

# TRANSTRENDS

THE TRANSLAW GROUP, INC.

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## IN THIS ISSUE

- 1 UPDATE MCS-150
- 2 SHADES OF OBAMACARE
- 2 EMBEZZLEMENT
- 2 DATA Q
- 4 LAWNCHAIR LARRY
- 4 DRONE BEER DELIVERIES GROUNDED
- 7 SHIPPERS AND SAFETY
- 9 CHUBBY BULLDOG

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### HEAR YE, HERE YE - ALL SCOFFLAWS



The Federal Motor Carrier Safety has started to deactivate the DOT numbers of trucking companies overdue for updating their unified registration system data, which are due every other year.

In November 2013 The Federal Motor Carrier Safety Administration sent out letters and emails to motor carriers, warning them of the need to file the registration updates.

The update is also commonly referred to as the MCS – 150 safety census docket.

The agency said it will begin deactivating USDOT numbers starting in March 2014 for those carriers that were due to update their dockets in January 2014. Fines for failure to comply are \$1000 a day, up to a maximum of \$10,000.

Therefore, those carriers that do not have a current MCS – 150 on file should make arrangements to update immediately. Those carriers that do not know whether or not they are updated can call the office and we will do the search for you.

When a DOT number is deactivated needless to say it is difficult to reinstate that docket. Please do not forget that the deactivation will be coupled with fines and penalties. The Federal Motor Carrier Safety Administration has no mercy when dealing out fines and penalties, and I am sure that they take great joy in collecting those funds.

### **SHADES OF OBAMA CARE**

Back in May 2012, FMCSA established a National Registry of Certified Medical Examiners to improve highway safety and driver health. For this to be effective, FMCSA set the number at 40,000 medical examiners to be registered by the compliance date of May 21, 2014. As of March 21, 2014, the total number of registered medical examiners is 9,505.

According to the FMCSA's final rule proposal, 40,000 medical examiners will be enough to cover the vast area of 3,140 counties in the United States. During the early stages rulemaking process, it was pointed out during the comments that a shortage of examiners could mean that many drivers will have to drive a few hundred miles out of their way to complete their certification. Fewer examiners could also lead to longer wait times for drivers and no opportunities for walk-ins.

The National Registry requires drivers to receive medical certification from medical professionals who are part of the registry. Official examiners will be trained on FMCSA's regulations and the physical standards of the truck driving industry. In the past, any licensed professional could certify a driver for physical qualification.

### **MAN ADMITS EMBEZZLING \$4.9 MILLION FROM MO MOTOR CARRIER**



The former financial comptroller for a Missouri-based trucking company has pleaded guilty to embezzling nearly \$5 million in company funds and employee tax contributions.

Federal prosecutors say David VanWinkle, 60, of Neosho, Mo., waived his right to a grand jury trial and pleaded guilty to wire fraud, money laundering and failure to pay taxes. The plea was entered Feb. 28 before U.S. Magistrate Judge David P. Rush.

VanWinkle worked for Joplin, Mo based Frontier Leasing Inc., and in his job processed payments from the company's customers. According to a news release from the U.S. Attorney's Office, VanWinkle correctly deposited some checks into the company's bank accounts but placed other checks into an account he opened at a different bank. Investigators were tipped off that someone had been making unusual deposits into VanWinkle's two business accounts – VanWinkle Accounting and VanWinkle Farms.

VanWinkle was responsible for collecting payroll taxes for FLI and paying the taxes to the IRS. According to the release, VanWinkle withheld the taxes but kept the money. Uncle Sam hates that!

In all, VanWinkle admitted to collecting and keeping \$435,896 in federal tax, Social Security and FICA withheld from FLI employee paychecks.

Under the plea deal, VanWinkle agreed to forfeit \$4,911,621, a 2013 Holland tractor, a 2007 Hummer H3, a 2012 John Deere till seed drill, and \$28,086 seized from his bank accounts. VanWinkle faces up to 30 years in federal prison without parole and a fine of up to \$750,000 under federal sentencing statutes. Sounds like his employer is out of luck. It does not appear that the \$4,911,621 is sitting in an interest bearing account!

