's **safety program.**

"We **provide documented expectations** for both the **driver** and our **location management** via **company policies** and **procedures,"** he says, adding Penske also **provides training** to its **4,440 drivers** across **North America.**

Training, with an **emphasis** on **ensuring drivers** understand what they **are looking for** in the **process,** Puff says, is a **critical part** of **developing** a **safety culture.**

"They **really need** to **understand** what they're **looking at.** One of the **things** I **often see** is **drivers** looking at **brakes** and **tires** but they **really don't know** what they are **looking for,"** he adds. "They **don't know** at **what point** it's a **pass** or **fail."**

A **veteran** of the **enforcement field** for **25 years,** Fakkema **agrees.**

"Number one, do **drivers know** what they are **looking at** when they are **doing** the **pre- and post-trip?** Then, **number two,** are they **actually doing it?"**

Bob Waller, **CEO** of Excelsior Springs, Mo.–based **Waller Truck. Co.,** says **driver education** will be **a big part** of his **company's focus** as it **rounds** the **corner** on the **second half** of **2016.**

"As part of our **Q3 safety efforts,** we will be **focusing** on a **driver education program** encouraging **pre-trip inspections,"** he says. "There will be **social media,** in **cab messaging** and an **incentive-based program** that **catches** our **drivers** in the act of doing a **pre-trip inspection."**

"The **more training** we can **give drivers** to teach them the **process correctly,** the **better,"** Puff adds. "If you **notice** in **re-inspections** that **things** are **not being done** as they **should,** you need to **retrain** on **specific areas** — like **recurring issues** with **brakes,** for **example."**

The **top violations** during **CSA roadside inspections** are **generally lights,** tires and **brakes,** each of which Fakkema says **can be spotted** during a **quality pre-trip inspection** before they **drag down CSA scores.**

"Enforcement officers are like **everybody else.** You're **always looking** for that **low-hanging fruit,"** he says. "If you have a **truck** and it has a **couple marker lights out,** or a **headlight out,** that's the **easy stuff** and then **your inspection** can **go from there."**

San Antonio Inspector Charged for Taking Bribes from Trucking Co. for Clean Inspections

A former San Antonio police officer who worked in a unit that performs inspections on trucks was arrested and indicted in June on bribery charges, according to a report from San Antonio news station KSAT.

The officer, identified as 42-year-old Daniel Schmitt, allegedly was paid $7,400 by Texas Chrome Transport to give the company "higher than normal passing grades" on its inspections, the report states. The San Antonio Express-News reports that authorities caught on after seeing Texas Chrome's record was "too clean."

Both news outlets reported Schmitt was placed on administrative duty after the allegations surfaced, then was suspended indefinitely in May. The allegations date back to 2013, according to the reports.

Schmitt is also accused of paying another police officer, Johnny Diaz, $400 to give the trucking company a passing inspection, KSAT reports. Diaz reportedly resigned from the San Antonio Police Department in January.

Schmitt was indicted June 2, according to court records, and was booked in the Bexar County Jail on June 6.

According to the Federal Motor Carrier Safety Administration, Texas Chrome Transport has 67 trucks and 65 drivers. No one with the company has been charged to date, according to the reports.

Delays in Approving Hair Testing Aid Drug Abusers, Officials Warn

Delays in **adopting federally mandated pre-employment hair drug-testing standards** potentially have **allowed hundreds** of **truck drivers** who **failed hair drug tests** to drive for **another carrier,** according to **fleet** and **medical executives.** "Drivers who **fail pre-employment hair tests** can simply **seek employment** with **other carriers** where they can **more easily** pass a **pre-employment urine drug test,** without fear that their **positive hair test results** will **follow them,"** Dave Osiecki, chief of national advocacy for **American Trucking Associations,** wrote to a **top federal drug agency** official.

Osiecki was **referring** to the **Substance Abuse and Mental Health Services Administration's** process of **adopting mandatory hair drug- testing standards** that **carriers** and other **federal agencies** can use to **test prospective employees. SAMHSA,** a sub-agency of the **U.S. Department of Health and Human Services,** has been **studying hair testing** since **2004.** Now **HHS,** which is **responsible** for **setting drug-testing standards** for all **federal employees,** is under a **congressional mandate** to **adopt** a **hair-testing standard** by December.

Current **federally mandated urine tests** check for **use of marijuana,** cocaine, **amphetamines,** opiates and **phencyclidine,** or **PCP.** Frustrated by **years-long delays,** a **substantial number** of mostly **large motor carriers** already have **implemented hair testing** on their own alongside **DOT-mandated urine tests.** However, **privacy laws** do **not permit** those **carriers** to share those **hair test failures** with **other carriers,** said Ronald Flegel, **SAMHSA'S** director of **workplace programs** and **chairman** of the **agency's drug testing advisory board.** Some of those **carriers** that have gone to the **extra expense** of **hair testing** — which **can detect drug use** up to **90 days** — are **seeing patterns** that **support** the **contention** that they **better** identify **"lifestyle drug use."**

The VP of one **truckload** and **intermodal carrier** has **hair-tested thousands** of drivers over the **past eight years.** "There is a **dramatic difference** in positive rates: **0.36%** of **applicants tested** positive with a **urine test,** while **3.67%** of the **same applicants** tested **positive using a hair test.** This **means** there are **thousands** of **seemingly qualified driving candidates** that have **been turned down** by us for **chronic drug use,** but who are **now driving** for **companies** that don't use **pre-employment hair testing."** The VP added that if **you are serious** about **eliminating chronic drug use** in the **industry,** then **hair testing** should be used for **screening applicants.**

