



# DUMP TRUCK CARRIERS CONFERENCE

NEWSLETTER

VOL. 52

April 2011

## A PARAPROSDOKIAN

..is a figure of speech in which the latter part of a sentence or phase is surprising or unexpected in a way that causes the reader or listener to reframe or reinterpret the first part. I hope you enjoy these!

- Going to church doesn't make you a Christian any more than standing in a garage makes you a car.
- If I agreed with you, we'd both be wrong.
- Knowledge is knowing a tomato is a fruit; wisdom is not putting it in a fruit salad.
- The early bird might get the worm, but the second mouse gets the cheese.
- To steal ideas from one person is plagiarism. To steal from many is research.
- Dolphins are so smart that within a few weeks of captivity they can train people to stand on the very edge of the pool and throw them fish.
- Women will never be equal to men until they can walk down the street with a bald head and a beer gut, and still think they are sexy.
- To be sure of hitting the target, shoot first and call whatever you hit the target.

- Behind every successful man is his woman. Behind the fall of a successful man is usually another woman.
- A clear conscience is usually the sign of a bad memory.
- You do not need a parachute to skydive; you only need a parachute to skydive twice.
- You're never too old to learn something stupid.

## DID YOU KNOW?

**Drug/alcohol clearinghouse** - By early August, the FMCSA wants to issue a proposed rule to create a central database listing commercial drivers who have tested positive on, or refused, a DOT-required drug or alcohol test.

**Diabetes** - By the end of 2011, the FMCSA is hoping to propose a rule that would allow insulin-using drivers to drive without first seeking an exemption (See Page 5).

### QUOTABLE

"When you are dissatisfied and would like to go back to your youth,...think of Algebra II."

...Anonymous

## **GENERAL INFORMATION**

### **FMCSA OFFICIAL ARRESTED FOR ALLEGEDLY TAKING BRIBES**

A supervisor at the Federal Motor Carriers Safety Administration's (FMCSA) Buffalo, New York, field office was arrested and charged with accepting bribes in his official duties from or on behalf of motor carriers. The offense carries a maximum penalty of 15 years imprisonment and/or a fine of \$250,000.

An official investigation revealed that the supervisor had accepted bribes from safety consultants for Canadian commercial trucking companies who paid him to provide inside information that enabled some trucking companies to avoid or delay inspections of their vehicles. He had also accepted cash bribes to initiate compliance audits that could put a competitor company out of business, and at times helped trucking firms get "friendly" audits that allowed companies to keep potentially unsafe vehicles on the road.

A cooperating witness admitted to paying approximately \$70,000 to the supervisor over the past two years for information and assistance.

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

Published quarterly by  
Dannemiller Associates, Inc.  
7792 Olentangy River Road, Suite F-2  
Columbus, Ohio 43235  
(614) 431-8740  
Fax: (614) 431-8742  
Website: Dannemiller.US  
E-mail: Larry@Dannemiller.US

Material in this Newsletter may not be reprinted without permission.

Submissions by members and interested parties are welcome.

Dump Truck Carriers Conference is a registered trade name of Dannemiller Associates, Inc.

### **FMCSA PROPOSES EOBRs FOR ALL INTERSTATE TRUCKS AND BUSES**

If a recently proposed rule goes into effect, most interstate commercial truck and bus companies will need to install electronic on-board recorders (EOBRs) in their vehicles and put into place a system to detect and prevent hours-of-service violations.

The proposal from the FMCSA provides that all interstate drivers currently required to use paper logs would have to switch to electronic logs within three years after the rule takes effect. **Certain short-haul drivers (many dump truck operators) who are eligible to use time records instead of logs would not have to install EOBRs.**

EOBRs are devices attached to commercial vehicles that automatically record the number of hours drivers spent operating the vehicle. The devices are used to monitor drivers' compliance with hours-of-service limits.

The FMCSA issued a similar rule governing EOBRs in early 2010; however, that rule only affects motor carriers who are audited after June 2012 and have a 10% or more non-compliance level of log violations.

