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OSHA/CONSTRUCTION NEWS SUMMARY

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Industry Fears HOS Losses When New Rule Is Issued

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MINING NEWS SUMMARY

MSHA Issues More Than 550 Violations During September Impact Inspections

The U.S. Department of Labor's **Mine Safety and Health Administration** announced that federal inspectors issued **499 citations**, 61 orders and three safeguards during special impact inspections conducted in September at 15 coal and **15 metal/nonmetal mine operations**. [Read more....](#)

MSHA Announces Tougher POV Provisions- Responds to OIG Audit

The U.S. Department of Labor's **Mine Safety and Health Administration** today announced the **second phase in major reforms** to its **Pattern Of Violations (POV)** process, which includes **tougher provisions** for mines with **chronic and persistent violations** of **significant** health and safety regulations. [Read more....](#)

MSHA Issues Statement in Response to Chilean Mine Rescue

The U.S. Department of Labor's Mine Safety and Health Administration Assistant Secretary Joseph A. Main released the following statement in response to the successful rescue of 33 Chilean miners... [Read more....](#)

MONTHLY SAFETY TIP NEWS SUMMARY

IDENTIFYING PAVEMENT MARKINGS AND TRAFFIC BARRICADES

Pavement markings and barricades are used to guide and warn drivers as well as to regulate traffic. [Read more....](#)

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OSHA Reaches Out to Prevent Distracted Driving

In conjunction with Drive Safely Work Week, **OSHA** has announced an education campaign calling on employers to prevent work-related distracted driving, with a special focus on prohibiting texting while driving. Part of **OSHA's** education outreach is a new Web page.

"**OSHA's** message to all companies whose employees drive on the job is straightforward: It is your responsibility and legal obligation to have a clear, unequivocal and enforced policy against texting while driving," said Assistant Secretary for **OSHA** Dr. David Michaels.

"Companies are in violation of the **Occupational Safety and Health Act** if, by policy or practice, they require texting while driving, or create incentives that encourage or condone it, or they structure work so that texting is a practical necessity for workers to carry out their jobs. **OSHA** will investigate worker complaints, and employers who violate the law will be subject to citations and penalties."

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OSHA/CONSTRUCTION

Michaels Shares Vision for Transforming OSHA to Meet Future Challenges

OSHA Assistant Secretary David Michaels sent a letter Oct. 15 to all **OSHA** personnel outlining the progress being made in transforming the way the agency addresses workplace hazards and communicates with employers and workers. This letter also encourages input from stakeholders outside the agency, including employers, workers, unions, public health professionals and scientists, federal and state agencies, trade associations, community and faith-based organizations, and educational institutions, on how to make **OSHA** stronger and more effective.

"Successfully transforming **OSHA** will require the efforts of more than just the staff at **OSHA** -- we will need the help of the entire occupational safety and health community," said Michaels. "We must all work together to prevent job-related injuries, illnesses and deaths."

This letter was an update to a July 19 document Michaels issued to **OSHA** staff, OSHA at Forty: New Challenges and New Directions. In that document, Michaels discussed the need to transform **OSHA**, focusing on nine key areas. These areas are stronger enforcement, ensuring workers have a voice, refocusing and strengthening compliance assistance programs, changing workplace culture, developing innovative approaches to addressing hazards, improving and modernizing workplace injury and illness tracking, strengthening **OSHA's** use of science, strengthening State **OSHA** Plans and keeping the public informed about **OSHA** activities.

New Penalty Policy Is In Effect

Assistant Secretary of Labor for Occupational Safety and Health David Michaels says **“OSHA's new penalty policy became effective at the beginning of October 2010”**.

“While maximum penalties are still set by law at a very low level, administrative changes will reduce the level of reductions provided to employers. We are also working with the state plans to increase their penalty levels. As low as federal OSHA's penalties are, the average penalties in many of the state plans are many times lower,” stated Michaels.

Michaels went on to highlight the enforcement activities that OSHA is currently working on including:

- **National Emphasis Programs** for oil refineries and **highly hazardous chemicals**
- **Severe Violators Enforcement Program** - **“Enforcement remains a priority for us because it is a proven, useful deterrent, even for the best employers who may be tempted to defer maintenance or cut corners on worker training and safety procedures. The threat of enforcement and penalties reminds all employers to do the right thing for their workers,”** said Michaels.