Likewise, another **transportation company** vice president of **safety** and **driver training** said his **carrier** is seeing **similar results** since it first added **hair testing** to its **employee screening** in **2012.** Since then, **more than 100** of **103 applicants** who failed a **hair drug test** passed their **urine tests** at the **same time.** "Anybody **could stay clean** for a **week** and **typically pass** a **urine test,** but **they wouldn't** be able to **pass** the **hair test."**

An **executive** with a **commercial drug tester** said that **3-5%** of **pre-employment hair tests** conducted by the **lab** were **positive** for **drugs,** but only **0.5%** of **urine tests** were **positive.** "It has **always been** a **concern** in the **industry** that information **regarding drug users** can't be **shared,** thus putting the **motoring public** in **danger.**"

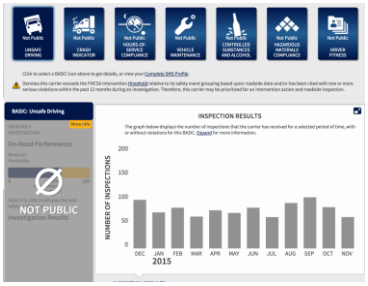
Several other labs and **carriers** that **test hair** did **not respond** to **requests** for **comment,** but in the past have been **strong advocates** of **mandatory hair testing.** Abigail Potter, an **ATA research analyst,** said **drug use** among drivers is **fairly rare.** "However, when **people** are **using** when **they're on duty,** it can be **extremely costly** to **life** and **financially,"** Potter said. "These are **people** we **don't want** on the **highways driving** a **very large truck."**

While **federal substance abuse officials** have their **eyes** on the **December congressional mandate, SAMHSA** director Flegel said it **could be** another **two years** before **HHS issues hair testing standards.** Flegel said **SAMHSA** and **HHS last month** assembled **25 national experts** for a **"scientific and technical"** closed-door **meeting** for **three days** in **Washington** to discuss **potential issues** with **hair testing.** The group, whose names **have not been made public,** is in the **process** of **compiling** a paper that will discuss **scientific evidence** related to the **reliability** of **hair testing.** The **paper** could include **recommendations** for **further research,** he said.

"I'm **99% sure** that **we're going** to **approve hair testing,"** Flegel said. "I'm **comfortable** that **we've eliminated** the **obstacles** to **approving hair testing."** Meeting at **SAMHSA headquarters** on June 12, the board **scheduled meetings** for **Aug. 6-7** to **discuss public comments,** finish **deliberating** the **pros** and **cons** of **hair testing,** and then take a **vote via secret ballot** on a **final proposal** that **would be sent** to **SAMHSA** Administrator Pamela Hyde. If **Hyde agrees,** the **recommendation** would be **forwarded** to the **Department of Health and Human Services,** which would **give final approval** for **proposed hair testing guidelines. HHS** in turn will **solicit comments** from **DOT** and the **Nuclear Regulatory Commission,** agencies that **have expressed interest** in **adopting hair testing.**

Any **subsequent** proposed **hair-testing standard** would **require** a **review** by the **White House Office of Management and Budget,** Flegel said. In **May 2015, SAMHSA** issued a **proposed rule** to **permit** the testing of **oral fluid specimens** for **drugs** and to **include drug testing** for certain **synthetic opiates** — hydrocodone, **oxycodone,** hydromorphone and **oxymorphone.** The agency **has yet** to **issue final guidance.**

DOT Chief: CSA Scores Likely to Remain Hidden for Two Years Pending Required Changes



The **reforms required** by **Congress** to the federal **Compliance, Safety, Accountability** carrier **ranking system** will take about **two years** to **complete,** Transportation Secretary Anthony Foxx told a **Senate panel.** That's the **same timeline** the **industry** can **expect to see** the so-called **"CSA scores"** — the **percentile rankings** in the **CSA Safety Measurement System's** seven **BASICs** — return to **public view.**

"Based on our **preliminary assessment,** it's going to **take a while** to do the **revised analysis,"** Foxx told the **panel,** referring to the **changes** in the **CSA score methodology** called for by **Congress** in the **2015 FAST Act highway bill.** "We **expect** it to take a **year** or **two,** probably **more like two,** before that **information** (*CSA SMS rankings*) will be **posted back up."**

Foxx testified before the **Senate's Commerce, Science and Transportation** committee early in **June.**

The **FAST Act required** the **Federal Motor Carrier Safety Administration** to pull **CSA SMS rankings** from **public view,** though much of the **underlying violation data** is still **available publicly.**

Congress **also directed** the **agency** to work with the **National Academies of Science** and other **government accountability agencies** to work with **FMCSA** to **develop** a plan to **reform** the system before the **agency** can bring the **scores back** to **public view.**

Since the **program's 2011 inception,** many **inside** of and **outside** of the **trucking industry** have pointed to **notable flaws** in the **program's data** well and the **methods** used to **calculate carriers' scores.** The **resulting flawed scores** were **available** for third parties **like shippers,** brokers and **insurers** to view and make **determinations** about **carriers** and their **crash risk,** in spite of the **program's** seeming **disconnect** with **crash risk.**

The **program** was **particularly unfair** for **small carriers** and **owner-operators,** many **studies** have shown. The **required reforms** are meant to bring **CSA scores** more **in line** with **carriers' actual risk** of **causing crashes.**

Listening sessions and comment period done…

SLEEP APNEA RESEARCH: Truck operators must spend average of $1,200 for testing when apnea suspected

Being **referred** for **sleep apnea screening** can be an **expensive requirement** for **truck operators**, particularly for those without **health insurance,** according to **new research released** May 26 by the **American Transportation Research Institute.** Costs to **truckers** many times **exceed $1,000** in **out-of-pocket expenses,** according to **ATRI's study.**

The **report** comes the **day following** the **conclusion** of the **third** and **final federal listening session** relative to **pursuit** of a **potential sleep apnea rulemaking** by the **U.S. DOT.**

