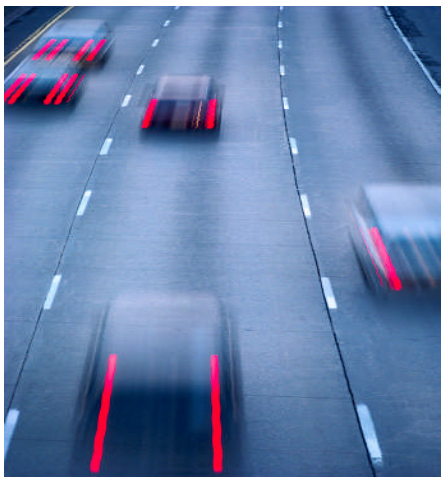


TRANSTRENDS
THE TRANSLAW GROUP, INC. EDITOR: JAMES M. BURNS

IN THIS ISSUE

1 NEWS AT THE FMCSA
1 INVOLUNTARY BANKRUPTCY EFLEET
2 UCR COMPLIANCE IN EFFECT
3 TAX INCREASE WITH VMT
3 CSA TO BE AUDITED
4 LIGHTER SIDE
5 DRUG AND ALCOHOL TESTING

NEWS AT THE FMCSA

The Federal Motor Carrier Safety Administration (FMCSA) is preparing for the implementation of the provisions of MAP-21, the "Moving Ahead for Progress in the 21st Century Act". MAP-21 directs the Agency to begin 29 new rule-makings within a 27-month period, which does not include current rule-makings underway. In addition, it requires FMCSA to implement 34 programmatic changes and produce 15 reports.

Included in the list of provisions is the bond increase from $10,000 to $75,000 for brokers and freight forwarders. Initially thought to take effect one year from the date the President signed the bill into law, on July 6, 2013.

The FMCSA has now scheduled the effective date for October 1, 2013 - one year from the date of enactment of the law - giving brokers and freight forwarders an additional 90 days to implement the new bond requirements.

Furthermore, this provision does not require a formal rule-making process and therefore will not be open for a public comment period. This provision will be included in the upcoming Unified Registration System (URS) 2 rule that will incorporate and implement all the new registration requirements, including new registration fee and registration requirements for brokers and freight forwarders.

INVOLUNTARY BANKRUPTCY PETITION AGAINST ELEETS TRANSPORTATION

Creditors alleging they are owed thousands have filed a petition to force Eleets Transportation, headquartered in Jacksonville, FL, into involuntary bankruptcy. Eleets operated a brokerage and a

trucking company until it abruptly shut its doors in November 2012, leaving many former employees, shippers and carriers stunned.

Elise M. Rosamonda of Weiss, Spencer and Levin in Lighthouse Point, FL, recently stated that her firm filed the petition on behalf of some of its clients on Dec. 28, 2012, in the U.S. Bankruptcy Court for the Middle District of Florida in Tampa.

"We rarely go this route – placing a company into an involuntary bankruptcy situation – but this is just a unique situation," Rosamonda said. "We know of so many carriers that were absolutely devastated by them just abruptly shutting their doors."

She said the move was necessary after Wells Fargo, headquartered in Charlotte, NC, filed an emergency motion for the appointment of a receiver in the U.S. District Court for the Southern District of Florida in Palm Beach.

The filing claims the bank is owed more than $5.7 million, stemming from revolving credit loans it made to Eleets, starting back in November 2011. Wells Fargo is pushing for receivership to protect and recover the company's remaining assets, including accounts receivables.

Rosamonda said Wells Fargo and some of the carriers are demanding payment for the loads. However, some of the shippers are concerned about who to pay for fear of being placed in a "double-payment situation."

"We hope to argue on behalf of the actual delivering motor carriers that the freight charges pledged to Wells Fargo were grossly encumbered by the carriers' freight charges, and Wells Fargo failed to do its due diligence to ensure the accounts receivable are wholly owned by Eleets," she said.

UCR COMPLIANCE: HARD ENFORCEMENT IN EFFECT

Although the Unified Carrier Registration board announced months ago that hard enforcement was a sure thing on Jan. 1, 2013, and there would be no exceptions – that has now changed.

The UCR requires individuals and companies that operate commercial motor vehicles in interstate or international commerce to register their business and pay an annual fee based on the size of their fleet. Those fees are now due, and compliance is routinely verified during roadside inspections.

Normally, there is a 30-day "soft enforcement" period – and on Feb. 1 of each year, the serious enforcement begins. In 2012, the UCR board voted to do away with the soft enforcement and begin hard enforcement Jan. 1.