The existing rule is estimated to effect approximately 3000 carriers. The proposed rule is estimated to effect over 500,000 carriers. The owner-operator Independent Drivers Association (OOIDA) has voiced strong opposition to the proposed rule.

### **PRE-EMPLOYMENT DRUG TEST MUST BE "IN-HAND"**

In meeting with new clients and when giving seminars covering DOT/PUCO Safety Compliance issues, I find that often personnel responsible for safety issues are under the impression that a "verbal" notification of a negative pre-employment test is sufficient notice to put the involved driver in a truck. It is not sufficient. You must have a copy of the report of negative result "in-hand" before a driver can operate equipment requiring a drug test.

## **GENERAL INFORMATION**

### **QUICK TIPS ON REWARDING WORKERS**

*(From Smart Supervision)*

Some supervisors think that if they really want to reward a worker, they should pay him or her more money. But, interestingly, money is not the top of the list when it comes to what workers want. Feeling appreciated and valued is much more important to them. Here are three ways to let workers know that you value their efforts:

- **Praise.** If workers know that their supervisors are pleased with their performance, they will keep trying to improve. The reason for this is simple; the employee wants to keep earning that praise.
- **Party.** If your department has done a really great job on a project, it may be time to celebrate. There doesn't have to be an elaborate restaurant meal. Something simple, like a box of donuts or a store bought cake let's your employees know that you appreciate their efforts.
- **Public recognition.** This act differs from praise because a broader audience is involved. Try a plaque with the engraved name of every employee of the year, or a newsletter in which you mention an employee of the month and describe his or her accomplishments.

### **END OF CARGO INSURANCE REQUIREMENT**

*(By Tony Palmer, Law Offices of John L. Alden)*

Effective March 21, 2011, the FMCSA will no longer require freight forwarders and for-hire carriers to maintain cargo insurance filings.

Prior to the new FMCSA rule, common carriers were required to maintain minimum cargo insurance on file at the agency's office and website, while contract carriers were not required to do so. The new rule eliminates the distinction between the two types of carriers for maintaining cargo insurance and exempts both.

Not all motor carriers and freight forwarders, however, benefit from the new rule. Those involved in household goods are still required to maintain cargo insurance and provide evidence of insurance to the agency.

Because of the nominal cargo insurance requirement - only \$5,000 - and the fact that there is little difference, if any, between common and contract authority and services, this action is logical and overdue. For more info, contact Tony Palmer at 614/221-1306 or [tpalmer@aldenlaw.net](mailto:tpalmer@aldenlaw.net).

### **FMCSA IMPROVES PSP**

The Federal Motor Carrier Safety Administration has enhanced its Pre-Employment Screening Program (PSP) by adding data for co-driver safety and post-crash violations to the roadside inspection and crash reports previously available.

The PSP report also now shows the date drivers' safety records are updated. PSP is a safety tool that you can use, with driver permission, to electronically obtain drivers' safety records as part of the hiring process. The PSP service requires payment of an annual subscription and charges \$10 per record. To access PSP go to [www.psp.fmcsa.dot.gov](http://www.psp.fmcsa.dot.gov)

## **GENERAL INFORMATION**

### **CHANGES - OUT-OF-SERVICE CRITERIA**

The standards used to place commercial motor vehicles and their drivers out-of-service during a roadside inspection have been updated and became effective April 1, 2011.

The latest criteria include ten changes, mostly to the standards for placing vehicles out-of-service. Vehicles placed out-of-service cannot be driven until the safety defects are corrected. A Summary of the latest follows:

- Clarification of the criteria for defective brakes. If a single brake pad or lining on a brake fails to move or contact the braking surface, that brake will be considered defective even if one of the brake's linings/pads is functioning properly.
- Clarification that the low air pressure warning device must operate continuously if either the primary or secondary reservoir is 55 psi and below, or 1/2 of the governor cut-out pressure, whichever is less.
- Clarification of the failure conditions for a tractor protection valve. If the trailer supply valve fails to close before pressure drops below 20 psi in either the primary or secondary system, or if air escapes from *either* glad hand when the brakes are applied after the tractor protection valve has closed, then the vehicle will be placed out-of-service.
- Clarification of the criteria for air tanks. An air reservoir (tank) separated at either end from the attachment point(s) allowing movement of more than 1 inch in any direction will now result in an OOS order.
- The addition of criteria for diesel exhaust leaking into the cab. Previously, diesel exhaust leaking into the driver/sleeper compartment was not an OOS condition (only gasoline exhaust leaks were considered).
- Clarification of the acceptable placement of tiedowns. The CVSA says federal safety rules generally require a tiedown for every 10 feet of cargo, but the tiedowns do not have to be placed in every 10-foot section. Therefore, the OOS Criteria allow some flexibility in tiedown placement as long as enough tiedowns are present (careful here!)
- Clarification of the criteria for tires that come in contact with the vehicle. An out-of-service condition exists only if the tire can be made to contact another component *at the time of inspection*.
- Removal of "unsuitable insulation protection to electrical components" from the criteria for electrical systems on buses, due to the fact that the phrase was not defined.
- The addition of criteria for operating a commercial vehicle while under an out-of-service order for failure to comply with 385.308, related to the filing by a new entrant motor carrier of information under a corrective action plan.
- Clarification of the requirement that drivers of passenger-carrying vehicles will be placed out-of-service if they are not *in possession* of a valid medical certificate while driving.

## **GENERAL INFORMATION**

### **DRIVER INDICTED ON 15 COUNTS OF LOG FALSIFICATION**

A commercial motor vehicle driver has been indicated on 15 counts of log falsification in the wake of a fatal accident that left one person dead and five others seriously injured.

A federal grand jury in Philadelphia, Pennsylvania, indicated the driver in February and charged him with 15 counts of making false statements to the U.S. Department of Transportation (DOT). The indictment alleges that the driver falsified his daily logs to conceal the fact that he drove in excess of the allowable driving hours without the required period of rest.

The fatal accident occurred on US-76 in Philadelphia when the driver plowed into stopped traffic. He had previously pled guilty to various state charges including one count of vehicular homicide. A DOT analysis of his logbooks revealed that he was driving in excess of the maximum allowable hours at the time of the accident. According to the indictment, he made 15 false entries in his logbooks. In one example, he recorded that he was in a sleeper berth in Wyethville, Virginia, when he was actually driving in Pennsylvania.

### **FMCSA GRANTS NUMEROUS VISION/DIABETES EXEMPTIONS IN 2010**

In the year 2010, the FMCSA announced that more than 800 drivers were approved for an exemption from the vision standard in 49 CFR 391.41(b)(10), and another 460 drivers were granted an exemption from the diabetes standard in 391.41(b)(3), which prohibits the use of insulin. These figures include both new applicants for exemption and drivers who requested the renewal of an existing exemption.

#### **Applying for Vision and Diabetes Exemptions**

To apply for an exemption from the vision standard, applicants need to:

- Possess a valid driver's license to operate

a CMV - either a commercial driver's license (CDL) or a non-CDL;

- Submit evidence that they operated a CMV with the vision deficiency for the three-year period immediately preceding the date of the application;
- Have a somewhat clean driving record, with no license suspensions or revocations, no accidents for which they bore some responsibility, no convictions for a disqualifying offense or more than one serious traffic violation, and no more than two convictions for any other moving traffic violations in a CMV;
- Submit a signed statement from an ophthalmologist or an optometrist, based on an exam occurring in the last 3 months; and
- Submit a list of specific information, including employment history and driving experience.

To apply for an exemption from the **diabetes standard**, applicants must submit:

- A completed application form,
- A signed copy of the Medical Examination Report form and Medical Examiner's Certificate showing that the driver is otherwise medically qualified,
- A form completed by an endocrinologist certifying that the driver is able to drive a CMV in interstate commerce while using insulin,
- A form completed by an ophthalmologist or optometrist based on a recent vision exam, and
- A copy of the driver's license and driving record.

Application forms are available online at [www.fmcsa.dot.gov/rules-regulations/topics/medical/exemptions.htm](http://www.fmcsa.dot.gov/rules-regulations/topics/medical/exemptions.htm).

## THE CONTROVERSY OVER CSA 2010

(by Larry Dannemiller)

The answer to what?