ATRI based its **report** on **results** of a **survey** of drivers **around issues** related to the **obstructive sleep apnea** (*OSA*) **condition.** Based on the **responses** of more than **800 drivers** (*7 in 10 of them company employee drivers, the balance owner-operators*), **conclusions underscore** a **number** of the **issues raised** during the **listening sessions** relative to the **costs,** incidence and **effectiveness** of screening and **testing** for and **treatment of** sleep **apnea.**

ATRI's report attempts to **quantify** the costs and **other impacts** that **truck drivers** are **experiencing** as they address a **diagnosis** and **potential treatment** regimen for **OSA.**

"ATRI's research clearly shows what my **fellow drivers** and I have been **experiencing,"** said **owner-operator** Barbara Beal. "The **costs associated** with **sleep apnea screening** and **treatment** are not **inconsequential** for drivers and the **flexibility** to utilize **lower cost options** for both **screening** and **treatment** will be critical if **FMCSA** moves **forward** with a **formal rulemaking."**

Incidence of **screening,** testing and **treatment** has risen in **recent years** among drivers. **Recent polling** showed a more than **10 percentage-point increase** in the **number** of drivers reporting having **been tested** for **apnea.**

Have you been tested/treated for sleep apnea?

Two years back, the **last time** that **question** was asked **directly** to ***Overdrive* readers,** more than **60 percent** responded in the ***No* column,** lending **credence** to **anecdotal evidence** that the **willingness** of **examiners** to **refer drivers** for **testing** is indeed **on the rise.** The **variability** of **screening protocols** for **apnea test referrals** has been perhaps the **biggest point** of **contention** among **critics** of how the **medical certification process** treats the **condition today.** The **ATRI survey** found that, **among both drivers** who have had **sleep studies** and those who **have not,** there is **concern** about the use of **neck circumference** and **Body Mass Index** (*BMI*) as **measures** to **refer drivers** to **sleep studies.**

Additionally, **among drivers** who **have been tested,** 64 percent **believe** that the **DOT guidelines** for **referring drivers** are **too broad** and that **medical examiners** do **not** follow the **guidelines** for **referrals** to **sleep studies.**

COSTS

Going through the **testing-referral process** can be a **costly proposition, ATRI's** study finds. **Among drivers** who **had been referred** for a **sleep study,** 53 percent **paid** some **or all** of the **test costs,** with an **average** of **$1,220** in **out-of-pocket expenses,** representing **just more** than **1.5 weeks** of **median driver pay** at **$805 per week,** the survey **authors note.**

Meanwhile, **health insurance assistance** with **sleep study costs** impacted driver **out-of-pocket costs** significantly — **61 percent** of drivers with **no health care coverage** of their **sleep study** incurred **out-of-pocket costs** exceeding **$1,000.** At the same time, **32 percent** of **drivers** whose health insurance **did cover** some **portion** of the **sleep study** reported costs **exceeding $1,000.**

Among **drivers** reporting **time away** from work **associated** with **sleep apnea screening,** 41 percent **indicated days off** ranging from **1-30 days.**

TREATMENT

Use of a **Continuous Positive Airway Pressure** (*CPAP*) machine was the most **commonly** reported **prescribed treatment regimen** for drivers **diagnosed** with **sleep apnea.** This includes **drivers** in the **ATRI sample** diagnosed with **mild sleep apnea,** a **condition** that, though **practices** among **medical examiners** have been **notoriously** variable, **ATRI** says does **not require treatment** for **medical certification.**

The **number** of **drivers** who report **not adhering** to a **prescribed OSA treatment** was a **scant 1.95 percent** of the **moderate/severe** OSA-diagnosed **respondents,** the **survey report** stresses, **underscoring** well-known **health/lifestyle benefits** of treatment for those **who truly suffer** from the **condition.**

Along similar lines, **drivers' perception** of **treatment efficacy** varied by **sleep apnea severity.** As **OSA diagnosis** severity **increased,** drivers experienced **more positive** CPAP **treatment effects.** For example, **drivers diagnosed** with **severe OSA** and being **treated** with **CPAP** reported **increased amounts** of **sleep** (*84 percent*), **feeling better** when they **wake up** (*71 percent*), and **lower blood pressure** (*75 percent*).

Conversely, of the **91 percent** of drivers **being treated** with **CPAP** — despite a **diagnosis** of **mild sleep apnea** — less than a **third** (*32 percent*) **experienced** improved **sleep** as a **result** of **CPAP treatment.**

The **comment period** for **FMCSA's** fact-finding **Advanced Notice of Proposed Rulemaking** on **sleep apnea** was open through **June 8.**

FMCSA Raises Fines for Some Violations, Lowers Fines for Others

The fines for violations of federal safety regulations underwent a makeover this year during the adjustment for inflation process. Some fines are higher than previous years, and some are lower, as the **Federal Motor Carrier Safety Administration** made the adjustments based on the **Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.** An interim final rule, published in the Federal Register on Monday, June 27, announced the changes to the fines. The **new penalties** will go into **effect Aug. 1.**

In previous years, adjustments were rounded to the nearest multiple of $1,000, but the **2015 Act** removed the rounding rules, ensuring that penalties increase each year with inflation, according to **FMCSA**. The inflation calculations were reset this year as well, resulting in some of the penalty values decreasing.