In similar cases of embezzlement and nonpayment of taxes the taxpayer is often required to pay a second time. The fact that the funds were mishandled does not really matter to the IRS.

### **COURT RULES IN OOIDA'S FAVOR IN DATA Q JURISDICTIONAL LEGAL BATTLE**



OOIDA Member Fred Weaver will have his day in federal district court over a violation that remains on his driver profile with the Federal Motor Carrier Safety Administration – even though the ticket was dismissed – thanks to a ruling Friday by the U.S. Court of Appeals for the District of Columbia.

The Owner-Operator Independent Drivers Association filed suit on behalf of OOIDA Member Fred Weaver in May 2013. Weaver was cited by an officer in Montana for failure to stop at a weigh station.

That charge was later dismissed by a Montana state court, but the Federal Motor Carrier Safety Administration denied Weaver's Data Q request to have the record of that charge removed from the Motor Carrier Management Information System (MCMIS) database.

We have heard similar stories for years and it is good to see that someone is leading the charge that hopefully will result in a more balanced approach to the Data Q process. Many carriers find the same fate when challenging a Data Q issue.

“The Weaver decision has important implications that go far beyond challenges to Data Q determinations,” said Paul D. Cullen Sr., litigation counsel for OOIDA and Weaver. “The FMCSA has been hiding behind uncertainties in the federal jurisdictional statutes for years in order to evade judicial review.”

OOIDA believes that the Weaver decision will bring greater certainty to the ability of drivers to hold FMCSA accountable in court for its actions.

**APRIL 19, 1949 – “LAWNCHAIR LARRY”**

Lawrence Richard Walters, also known as “Lawnchair Larry” is born in Los Angeles, California.



Walters, a truck driver would become famous for his July 2, 1982 flight in which he strapped 45 helium-filled weather balloons to his lawn chair and floated to an altitude of 15,000 feet.

He eventually made his way from San Pedro, California to controlled airspace near Los Angeles international Airport at which point he shot some of the balloons with a pellet gun and began his descent.

Larry Walters died of a self-inflicted gunshot wound in 1993. Apparently, he wasn't using pellets at the time.

**FLORIDA DUO NABBED IN FBI CARGO THEFT STING**



Eliesky Sanchez, 31, and Reinaldo Garcia Suarez, 39, both of West Palm Beach, have been charged with conspiracy to receive stolen goods and sale or receipt of stolen property, according to U.S. Attorney Wifredo A. Ferrar.

The defendants made their initial appearances before U.S. Magistrate Judge Dave Lee Brannon on Feb. 28.

A pretrial detention hearing for Sanchez has been scheduled for March 5. A pretrial detention hearing for Garcia Suarez has been scheduled for March 7.

According to the criminal complaint, the FBI investigation revealed that Sanchez and Suarez were actively selling and providing as samples property that bore identifying numbers. The numbers matched the numbers on products stolen from different tractor trailer thefts in the Florida area.

Those items include LCD vehicle monitors, food and drinks, clothing items, feminine hygiene products and brand-name wrist watches, according to the complaint filed in U.S. District Court, Southern District of Florida.

**SAY IT AIN'T SO**

A craft brewer had a plan to deliver beer to thirsty ice fishing anglers on a Minnesota Lake until the federal aviation administration stepped in and grounded the idea.

Lakemaid Beer would deliver a twelve pack of its larger to diehard anglers on central Minnesota's Lake Mille Lacs using a drone.

Orders would be taken through GPS coordinates. The plan has been worked through and an Internet posting of an actual delivery has been posted on the brewer's Facebook page.



This plan sounds similar to plans announced by Amazon.com for delivery of small packages. It would appear that it is going to be a bumpy flight for anyone trying to make deliveries through use of unmanned drones. The brewery has been told to cease the deliveries.

Let us just hope that the system is perfected by private initiative before the US Post Office tries to get into unmanned drone delivery. In fact, a visit to the main post office in Springfield, MA would make one think that the whole place is run by a group of people commonly known as drones often confused as government employees.