"Comprehensive Safety Analysis 2010" (CSA 2010), now called "Safety Measurement System" (SMS), has been under development for the past 5 years by the FMCSA. The purpose intended by Congress was to provide a carrier monitoring system and mechanism from which all interstate carriers could be assigned a safety rating, since nationwide, out of the more than 500,000 carriers operating, less than 100,000 had been given a safety rating.

Currently, under CFR Part 385 of the Motor Carrier Safety Regulations, there is a specific formula for assigning a carrier safety rating, and there are specific guidelines for triggering an audit that can result in a safety rating. For instance, if the number of your vehicles that are placed out-of-service compared to the number of inspections ratio is above 34% it can trigger an audit which could result in a substandard safety rating. More than 1.5 accidents per million miles for over the road carriers and 1.7 accidents for local carriers can trigger an audit and effect your safety rating. Neither actually affects your rating unless there is an audit.

The CSA/SMS concept for regulation, as opposed to current law under CFR Part 385, is that instead of requiring a formal on-site audit to calculate your safety rating (the present situation), under CSA/SMS the data accumulated from roadside inspections could be the primary factor in assigning carrier safety ratings. Ostensibly, in the extreme, if your roadside inspection history reached a certain point of deficiency you could be awarded an "Unfit to Operate" rating without an audit.

In a perfect world, with perfect methodology, based on perfect theory, administered by perfect bureaucrats, that concept could possibly work; but there are so many arbitrary and likely inaccurate factors built into the CSA/SMS methodology for scoring carriers it results in huge inequities for certain types carriers and significant potential for unfair ratings for all carriers.

Under both the present regulations based on CFR Part 385 and the changes to the law sought by CSA/SMS proponents, there are arbitrary thresholds

of violation that will affect your safety rating. Under the present regulations there are certainly valid questions:

- Why is 1.5 accidents per million miles the proper threshold to affect your safety rating? Why not 1.3 or 1.9?
- Why is 34% vehicle out-of-service ratio the proper threshold to affect your safety rating? Why not 22% or 50%?
- Why is a 10% level of critical violations the threshold to affect safety ratings? Why not 9%,...why not 13%?

Presumably, long ago, some study and analysis went into choosing these thresholds, but, bottom line, in the end somebody picked a number, and that number potentially affects us all. Who knows if it was the best number then, or now? The same thing is being done with CSA/SMS. Someone is picking peer group variables, severity weighting values, time weighting values, thresholds for intervention, and which carriers are included in various peer groups. This is a flawed work in progress and should not be used at this point as basis for assigning safety ratings. It is arbitrary, and when considering the possible consequences to a carrier, it is irresponsible.

Two of the most evident anomalies in the CSA/SMS model construct are peer rating and scoring in the fatigued driving (hours-of-service) category.

- When carriers are peer rated it means that their final safety score is not based on their actual safety performance, but on their performance relative to other carriers in the peer group they have been placed. Even if a given carrier's violation count doesn't change, if other carriers in their group have a bad performance, their score will improve; if other carriers in their group have a good performance, their score will suffer. Like grading on the curve.
- Hours-Of-Service. When almost one-half of violation points shown in CSA/SMS result from paperwork (log) errors, which are not really safety

## THE CONTROVERSY OVER CSA 2010

(by Larry Dannemiller) (Cont'd)

consequential, your score can be high in that category even though your drivers are not accumulating serious maximum driving time, on-duty time, or falsification violations, and others are.

While some of the statistical flaws, inaccuracies, peer grouping, variables, etc... existed under the old Safestat model used to determine SEA values (carriers' relative safety score), they were not used as a means to actually change a carrier's safety rating without a full on-site audit.

Last week I attended a presentation by Henry E. Seaton, Esq. who was one of the lawyers involved in successfully challenging certain aspects of CSA/SMS. This challenge eventually produced a settlement whereby the FMCSA on their Website could not label carriers with scores above stated threshold levels as "Deficient" or "Under Alert" status. Now they show a small triangle with an exclamation point inside, adjacent to the involved basic. If you regularly review your scores on this Website, you may have noticed the labeling transition over the past few months.