The new fines for safety regulations violations are listed below:

Violation	New penalty value	Former penalty value
Failure to respond to Agency subpoena to appear and testify or produce records	$1,028	$1,000
Failure to respond to Agency subpoena to appear and testify or produce records	$10,282	$10,000
Out-of-service order: Operation of CMV by	$1,782	$3,100
Out-of-service order: Requiring or permitting operation of CMV by driver	$17,816	$21,000
Out-of-service order: Operation by drive of CMV or intermodal equipment that was placed out-of-service	$1,782	$3,100
Out-of-service order: Requiring or permitting operation of CMV or intermodal equipment that was placed out-of-service	$17,816	$21,000
Out-of-service order: Failure to return written certification of correction	$891	$850
Out-of-service order: Failure to cease operations as ordered	$25,705	$25,000
Out-of-service order: Operating in violation of order	$22,587	$16,000
Out-of-service order: Conducting operations during suspension or revocation for failure to pay penalties	$14,502	$16,000
Out-of-service order: Conducting operations during suspension or revocation	$22,587	$11,000
Recordkeeping: Maximum penalty per day	$1,194	$1,100
Recordkeeping: Maximum total penalty	$11,940	$11,000
Knowing falsification of records	$11,940	$11,000
Non-recordkeeping violations	$14,502	$16,000
Non-recordkeeping violations by drivers	$3,626	$3,750
Alcohol prohibition violations (first offense)	$2,985	$4,125
Alcohol prohibition violations (second or subsequent conviction)	$5,970	$4,125
Commercial driver's license violations	$5,391	$4,750
Special penalties pertaining to violation of OOS orders (first conviction)	$2,985	$2,750
Special penalties pertaining to violation of OOS orders (second or subsequent conviction)	$5,970	$5,500
Knowingly allowing, authorizing employee violations of OOS order (minimum)	$5,391	$4,750
Knowingly allowing, authorizing employee violations of OOS order (maximum)	$29,849	$27,500
Special penalties pertaining to railroad-highway grade crossing violations	$15,474	$11,000
Financial responsibility violations	$15,909	$21,000
Violations of Hazardous Materials Regulations and Safety Permitting Regulations (transportation or shipment of hazmat)	$77,114	$75,000
Violations of Hazardous Materials Regulations and Safety Permitting Regulations (training) (minimum penalty)	$463	$450
Violations of Hazardous Materials Regulations and Safety Permitting Regulations (training) (maximum penalty)	$77,114	$75,000
Violations of Hazardous Materials Regulations and Safety Permitting Regulations (packaging or container	$77,114	$75,000
Violations of Hazardous Materials Regulations and Safety Permitting Regulations (compliance with FMCSRs)	$77,114	$75,000
Violations of Hazardous Materials Regulations and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property)	$179,933	$175,000
Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (generally)	$25,705	$25,000
Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazmat maximum penalty)	$77,114	$75,000
Violations of Hazardous Materials Regulations and Safety Permitting Regulations (maximum penalty if death, serious illness, severe injury to persons; destruction of property)	$179,933	$175,000
Violations of the commercial regulations, property carriers	$10,282	$10,000
Violations of the CRs, brokers	$10,282	$10,000
Violations of the CRs, passenger carriers	$25,705	$25,000

Violation of the CRs, foreign carriers, foreign motor private carriers	$10,282	$10,000
Violations of the CRs, foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions (maximum penalty for intentional violation)	$14,140	$16,000
Violations of the CRs, foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions (maximum penalty for a pattern of intentional violations)	$35,351	$37,500
Violations of the CRs, motor carrier or broker for transportation of hazardous wastes	$20,564	$20,000
Violations of the CRs, motor carrier or broker for transportation of hazardous wastes	$41,128	$40,000
Violation of the CRs, household goods carrier or freight forwarder, or their receiver or trustee	$1,547	$1,100
Violation of the CRs, weight of HHG shipment, charging for services (minimum for first	$3,095	$3,200
Violation of the CRs (weight of HHG shipment, charging for services)	$7,737	$7,500
Tariff violations	$154,742	$140,000
Additional tariff violations, rebates or concessions (first violation)	$309	$320
Additional tariff violations, rebates or concessions (subsequent violations)	$387	$375
Tariff violations, freight forwarders (max penalty for first violation)	$774	$750
Tariff violations, freight forwarders (max penalty for subsequent violations)	$3,095	$3,200
Service from freight forwarders at less than rate in effect (first violation)	$774	$750
Service from freight forwarders at less than rate in effect (subsequent violations)	$3,095	$3,200
Loading, unloading violations	$15,474	$16,000
Reporting and recordkeeping - min penalty	$1,028	$1,000
Reporting and recordkeeping - max penalty	$7,737	$7,500
Unauthorized disclosure of information	$3,095	$3,200

Knowingly and willingly fails to deliver or unload HHG	$15,474	$11,000
HHG broker estimate before entering into agreement with motor carrier	$11,940	$10,900
HHG transportation or broker services - registration requirement	$29,849	$27,250
Copying of records and access to equipment, lands and buildings (max penalty per day)	$1,194	$1,100
Copying of records and access to equipment, lands and buildings (max total penalty)	$11,940	$11,000
Evasion of motor carrier regulations (minimum for first violation)	$2,056	$2,000
Evasion of motor carrier regulations (maximum for first violation)	$5,141	$5,000
Evasion of motor carrier regulations (minimum for subsequent violations)	$2,570	$2,500
Evasion of motor carrier regulations (maximum for subsequent)	$7,711	$7,500
Evasion of carrier or broker regulations (minimum for first violation)	$2,056	$2,000
Evasion of carrier or broker reguations (minimum for subsequent)	$5,141	$5,000

Dodging the Ambulance Chasers

"Big trucks rule the road, they're dangerous, and they can cause big, bad injuries"....*Those are the opening words from Atlanta-based personal injury plaintiff's attorney Ken Nugent, standing atop a reefer trailer in a 2013 commercial.*
He continues: ***"Big trucking companies have big insurance, and I make them pay up."***

Advocates of our legal system's tort law protection contend that such lawsuits rein in reckless behavior by large corporations or other parties that otherwise would go unpunished. When it comes to trucking, however, many in the industry believe the punishments have gotten out of hand with the multimillion-dollar awards won by so-called ambulance chasers.

