TRANSTRENDS

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

IN THIS ISSUE

IF YOU WISH TO END YOUR SUBSCRIPTION TO TRANSTRENDS, SIMPLY SEND AN EMAIL REQUESTING A CANCELLATION TO JBURNS@TRANSREGS.COM

DON'T MESS WITH TRAFFIC

New evidence suggests the lane closures carried out by the Port Authority of New York and New Jersey last September on the George Washington Bridge were politically motivated – and ordered by a top aide in the office of New Jersey Gov. Chris Christie.

It also appears that there may be some email correspondence that will indicate Governor Christie's involvement.

Emails exchanged between a Port Authority official, David Wildstein, and Christie senior-level aide Bridget Anne Kelly indicate the closures were some sort of retaliation or punishment against the mayor of Fort Lee, N.J.

"Time for some traffic problems in Fort Lee," Kelly wrote to Wildstein on Aug. 13, 2013. Wildstein, who has since resigned, replied, "Got it." The lane closures lasted four days, from Sept. 9 through Sept. 13, when schools were back in session. The ensuing traffic jams left thousands of commuters and truckers blindsided for four hours at a time.

Publicly, Port Authority officials cited a "traffic safety study" to justify the closures.

Fort Lee Mayor Mark Sokolich told the press during the aftermath that he believed the "traffic safety study" to be a ruse. He accused Christie and the Port Authority of retaliating against him for his refusal to endorse the incumbent governor in the fall elections. He has since tempered the accusation, but still openly questions the lane closures.

Wildstein and an unknown source discussed Sokolich's reaction in an exchange of text messages.

The double-decked George Washington Bridge is considered the world's busiest vehicle bridge, carrying about 275,000 vehicles per day over the Hudson River between Fort Lee and Manhattan, N.Y.

Truckers know the bridge well because of the Port Authority's steep toll increases in recent years. The port authority has raised tolls on five-axle vehicles each year since 2011. What was a $40 toll in 2011 is now $90.

PROOF OF MEDICAL CERTIFICATION WAS REQUIRED BY JAN. 30

Don't get too excited about the recent announcement that FMCSA was extending a deadline related to medical certification.

Drivers *still* only had until Jan. 30 to provide proof of medical certification to the state drivers licensing agency or face having their license downgraded.


DOT MEDICAL CERTIFICATE FLORIDA

The changes to the regulation that were supposed to go into effect on Jan. 30 were that in addition to all current CDL holders providing proof to the states, the drivers would not be required to keep their medical cards with them on the road. ***That is the only thing that changed.***

The extension announced by FMCSA on Jan. 14 states that drivers ***must continue*** to keep their medical certificates on the road with them. Motor carriers will also have to retain a copy of the medical certificate in the driver qualification files until ***Jan. 30, 2015***.

No other deadlines were extended.

The intent behind the regulation is that once drivers provide proof to their state drivers licensing agency, that information will be entered into the Commercial Driver's License Information System database – called CDLIS. The driver's medical certification and CDL will be basically tied together in the database. That will allow roadside law enforcement to check for medical certification electronically instead of depending on the certificates.

The regulation went into effect in 2008 with an initial deadline for states to be up and running and entering information by Jan. 30, 2012. The final rule also set the Jan. 30, 2014, deadline for all existing CDL holders to provide proof to their home states.

The first extension of the requirement to continue carrying medical certificates on the road and filed in driver qualification files happened in 2012.

Fast forward to 2014. There are states still not getting the information entered into the CDLIS database. So, FMCSA "reluctantly" is extending the requirement that drivers have their medical certificates with them, according to the notice published in the *Federal Register*. That leaves little time for CDL holders who have not presented proof to their home state, and could be setting themselves up for a headache.

Each state's officials were allowed to determine how that state would accept proof of certification. Some states allow you to visit the licensing offices, mail, fax or email. Other states restrict that to fax only – like Tennessee. While there is a requirement in the regulation that states are to provide a stamped receipt stating the medical certification was received, that's not happening in all states – setting up compliant drivers for problems.

