

# Hi-Way Hi-Lites



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## WHAT WILL CSA 2010 MEAN TO YOU AS A DRIVER OR OWNER OPERATOR?

**R**ight now data about your driving is being recorded by DOT for your DRIVER SAFETY RATING when FMCSA's new CSA 2010 goes into effect in July, 2010. And yes, you read that right! Drivers will now have THEIR OWN INDIVIDUAL safety rating. Drivers have to know that with CSA 2010, THEY are responsible for their own safety ratings.

from carrier to carrier are coming to an abrupt end. Driver fitness, unsafe driving, fatigued driving, controlled substances, and vehicle maintenance infractions are being recorded to determine your safety score in 2010. Yes, I said vehicle maintenance is now going to be held against the driver and will be reflected on your driving report.

Management is not off easy either. Under article 444, one key change was made. They changed one word in the article. It used to say that motor carriers had a moral and legal obligation to DETECT violations. Now it says they have a moral and legal obligation to PREVENT violations.

Additionally, the article used to say that the CEO of the motor carrier encompassed all the influence over its drivers. The article now states that ALL PERSONS in contact with the drivers have influence. So management now knows their actions or inaction has a significant impact on their rating. They can individually be held accountable, not just the CEO.

Owner Operators this new bill could be a death sentence to small companies as the number of trucks in a fleet is now part of the formula used to determine your safety score.

Drivers, it looks like the days of moving

**“Drivers, it looks like the days of moving from carrier to carrier are coming to an abrupt end.”**

If you are a company driver, I highly suggest that you contact your dispatcher or management and go either to the FMCSA website for more information or NTA's website for official US DOT training.

The FMCSA has speculated that as many as 175,000 drivers may have unfit safety ratings and will find themselves

without a job. These drivers would be unemployable! There is very little a driver can do to fix an unfit rating. When they are declared unfit, they can NO LONGER DRIVE a commercial vehicle. The only thing they can do is WAIT for some time to pass and hopefully some of the tickets they have will no longer be in the 36 month history they are evaluated on. Most drivers would have to quit driving at that point since they would not be able to make a living for a period of time. If a driver has a marginal status, the one thing they can do is have a CLEAN

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Sustaining Member



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# FUEL SURCHARGES

## CAN CARRIERS PASS ON FUEL SURCHARGES TO SHIPPERS?

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On Tuesday, April 16, 1996 in the Los Angeles Times Business Section the headline announced: "Diesel Joins Gasoline in an Upward Price March in Southland." The article noted recent increases in diesel fuel prices at the pump in Southern California from \$1.23 just two (2) months ago to \$1.60. One of the two trucking firms interviewed stated that it might add five percent (5%) to its rates as a result of a twenty-five percent (25%) increase in monthly fuel costs. If carriers do add a surcharge can shippers refuse to pay?

As of August 26, 1994 motor carriers were no longer required to file rates with the ICC. Existing tariffs for all but household goods carriers were declared null and void under the Transportation Industry Regulatory Reform Act. This change was preserved in the ICC Termination Act effective January 1, 1996. (See 49 U.S.C. § 13710(a)(4)). Accordingly, carriers choosing to increase their rates by adding a fuel surcharge are free to do so by simply changing their prices for services. Many carriers maintain rates, rules, etc. in tariffs. By changing its tariff a carrier can add a surcharge to its rates.

Shippers are entitled under the ICCTA to receive a copy of the carrier's rates, charges, rules and classifications upon request. (See 49 U.S.C. § 13710(a)(1)). Accordingly, shippers have access to the rates which the carrier will charge for its services. Moreover, some carriers who plan to add a surcharge have mailed notices to their customers. Others are advising customers at the time of requests for service.

While it is likely that most shippers will

voluntarily pay the surcharge, regardless of prior notice or agreement, undoubtedly there will be some who will object. Although it is impossible to predict, I suspect that most courts will side with the carriers if suit is filed to collect fuel surcharges. This conclusion is based on the provisions of ICC TA, 49 U.S.C. § 13710(a)(1) and the bill of lading which most shippers and carriers continue to use.

