



# DUMP TRUCK CARRIERS CONFERENCE

NEWSLETTER

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## CAN YOU SAY TRUCK?

Researchers for the Pennsylvania Turnpike Commission found over 200 dead crows near the city of Monessen, Pennsylvania recently, and there was concern that they may have died from Avian Flu. A Bird Pathologist examined the remains of all the crows, and, to everyone's relief, confirmed the problem was definitely NOT Avian Flu. The cause of death appeared to be vehicular impacts.

However, during the detailed analysis it was noted that varying colors of paints appeared on the bird's beaks and claws.

By analyzing these paint residues it was determined that 98% of the crows had been killed by impact with trucks, while only 2% were killed by an impact with a car.

The Pennsylvania Turnpike Commission then hired an Ornithological Behaviorist to determine if there was a cause for the disproportionate percentages of truck kills versus car kills.

The Ornithological Behaviorist very quickly concluded the cause: when crows eat road kill, they always have a look-out crow in a nearby tree to warn of impending danger.

The conclusion was that while all the lookout crows could say "Cah", none could say "Truck."

(Yeah,...I know, it's corny!)

## DID YOU KNOW?

(DOT/PUCO Rule Guidance)

- Q:** What are the penalties for violating a Roadside Out-Of-Service order by moving the truck before correcting the problem or waiting the time ordered.
- A:** A driver convicted of violating an Out-Of-Service order will be charged not less than \$2,100 nor more than \$3,750.

An employer of a driver who knowingly allows, requires, permits, or authorizes that driver to operate a CMV during any period subject to an Out-Of-Service order will be charged not less than \$3,750 or more than \$16,000.

"Jumping" an Out-Of-Service order is also considered an "Acute" violation (the worst) in a DOT/PUCO on-site audit.

### FALSE ADVERTISING?

I totally disagree with the current Kay Jewelers T.V. commercial. I personally would be willing to bet that on any given Friday or Saturday night many more kisses begin with a Miller Lite or a Budweiser than with any Kay Jeweler's item.

...LBD

## **GENERAL INFORMATION**

### **FMCSA REVISES GUIDANCE FOR GOING "OFF-DUTY"**

You can now allow your drivers to go "off-duty" for their meals and other routine stops, and you no longer have to put it in writing.

Since 1997, motor carriers have been required to give their drivers written instructions for going off-duty for short rest breaks taken throughout the day. Now, federal regulators say those written instructions are no longer necessary.

The Federal Motor Carrier Safety Administration has revised its official guidance for 49 CFR Sec. 395.2 to state that drivers can log "off-duty" as long as they are relieved of all duties and responsibilities and free to do whatever they want to during the stop.

#### **DUMP TRUCK CARRIERS CONFERENCE NEWSLETTER**

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Previously, the guidance included what the FMCSA now calls an "unenforceable performance standard": a requirement that the rest period be long enough to ensure that the driver's "accumulated fatigue...will be

significantly reduced."

Previous guidance also said "the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer," but there were no recordkeeping requirements.

### **CSA UPDATED TO INCLUDE REST-BREAK VIOLATIONS**

If you are not within the "local exemption," violating the requirement to take a 30-minute rest break within every 8 on-duty/driving time will add 7 points in the Compliance, Safety, Accountability (CSA) enforcement program.

That's one of two new violations recently added to the list of more than 800 violations tracked under CSA.

The change results from new Hours-Of-Service rules that went into effect on July 1, 2013, which included the new rest-break requirement for drivers of property-carrying vehicles (Sec. 395.3(a)(3)(ii).

The other new CSA-tracked violations is for possessing alcohol in a commercial motor vehicle (Sec. 392.5(a)(3)), which carries 3 severity points under CSA.

Both new violations affect both drivers' and carriers' CSA scores.

According to the Federal Motor Carrier Safety Administration (FMCSA), the new violation related to alcohol possession was added based on industry and law-enforcement feedback. The violation allows roadside inspectors to distinguish between alcohol possession and alcohol use, with alcohol possession carrying significantly fewer CSA points than alcohol use.

## **GENERAL INFORMATION**

### **DOT CANNOT REQUIRE 30-MINUTE BREAKS FOR SHORT-HAUL DRIVERS**

As reported in recent DANNEMILLER BULLETINS, a federal appeals court has decided to allow most of the new federal Hours-Of-Service rules to stand, except that short-haul drivers can't be required to have 30-minute breaks.