There have been cases around the country where drivers who had provided proof of certification to their home state still had their CDLs downgraded. It's not been an easy road to get those licenses reinstated in all cases.

CARB: BROKERS, FORWARDERS, SHIPPERS ON HOOK FOR REEFER REG

The New Year brought required emissions upgrades for 2006 reefer and generator set engines in California – an annual tradition many produce haulers are all too familiar with.

What many brokers, freight forwarders and other players in the industry may not know is they too are on the hook to be compliant with California's Transportation Refrigeration Unit regulation.

CARB's TRU Regulation requires emissions upgrades for reefers eight years after their year model year of production. Dec. 31, 2013, was the deadline for 2006 model year reefers to be upgraded. According to an informational email sent Tuesday by the California Air Resources Board, brokers, freight forwarders, shippers and receivers also are bound by the emissions requirements for reefers. Another new requirement of the rule will mean drivers with refrigerated loads must carry documentation with them while they're on the road.

"Any business entity that hires motor carriers to transport perishable goods on California highways and railways must require the carriers they hire or contract with to only dispatch TRUs or TRU generator sets that comply with the RU's in-use performance standards," the email reads.

CARB suggested several strategies to help those who hire motor carriers to ensure compliance with the reefer rule. The strategies include notifying refrigerated carriers they work with to register

their reefers with CARB's ARBER system and to dispatch only compliant TRUs to California. ARBER is the online equipment registration program.

"Notify them that you will not hire a carrier that can't show you that they are compliant with ARB's in-use performance standards," the email said. Businesses hiring refrigerated carriers can require the companies to show them a current ARBER certification page for each TRU they operate. The ARBER system has a "100 percent Compliant Carrier List" that highlights companies that are listed as being fully compliant with the Reefer Rule.

CARB said loads coming to or from California should be advertised as requiring CARB-compliant TRUs, and freight contracts and bills of lading should include similar language highlighted in bold print. Another new requirement of the rule will mean drivers with refrigerated loads must carry documentation with them while they're on the road. The business hiring the reefer must provide contact information to the motor carrier for their driver. The contact info must include the hiring entity, shipper and receiver.

Motor carriers must also give the driver contact information for the shipper, receiver and business entity that hired the motor carrier.

Drivers hauling reefer loads in California should be able to provide their driver's license, vehicle registration, bill of lading or freight bill with the origin and destination of the load, and contact information for the carrier, shipper, receiver and business entity that hired the carrier, the email said.

All parties involved in the freight transaction are subject to citations and fines by CARB, an advisory posted to the air quality agency's website says. Enforcement will occur at weigh stations, ports, border crossings, and other locations. The TRU rule can be enforced by CARB's uniformed enforcement staff and the Los Angeles Police Department.

SALES TAX ON FREIGHT CHARGES

There is a bill in Congress that would tax truck shipments at 1% on movements of more than 50 miles. There have been other attempts in the past to put sales tax on freight charges by various states in all of those have failed.

One can only imagine the confusion that will surround such a tax. It would generate a whole new system of auditing freight bills by the various states or federal government. TRANSTRENDS can only imagine the confusion that would ensue.

The 1% fee would be earmarked for the National Freight Mobility Infrastructure Fund. That fund would be earmarked for rail type projects. TRANSTRENDS would encourage Congress to tax rail freight movements 1% if they want that money for rail projects. Motor carriers pay enough in direct

and hidden taxes for infrastructure maintenance. Once the FEDS can tax freight movements it is only a matter of time that the states will get on the bandwagon – watch out!

EXPIRING TWIC CARDS NEED A $60, THREE-YEAR EXTENSION

Millions of truck drivers and other workers who visit US ports have carried Transportation Worker Identification Credentials (TWIC) for the last five years. Many of those workers will carry them for the next three years. The transportation security administration that recently posted an announcement on its website that TWIC cardholders must apply for a three-year extension for $60.