Again, the planned changes to the administrative penalty calculation system were announced by OSHA earlier this year. **Changes include:**

- **History reduction will expand from three to five years.** An employer who has been inspected by OSHA within the previous five years and has no serious, willful, repeat, or failure-to-abate violations will receive a 10 percent reduction for history. Previously this was based on a three year period.
- **A new history increase will be established.** Employers that have been cited by OSHA for any high gravity serious, willful, repeat or failure-to-abate violation within the previous five years will receive a 10 percent increase in their penalty, up to the statutory maximum.
- **The time period for repeat violations will be increased** from three to five years.
- **Area Director/Informal Conference reductions will be changed.** Any changes over 30 percent penalty reduction will have to be approved by the Regional Administrator. In

addition, OSHA will no longer allow penalty adjustments to an employer at an informal conference where the employer has an outstanding penalty balance owed to OSHA.

- **High gravity serious violations related to standards identified in SVEP** will be citable as separate violations.
- **A gravity-based penalty determination will be adopted,** providing for penalties between \$3,000 and \$7,000.
- **Size reductions will be lessened.** Employers with 1-25 employees will be eligible only for a 40 percent penalty reduction, down from 60 percent. Employers with 26-100 employees will be eligible for a 30 percent reduction, down from 40 percent. Employers with 101-250 employees will be eligible for a 10 percent reduction, down from 20 percent.
- **The current good faith procedures** will be retained.
- **Final penalties will be calculated serially,** unlike the present practice in which all of the penalty reductions are added and then the total percentage is multiplied by the gravity-based penalty to arrive at the proposed penalty. For comparison, this change would result in an increase of approximately 50 percent to a moderate gravity penalty.

[Click here](#) for more on the penalty structure.

TOP 10 MOST FREQUENTLY CITED STANDARDS FOR FISCAL 2010

(Oct. 1, 2009 to Sept. 30, 2010)

Following is a list of the top 10 most frequently cited standards following inspections of worksites by federal OSHA. OSHA publishes this list to alert employers about these commonly cited standards so they can take steps to find and fix recognized hazards addressed in these and other standards before OSHA shows up. **Far too many preventable injuries and illnesses occur in the workplace.**

1. [1926.451 Scaffolding](#)
2. [1926.501 Fall Protection](#)
3. [1910.1200 Hazard Communication](#)
4. [1910.134 Respiratory Protection](#)
5. [1926.1053 Ladders](#)
6. [1910.147 Lockout/Tagout](#)
7. [1910.305 Electrical, Wiring Methods](#)
8. [1910.178 Powered Industrial Trucks](#)
9. [1910.303 Electrical, General Requirements](#)
10. [1910.212 Machine Guarding](#)

OSHA Increases Enforcement Against Serious Safety and Health Violators

From October 2009 to September 2010, **OSHA** issued citations in 164 significant cases where penalties reached \$100,000 or more. **OSHA** found conditions warranting use of its **egregious citation policy** in 20 of these inspections. In a so-called **egregious case**, an **employer is cited on a per-instance basis** under the same standard rather than **grouping similar violations for penalty purposes**. The result is a **considerably higher penalty** intended to serve as a **deterrent**.

Egregious treatment is often used when an employer exhibits **deliberately violative conduct or indifference to employee safety and health** or the law. Many of these cases spring from **inspections of tragic worker fatalities, worksite catastrophes (such as explosions or chemical releases) or worker injuries or illnesses**. This number of significant and egregious cases is more than **OSHA** issued during any **similar period** in the last decade.

Egregious cases during this period include the **BP Products North America** oil refinery in Texas City, Texas; the **Kleen Energy** power plant in Middletown, Conn.; and the **Cooperative Plus** grain handling facility in Burlington, Wis.

The **increase in significant and egregious cases** demonstrates **OSHA's** commitment to **aggressively enforcing its standards** when employers **show indifference to protecting the safety, health and lives of their workers**. The increase results from **better inspection targeting**, more **follow-up inspections** and the **addition of more compliance officers**. In addition, inspectors are **issuing a higher percentage of citations** for violations that **seriously endanger workers** or show an employer's **willful disregard for their safety**.

Also, **many referrals to other facilities within the same company** lead to more **significant cases**, such as the serious electrical and other hazards found at many **U.S. Postal Service facilities** across the country.

Michaels Shares Goals for Protecting Workers at National Safety Conference

OSHA Assistant Secretary David Michaels shared the Obama Administration's vision for **government agencies** that coordinate efforts to **benefit people** at the National Safety Council's **2010 Congress & Expo**. Michaels was joined in the Oct. 5 keynote address by **National Institute of Occupational Safety and Health Director John Howard**.

