



Volume 63

February 2, 2009

Spotlight: OOIDA...An Independent Perspective

We have found perspective to be a good ally and serve us well. As we were reading the most recent edition of Land Line Magazine, it occurred to us that our clients might also benefit. The Owner-Operator Independent Drivers Association (OOIDA) is a trade association representing the interests of independent owner-operators and professional drivers on all issues that affect truckers. With more than 160,000 members, OOIDA has actively advocated the views of professional truckers through its interaction with state, provincial and federal government agencies, legislatures, the courts, other associations, and private businesses since 1973. OOIDA is actively involved in the legislative process both on the federal and state level. The Association participates in virtually every significant rulemaking affecting professional truckers and is staffed with more than 300 full-time employees.

All OOIDA Officers and Directors are now or have been professional truckers, and are elected from the membership, by the membership, a very refreshing prerequisite for leadership. We recommend you consider joining as the annual membership is only \$45 and includes a subscription to Land Line Magazine, their trade publication dedicated to keeping professional truckers informed of current legislation, trucking regulations and other developments. Click here for access to their [website](#) or an [application](#) for membership. Enter Allen Summers as the person who referred you and your first year of membership will only cost \$25.

New Compliance Items Available Online

Two versions of DOT logbooks and a new visibility vest have been added to the Online Catalog at www.asmark.org. To check out the new items, go to www.asmark.org and click on "Products."

Reminder: Time to Post Your 300A

It's time to complete your 2008 injury and illness recordkeeping obligations by posting the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A). OSHA requires that the notice be displayed from February 1st to April 30th of each year in a conspicuous place where employee notices are customarily posted. A company official must certify the information in Form 300A was examined and is believed to be correct and complete. Click [here](#) to access the form and instructions.

DVDs Cross the Finish Line!

The English set of DVDs shipped to all client locations on January 9th, bringing to an end a project that consumed



almost three years and more than \$300,000. Feedback on the new DVDs has been very positive. The new Spanish set of DVDs are in the final stages of proof, approval and replication and should be ready for shipment in mid-February.

OSHA Allows Electronic Written Programs

OSHA recently announced that it would allow a written program to be in either paper or electronic format in a letter of interpretation issued September 16, 2008. Electronic versions of the program must meet all other requirements of the standard in question, and employers must make sure that there are no barriers to employee access, especially where the standard requires that a written program must be made available to employees. OSHA allows for paper copies, electronic (computer) access, microfiche and other alternatives as long as no barriers to immediate employee access are created. For instance, if a computer is used, all employees must know how to operate and obtain the written program from the system. The September announcement is consistent with past interpretations by OSHA concerning access to documents such as Material Safety Data Sheets (MSDS).

New Enforcement Policies for OSHA Inspectors

OSHA revised its enforcement policies and procedures in the Field Operations Manual, the 329-page reference document used by field officers when conducting inspections, issuing citations, and proposing penalties. The revision includes significant changes. More detailed information on the health inspection enforcement policy, violations, industry sectors and inspection procedures can be found, as well as a variety of other procedures that OSHA compliance officers must follow. Click [here](#) to access a copy of the new Field Operations Manual.

Removed Safety Valves Results in \$1.4 Million Verdict

A jury recently awarded a former trucker from Oroville, CA, \$1.4 million after he was permanently disabled by exposure to the aqueous ammonia liquid fertilizer he was pumping. The fertilizer, which has corrosive properties, backed up and sprayed onto him. The 30-year veteran driver needs a lung transplant as a result of the 2005 incident. According to the Chico Enterprise-Record, the company the driver was employed by, was accused of removing flapper-type safety valves from the pumping hose on his truck and on 10 other trucks so they would pump faster. The jury found that the company had acted with "malice, oppression or fraud" in its actions.

OSHA Expressly Clarifies "Each Employee"

OSHA is amending its standards to make it clear that employers have a duty to provide personal protective equipment (PPE) and training to each employee covered by the standard. Regardless of whether a provision expressly states that PPE or training must be provided to "each employee" this is the expectation, according to OSHA. To accompany OSHA's longstanding position on this subject, the agency is clear that separate violations will occur for each employee who is not provided the required PPE or training, and that a separate citation item and proposed penalty may be issued for each. The agency notes that these amendments do not add any new compliance obligations. The amendments further clarify that training and personal protective equipment (including eye, hand, face, head, foot, and hearing protection, as well as respirators and other forms of PPE) standards apply to each employee. This final rule became effective on January 12, 2009 and affects most of the agency's PPE standards including 29 CFR 1910 General Industry.

One More Reason To Make Sure Your Drivers Are Drug-Free...

