



TRANSTRENDS

THE TRANSLAW GROUP, INC.

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VOTERS IN MASSACHUSETTS MAY DECIDE AUTOMATIC INCREASES



The public, at least the voting public, in Massachusetts may get a chance to stop the “auto-tax” that the state legislators voted into law. Motorists in MA are paying more in tax at the fuel pump since July 31. The tax went from 21 cents per gallon to 24 cents per gallon.

The boost is the result of the new transportation funding package that also ties the state’s fuel tax rate to inflation, which

allows for regular increases.

A group of Republican lawmakers and activists want to get rid of the provision allowing for automatic increases. They label the new law as a “forever tax” because the tax rate can increase without legislative action.

To qualify for the 2014 fall ballot, supporters must gather nearly 69,000 voter signatures in the months ahead. It is believed that the task of gathering 69,000 signatures should be achievable.

The fuel tax increase was part of a Democrat-led transportation funding package that includes a \$1 excise tax on cigarettes and adding the state’s 6.5 percent sales tax on computer software services. The new software tax is another issue that carries with it many unintended consequence and could actually generate as much as 500 million dollars in tax revenue rather than the 150 million projected. The new money will be applied to roads and bridges.

Wouldn't the legislators love the extra funds from the software tax? They would be like the proverbial kid in a candy store without parental supervision.

In addition, a 2.5-cent portion of the fuel tax applied to underground storage tank cleanups is being rerouted to transportation in the form of higher product cost.

CELADON CHANGES CRUISE CONTROL POLICY AFTER \$18.5 MILLION AWARD

For drivers at Celadon Trucking Services Inc., it's no longer an option to use the cruise control during inclement weather conditions. The company announced recently it's the policy to make sure that function is turned off.

The policy change comes on the heels of a massive wrongful-death judgment that was awarded last month to the families of two men. They were killed when a Celadon truck driver who was using cruise control in icy conditions rear-ended the victims' vehicle.

An Indiana jury ordered the company to pay a total of \$18.5 million to two Michigan families in a lawsuit stemming from a fatal crash on Interstate 94 near Portage, Ind., in 2011. The jury sided with the families of the two men who were killed in a multiple vehicle collision involving a tractor-trailer driven by Earnest Johnson, an employee of Celadon. The suit argued that the victims, 44-year-old Daniel Van Dyke, and his passenger, 47-year-old Richard Hannah, died as a result of negligent/reckless driving on the part of Johnson, who was driving too fast for conditions on an icy road.

The two victims, who had stopped on the road when another vehicle in front of them was disabled and spun out of control due to the slick conditions, were fatally struck by Johnson's tractor-trailer. During the trial, it was shown that the EOBR on Johnson's truck recorded his speed at 65 miles per hour on cruise control just before impact. Johnson was hauling 21 tons of crushed marble.

Celadon contended that Johnson could not have avoided the accident due to the presence of invisible ice, and that both Van Dyke and the other vehicle driver were contributorily negligent by failing to maintain proper control of their vehicles.

The jury found Celadon 40 percent at fault and driver Johnson 60 percent at fault and awarded Van Dyke's estate \$7.5 million. Due to fault apportionment, defendant Celadon was responsible for \$3 million and defendant Johnson was liable for \$4.5 million. Hannah's estate was awarded \$11 million, with Celadon responsible for \$4.4 million and Johnson \$6.6 million. The estates, together, collected \$18.5 million.

DOT WARNING LETTERS – WHAT TO DO

Receiving a warning letter from the US DOT citing you for excessive CSA scores in one or more of the critical areas can be very distressing. The following is a short list of descriptions for the 7 areas that the US DOT is monitoring. Each carrier should be familiar with this list and know the areas that constitute the basis for the CSA scores. And, for those of you who have not read an Industry newsletter or journal since 2009 CSA stands for **COMPLIANCE, SAFETY, ACCOUNTABILITY**.

Take a moment to read through the following and feel free to call the office with any questions that you may have.

1. UNSAFE DRIVING OVERVIEW

What is the Unsafe Driving BASIC? The Unsafe Driving Behavior Analysis and Safety Improvement Category (BASIC) is one of seven categories that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program uses to determine how a motor carrier ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes). The Unsafe Driving BASIC specifically addresses the requirements within the Federal Motor Carrier Safety Regulations (FMCSRs) Parts 392 and 397 and refers to the operation of commercial motor vehicles (CMVs) by drivers in a dangerous or careless manner. Some example roadside safety violations that may cause a motor carrier to rank poorly in this BASIC include speeding, reckless driving, improper lane change, and inattention.

2. FATIGUED DRIVING (HOS) OVERVIEW

What is the Fatigued Driving (HOS) BASIC? The Fatigued Driving (Hours-of-Service (HOS)) Behavior Analysis and Safety Improvement Category (BASIC) is one of seven categories that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program uses to determine how a motor carrier ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes). Specifically, the Fatigued Driving (HOS) BASIC addresses the requirements within the Federal Motor Carrier Safety Regulations (FMCSRs) 49 CFR Parts 392 and 395 to obey HOS rules and not drive when drowsy. This BASIC includes violations of the regulations pertaining to records of duty status (RODS) as they relate to HOS requirements and the management of commercial motor vehicle (CMV) driver fatigue. Some example roadside safety violations that may cause a motor carrier to rank poorly in this BASIC include a driver operating more hours than allowed under HOS regulations and falsification of RODS.