Michaels told the audience of about **10,000 safety and health professionals and industrial hygienists** that **OSHA** and **NIOSH** believe the **key to worker safety and health is focusing on prevention** and shifting the burden of worker protection to **employers**.

Michaels also explained how **OSHA** is achieving the Administration's goal of a **more transparent and responsive government** by using the **Internet** and **social networking technology**. These tools allow **OSHA** to **provide information** about the agency's activities and **invite workers, employers and the public** to provide **their perspective** on worker safety and **health concerns**.

He gave the example of **OSHA's** recent online Web forum to **seek stakeholder input** in **identifying hazardous chemicals** for which **OSHA** should **develop exposure reduction strategies**.

Michaels **encouraged workers, employers, safety associations and trade organizations** to **share their ideas** with **OSHA** so the agency can **pursue effective rulemaking** and bring about a **fundamental change** in the **safety culture** of **America's workplaces**.

Fed 'Red List' Tracks Troublesome Drivers.... Eyes Employers

A former **FMCSA** Administrator, Annette Sandberg, says that the **Federal Motor Carrier Safety Administration** has a roster of truck drivers who've **committed serious offenses**, and **carriers would be inviting scrutiny** by hiring them. "So it really is **incumbent on carriers** to want to **pay attention to the data** in the system on drivers, and particularly as the driver pool tightens, **not just hire any driver that walks in the door**, because **FMCSA** is monitoring these quote, '**red-listed drivers**' to see where they end up. They've always had the **ability** to take **enforcement action** against individual drivers, **they just didn't very often**," Sandberg said. "The **CSA 2010** data is more refined."

Specifically, the **Driver Safety Measurement System** allows investigators to **know which drivers** are creating problems, and will "**look at them first**" in a carrier intervention. **In a follow-up conversation**, Sandberg said that her source's use of '**red list**' could refer to the agency database's '**Red Flags**'.

FMCSA responded with a brief statement that the **agency does not have** a '**red list**' of commercial truck and bus drivers. "The **CSA 2010** program includes a list of **specific safety violations** that are referred to as '**Red Flag**' violations," the statement said. "When a safety investigator **conducts a compliance review** and other type of **safety intervention**, the **CSA 2010** system informs the investigator if any of the drivers employed by the carrier have received **one of the 'Red Flag' violations**. **Investigators** are then **required to look further into the violation**."

American Trucking Associations Vice President of Safety Policy, **Rob Abbott**, further explains that **FMCSA** does indeed **have the ability** to '**Red Flag**' drivers for **serious violations** such as **defying out of service orders**, drug and alcohol use, and **CDL issues**. He was **not aware**, however, that **FMCSA** would **target carriers** based on **hiring these drivers**. Rather, and as Sandberg explained, **those drivers' records** would be targeted if a **carrier**

warranted an intervention because of **driver-related high scores** under **CSA 2010**.

"The intent of the **Driver SMS** is to **track driver violations** from carrier to carrier, wherever they work," Abbott told The Trucker.

When **FMCSA** investigators find **10 percent or more** of a **carrier's driver records** contain **Hours of Service violations**, for instance, that carrier is **found to be in violation**. So, Abbott continued, with **investigators pulling the files** of drivers known to have a **history of HOS violations**, "**it's more likely a carrier will be found in violation**" — even if the sample might not be representative of the fleet overall.

Complicating the matter, carriers who hired drivers before the **Pre-Employment Screening Program (PSP)** reports became available earlier this year **have no way of knowing** if a driver's previous history contains any '**Red Flag**' violations. **ATA** likewise is pushing **FMCSA** to give carriers access to the **Driver SMS**, that is to see the **comparative driver scores** — rather than simply the **raw driver history data** — used by roadside inspectors to **target enforcement**.

"Even though a **driver's points will not be adopted by a carrier** at the time of hire, carriers will look at records to **determine** if a driver has a **pattern of behavior** that will **likely repeat itself** and **negatively impact the carrier's score**," Abbott said. "**As a result**, drivers who have a **pattern of such violations** may **find themselves unemployable**. **Drivers should work** very carefully to **protect their own records** and their own scores in the **system**."

Former **FMCSA** Administrator John Hill said he was **not aware** of an **official list of bad drivers**, but drivers with **repeated violations** will receive a '**designation of a red flag**' in the computer system. "**It just means** you're going to be subject to **more scrutiny** in a **compliance review**. It helps **investigators identify where the weak parts** are in a **carrier's performance**," Hill said.