The repository and national online pay site for the UCR registrations is maintained by the state of Indiana. They notify the Federal Motor Carrier Safety Administration when a motor carrier has paid the fee.

At the end of December, the Indiana Department of Revenue notified the Commercial Vehicle Safety Alliance that a mysterious problem was preventing the uploading of 2013 registrations to from the Indiana system to the FMCSA. This problem makes it impossible for state motor carrier enforcement to know which trucking companies have paid and which are scofflaws. A delay was recommended.

TAXES COULD RISE UNDER MILEAGE-BASED HUT

Just when you think you have done all that you can do increase MPG and to save money and even perhaps go green there is someone ready to take your savings away.

Truckers could pay significantly more than they do now should Congress choose to use mileage instead of fuel consumption to calculate roadway taxes. A recent report by the Government Accountability Office suggests that commercial trucks could pay between 3 and 8 cents per mile under a tax on vehicle miles traveled, or VMT.

The GAO recommends that Congress conduct a pilot program on a mileage-based user fee to one day replace the fuel tax. One way to do that, the GAO says, is to study the viability for commercial trucks and electric cars – two demographics the Federal Highway Administration says are not currently paying their fair share into the Highway Trust Fund.

CSA ITSELF TO UNDERGO AUDIT

At the behest of a House subcommittee, the new compliance measurement system used by FMCSA will undergo an audit. The Comprehensive, Safety, Accountability program – dubbed CSA – drew heavy fire during a mid-September 2012 hearing of the House Subcommittee on Highways and Transit.

Rep. Don Young, R-AK, long-time former chairman of the full Transportation and Infrastructure Committee, upped the ante for the program.

"The reason we have these hearings is we are beginning to get complaints," Young said in his opening remarks. "My biggest concern, Mr. Chairman (John J. Duncan Jr., R-TN), is I have watched over the years agencies that lose contact with what they are trying to do through what I call gobbledygook. I love that word gobbledygook," Young said. "Bureaucrats that have a paycheck … are doing it because they can. And that disturbs me."

Young went on to ask that the Highways and Transit Subcommittee take the lead on requesting an inquiry into CSA from the Government Accountability Office.

About a month later, Duncan and Rep. Peter DeFazio, D-OR – who were the chairman and ranking member of the Highways and Transit subcommittee at the time of the letter – launched scrutiny of the program on a second track when they asked the Department of Transportation's Office of Inspector General to initiate an audit of the program.

On Jan. 14, a memo issued by the Office of Inspector General announced the launch of the requested audit. The memo also confirmed that a GAO inquiry is already ongoing into the program, and the two investigations will be coordinated to avoid duplication.

"Specifically, our audit will assess whether FMCSA has (1) established adequate controls to ensure the quality of the data used to evaluate carrier performance and risk, and (2) effectively implemented CSA enforcement interventions. The Government Accountability Office (GAO) is currently reviewing CSA's identification of the highest risk carriers, and we will coordinate with GAO during our audit to avoid duplication of work," the memo states.

There are too many issues with the DATAQ system and its failure to address ways to resolve infractions that are not really the carriers fault or even true.

AND YOU THINK LOAD SECUREMENT IS REALLY NOT AN ISSUE!

Just what were they thinking when they pulled this vehicle from the loading area? It is time to review CFR PART 393.

THE PROVERBIAL UNDERPASS HIT

This driver was inching his way through a low underpass. It would have been easier to get out of the truck and do a visual or just know that 11 feet does not fit through 9 feet.

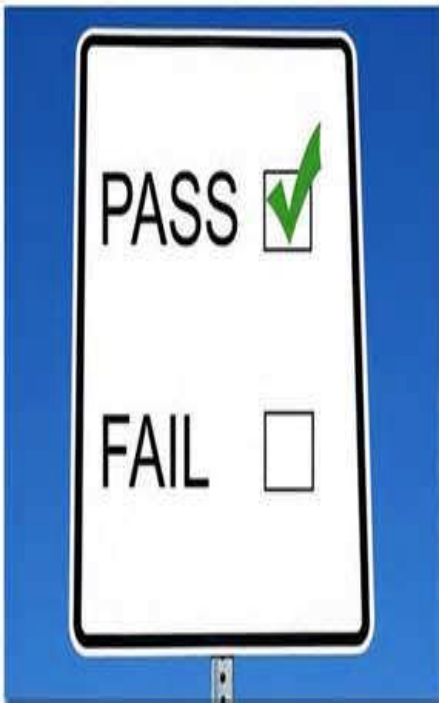
DRUG AND ALCOHOL TESTING PROCEDURES
A REFRESHER COURSE!