Transportation defense attorney Rob Moseley of the Smith, Moore & Leatherwood firm in Greenville, S.C., says that it's almost like "a switch was flipped" in 2011. That was the advent of easy access to carrier information via the then-new **Compliance, Safety, Accountability** program.

With easy public access to carrier data and other tools, plaintiff's attorneys are "better equipped than they have been in the past" and are working harder, Moseley says. "They know more about companies."

He's charted civil jury verdicts of more than $10 million against transportation providers, mostly trucking companies, happening more frequently, every couple months on average since 2011. Award amounts also are growing.

Trucking insurance companies, the first line of defense against civil suits for most independent owner-operators, "have been more worried about saving money than spending on lawyers" to fight a case, he says. In some ways, that's nothing new, but fear of the gigantic award and extended case time, Moseley says, is leading to more early payouts to injured parties regardless of fault. That contributes to rising insurance premiums for carriers across the board.

Also contributing to plaintiff's attorneys' arguments for higher awards are escalating health care costs and "a paradigm shift, too, where jurors walk in thinking it's Monopoly money," Moseley says. "They've been conditioned through media to not really understand what a million dollars is."

In spring polling, one in every five of ***Overdrive*'s** mostly owner-operator readers reported being named directly, as a defendant in a civil trial following a crash.

Have you been a defendant in a post-crash civil lawsuit?

There's plenty for owner-operators, especially independents, to learn from bigger carriers who've been targeted in questionable litigation. Making smart choices about where to spend your money to ward off risk could be key to your survival if you collide with a four-wheeler.

Excess liability insurance

The threat of litigation is ever-present in the event of an injury or fatality accident, says Bill Strimbu, president of Nick Strimbu Inc., a third-generation 130-truck flatbed, refrigerated and specialized carrier. And that even goes for accidents where you might not expect litigation to rear its head.

Strimbu says one of his trucks left the roadway and flipped in a ditch three years ago. "The woman who later said she was following the truck claimed she was so scared, she hit her brakes" and came to a quick halt, injuring her neck.

She brought her chiropractor along to negotiations, Strimbu says, though "I didn't want to settle out of court where we weren't at fault." That's a common complaint of carriers threatened with litigation and advised by insurers and their representing attorneys to seek a settlement.

Strimbu fought the allegation, and the lawsuit was withdrawn. "But the statute of limitations is not up yet," Strimbu says. "She can refile if she can find another blood-sucking trial lawyer to take the case."

The company carries an extra $1 million in excess liability insurance over a standard $1 million policy, but with a high deductible of $100,000 to reduce the premium's expense. That means he's responsible for any insurance settlement in a given year that's under $100,000.

It's notable that in the few cases he's been to court over during the last 10 years, they ended up costing $2 million and $2.5 million, right at and above the limits of his liability insurance. "They would have been more had we had more insurance coverage," Strimbu says.

Therein lies the paradox around what's been the traditional line of protection against civil liability litigation – liability insurance. It seems wise to have as much protection as you can afford. Yet the more you have, as the example of Strimbu's court cases suggest, the more likely it is that an abnormally high post-jury award will ultimately result in a settlement near or equal to the limits of whatever you carry, increasing costs for you and your insurer.

Given these dynamics and the minimum $750,000 in government-mandated required liability coverage, it's no wonder trucking businesses become a target for plaintiff's attorneys.

"There's a lot of states where claimants get attorneys, and even if the claimant is at fault, if they can demonstrate *comparative* negligence" – shared fault by both parties – and "show that a trucker was at least 50 percent at fault, their claimant might not have to pay anything," says Steven Libertore of insurance agent National Risk Management Services. "It doesn't hurt that claimants get letters from attorneys saying, 'You don't owe us a dime unless we get money for you.' "

Libertore says that for the smallest fleets with which he specializes – one to nine trucks – insurance policies typically have no deductible. In other words, the small fleet pays no part of any claim directly.

Insurers, thus, for the majority of those smallest fleets, are even more inclined to settle if they have a sense that a drawn-out court case could go awry toward a high award.

For a motor carrier large or small, it "comes to that question," says Strimbu: "How much do you really need? You can only afford so much, but if it was cheap enough, I'd have $10 million."

Excess liability insurance is at least cheaper than the primary policy for an owner-operator with his own authority, says Libertore. While the first million in coverage could run from $5,000 to $10,000 or more in annual premiums, "you're looking at $1,250 to $1,500 for that extra layer of a million," he says.

The good news is, in the case of Libertore's clients, "it's been a very long time since we've had a small fleet [one to nine trucks] that gets into the six-figure mark" with a settlement.

ELD Market: The 'Wait-and-See' Approach to Implementation

Since the **ELD mandate's introduction** in 2014, the **share** of **owner-operators reporting** they would leave the **industry** if an **e-log mandate** came to be has **fallen sharply.** That could be **due partly** to the **sizable** exemptions **FMCSA** included in the **rule,** partly to the **cooling nature** of **strong emotions** with time. In **2014,** following **FMCSA's** release of its **proposal** to **require e-logs,** 63 percent of **owner-operators** reported they would **retire** or look for **another line** of work if such a **mandate** came to **pass.** A **separate survey** in April told a **different story.**

Your most likely response to the ELD mandate, assuming it remains intact?