The uniform domestic straight bill of lading and other similar versions refer to and incorporate the carrier's tariff. And while issued by the carrier, it is typically on a preprinted form prepared by the shipper. The bill of lading is the contract of transportation and thus governs the transaction. Further, the shipper has a right to obtain a copy of the carrier's rates under the ICCTA, a right the prudent purchasers of services would be expected to exercise. It is therefore expected that upon receipt of the carrier's rates, including the surcharge, a shipper would choose to accept the carrier's rates or reject them by not using its services.

Application of a fuel surcharge may not come to the shipper's attention until a post-shipment audit is performed. This may well be too late to resist payment of the carrier's freight charges. We'll have to wait and see what the courts do when the issue is presented. ■

For more information, contact Miles L. Kavaller, A Professional Law Corporation, Encino Law Center, 15915 Ventura Blvd., Penthouse One, Encino, CA 91436-2741. Telephone: (818) 728-4821 and E-mail address: mkavaler1@earthlink.net.

## PRESS RELEASE



### NorthAmerican Transportation Receives 2009 Best of Carson City Award

U.S. Commerce Association's Award Plaque Honors the Achievement

WASHINGTON D.C., June 8, 2009 -- NorthAmerican Transportation has been selected for the 2009 Best of Carson City Award in the Drug Detection Service & Equipment category by the U.S. Commerce Association (USCA).

The USCA "Best of Local Business" Award Program recognizes outstanding local businesses throughout the country. Each year, the USCA identifies companies that they believe have achieved exceptional marketing success in their local community and business category. These are local companies that enhance the positive image of small business through service to their customers and community.

Various sources of information were gathered and analyzed to choose the winners in each category. The 2009 USCA Award Program focused on quality, not quantity. Winners are determined based on the information gathered both internally by the USCA and data provided by third parties. ■

# INTRODUCING - E-DRAY

**N**orth American Transportation Association has partnered with Vilden Associates Inc to introduce E-Dray, a full function software application for the drayage/intermodal community that delivers tangible and measurable benefits by enabling companies to operate more efficiently, reduce and eliminate costs, increase profits, and provide world-class customer service.

As web based product, E-dray is accessible from anywhere in the world, and allows users to perform all of the necessary operational and financial functions: order entry, automated rating

and billing, driver dispatching/tracking, year management, inquiries and reporting, calculating driver pay with deduction, and performing customer service duties.

Benefits of E-dray:

- System Functions – Completely integrated from end-to end, order entry, availability, real-time dispatching, driver pay, billing, 24 x 7 web based track and trace module, complete EDI functions, complete accounting system – A/R, A/P, G/L, custom reports, and financial statements.

- Financial Benefits – Increase business volume without increasing staff, reduce and/or eliminate per diem, demurrage fees, and assessorial charges, decrease time required to do payroll and billing, and achieve top-notch customer service.

Vilden Associates Inc has been helping transportation companies achieve operational and financial success through creative use of technology and process improvement for over 30 years. 🚚

## CSA 2010 *cont. from page 1*

inspection. Clean inspections will take points off of their record. So a marginal driver can improve his safety score. In the meantime, every driver should sign up with a legal plan to protect them from tickets. NTA offers PRE PAID LEGAL through our insurance department, which has several CDLP certified individuals on hand.

Company drivers and owner-operators should be prepared by using NTA's results-oriented driving safety training courses. Our web based safety training will assist you with development and implementation of safety training and you will receive a certificate of training issued by the Transportation Safety Institute of the U.S. Department of Transportation.

So what is CSA 2010?

Comprehensive Safety Analysis 2010, or CSA 2010, is a MAJOR Federal Motor Carrier Safety Administration (FMCSA) initiative to improve the effectiveness of FMCSA's compliance and enforcement programs. Its ultimate goal is to achieve a greater reduction in large truck and bus crashes, injuries, and fatalities, while making efficient use of the resources of FMCSA and its state partners.

The key features of CSA 2010 are to; 1) Increase the opportunity to have contact with more carriers and drivers, 2) Use more and better data to improve

performance measurements for identifying high risk carrier and driver behaviors, and 3) Apply a wide range of interventions to correct these high risk behaviors before they become chronic and habitual.

Your company and its drivers could face ALL of the above negative consequences if you do not begin taking action NOW to implement and follow a measurable, results-oriented safety program, under the coming CSA 2010 guidelines.