Several groups took the Federal Motor Carrier Safety Administration (FMCSA) to court in an effort to force changes to the Hours-Of-Service rules issued in December 2011.

The rules came into full effect on July 1, 2013.

The court said that the only portion of the new rules that cannot stand is the requirement for short-haul drivers (those who work locally and return home every day) to take a 30-minute rest break every 8 hours.

As a result, effective August 2, 2013, the date of the court's ruling, the FMCSA stopped enforcing the 30-minute break rule on anyone who qualifies for the 100- or 150-air-mile exceptions in Sec. 395.1(e). The agency asked state enforcement officers to do the same. (Also, see Article below).

### **BUT, BE CAREFUL!**

Drivers who occasionally exceed the limits of the short-haul exception to the rest break rule may occasionally find themselves in violation of the rest-break requirement if they aren't careful.

Consider this scenario: Joe Driver normally claims the 100-air-mile exception and is exempt from needing a 30-minute break every 8 hours. Today he begins his normal schedule and drives past the 8th hour of the day without taking a break. So far, he's in compliance.

But as he approaches the end of the day, he realizes that he won't be done within 12 hours as required under the 100-air-mile exception, or perhaps will need to drive outside the 100-air-mile radius. This means he's no longer eligible for that exception AND is no longer exempt from the break requirement. He can fill out a regular log to cover the recordkeeping requirements, but there's nothing he can do about the fact that he's already in violation of the break rule.

The lesson is, if your short-haul drivers *may* end up exceeding the limits of the 100- or 150-air-mile exception on any given day, they may want to comply with the 30-minute break rule just in case!

### **NEW ONLINE REGISTRATION SYSTEM BECOMING A REALITY**

Under new rules from the Federal Motor Carrier Safety Administration (FMCSA), the Unified Registration System (URS) is scheduled to become operational in 2015 and will:

- Combine 16 separate forms (including the MCS-150 registration form) into a single, electronic "smart-form;"
- Streamline the registration process; and
- Make it easier for the FMCSA to keep track of - and the public to find information about - everyone required to register with the agency, including motor carriers, property brokers, freight forwarders, intermodal equipment providers, haz-mat safety permit applicants, and cargo tank facilities.

Most carriers will encounter the URS when updating their registration information, which is currently required at least every two years.

## GENERAL INFORMATION

### NEW ONLINE REGISTRATION SYSTEM BECOMING A REALITY (Cont'd)

Under the new rules, carriers that forget to update that information could lose their registration.

Once the system is fully operational, all new carrier registrations and all updates to existing registration information will be handled through the new online system.

The new URS consolidates four existing registration and information systems:

- The U.S. Department of Transportation (USDOT) identification number system;
- The commercial registration system to obtain for-hire operating authority/MC numbers;
- The financial responsibility information system; and
- The service of process agent designation system.

#### *Looking Back!*

*"This year will go down in history. For the first time, a civilized nation has full gun registration. Our streets will be safer, our police more efficient, and the world will follow our lead into the future!"*

*Adolph Hitler, 1935*

### REGULATORS REMIND INSPECTORS HOW TO CHECK BRAKES

The FMCSA has issued a bulletin to remind inspectors how to properly measure air brake

adjustment.

The bulletin addresses problems that came to light in the wake of a fatal crash that occurred in June 2011 when a tractor-trailer failed to stop for an oncoming passenger train in Nevada.

The truck was found to have severe brake problems but post-crash measurements weren't possible because the inspecting officers didn't follow standard procedures for measuring the truck's pushrod stroke. In addition, the towing company that responded to the scene destroyed evidence when it "backed off" the truck's brakes.

The FMCSA bulletin stresses that inspectors checking brakes with clamp and roto-chamber actuators have to build the air system pressure to between 90 and 100 pounds per square inch (PSI) before the initial brake application. And, when applying the brakes, the driver must apply full foot force to the treadle valve.

"Failure to follow these steps as outlined in the Commercial Vehicle Safety Alliance (CVSA) North American Standard Level I Inspection Procedure will result in inaccurate brake adjustment measurements," the bulletin says.