[Click here](#) for a list of the **FMCSA 'Red Flag'** violations.

Most Fleets Unprepared for CSA 2010

For the past decade, DOT-regulated fleets have operated under SafeStat, but no longer. SafeStat has been replaced by Comprehensive Safety Analysis (CSA) 2010, which applies to all truck fleets that operate interstate and require a US DOT number. All vehicles that operate interstate with a 10,001-lb. combined GVWR or greater are covered by CSA 2010. This regulatory enforcement change will create a monumental change in how truck fleets manage drivers, their fleet operations, and remain DOT compliant.

To understand CSA 2010, it's important to understand what it's not. First, CSA 2010 isn't limited to CDL drivers. Second, CSA 2010 does not create any new driver regulations, vehicle regulations, or record-keeping regulations. CSA 2010 is an enforcement system, which tracks, measures, evaluates, and intervenes with motor carriers. It's a replacement for SafeStat.

Designed to more effectively target problem truck fleets, CSA 2010 is a proactive system, while SafeStat was a reactive process. Its purpose is to provide the Federal Motor Carrier Safety Administration (FMCSA) and states more tools to identify and intervene with potentially unsafe carriers. Under SafeStat, only out-of-service violations impacted the safety evaluation area. Under CSA 2010, all safety-related data from roadside inspections will be used to identify problem fleets, which will result in more enforcement. Already, fleets with long-standing satisfactory ratings have received warning and intervention letters.

"All indications are that CSA, instead of standing for Comprehensive Safety Analysis, will change to Compliance, Safety, and Accountability, which is certainly an accurate description of what this program intends to do," said Mark Catlin, national account executive, service sales, for J.J. Keller & Associates, in a recent industry Webinar on CSA 2010.

History Leading Up to CSA 2010

More than 20 years ago, the FMCSA instituted its compliance review and safety ratings: satisfactory, conditional, and unsatisfactory. This process triggered an audit based on a complaint or one or more fatal accidents. In

the late 1990s, FMCSA developed SafeStat - a data-driven, performance-based algorithm that identified potentially high-risk motor carriers for compliance reviews. However, FMCSA has finite resources. Today, it can only audit about 2 percent of truck fleets, which, by default, means only high-risk fleets get real attention. Yet, the number of carriers has continued to increase over the years. In addition, FMCSA is experiencing additional demands on its limited resources related to homeland security issues.

In response to these resource constraints, FMCSA developed CSA 2010 to implement more effective and efficient ways to reduce commercial motor vehicle (CMV) accidents. CSA 2010 was designed to help FMCSA and its state partners contact more fleets and drivers, use improved data to better identify high-risk fleets and drivers, and apply a wider range of interventions to correct high-risk behavior. The system measures safety performance and compliance, determines safety fitness, recommends and applies interventions, and tracks and evaluates safety improvements for FMCSA-regulated fleets. A company's safety performance will be measured through data uploaded from fleet compliance activities and accident reports.

Increased Use of Off-Site Investigations

In its prior system, FMCSA's compliance review (CR) program was resource-intensive and reached only a small percentage of truck fleets. On-site CRs take one safety investigator an average of three to four days to complete. At present staffing levels, FMCSA was able to perform CRs on only a small portion of the 700,000 interstate motor carriers. In addition, an earlier FMCSA Large Truck Crash Causation Study revealed that increased attention should be given to drivers. The prior FMCSA systems did not evaluate the safety fitness of individual CMV drivers.

Under CSA 2010, there will be many more intervention options to enforcement personnel. The intent is to discover what the safety problems are, why they exist, and how to correct them. One of the biggest differences between CSA 2010 and the previous system is use of an off-site investigation. This allows CSA 2010 intervention steps to be less resource intensive for the enforcement agency and ultimately less time-consuming

for carriers being investigated. Rather than **always having to go on site** from anywhere for **three days to two weeks**, **FMCSA** personnel and agents can **intervene by telephone** and ask for more information in a **specific area, such as logs or drug testing**.

The intent of **CSA 2010** is to **identify deficiencies** before they turn into **problems**. If **severe problems arise**, **FMCSA** can initiate an on-site investigation. **FMCSA's** decision to **intervene** also can be triggered by **high crash indicators**, fatal crashes, or complaints, **just as it does today**.

Penalties range from initial warning letters to removing non-compliant vehicles from service. Violations **remain on record** for two years for fleets and **three years for drivers**. Fleets will be able to see an **assessment of their violations** based on the new **Carrier Safety Measurement System (CSMS)**, which replaces **SafeStat**. In addition, **non-crash CSMS data** will be available to the public, including shippers and insurance companies.