Much confusion surrounds the responsibilities associated with drug and alcohol testing protocols. The following will give you the basics of what is required.

There are five situations where testing is done to determine the presence of alcohol and/or drugs.

1. Pre-employment Test; (controlled substances only) When: Before a new hire or a person transferring into a driving position from elsewhere in the company can perform any safety-sensitive function.

REGULATIONS THAT REQUIRE DRUG TESTING COMPLIANCE.



A driver that will operate the following types of vehicles as described below must comply with CFR PART 382.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle-

(1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)

2. Post-accident Test; When: Following an accident where: a) A life was lost; b) A driver was cited for a moving traffic violation and the accident involved injury requiring medical treatment away from the scene; or c) a driver was cited for a moving traffic violation and the accident resulted in the towing of one or more vehicles from the scene.

Post-accident alcohol testing should be done within 2 hours of the accident. If the test cannot be performed within 2 hours, the employer must prepare a record stating why the test wasn't given. If

the test cannot be performed within 8 hours, the employer should not give the test and must prepare a record stating why the test could not be given within that time.

Post-accident drug testing must be performed within 32 hours. If the test cannot be performed within 32 hours, the employer should not give the test and must prepare a record stating why the test could not be given within that time.

A driver subject to post-accident alcohol testing must remain available for testing. Not remaining available for testing is considered as a refusal to test.

3. Random Test; Every carrier or fleet should be part of a recognized random testing program. Carriers and fleets that try to adhere to the regulations and conduct their own random testing program will find themselves generally not in compliance with the regulations covering testing.

4. Reasonable Suspicion Test; When: If the employer has reason to believe that your behavior or appearance may indicate alcohol or drug use. Observations for alcohol testing must be made just before, during or just after the performance of a safety-sensitive function. Observations for drug testing may be made at any time while you are at work for your employer.

Testing for reasonable suspicion must be based on a) The observations of a trained supervisor; and b) Specific, clearly stated observations concerning your appearance, behavior, speech or body odor.

Please remember - The supervisor who makes the observation and determines that reasonable suspicion testing should be done may not be the one who conducts the alcohol test on the driver. If the alcohol test cannot be given within 2 hours, the employer must prepare a record stating why the test could not be given. If the alcohol test cannot be done within 8 hours of the observation, the employer should not give the test and must prepare a record stating why the test could not be given.

Even if reasonable suspicion is observed but a test could not be done, you cannot perform safety-sensitive functions until: a) A test is done and your alcohol concentration is determined to be less than 0.02, or b) 24 hours have passed from the time of the initial observation.

The employer may not take action against the employee regarding alcohol misuse unless an alcohol test was administered within the required timetable. The chronic and withdrawal effects of drugs, as well as the conditions listed above, are used to determine reasonable suspicion for drug testing.

For reasonable suspicion drug testing only: Documentation of the driver's conduct must be prepared and signed by a witness within 24 hours of the observed behavior, or before the results of the drug test are released, whichever is first.

5. Return-to-Duty and Follow-up Tests; When: Return-to-duty testing is required for drivers who tested positive for drugs, failed an alcohol test, or refused to take a drug or alcohol test. In order to return to performing safety- sensitive functions an alcohol concentration of less than 0.02 and/or a

negative drug test is required. There are also referral, evaluation and treatment requirements that must be met.

When: Follow-up testing is required when a substance abuse professional (SAP) determines the driver needs help resolving alcohol or drug problems. The regulations call for a minimum of six (6) tests during the first year back in a safety- sensitive position. However, follow-up testing can continue for up to five (5) years.

What Happens if the driver refuse to be tested? As part of the alcohol and drug regulations, you must submit to alcohol and drug testing. A refusal to test is treated the same as a positive test. If you refuse to be tested, you cannot continue to perform safety-sensitive functions. "Refusal" occurs when: a) The driver fails to provide enough breath or saliva for alcohol testing or urine for controlled substances testing without a valid medical reason after being notified of the testing requirements, b) or You clearly obstruct the testing process through deception or use of a variety of methods available on the market to adulterate the testing protocol.

TRANSTRENDS is published monthly for friends and clients of the Translaw Group, Inc. The information provided in this newsletter is not intended as specific advice on a particular subject. Rather, the information is for general edification. Further, this information is time sensitive and may need to be revised and updated from time to time. Please feel free to call this office with your specific questions at 413 781 8205, or you may e-mail the office at jburns@transregs.com.