Pushrod stroke measurements have to comply with 49 CFR Sec. 393.47. Measurements taken outside the specified air pressure range can make it appear that the brakes are out of adjustment, making proper system pressure critical. Improper pressure can also make noncompliant brakes appear to be compliant.

#### 10 PSI = 1/10 INCH

According to the agency, a 10 PSI variance in the pressure typically changes the pushrod stroke by one-tenth of an inch.

## GENERAL INFORMATION

### REGULATORS REMIND INSPECTORS HOW TO CHECK BRAKES (Cont'd)

#### 10 PSI = 1/10 INCH (Cont'd)

"A system pressure that is 20 PSI too low or 20 PSI too high could each result in a variance in measured brake stroke of nearly 1/4 inch in stroke measurement error," the bulletin states.

Inadequate force on the treadle valve, i.e., too little foot force by the driver, can lead to a similar result.

The FMCSA reminds inspectors that when they are preparing to inspect the brakes on a commercial vehicle, they need to first:

- Place the chock blocks,
- Make sure the transmission is out of gear and that all brakes are released, and
- Confirm that the air system pressure is between 90 - 100 PSI.

Tow truck operators to are reminded not to back off the brakes of vehicles involved in crashes until the evidence has been collected. The spring brake should be mechanically compressed using a caging bolt, the agency says, so the position of the slack adjusters isn't altered before the inspection.

### FMCSA ISSUES MAP-21 GUIDANCE FOR BROKERS AND FREIGHT FORWARDERS (By: Tony Palmer, AidenLaw)

On September 5, 2013, FMCSA published guidance for carriers, brokers, and freight forwarders on the implementation of MAP-21. The guidance, effective October 1, 2013, addresses FMCSA's timing and enforcement of the increase of the bond for brokers and freight forwarders from \$10,000 to \$75,000. Highlights

include:

- Effective October 1, 2013, all brokers and freight forwarders must file new BMC-84 or BMC-85 forms with a \$75,000 surety bond or trust fund agreement.
- FMCSA will not accept group surety bonds or trust funds.
- FMCSA has a 60-day phase-in period beginning October 1, 2013, of the new minimum financial responsibility requirements. Beginning November 1, 2013, FMCSA will mail notifications to all brokers and freight forwarders that have not met the new requirement. FMCSA will provide 30 days advance notice before revoking authority.
- Motor carriers that broker loads, even occasionally, are required by MAP-21 to hold both motor carriers and broker authority.
- The civil penalty for knowingly engaging in interstate brokerage or freight forwarding operations without authority range up to \$10,000.

The list above is non-exclusive of the provisions in the guidance. The Notice can be viewed in full at <http://federalregister.gov/a/2013-21539>.

### MEDICAL CARDS

Beginning January 30, 2014, CDL drivers who submitted a medical card to their state licensing agency will no longer have to carry a copy of the card for more than 15 days after issuance. See Sec. 391.41(a)(2).

## **GENERAL INFORMATION**

### **PROPOSAL WOULD ELIMINATE NO-DEFECT DVIR'S**

A proposed rule from the Federal Motor Carrier Safety Administration (FMCSA) could reduce the number of post-trip inspection reports many truck drivers need to prepare.

The agency is proposing to withdraw the rule that requires truck drivers operating in interstate commerce to prepare post-trip driver-vehicle inspection reports (DVIRs) when there are no vehicle defects to report.

These "no-defect" DVIRs will still be required for passenger-carrying vehicles and may also be required of in-state-only truck drivers in states that have their own DVIR requirements. (Ohio generally adopts the Federal regulations).

The FMCSA estimates that the rule change will save the industry \$1.7 billion per year, although it is unknown how many companies will choose to continue having their drivers complete no-defect DVIRs for maintenance and risk management purposes.

Currently under 49 CFR Sec. 396.11, all commercial motor vehicle drivers must prepare a DVIR for each vehicle operated each day, whether defects are found or not. The DVIR is then routed to maintenance personnel so any necessary repairs can be made, and then stored for at least three months.

Drivers have had to prepare DVIRs since 1939, and no-defect DVIRs since 1952.

The proposal would amend Sec. 396.11(a)(2) to state that "the driver of a passenger-carrying CMV must prepare a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver."

### **Savings**

In 2012, the FMCSA stopped requiring drivers to prepare no-defect DVIRs for intermodal equipment, a move that was expected to save \$54 million annually.