It's a **new world** in terms of **DOT regulatory enforcement** and fleets need to **adjust** to it - quickly.

FMCSA to Alter CSA to Address Industry Concerns

The **Federal Motor Carrier Safety Administration** is making **several changes** in its **soon-to-be-implemented overhaul** of truck safety standards as a **result of industry comments**, Administrator Anne Ferro told Transport Topics.

Ferro said at the annual meeting of ATA that **FMCSA** will **change some of the terminology** used to label fleets, put disclaimers on the data and **hold back crash data** when the program is implemented in December. However, despite the desire by some fleets to **delay publication of the scores**, they will be **posted as scheduled**. "We've had a **great deal of opportunity** to talk to the industry about our **publication of that data** to a broader audience. Number one, it will be **going public in December**, and we will be **initiating the warning letters** and phasing-in the concept of a **focused compliance review where appropriate**."

But to avoid inflammatory terms, FMCSA will be **"getting away from that 'trigger language,'** so it won't say 'deficient' " on a carrier's score, but **"probably something closer to 'threshold',** or 'above the threshold' or something like that." **Fleets have been concerned** that using the term "deficient" is **too pejorative** and could **harm them in legal proceedings**.

Also in response to industry concerns, Ferro said that **while the agency considers whether it's feasible** to assign fault to the crashes in its system, "we will **continue to treat the crash data** as we do under **SafeStat**" and keep it off **FMCSA's** public website. As a result, **carriers' scores in six of the seven CSA safety categories** are now scheduled to be posted.

Under **CSA**, the agency is sorting carrier infractions into seven categories, or **BASICs** –

- (1) Unsafe Driving
- (2) Fatigued Driving (Hours-of-Service)
- (3) Driver Fitness
- (4) Controlled Substances/Alcohol
- (5) Vehicle Maintenance
- (6) Cargo-Related
- (7) Crash Indicator

In August, **FMCSA** changed the way some of the **BASICs** are calculated. Those revisions, according to Scott Randall, safety director at Hogan Transports, **benefited large carriers, who generally saw improvements in their scores**. "The **larger the carrier**, the greater the chance they would be **deficient under the old methodology**," but **under the new methodology** "larger carriers all **saw a decrease**," he said.

Keith Klein, chief operating officer of Transport Corp. of America, said that **before the changes**, his company was **"deficient in three of the seven basics,"** but that is **not the case now**.

"There are **still some concerns on CSA 2010**, that there may be a lot of **bumps in the road** that we think could be **avoided to some degree**," said Charles "Shorty" Whittington, president of Grammer Industries and chairman of **ATA's executive committee**. "However, in a nutshell, **this thing is so far down the pike** that if you're going to be a carrier, **you're going to have to learn to be a good carrier**."

Steve Williams, chairman and CEO of Maverick USA Inc., told TT he agreed with **FMCSA's** decision to post the scores, **despite his**

concerns about **CSA**. “I don’t like the message that it is sending to the public, that we have something hidden behind this score,” he said. However, that **didn’t absolve the agency** from continuing to look at the program. “I am confident that we will in time — and it needs to be sooner than later — get this right,” Williams said. “It is a **critical piece** that needs to be implemented and to **accomplish the goals** that we want to accomplish on **highway safety**.”

Some of the **concern stems from carriers’ fear** that shippers or plaintiff’s attorneys may use the data from **CSA** either to select carriers or in lawsuits.

Former **FMCSA** Administrator Annette Sandberg, now a consultant and attorney with Scopelitis, Garvin, Light, Hanson & Feary, said that **failing to do due diligence and potentially using a carrier with a deficient or even marginal score** “does not play very well” with juries, **citing several multimillion-dollar suits** where brokers or shippers have been **found negligent** for using **poorly rated carriers**.

As a result, Sandberg said she **advises her clients** to discuss the **CSA** issue with their carriers, and for carriers to explain that there are **issues with the data**.

John Hill, also a former **FMCSA** administrator and current consultant, said he believed the **CSA scores should be publicized**. But he added that if **quality issues with the data persist**, the **scores might need to be withheld** until the **data problems were solved**.

More Safety Rules Expected Soon

Even with **truck-related fatalities on the decline**, the head of the **Federal Motor Carrier Safety Administration**, Anne Ferro, told a group of driver school executives the agency was **still working on a series of rules** that could be out before the end of the year. The **20% decline in truck-related crashes** during 2009 were “**very significant numbers** and both a real reflection of the **collective impact of enforcement and the safety work**. I think everybody was **quite relieved** to see that decline, and **early indications** are that in **2010**,

that decline will continue while the economy is growing,” Ferro said.