Problems with the equipment intended to read the TWIC cards has caused TSA to opt for a three-year expiration rather than a five-year card while they work out their problems. Again, another government agency at the ready.

FMCSA FINAL RULE PROPOSAL TARGETS "PATTERNS" OF SAFETY VIOLATIONS

Bad actors beware. The Federal Motor Carrier Safety Administration has issued a new final rule that will empower the agency to go after existing companies and drivers that have a “pattern” of safety violations.

The final rule enables FMCSA to “suspend or revoke the operating authority registration of motor carriers that show egregious disregard for safety compliance, permit persons who have shown egregious disregard for safety compliance to exercise controlling influence over their operations or operate multiple entities under common control to conceal noncompliance with safety regulations,” according to the proposal released Friday.

The rule goes into effect 30 days after it is first published. It is scheduled to be published on Jan. 22. Suspension or revocation of authority is costly. FMCSA estimates the average cost to relicense and reregister a 10-company truck is $32,000.

The regulation would apply to all motor carriers, even owner-operators who are leased to and running under another company’s authority – if they are in direct control of their own safety compliance.

“An owner-operator can be subject to this rulemaking either as a motor carrier or as an officer, depending on the capacity in which he or she is acting,” the proposal stated. “An owner-operator who engages in a pattern or practice of safety violations while working under another motor carrier’s registration risks having his or her own individual registration suspended or revoked.

However, an owner-operator who neither acts as a motor carrier nor an officer would not be subject to this rule."

Data from compliance reviews, safety audits, roadside inspections and other investigations would be considered in determining whether an actor or company poses a safety risk.

How does the agency define "pattern"? Well, in some cases, a single incident "could be sufficient to establish a pattern or practice" and will be determined on a case-specific basis.

The initial rulemaking stems from an Aug. 8, 2008, fatality bus crash in Sherman, Texas. Seventeen passengers were killed, and the bus driver and 38 other passengers received minor to serious injuries. The FMCSA investigation found the motor carrier was a reincarnated carrier that had recently been placed out of service for safety violations while operating without authority, and both companies were under the control of the same individual.

OOIDA and 23 others weighed in on the rulemaking last November. Those organizations include American Trucking Associations, FedEx, the Teamsters, the New York Department of Motor Vehicles, United Motorcoach Association, the AFL-CIO and Werner Enterprises. Seven individuals also submitted comments.

The rule would also put the onus on motor carriers to hire quality people in positions of control over safety operations and does not put limitations on the phrase "any person" who has a controlling influence, despite objections from large carriers.

In response to comments from Werner and the ATA, which expressed concern over the potential liability against a company or carrier's operating authority in the event they might "innocently hire" a person with a history of egregious safety violations.

FMCSA's response makes no bones about it – "Motor carriers are responsible for the people they hire on their behalf," and "placing limits on liability would discourage motor carriers from engaging in due diligence."

"The Agency finds it difficult to believe that any responsible motor carrier would engage someone to exert controlling influence over its operations without engaging in a level of due diligence sufficient to understand the person's qualifications and prior work experience in the industry," the FMCSA said in its response.

The New York Department of Motor Vehicles and five individuals expressed general support for the rule while one individual expressed general opposition. OOIDA expressed its support for portions of the proposal but also asked for further clarification on several points, as well as asked for the inclusion of whistleblower protection provisions.

FMCSA did not incorporate OOIDA's suggestion into the regulation, but did comment that individuals seeking such protection can do so through either the U.S. Department of Labor or through federal court. The agency also noted that complaints that whistleblowers levy could be enough to trigger enforcement under the new final rule.

With regard to reincarnated carriers, the rulemaking specifies that legitimate sales of motor carrier assets would not qualify as a reincarnated carrier.

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