In Mr. Seaton's paper entitled "CSA/SMS Methodology and Vicarious Liability." "Who should be responsible for making carrier safety fitness determinations and what should be the standards,?" there was one paragraph that succinctly describes the problem:

*"CSA 2010/SMS methodology is based solely upon a comparative statistical analysis of carriers' safety compliance performance and an artificial percentile ranking by peer groups, which leads to certain conclusions. To the extent the procedure is used as a rough instrument for determining which carrier bears closer scrutiny, the statistical flaws, inaccuracies and abnormalities while troubling, are not fatal. If, as the Agency seems to suggest, though, the statistical*

*analysis is to be used to make a satisfactory safety determination, or the publication of same is to be used by the shipping and broker community to bar carriers from use, then the problems with the methodology become more acute if not lethal."*

During construction of the CSA/SMS model, the University of Michigan was commissioned to analyze and report on the validity of the logarithms utilized in processing the accumulated data, and other model construct issues such as profiling, law of large numbers, and demographic anomaly; however, the inspection data was converted from the Safestat model to the CSA/SMS model and released to public on the FMCSA Website on December 13, 2010, without waiting for the results of the University of Michigan study. The Website data initially showed 57% of the 97,000 carriers measured under some kind of an "Alert" in one or more of the basics, effectively labeling these carriers as unsafe or problematic without regard to their actual standing under existing law provided under CFR Part 385. This included 6 of the nation's 17 largest truckload carriers. It also posed problems for shippers and brokers (and ultimately carriers) who, to avoid being pulled into "upstream" lawsuits, had established strict procedures and policy to use only carriers without substandard safety ratings or scores.

When the CSA/SMS data was released onto the FMCSA Website in December 2010, prematurely by almost any standard, less than one fifth of the nation's carriers were measured; thus, fortunate for many, completely ignoring the intended goal of ranking all carriers. In Ohio, there are over 24,000 carriers. Only 2,624 (or 10.6%) of those carriers were measured in any of the seven basic safety categories. Of the 2,624 carriers that were measured under the new program 1261 (or 48%) were shown as being over the arbitrary "Under Alert" status percentage threshold incorporated into the CSA/SMS scoring system.

Has this project, which has distressed many in the trucking industry for almost two years, achieved it's goal? You be the judge.



# DUMP TRUCK CARRIERS CONFERENCE

## MEMBERSHIP LISTING

### CARRIER MEMBERS

Mr. Aaron Jones  
AARON JONES TRUCKING  
P. O. Box 186  
Spring Valley, Ohio 45370  
(937) 488-2075

Mr. Leroy J. Robbins  
AUGUST ROBBEN SONS, INC.  
6500 Bender Road  
Cincinnati, Ohio 45233  
(513) 941-7500

Mr. Abu Bundu  
BAKARR ENTERPRISES, INC.  
935 Wake Drive  
Westerville, Ohio 43082-8539  
(614) 898-7214

Mr. Jim Knisely  
BERNER TRUCKING, INC.  
P. O. Box 660  
Dover, Ohio 44622  
(330) 343-5812

Mr. Thomas Boyd  
BOYD BROS., INC.  
Box 118  
Fredericktown, Ohio 43019  
(614) 694-5916

Mr. Bill Berger  
CTS, INC.  
P. O. Box 870  
Mt. Vernon, Ohio 43050-0870  
(740) 397-9191

Mr. Daniel Zarlenga  
C-Z TRUCKING CO.  
9495 Harvard Boulevard  
Youngstown, Ohio 44514  
(330) 758-2313

Mr. Christopher A. Scala  
CRYSTAL SPRINGS  
MATERIALS, INC.  
9500 Forty Corners Road NW  
Massillon, Ohio 44647  
(330) 494-6455

Mr. Gary Nye  
FA NYE & SON'S  
ENTERPRISES  
P. O. Box 398  
Bettsville, Ohio 44815  
(419) 986-5400

Mr. Shawn Henderson  
HENDERSON TRUCKING, INC.  
124 Henderson Court  
Delaware, Ohio 43015  
(740) 369-6100