### **FMCSA SHUTS DOWN D'MASSACHUSETTS PASSENGER VAN COMPANY**

D'Boston Transportation LLC was ordered to "immediately cease all passenger transportation services due to widespread and serious noncompliance with federal safety regulations that has endangered the lives of its drivers, passengers and the motoring public," according to a March 7 news release from The Federal Motor Carrier Safety Administration.

According to the out-of-service order accompanying the release, federal investigators found that the owners of D'Boston "failed to ensure that its vehicles were systematically and properly inspected, repaired or maintained," and also found that the company "failed to monitor and ensure that its drivers were qualified or complied with hours of service requirements."

The order also applies to Luis Contreras, Juan Stepan and Ramon Castillo, and references a related company, D'Family Transportation LLC, which was also ordered out-of-service in December 2013. The imminent hazard out-of-service order issued by FMCSA prohibits the D'Family and D'Boston companies – both controlled, managed, and operated by Contreras, Stepan and Castillo – from commercial passenger transportation operations, and it blocks the unapproved use of its buses by another company or any driver.

The violations discovered included no or unsecured fire extinguisher, no or defective bus emergency exit windows, no or insufficient warning devices, no or inadequate bus emergency exit markings, no bus driveshaft protection, and numerous other violations.

D'Boston fails to inquire into its drivers' driving records, which led to D'Boston dispatching a driver whose license had been suspended for a moving violation. Further, D'Boston fails to ensure that its drivers are medically examined and certified.

D'Boston Transportation Inc. was created and applied for a USDOT number on or about Nov. 22, 2013, according to the report. During an FMCSA review of D'Boston Transportation, Contreras,

Stepan, and Castillo represented the company, with Contreras reportedly admitting that “D’Boston Transportation, Inc. was a successor to and continuation of D’Family Transportation, Inc., and that he was the president of D’Boston Transportation, Inc. and that FMCSA should link the safety records of the two entities.

In order to resume operations, D’Boston must comply with a 15-point plan from FMCSA, which includes changing its company and management philosophy regarding driver oversight and vehicle maintenance, as well as establishing sufficient safety management controls over drivers’ hours of service and record of duty status reports.

### **PROPOSAL TO MANDATE ELECTRONIC LOGS CLEARS INTERNAL HURDLE IN D.C.**



The issue of driver harassment remains a big issue for truckers as a proposal to put electronic logging devices in all trucks clears an administrative hurdle in D.C.

The Federal Motor Carrier Safety Administration’s supplemental notice of proposed rulemaking on electronic logging devices, or ELDs, cleared the Office of Management and Budget on Tuesday, March 11.

Clearing OMB sends the proposal a step closer to publication, but it is not a rule at this stage.

The supplemental notice contains four parts. Three relate to the design and specifications for what an electronic logging device would be able to do or not do in terms of logging a trucker’s hours of service. The fourth part, the sticking point, is that electronic logs cannot be used to harass drivers.

The FMCSA issued a first final rule on electronic logs in 2010.

The rule was challenged in court, and in August 2011 the Court of Appeals for the Seventh Circuit ruled in favor of the plaintiff on the harassment issue. The ruling forced the FMCSA to vacate the rule.

In 2012, Congress passed the transportation policy and funding law known as Moving Ahead for Progress in the 21st Century. MAP-21 directed the FMCSA to once again pursue an electronic-logging rule. It also reiterates that electronic logs must not be used to harass drivers.

As the supplementary notice continues to move through the inner workings in D.C., the FMCSA is awaiting the results of a study of harassment of drivers who use electronic logs. That survey is being conducted by Virginia Tech.

Congress and the courts have made it clear that any policy regarding electronic logs must take the issue of harassment and coercion into account.

It will be important to see if the proposal incorporates the study on harassment at the start, or if it is something the agency wants to incorporate at a later stage, which is the wrong direction to take in our view.

An actual rulemaking for electronic logs must go through the public process, and that presents an opportunity for truckers to file comments.

### **WHAT ARE SHIPPERS LOOKING FOR WHEN QUALIFYING A MOTOR CARRIER?**



Today carriers and shippers are more aware of the tools that are readily available to them in order to check out a motor carrier's safety integrity. Many shippers are simply relying on the CSA website to determine whether a Carrier is qualified to handle their traffic.