- I'll wait for the outcome of challenge lawsuits before purchasing any ELD…30%
- I'll run with an ELD, likely purchased in 2017…4%
- I run a pre-2000 model year truck and will continue doing so…11%
- I do or will run short-haul enough to avoid using an ELD…7%
- If I can't find a pre-2000 truck, I'll look for another line of work…10%
- I'm already running e-logs…10%
- I'll retire or look for another line of work...22%
- Other…6%

If **numbers** from this **most recent polling** are correct, **18 percentage points** of the **31-point decline** can be **attributed** to **pre-2000 model year** and **short-haul exemptions** included in the **final rule.** Meanwhile, a **third of owner-operators surveyed** indicated they would **wait** a **considerable time** before making a **decision** on just what to do **relative** to **ELD acquisition.**

Most of that third, **30 percent** of **all poll respondents,** were basing that **determination** not on **ELD market considerations** but the **potential outcome** of a **legal challenge** of the **mandate** by the **Owner-Operator Independent Drivers Association.** If the rule is **thrown out** or sent back to the **regulatory drawing board,** such **reasoning** goes, why **invest now?** Another **4 percent** put the **likelihood** of an **ELD purchase** well **beyond** this year.

Landstar-leased owner-operator Gary Buchs sees that **logic clearly.** He **emphasizes** that **confidence** in any **vendor's ability** to **conform** to **FMCSA's** technical **specifications** for **ELDs** – and remain in **business** – should be a **key consideration** in **assessments.** Buchs began using **e-logs** in **recent years,** running **leased** to Landstar with an **Omnitracs e-log system.**

"You **don't want to** do it **twice,"** he says of the **transition** to **running electronic,** which could happen "if **something goes wrong** and the **e-log vendor** goes out of **business suddenly,"** ceasing **support** for a **month-to-month** subscription-type **product.** Most available **e-log systems** today are **structured** that way, **Continental's VDO RoadLog** the exception. "When I **look out** here at all the **companies** who are **thinking** they'll do the **ELD thing**, they make me **nervous,"** he says. If you're in the **trucking business** for the **long term,** don't **"wait until** the **very last minute,"** he says, to do the **research** and to **test out** free **non-engine-connected** electronic **log book apps** to inform an **eventual decision**. There's **something** of a **learning curve** in **running electronic,** he adds.

There is **some evidence** of **more operators** in the **small-trucking world** moving into the **electronic realm,** at least on a **trial basis.** BigRoad's **log book app** is **capable** of being **paired** with its **DashLink engine** connection for a **full e-logs solution,** but the app, **BigRoad President** Terry Frey **believes,** is **being used** (*minus the DashLink*) with much more **frequency** since the **mandate's announcement.** Frey sees a **boost** in **downloads** of the app as **evidence** more **drivers** are **showing interest** in trying out **computer-assisted logs** in **advance** of the **mandate.**

FMCSA on ELDs: Longtime 'Government Supervision' of Trucking Justifies Privacy Intrusion

The **Federal Motor Carrier Safety Administration** filed on Wednesday, June 15, its official response to the **legal challenge** brought against its **2015-issued electronic logging device mandate,** defending the **rule** against **challenges** to its **constitutionality** and **saying** the **mandate stands up** to a **cost-benefit analysis.** The **agency filed** the **60-page document** on the day it was **due,** a **deadline set** by the **7th Circuit Court** of **Appeals,** the **court overseeing** the **case.**

The **rule** will in short, **FMCSA** says, **improve hours** of **service compliance** and **prevent 1,844 crashes** a year and **save 26 lives** annually. Moreover, the **agency contends** its **rule** does not **violate truckers' constitutional rights** to **privacy,** as the **Owner-Operator Independent Drivers Association** charges in its **lawsuit.**

Relative to **ELDs potential** to **infringe** on truckers' privacy**, FMCSA** argues that's **simply part** of being a **truck driver.** Trucking has a **'long tradition** of close **government supervision,'** the **agency says,** citing the **1987 court decision** New York v. Burger. **Truckers** should have a **lower expectation** of **privacy** while on the job, **FMCSA's** lawyers **argue** in the **brief,** because **trucking** is such a **highly regulated industry.** Given that **ELDs** are meant to **track only hours of service compliance,** they **infringe** on **truckers' rights** no more than **keeping paper logs** does, the **agency argues** in its **court filing.**

The **alleged infringement** on drivers' **4th Amendment protections** against **illegal search** and **seizure** — which **OOIDA** says is **inevitable** with the **tracking requirements** spelled out in the **ELD mandate rule** — is one of the **association's principal arguments** against the **ELD mandate.** All **truck operators** (*with a few notable exceptions*) who are **required** to **keep records** of **duty status** currently will be **required** to use an **ELD** under the **mandate** by December 18, 2017, to **track hours compliance.**

OOIDA's challenge, however, **intends** to overturn the **ELD requirement.** The association **successfully challenged** the **agency's prior mandate.** Its **new lawsuit** will be **heard** by the **same court** that ruled to **overturn** the **agency's 2010-published** attempt at an **electronic logging devices mandate.**

FMCSA had **60 days** to file a **response** to **OOIDA's complaint,** but it **received** a **two week-extension,** giving the **agency** and its **legal team** until **June 15** to **file a brief** with the **court.**

The agency distilled its arguments for the mandate into six key points:

1. The rule was required by Congress, the agency says. The mandate requires nothing further than what Congress asked of the agency, FMCSA argues.
2. ELDs are more reliable at tracking hours of service than paper logs and will "increase compliance" with hours regulations, the agency says.
3. The agency has shored up the trucker harassment concerns that caused the court the toss out the prior ELD mandate, FMCSA says.
4. The rule will reduce crashes, according to FMCSA's cost-benefit analysis.
5. Drivers' personal data and records are protected in adjudication processes, including when drivers file complaints against carriers.
6. ELDs do not violate illegal search and seizure protections.