Mr. Bari Henning  
HENNING TRUCKING  
3618 Bootjack Road  
Williamsburg, Ohio 45176  
(513) 724-2994

Mr. Todd Hiney  
HINEY TRUCKING LTD.  
1101 S. Columbus Street  
Xenia, Ohio 45385  
(937) 372-9960

Mr. John Grattino  
J.T. TRUCKING, INC.  
19070 Haskins Road  
Chagrin Falls, Ohio 44023-605  
(216) 663-7002

Mr. Joe Stenger  
J.W. STENGER TRUCKING, INC.  
61485 Professional Drive  
Barnesville, Ohio 43713  
(800) 837-8364

Mr. Dick Jones, President  
THE JONES FUEL CO.  
350 Frank Road  
Columbus, Ohio 43207  
(614) 443-4611

Mr. Richard E. Jones, Jr.  
JONES TRANSPORTATION CO.  
2610 Crescentville Road  
West Chester, Ohio 45069  
(513) 326-6000

Mr. Bill Kerr  
KERR TRUCKING, INC.  
705 State Route 302  
Ashland, Ohio 44805  
(419) 289-9275

Mr. Bryan Monesi  
MONESI TRUCKING &  
EQUIPMENT REPAIR, INC.  
1715 Atlas Street  
Columbus, Ohio 43228-9648  
(614) 921-9183





# DUMP TRUCK CARRIERS CONFERENCE

## MEMBERSHIP LISTING

### CARRIER MEMBERS

Mr. Tim Patrick  
PATRICK EXCAVATING, INC.  
5839 S.R. 5  
Ravenna, Ohio 44266  
(330) 296-7706

Mr. Rick Kuntz  
RICK KUNTZ TRUCKING, INC.  
9056 State Route 88  
Winham, Ohio 44288  
(330) 296-9311

Mrs. Suzette Hamlin  
VIKING TRUCKING, INC.  
Box 25, 19-929 Rd. T  
Ridgeville Corners, Ohio 43555  
(419) 267-3319

Mr. Paul Adelman  
PAUL ADELMAN TRUCKING  
P. O. Box 370  
1250 Hartville Road  
Randolph, Ohio 44265  
(330) 325-7470

Mr. Ben Morabito, Jr.  
S.B. MORABITO TRUCKING  
COMPANY  
3560 East 55th Street  
Cleveland, Ohio 44105  
(216) 441-3070

Mr. Dan Vorst  
VORST PAVING & LEASING,  
INC.  
14373 Road 23M  
Cloverdale, Ohio 45827  
(419) 453-3166

Mr. Mark Carroce  
R & J TRUCKING  
8063 Southern Boulevard  
P. O. Box 9454  
Youngstown, Ohio 44513  
(330) 758-0841

Mr. Brad Smith  
SMITH MATERIAL SUPPLY,  
INC.  
1571 N. Main Street  
Marion, Ohio 43302  
(740) 382-4148

Mr. Michael D. Hodson  
W.A. HODSON, INC.  
P. O. Box 412  
Leesburg, Ohio 45135  
(937) 780-4272

Mr. Dave Jackson  
REDBANK TRANSPORT, INC.  
910 U.S. Route 50  
Milford, Ohio 45150  
(513) 831-5491

Mr. Kim Testa  
TESTA TRUCKING, INC.  
4381 Newhouse Road  
Ostrander, Ohio 43061  
(740) 666-1920

### ASSOCIATE MEMBERS

#### Legal Services:

Law Offices Of  
JOHN L. ALDEN  
One East Livingston Avenue  
Columbus, Ohio 43215-5700  
(614) 221-1306

#### Legal Services:

Mr. L. Christopher Bobbit  
SANBORN, BRANDON, DUVALL  
& BOBBITT CO., L.P.A.  
2515 West Granville Road  
Columbus, Ohio 43235  
(614) 889-2531

#### Medical Services:

Ms. Lorri Smith  
INTEGRITY TESTING &  
SAFETY ADMINISTRATORS  
6015 19 Mile Road  
Sterling Heights, Michigan 48314