A motor carrier may hold a satisfactory safety rating, but that rating may have been issued 10 or 15 years ago. Shippers are more sophisticated today and know that those types of ratings may not reflect current safety compliance.

The CSA is far more real-time oriented in evaluating for early monitoring of a motor carrier's current safety compliance, conduct or lack thereof, invoking suggested measures for correcting deficiencies and thereby reducing costly and in some cases, catastrophic commercial motor vehicle accidents that typically ensue when significant safety BASIC violations are evident.

Under CSA the Federal Motor Carrier Safety Administration has established violation thresholds for each BASIC which, if exceeded, will trigger the intervention process. Specifically, the federal motor carrier safety administration employs four steps to assess motor carrier or driver performance in each of the seven BASICs.

The four step process includes the following...

- Relevant inspections, violations and crash data will be attributed to a carrier for purposes of establishing a safety events history
- A carriers violation and crashes will be classified into a BASIC.
- A value will be assigned to each BASIC violation with such value determined by that violations deemed associated with crash causation via application to that violations of:
  - time weighting
  - severity weighting
  - normalization to account for such factors as power units used by the carrier, vehicle miles traveled and number of driver inspections, incurred, and
  - peer grouping to establish a quantifiable measure for the carrier in each BASIC.

- An entity's BASIC measure will be compared to those of its peers to establish a percentile ranking for the carrier with respect to each of the BASICs.

The score is based on the carrier's data for the preceding 24 months. It takes 24 months for violations to drop from your record.

Shippers are looking at this type of data when determining whether or not to use a particular carrier.

The CSA's intervention process can be prompted by several factors. Among them are one or more deficient BASIC scores, filing of a complaint with respect to a carrier from a member of the public, or carrier involvement in a fatal crash.

If the carrier's percentile exceed a Federal Motor Carrier Safety Administration designated threshold, that carrier becomes a candidate for intervention. Interventions are designed to be progressive. Interventions consists of the following steps.

- A warning letter
- Targeted roadside inspections prompted by a warning letter
- off-site investigations performed at locations distinguishable from the carrier's principal place of business
- focused on-site investigations at the carriers business headquarters in light of a carrier's continuing deficient or worsening performance under a particular BASIC
- a comprehensive on-site investigations similar to a compliance review when the carrier's overall performance suggests a broad and complex array of safety problems
- establishment and adoption of a cooperative safety plan under which the carrier expresses a willingness to remedy the deficiencies noted before incurring Federal Motor Carrier Safety Administration imposed fines
- issuance of a notice of violation to increase carrier awareness of the agency's enforcement intent, mandate corrective action, and motivate the carrier to alter and improve its safety behavior in order to avoid a fine
- issuance of a notice of claim justifying the assessment of penalties (big buck\$)
- carrier entrance into a consent agreement with the Federal Motor Carrier Safety Administration binding the carrier to embark upon steps to improve its safety profile, thereby avoid fines or suspension of operation and apprise the carrier that failure to comply with the consent agreement's terms will result in imposition of the maximum penalty that would otherwise have been levied
- imposition of an unfit suspension order placing the carrier out of business

Therefore, carriers should be more aware of what the CSA can do to them or for them.

If you are a carrier that has exceeded the threshold on one of the BASIC categories please feel free to call the office for suggestions to improve the deficient scores in an effort to avoid any of the above actions.

Once you have received an intervention letter the carrier will have very little power other than to immediately follow Federal Motor Carrier Safety Administration directives and potentially be open to fines and penalties and perhaps the dreaded consent agreement.

**AND, FINALLY...THE BULLDOG WAS GETTING CHUBBY**

Mack truck is launching a brand identity program that features a sleeker bulldog. Apparently, the old bulldog was just getting a little too chubby. The Mack trucks bulldog first appeared in 1921.



The company's trademark is the bulldog. It can be found on the front of almost all Mack trucks.

A Mack truck with a gold-plated bulldog indicates that the entire truck is made of Mack components.

Trucks with another manufacturer's transmission, engine, rear axles or suspension are given the chrome-plated bulldog. The sleeker, albeit skinnier, bulldog is said to represent the bolder stronger

image Mack wants to project. But, please do not let the dog look emaciated!

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