CSA 2010 could cost your company hundreds of thousands of dollars in fines and lost revenue due to "drivers" being declared "unfit."

Certainly most companies will develop a minimum safety rating requirement for hiring and firing drivers. Most of which will likely be dictated by the liability insurance carriers. I suspect that most insurance carriers will set a minimum safety score that a driver must have in order to be insured. Should a driver fall below that minimum, the insurance company could no longer insure them and the driver would have to be terminated. New drivers being recruited would also have to meet the minimum safety rating in order to join the company. I can foresee that the driver's safety rating will become a regular part of the background check and will determine if a driver can be hired or not.

The operational model is based on the Behavioral Analysis and Safety Improvement Categories, or BASICs, are seven categories of data available through the Motor Carrier Management Information System (MCMIS). These represent behavior categories that can lead to crashes; unsafe driving, fatigued driving, driver fitness, controlled substances and alcohol, vehicle maintenance, improper loading/cargo securement, and crash history. This data is weighed differently based on crash causation, but are all part of the CSA2010 Operational Model's Safety Measurement System (SMS), and are collected from on-road safety performance activities including roadside inspections, traffic enforcement, the intervention process, and crashes.

CSA 2010 will monitor both the carrier and driver safety performance. FMCSA has designed two Safety Measurement Systems (SMS) – one for carriers, and one for drivers.

At this point, the only thing that I can suggest is that if you are a driver or an independent contractor you need to do two things immediately – get the necessary proper training so you don't get tickets and get a Pre-Paid Legal Plan to protect you from any tickets you do get. 🚚

# Reminder: Direct Observation Rule Began 8/31/09

The direct observation drug testing rule is applicable to all return-to-duty and follow-up testing for safety-sensitive transportation industry employees who have already failed or refused to take a prior drug test.

All employees who go for a return-to-duty and follow-up tests after this effective date must have their collections observed. This includes employees currently in follow-up testing programs who will still be in those programs on or after August 31, 2009.

1. The DOT's 49 CFR Part 40 directly says observed collections are authorized and required **ONLY** when:

- The specimen temperature is outside the acceptable range;
- The specimen shows signs of tampering – unusual color/odor/characteristic; or
- The collector finds an item in the employee's pockets or wallet which appears to be brought into the site to contaminate a specimen; or the collector notes conduct suggesting tampering.



The Medical Review Officer (MRO) orders the direct observation because:

- The employee has no legitimate reason for certain atypical laboratory results; or
- The employee's positive or

refusal [adulterated/substituted] test result had to be cancelled because the split specimen test could not be performed (for example, the split was not collected).

The employer orders direct observation for a Follow-up or a Return-to-Duty test.

2. The observer **must** be of the same gender as the employee.
3. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry "clean" urine and urine substitutes and for watching the employee urinate into the collection container.

***The observer requests the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel, and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.***

***If the Employee Has A Device: The observer immediately notifies the collector, the collector stops the collection, and the collector thoroughly documents the circumstances surrounding the event in the remarks section of CCF. The collector notifies the DER. This is a refusal to test.***

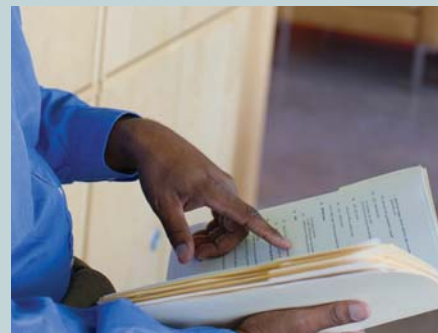
***If The Employee Does Not Have A Device: The employee is permitted to return clothing to its proper position for the observed collection. The observer must watch the urine go from the employee's body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.***

4. Failure of the employee to permit any part of the direct observation procedure is a **refusal to test**. 🚫

## eclipse Logbook

### Logs Made Simple

- Slash the time you spend on logs
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  - Track hours in real-time
- Breeze through inspections
- Submit picture-perfect logs



### Easy to Use

- Looks and works like a real log
- Draws lines across the grid like usual
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  - Very little typing required
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### Prevent Violations

- Sketch out plans in advance
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- Violations shown in red on grid
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### Paper-Log Preview

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- Print any log or range of dates

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