All six points are in **response** to **arguments made** against the **mandate** by **OOIDA,** who says the **rule violates truckers' privacy,** because **ELDs** are required to **track drivers** within a **one-mile radius** while they're on duty. **OOIDA** also **argues** the **mandate** will **not enhance safety,** still opens the **door** for **harassment** and **coercion** of **truck drivers** and does not **adequately protect** drivers' **records.**

Post-Crash Litigation: Cameras and ELD evidence

Much of the **monitoring equipment** that many **larger carriers** are **investing** in also gives them a **critical edge** in **legal disputes.** Video **cameras,** which also are used in **ongoing training** for **drivers** who exhibit **unsafe habits,** also can **prove** what **really happened** in a **crash.** Electronic **logging devices,** beyond their **primary function,** can **remove** a common line of **legal attack** by **encouraging** and **proving bedrock compliance** with **hours of service.** Josh Fulmer, a **risk management manager** at Florida-headquartered Carroll Fulmer Logistics, says his **company** has had **two big settlements** in the **past 10 years.** One **was settled** out of **court** after a Fulmer **truck rear-ended** an **auto driver.** The insurance company **"ended up awarding** him a **little over $4 million."** The **company** went to **trial** in a **"rear-ending accident** in **California** that **happened nine** or **10 years ago,"** Fulmer says, and in which the **company** believed its **driver** was in the **right.** "There was a **lot going on** with the **insurance companies** on the **back side"** of the **case,** and it **dragged out** over **nearly** a **decade.**

To **ward off such expensive,** time-consuming **cases,** Carroll Fulmer began **using cameras** to **gather video evidence.** The **SmartDrive dual-camera systems** in place there today **produce such good results** that they **shortcut** the **satisfaction** of **"going to court** and having this **'gotcha' moment."** When **video evidence** is in **play,** Fulmer says, **"it just never gets that far."**

He **describes** a case of **attempted insurance fraud.** "We had a **gentleman pull** in **front** of us at **65 miles per hour** and **slam** on his **brakes,** and we **rear-ended him.** Our **driver** got **charged.** A day or **two later,** we were able to **get that video,** and they **retracted** their **citation."** Without the **video,** it could have **been simply** a **"he-said she-said" trial** with an **officer's citation** working **against** the **trucking company.**

Carroll Fulmer **does carry excess insurance** – "up to **$10 million,** $8 million over our **first $2 million,"** he says, with a **high deductible** to lower the **premiums.** The **investment** in the **cameras,** Fulmer believes **wholeheartedly,** "lowers **our exposure"** with the **ability** to "tell the **true story** of what **really happened."** Dragging a **suit out** when there's a **scarcity of evidence,** too, is **unappealing** because **attorney's fees accrue.** "With a **camera system,** you know what you have," Fulmer says. "If we're at **fault** and we know it" **beyond** a **shadow of a doubt,** "we **have no problem paying** the **injured party,** but we **don't want** to pay the **attorneys."**

Another fleet moved to **iDrive's dual road-** and **driver-facing camera system** (*iDriveglobal.com*). It's **not unlike** Fulmer's **SmartDrive cams,** but with a **crucial difference.** Both **SmartDrive** and **Lytx DriveCam,** two **industry leaders,** include a **third-party review service** for **all critical events.** Most of those **events,** with **parameters determined** by the **fleets,** are used for **training.**

The **iDrive system** is in some ways **more intrusive** because it **gives fleet managers** the **potential** to **monitor drivers** in real time. But as the **Strimbu fleet** has it set up, the **company monitors captured events** after the **fact** and on their own, **rather** than **paying** for any **third-party review service.** When **drivers fuel** at the **central terminal** in Brookfield, Ohio, **personnel download** the **data** from the **camera.** "We like to **review** our **own events,"** Bill Strimbu says. "A lot of these **camera manufacturers** don't **allow** you to do that." If the **volume** of **events** is **sufficiently low,** having **little** or **no direct ongoing costs** could be an **appealing option** for many of the **smallest fleets.** What's more, **reflecting** a trend that's **just now gaining steam,** "the **insurance company** we're with **pays half** the **cost** of the **camera,"** each of **which costs** about **$300 in total.**

While **many owner-operators** are **investing** in **road-facing dashcams,** they've seen **no reason** to buy **driver-facing cameras** to **monitor themselves,** though some **have gone** that **route** with the **employment** of **two consumer dashcams,** one **pointing at the road,** one **back into the cab.** Defense **attorney** Rob Moseley **believes** that **might be** the **right move** in light of **litigation.**

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so, in review…a little 'food for thought'

Protect yourself

- Buy as much liability insurance as you can afford and still maintain a healthy profit margin.
- Get a forward-facing camera (or dual-view, with in-cab vid capability) to record accidents.
- Begin using electronic logs to encourage and better document 100 percent hours of service compliance.
- Devise a system for routine saving and purging of data from your ECM and other equipment, such as dashcams.
- Get proper treatment for any medical conditions, especially sleep apnea, to remove any hint of impairment.

Improving Safety and Health…

Workplace exams may thwart mining injuries, deaths: Michael Jay Nickels was driving a truck at a sand and gravel mine in Valley County, Neb., in March 2015, when the vehicle left an elevated roadway on an embankment and headed into a pond – leaving him injured seriously. Two days later, the 44-year-old haul driver succumbed to his injuries.

Investigators with the **Mine Safety and Health Administration** later determined that the roadway had no barrier to stop the truck. If an examination had been conducted, the fatality likely might have been prevented. Effective work place examinations are a fundamental accident prevention tool that allows mine operators to find and fix adverse conditions and violations of safety and health standards before they cause injury or death to miners. On June 7, **MSHA** published a proposed rule to enhance the quality of workplace examinations in **metal and nonmetal mines** around the country.

MSHA issues "Cell Phones and Mobile Equipment Don't Mix" safety alert

The **Mine Safety and Health Administration** (MSHA) has issued a **metal/non-metal safety alert** titled "**Cell Phones and Mobile Equipment Don't Mix.**" The alert states that the use of cell phones while operating mobile equipment is a form of distracted driving and is extremely dangerous.