Specifically, Ferro said the agency’s **commercial learner’s permit rule** is one she expects will be out by **early next year** and possibly at the end of this year.

The rule will **incorporate tougher licensing standards** and “**improved fraud protection measures**,” the **FMCSA** leader said.

Ferro also said the agency is in the **process of finalizing its entry-level driver training rule**, and it could be sent to the White House for review in the coming months.

The agency also is **working on a series of distracted driving proposals**, and recently published a rule **banning texting by commercial drivers**.

“We have the **ban on texting, which took effect Oct. 27**,” Ferro said. “The **second part was developing some restrictions on cell-phone use** and we expect to see that some time later this year.” That proposal is currently at the White House for review.

FMCSA also has sent a second proposal, which would **cover the use of cell phones by commercial drivers** to the White House, based on a report **filed by a safety advisory panel on distracted driving**.

A third piece, following the texting ban and the cell-phone rule, is looking at “**the full concept of distracted driving**,” Ferro said, taking “**into effect the full range of things going on in the cab of that vehicle**.”

To do that, Ferro said **FMCSA** “took the body of work that the **Motor Carrier Safety Advisory Committee** did” and used it as the basis of a proposal to **seek public comment on the issue**.

Ferro said the examination would look at **other technologies in the cab** “because there are safety efficiencies - there are gains to some of that equipment. **There’s proper use, and there’s improper use**.”

Based on the **reaction to the proposal**, Ferro said “**there might not even be a rule**” governing other devices such as **mapping equipment and dispatch communications equipment**.

Industry Fears HOS Losses When New Rule Is Issued



Trucking officials said they are preparing for what they believe will be a **loss of productivity and flexibility** when the **Federal Motor Carrier Safety**

Administration issues the **revised hours-of-service rule**.

“We’re not all that optimistic that this proposal will be something that we will like. We think it could shrink drive time, and we think it will perhaps have other unproductive changes,” Dave Osiecki, senior vice president for policy and regulatory affairs with American Trucking Associations, said during the group’s 2010 Management Conference & Exhibition.

FMCSA Administrator Anne Ferro said only that the **agency was “on schedule”** to deliver the new rule later this month, and she was **“looking forward to a very robust discussion beginning in early November.”**

The rule **currently is being reviewed** by the White House Office of Management and Budget.

ATA Chairman Barbara Windsor, president of Hahn Transportation Inc., said she **expects the industry to lose the current restart clause, which allows drivers to reset their weekly clocks following a 34-hour break.**

“I think the time required before a restart is going to be extended and we’re going to lose an hour of driving,” she said. **“For Hahn Transportation, as a regional carrier, the 34-hour restart has been wonderful** because our guys can come home and have a **five [days] on, two [days] off** schedule and have a regular life.”

“We think we know what it is going to be, and it bothers the hell out of me,” said Charles “Shorty” Whittington, president of Grammer Industries and the **outgoing chairman of ATA’s executive committee.** Whittington predicted the **restart clause** would be extended

to **between 44 and 48 hours.** In addition, he thinks there will be a **mandatory rest break included,** but it is not clear yet whether that would count as **on-duty or off-duty time.**

James Burg, president of James Burg Trucking Co., said that an **improving economy** is making these **potentially disruptive HOS changes** easier to handle. **“It could have been devastating** a year ago in the **economic environment,** but it seems like we have the capacity on our side,” Burg said. **“While it is going to be difficult,** if we have any new restrictions, **it is going to be much more manageable.”**

Still, **ATA Chief Counsel** Robert Digges did **not rule out a legal challenge** after the rule is released. **“I think we will be in a very good position** to litigate if there are draconian changes made to the **hours-of-service rules,** because it will be **“very hard”** for **FMCSA** to justify the changes in light of **trucking’s improving safety record.**

He added that **courts are “often a little suspicious”** when an agency that had been **defending a regulation** reverses course.