A federal jury in Kansas recently awarded one trucker's family \$23.5 million for a 2006 accident caused by a Swift Trucking Company driver who tested positive for being under the influence of drugs. An Overland Park, KS couple sued Swift in relation to a March 16, 2006 crash that involved a Swift truck driven by Robyn Getchel. The wreck occurred about 1:30 a.m. that day on U.S. 54 near Tucumcari, NM. The collision killed another driver and injured the spine of one of the Kansas couple. The couple's attorney argued that Getchel recklessly turned into a rest area north of U.S. 54 and failed to maintain proper control of the truck, leading to the crash between the two trucks. Getchel tested positive for methamphetamine following the wreck. Reminder: Perform a pre-employment drug test on each of your CDL drivers and make sure they are

enrolled in a Random Drug Test program approved by DOT. Don't forget the DOT Supervisor Training for Alcohol and Substance Abuse Awareness required for all supervisory personnel.

Heads Up! PPR Forms for 2008 Change, Expanded

EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, is used to collect pesticide production information. On December 30, 2008, EPA posted a revised form and set of instructions to their website. The look of the form has changed for the 2008 reporting year, with some of the biggest changes being to the Product Classification section. The number of categories used to classify products has been expanded to better identify the products being reported. The numbering system will also change for the existing classifications listed. Our contacts at U.S. EPA report the new form and instructions must be used for submission of the reporting year 2008. Asmark Institute staff has reviewed the changes, built the new revised form and revised the classification codes. All the codes used to classify the type of pesticide have changed. Click [here](#) for more information.

Please Define "Immediate Notification"

EPA rules require the owner or operator of a facility to immediately notify the appropriate agencies when a hazardous substance is released. The rules also require that a follow-up written notice be sent as soon as practicable. If you haven't looked into the meaning of "immediate" and "as soon as practicable," you may not realize how quickly a violation can occur. Immediate notification of a release is required under two regulations:

- The rules in 40 CFR 302.6 require the person in charge of a facility or vessel from which a hazardous substance has been released in an amount that meets or exceeds its reportable quantity to immediately notify the National Response Center as soon as he/she has knowledge of the release.
- Under 40 CFR 355.40, the owner or operator of a facility must immediately notify the appropriate governmental entities for any hazardous substance release that requires notification under 302.6, and releases of extremely hazardous substances.

The notification must be given to state emergency response commissions (SERCs) and community emergency coordinators for the local emergency planning committees (LEPCs) to be affected by the release. The regulations do not define "immediate notification." However, the Legislative History of the Superfund Amendments and Reauthorization Act of 1986 says that "delays in making the required notifications should not exceed 15 minutes after the person in charge has knowledge of the release. Immediate notification requires shorter delays whenever practicable." Enforcement documents instruct EPA staff to begin assessing penalties when notification exceeds 15 minutes.

FMCSA Names 16 Deadly Sins for New Motor Carriers

New motor carriers face losing their authority if they commit any one of the newly identified 16 deadly sins that the Federal Motor Carrier Safety Administration (FMCSA) outlines in a new final rule according to the Owner-Operator Independent Drivers Association (OOIDA). The final rule was published in the Federal Register Tuesday, December 16, 2008 and goes into effect February 17, 2009, with a compliance deadline of December 16, 2009. Once the regulation is in effect, truckers and trucking companies will have their authority yanked if they are found to have violated one of 16 different safety regulations during the new entrant safety audit. If one of the violations is found during a roadside inspection, that can trigger an "expedited action," which is a safety audit or compliance review. The key safety regulations, quickly dubbed the "16 deadly sins" by industry insiders, are:

- Failing to implement an alcohol and/or controlled substances testing program.
- Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.
- Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.

- Using a driver known to have tested positive for a controlled substance.
- Failing to implement a random controlled substances and/or alcohol testing program.
- Knowingly using a driver who does not possess a valid CDL.
- Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked or canceled by a state, or who is disqualified to operate a commercial motor vehicle.
- Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.
- Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.
- Operating a passenger-carrying vehicle without having in effect the required minimum levels of financial responsibility.
- Knowingly using a disqualified driver.
- Knowingly using a physically unqualified driver.
- Failing to require a driver to make a record of duty status.
- Requiring or permitting the operation of a commercial motor vehicle declared "out-of-service" before repairs are made.
- Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.
- Using a commercial motor vehicle not periodically inspected.

Most of the violations are a "one strike and you're out" scenario. Any motor carrier found to fail the new entrant safety audit must be notified within 45 days of the review. Once notified that they failed the audit, the motor carrier has 60 days to correct the problems or lose their operating authority. Passenger-carrying operations and hazmat haulers are singled out by being given only 45 days to correct any violations in their safety audits.

© **2009 Asmark Institute, Inc.** This information is believed to be reliable by the Asmark Institute, however, because of constantly changing government regulations, interpretations and applicability or the possibility of human, mechanical or computer error, the Asmark Institute does not guarantee the information as suitable for any particular purpose.