"This proposed rule would remove a significant information collection burden without adversely impacting safety," the FMCSA contends, adding that it "is confident that there will be no reduction in the overall level of equipment safety as a result of this proposed change."

The FMCSA estimates that 95 percent of all DVIRs are no-defect DVIRs, and that each one takes about 2 minutes, 35 seconds to complete. According to the Department of Transportation, DVIRs are the 19th-highest paperwork burden imposed across all federal agencies, based on the number of hours needed to comply.

If finalized, the proposal would also add wheels, rims, and emergency equipment to the list of items that have to be inspected during a pre-trip inspection in Sec. 392.7, to harmonize the pre-trip and post-trip inspection lists.

### **Liability**

"Some carriers have indicated that even without a regulation, they will still keep records of no-defect inspections to use as evidence of reasonableness in the event of accident litigation," says Richard Schweitzer, a Washington, D.C. motor carrier attorney. "Once the regulation is withdrawn, however, producing an inspection report showing no defects might not provide any additional protection in court."

I personally say - "get rid of them." They are a nuisance with no value, and, most important, they are considered "Critical" violations in an audit.

## MY TURN

### WHAT HAPPENED?

(by Larry Dannemiller)

On Wednesday, June 9, 2010, my friend John Alden hosted a Fund Raiser for John Kasich's candidacy for Governor of Ohio. It was well attended, by representatives of Ohio trucking companies, executives of the Ohio Trucking Association, and others.

I was pleased to attend. John Kasich was my kind of politician,...not a particularly personable guy, but a true conservative. While in the U.S. Congress, as Chairman of the House Committee On Budget, he was widely recognized as the sponsor, chief architect and key player in negotiating H.R. 2155, "The Balanced Budget Act of 1997" a bipartisan agreement to balance the Federal Budget by the year 2002, cut taxes, and reduce Medicare and Medicaid payments to health care providers. Bill Clinton, to his credit, signed the bill. For the three years following -- 1998, 1999, and 2000 -- the country experienced the first and only budget surpluses in 29 years, and ever since 2000.

Kasich began speaking at 7:00 p.m., on schedule. I was 10 minutes late. The audience was on the far side of the room, so when I walked in I just stood beside him and his wife. He was dressed casually, but was intense. He exuded energy,...you could feel it! He was passionate about his love for Ohio and the changes that were needed. He said, if given the chance, he could fix the \$8,000,000,000 deficit the democrats had rung up. Here are a few of the sentences I remember: "I will not engage in a popularity contest," "I just want a chance to do what I believe is best for Ohio." "I don't care about a 2nd term." "If I'm elected there won't be any G.D. high speed train." He is obviously a man of his word (although we'll see about the 2nd term).

So, it is almost impossible to believe that this very serious man, who is typically credible,

recently by-passed a reluctant Ohio state legislative, and with a maneuver worthy of Barack O'bama himself, appealed to an obscure state "Controlling Board" in order to expand Medicare in Ohio beginning with federal funding of \$2.56 billion as part of the "Affordable Care Act." Actually, "reluctant" isn't a strong enough adjective. The Republican majority in the state legislature had not only refused to authorize spending this federal money, they passed a budget which contained language that specifically prohibited the expansion of Medicare in Ohio. Kasich line-item vetoed the prohibiting language and appealed to the "Controlling Board," which, previously stacked with GOP appointees, approved the request by a vote of 5-2. The Republican leadership in the legislature, not happy to be by-passed, have threatened to sue the Governor. Maurice Thompson, the attorney representing the groups that are suing, says Kasich's veto changed the law from the "intent of the General Assembly."

I'm sure John Kasich believes this is a good thing. In fact he has claimed guidance from above. On several occasions in defense of the Medicaid expansion, he explained: *"When you die and get to the meeting with St. Peter, he's probably not going to ask you much about what you did about keeping government small. But he is going to ask you what you did for the poor."*

Very spiritual, and may play well with St. Peter. However, the voters are entitled to ask Mr. Kasich who's money is it that he will be spending on the poor, and how much of that money will be swallowed up by the bureaucracy, how much it will cost Ohio taxpayers a few years from now when it is no longer 100% federally funded; and, in my mind most important, will this be another peg of support for a very wobbly "Affordable Care Act" which would be better collapsed?



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