Last October, **FMCSA** dropped its **defense of the HOS rule** and said it would review it as part of a **court settlement** with a number of advocacy and labor groups. That settlement called for the agency to **issue a final rule this October.**

FMCSA has also been ordered to issue a rule **specifying what paperwork fleets** must retain in order to verify their **driver logs,** one the agency has said will include a **renewed, and probably expanded, electronic onboard recorder requirement.**

Ferro said such a **proposal** will be sent to the White House soon, and, **“OMB will get that back to us by the end of the year.”**

Windsor said she has been **“quite surprised** about **how many ATA members** have already **switched over to electronic logging.”**

Her own company will be **making the switch** during the **next six months** because, she said, **“It is such a better way of doing business.”**

Windsor also suggested that if **enough carriers voluntarily adopt EOBRs,** that could help **strengthen trucking’s case** in any **HOS legal challenges.**

MSHA Issues More Than 550 Violations During September Impact Inspections

The U.S. Department of Labor's **Mine Safety and Health Administration** announced that federal inspectors issued **499 citations**, 61 orders and three safeguards during special impact inspections conducted in September at 15 coal and **15 metal/nonmetal mine operations**.

These concentrated inspections, which **began in force last April** following the explosion at Upper Big Branch Mine, target mines that **merit increased agency attention** and enforcement due to their **poor compliance history** or particular compliance concerns, including **high numbers of violations or closure orders**; indications of operator tactics, such as **advance notification of inspections** that prevent inspectors from **observing violations**; frequent **hazardous complaints or hotline calls**; plan compliance issues; **inadequate workplace examinations**; a high number of accidents, injuries or illnesses; fatalities; and **adverse conditions** such as increased methane liberation, faulty roof conditions and **inadequate ventilation**.

During this most recent round of impact inspections, **MSHA** coal inspectors issued 275 citations, 53 orders and three safeguards, while **metal/nonmetal inspectors issued 224 citations and eight orders**.

"We are continuing to find serious threats to miners' safety and health," said Joseph A. Main, assistant secretary of labor for mine safety and health. **"While some operators are finally getting the message, others are not,"** he said.

"Mine operators are obligated to address all the problems that **MSHA** inspectors identify, yet some **continue to violate standards** and place miners at **risk**," said Main. **"We will continue to target them** and other operations that **ignore fundamental safety and health laws**. At the same time, we are **beginning to see signs of improvement** at some mines, an indication that these **impact inspections are making a difference**."

MSHA Announces Tougher POV Provisions- Responds to OIG Audit

The U.S. Department of Labor's **Mine Safety and Health Administration** today announced the **second phase in major reforms** to its **Pattern Of Violations (POV)** process, which includes **tougher provisions** for mines with **chronic and persistent** violations of **significant** health and safety regulations.

This announcement **coincides** with the release of an **independent analysis** prepared by the Labor Department's **Office of Inspector General**: **"In 32 years MSHA Has Never Successfully Exercised its Pattern of Violation Authority."** **MSHA** has publicized new screening criteria for the **POV** enforcement program.

"We agree with the **final recommendations** in the **OIG** report and **welcome that input**, which we believe will help us **improve the process** already underway at **MSHA**," said Joseph A. Main, assistant secretary of labor for mine safety and health.

"Our efforts are focused on ensuring that future potential **POV** and **POV** determinations are an **effective part** of **MSHA's** enforcement strategy and advance Congress's intent - that **mine operators find and fix the root causes of violations** before they become a hazard to miners."

Mines that have received potential **POV** notification will have the **opportunity to submit a corrective action program**, which must contain:

- concrete, meaningful measures to reduce their **significant and substantial**, or **S&S**, violations;
- achievable benchmarks and milestones for implementing the program;
- management oversight to ensure the program is being instituted and followed;
- measures to find and fix the mine's specific compliance problems.

The **new procedures** include more meaningful **corrective action programs** and measures to help **ensure long-term compliance** on the part of **mine operators**.

A mine placed on a potential **POV** must meet more **stringent goals to avoid the sanctions** of a **POV**. Mines that **implement appropriate corrective action** programs will need to achieve a **50 percent reduction** in the rate of **S&S** violations or a rate **within the top 50 percent** for all mines of similar type and classification. Mines that **do not choose to implement corrective action programs** will need to achieve a **70 percent or more reduction** in their **S&S** issuance rates or a rate within the **top 35 percent for all mines of similar type and classification**.

If a mine **fails to meet the requirements** of a potential **POV** and is placed on a **POV**, each **violation** that is determined to be an **S&S** violation will be an **automatic closure order**. To **avoid** that enforcement action, the **mine operator** must have a **complete inspection of the mine** by **MSHA** without a single **S&S** violation being found.

Any decision **not to place** a mine on **POV** status will be **documented**, and the mine will be **closely monitored for backsliding**. Mines that **do meet reductions** will **also be monitored** and subject to **future potential POV** screenings.