The U.S. Department of Transportation reports that cell phones are involved in 6,000 auto fatalities each year. Operating mobile equipment has inherent risks that can be mitigated by training, supervision, maintaining equipment in proper operating condition, and following established procedures; however, using a cell phone introduces the hazard of distracting the equipment operator and increases the chances of being involved in an accident dramatically.

Consider the following facts about cell phone usage in the automotive industry that can be translated into the operation of off-road equipment:

- ▶ *The risks of operating mobile equipment while intoxicated are widely known, but using a cell phone can be up to six times worse.*
- ▶ *In a reaction test, a driver who was using a cell phone took over twice as long to react to a red light than when the driver was legally impaired by alcohol.*
- ▶ *Writing or reading a text message takes your eyes off the road for an average of 5 seconds. At 55 miles per hour, that's like driving the length of a football field blindfolded.*
- ▶ *Currently, 46 states have laws banning texting while operating a vehicle.*
- ▶ *Using your cell phone while operating mobile equipment takes your eyes off the road, your hands off the wheel, and your mind off operating the equipment. No call, text, or email is worth the risk.*

MSHA issues "Close Call Alert" after excavator slips into lake… offers Best Practices

The **Mine Safety and Health Administration** (MSHA) issued a "**close call alert**" after an excavator slipped into a lake while excavating sand at a surface crushed, broken limestone operation. Luckily, the driver walked away without any injuries.

MSHA offers the following **Best Practices** to help prevent this type of accident:

- ▶ *Examine working places, identify hazards, and assess and control risks. Be alert to changing ground conditions such as cracking, bulging, sloughing, undercutting, and erosion. Maintain a safe distance from the edge of excavations and slopes.*
- ▶ *Ensure all miners are trained to recognize workplace hazards, evaluate the stability of the ground prior to operating equipment near any drop off or edge.*
- ▶ *When operating equipment on soft or unconsolidated material, what may appear to be a good operating surface can quickly liquefy and create an unstable condition.*
- ▶ *Discuss safe work procedures before beginning work. Identify and control all hazards associated with the work to be performed and the methods to properly protect miners.*

Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments
See information page 5

HEAT ILLNESS CAN BE DEADLY

Unusually hot temperatures in June have been a good reminder that we need to be mindful of negative side effects. The body normally cools itself by sweating. During hot weather, especially with high humidity, sweating isn't enough. Body temperature can rise to dangerous levels if you don't drink enough water and rest in the shade. You can suffer from **heat exhaustion** or **heat stroke**.

In 2014 alone, **2,630** workers suffered from heat illness and **18 died** from heat stroke and related causes on the job. **Heat illnesses and deaths are preventable**.

Symptoms to watch for…

Heat Exhaustion	Heat Stroke
Dizziness	Red, hot, dry skin
Headache	High temperature
Sweaty skin	Confusion
Weakness	Convulsions
Cramps	Fainting
Nausea, vomiting	
Fast heart beat	

Employers must protect workers from excessive heat

Under OSHA law, employers are responsible for providing workplaces free of known safety hazards. This includes protecting workers from extreme heat. An employer with workers exposed to high temperatures should establish a complete heat illness prevention program.

- Provide workers with water, rest and shade.
- Allow new or returning workers to gradually increase workloads and take more frequent breaks as they acclimate, or build a tolerance for working in the heat.
- Plan for emergencies and train workers on prevention.
- Monitor workers for signs of illness.

To prevent heat related illness and fatalities:

- Drink water every 15 minutes, even if you are not thirsty.
- Rest in the shade to cool down.
- Wear a hat and light-colored clothing.
- Learn the signs of heat illness and what to do in an emergency.
- Keep an eye on fellow workers.
- "Easy does it" on your first days of work in the heat. You need to get used to it.

Working in full sunlight can increase heat index values by 15 degrees Fahrenheit. Keep this in mind and plan additional precautions for working in these conditions.

Drink water often

Rest in the shade

Report heat symptoms early

Know what to do in an emergency

Who is affected?

Any worker exposed to hot and humid conditions is at risk of heat illness, especially those doing heavy work tasks or using bulky protective clothing and equipment. Some workers might be at greater risk than others if they have not built up a tolerance to hot conditions, **including new workers, temporary workers, or those returning to work after a week or more off**. All workers are at risk during a heat wave.

Industries most affected by heat-related illness are: construction; trade, transportation and utilities; agriculture; building, grounds maintenance; landscaping services; and support activities for oil and gas operations.

What to do if a worker becomes ill?

- Call a supervisor for help. If a supervisor is not available, call 911.
- Have someone stay with the worker until help arrives.

Heat Safety Tool App

When you're working in the heat, safety comes first. With the **OSHA Heat Safety Tool**, you have vital safety information available whenever and wherever you need it - right on your mobile phone. (*The OSHA Heat Tool is available in Spanish for Android and iPhone devices. To access the Spanish version on the iPhone, set the phone language setting to Spanish before downloading the app*)

The App allows workers and supervisors to calculate the **heat index** for their worksite, displays a **risk level** to outdoor workers for that heat index, and with a simple "click," gives reminders about the **protective measures** that should be taken at that risk level to protect workers from heat-related illness: drinking enough fluids, scheduling rest breaks, planning for and knowing what to do in an emergency, adjusting work operations, gradually building up the workload for new workers, training on heat illness signs and symptoms, and monitoring each other for signs and symptoms of heat-related illness.

Working in full sunlight can increase heat index values by 15 degrees Fahrenheit. Keep this in mind and plan additional precautions for working in these conditions.

Stay informed and safe in the heat, check your risk level.