A **POV** panel consisting of personnel from three separate divisions of **MSHA** will **review any questions** raised on **mitigating factors** regarding mines selected for potential **POV** action. This panel will **help ensure consistency** of application of both the **quantitative and qualitative criteria**.

As noted earlier, work on the current potential **POV** process is a **stopgap measure** to be used until **other regulatory or legislative reforms occur**.

MSHA Issues Statement in Response to Chilean Mine Rescue

The U.S. Department of Labor's Mine Safety and Health Administration Assistant Secretary Joseph A. Main released the following statement in response to the successful rescue of 33 Chilean miners who had been trapped in an underground copper mine for 69 days, following a massive cave-in on Aug. 5:

"We join the rest of the world in celebrating the most successful rescue in mining history. On behalf of the many Americans who provided support for the mission and prayers for the miners, we offer sincere words of praise to the rescue team for its well-coordinated operation. We in the mine rescue community will study and learn from this highly successful experience, with the hope that we'll never need to employ its valuable lessons.

"The miners themselves deserve a great deal of credit for their survival skills, not only during the initial 17 days when their fate was uncertain, but throughout the entire 69-day ordeal. They have made their fellow miners proud, and the world now knows what many of us have known all along - that miners are truly a special kind of people."



IDENTIFYING PAVEMENT MARKINGS AND TRAFFIC BARRICADES

Pavement markings and barricades are used to guide and warn drivers as well as to regulate traffic. Painted roadway markings may be yellow or white, solid or broken, and can appear in combinations. Each combination has a different meaning. Barricades are used to protect workers on a jobsite and to warn drivers of road hazards, usually temporary, such as construction and work zones. Traffic control on a jobsite is an important factor in worker safety and is usually established at project start-up.

FOLLOWING IS A GENERAL RUN-DOWN OF TRAFFIC CONTROL AND SAFETY DEVICES:

Barricades or other temporary traffic control or warning devices:

- **Barricades** may be of a single placard, vertical type, a double placard, horizontal type, or may simply be a solid orange, plastic cone designed to be moved or rearranged quickly.
- **Placard barricades** are designed with orange and white diagonal stripes for easy visibility. The barricades are normally placed so that the downward slope of the stripe indicates on which side of the barricade traffic is to pass.
- **Barricades may be equipped** with flashers for use at night and are often used with temporary signs which give specific directions to be followed.
- **All barricades indicate that there is danger on the other side of the barricade** which they are directing you around or away from and should be respected for the protection they afford to motorists and work men.

Pavement markings are used as a permanent traffic regulation device and are described as follows:

- **Broken yellow lines:** A broken yellow line indicates that passing on the left is permitted only when the roadway is clear. Pass with extreme caution.
- **Solid and broken yellow lines:** A broken yellow line alongside a solid yellow line indicates that passing is permitted only in one direction. If the broken yellow line is on your side, you may pass when the roadway is clear. If the solid yellow line is on your side you may not pass.
- **Double yellow lines:** Double solid yellow lines mean that passing is not allowed in either direction.
- **Broken white lines:** Broken white lines separate lanes of traffic going in the same direction.
- **Solid white lines:** Solid white lines are used for turn lanes and to prevent lane changes approaching intersections, at freeway exits, and on-ramps. Arrows are often used with the white lines to indicate which turn may be made from the lane.
- **Turn lane arrows:** If you are traveling in a lane marked with a curved arrow and the word **ONLY**, you must turn in the direction indicated by the arrow. If your lane is marked with both a curved and a straight arrow, you may turn in the direction indicated by the curved arrow, or you may go straight ahead.

Painted curbs: A painted yellow, white, or red curb means that you must follow special rules to park there.

- **White curbs:** You may stop only long enough to pick up or drop off passengers.
- **Yellow curbs:** You may stop only long enough to load or unload. You must stay with your vehicle.
- **Red: curbs:** A red painted curb means you may not stop, stand or park.

Conclusion: Pavement markings and barricades are for everyone's protection and must be obeyed. Remember that traffic signs, roadway paint, temporary warning devices, flagmen (or other traffic directors), and barricades should be construed as local traffic law. Disobeying their direction is not only dangerous, but may also result in a moving violation. Disregard for temporary roadway warning devices such as crossing barricades, moving barricades or cones, or unauthorized removal of these devices is a violation which endangers other drivers and any personnel working behind them. Follow the directions of these traffic warning devices in order to maintain safe road conditions.