3. DRIVER FITNESS OVERVIEW

What is the Driver Fitness BASIC? The Driver Fitness Behavior Analysis and Safety Improvement Category (BASIC) is one of seven categories that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program uses to determine how a motor carrier ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes). The Driver Fitness BASIC specifically addresses the requirements within the Federal Motor Carrier Safety Regulations (FMCSRs) Parts 383 and 391 and refers to the operation of commercial motor vehicles (CMVs) by drivers who are unfit to operate a CMV due to a lack of training, experience, or medical qualifications. Some example roadside safety violations of the regulations that may cause a motor carrier to rank poorly in this BASIC include failure to have a valid and appropriate commercial driver's license (CDL) and being medically unqualified to operate a CMV.

4. CONTROLLED SUBSTANCES/ALCOHOL OVERVIEW

What is the Controlled Substances/Alcohol BASIC? The Controlled Substances/Alcohol Behavior Analysis and Safety Improvement Category (BASIC) is one of seven categories that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA)

program uses to determine how a motor carrier ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes). The Controlled Substances/Alcohol BASIC specifically addresses the requirements in Federal Motor Carrier Safety Regulations (FMCSRs) Parts 382 and 392. The Controlled Substances/Alcohol BASIC deals with the operation of commercial motor vehicles (CMVs) by drivers who are impaired due to alcohol, illegal drugs, and the misuse of prescription or over-the-counter medications. Some example roadside violations that may cause a motor carrier to rank poorly in this BASIC include a driver(s) failing an alcohol test, which indicates an alcohol level of .02 or greater, and operating under the influence of illegal drugs.

5. VEHICLE MAINTENANCE OVERVIEW

What is the Vehicle Maintenance BASIC? The Vehicle Maintenance Behavior Analysis and Safety Improvement Category (BASIC) is one of seven categories that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program uses to determine how a motor carrier ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes). The Vehicle Maintenance BASIC specifically addresses the requirements within the Federal Motor Carrier Safety Regulations (FMCSRs) Parts 393 and 396 to properly maintain a commercial motor vehicle (CMV). Proper maintenance includes, for example, ensuring that lamps or reflectors are working and tires are not worn. Some example roadside safety violations that may cause a motor carrier to rank poorly in this BASIC include operating an out-of-service vehicle or a vehicle with inoperative brakes, lights, and/or other mechanical defects, and failure to make required repairs.

6. CARGO-RELATED OVERVIEW

What is the Cargo-Related BASIC? The Cargo-Related Behavior Analysis and Safety Improvement Category (BASIC) is one of seven categories that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program uses to determine how a motor carrier ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes). At present, the Cargo-Related BASIC can only be seen by enforcement personnel or by a motor carrier that is logged into its own safety profile. It is not available to the public. The Cargo-Related BASIC specifically addresses the requirements within the Federal Motor Carrier Safety Regulations (FMCSRs) Parts 392, 393, 397, and Hazardous Materials (HM) Regulations to properly prevent shifting loads, spilled or dropped cargo, overloading, and unsafe handling of HM on a commercial motor vehicle (CMV). Some example roadside safety violations that may cause a motor carrier to rank poorly in this BASIC include improper load securement (see the specific securement requirements by commodity type in 49 CFR Part 393.116-393.136), cargo retention, and HM handling.

7. CRASH INDICATOR OVERVIEW

What is the Crash Indicator BASIC? The Crash Indicator Behavior Analysis and Safety Improvement Category (BASIC) is one of seven categories that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program uses to determine how a motor carrier ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes). At present, the Crash Indicator BASIC can only be seen by

enforcement personnel or by a motor carrier that is logged into its own safety profile; it is not publically available. The CSA program defines the Crash Indicator BASIC as histories or patterns of high crash involvement, such as frequency and severity. It is based on information from State-reported crashes that meet reportable crash standards. The Crash Indicator BASIC uses crash history that is not specifically a behavior but instead the consequence of a behavior or set of behaviors. The consequence of a behavior(s) can point to a problem that needs attention. State-reported crashes raise the percentile rank of the Crash Indicator, which indicates lower safety compliance. CSA's Safety Measurement System (SMS) does not currently factor in crash accountability; the agency is researching how this may be incorporated in the future.

When you receive a warning letter this should be the reminder to review your operations and make changes that will reflect upon an improved CSA score.

The following is a list of steps the US DOT follows when enforcing the CSA program.

EARLY CONTACT

Warning Letter - Correspondence sent to a carrier's place of business that specifically identifies an alerted Behavior Analysis and Safety Improvement Category (BASIC) and outlines possible consequences of continued safety problems. The warning letter provides instructions for accessing carrier safety data and measurement as well as a point-of-contact.

Carrier Access to Safety Data and Measurement - Carriers have access to their measurement results (BASICs scores), as well as the inspection reports and violations that went into those results. With this information, carriers can chart a course of self-improvement. Carriers can also monitor this data for accuracy and challenge it as necessary through FMCSA's DataQs system: <https://dataqs.fmcsa.dot.gov/login.asp>.

Targeted Roadside Inspection - CSA provides roadside inspectors with data that identifies a carrier's specific safety problems, by BASIC, based on the new measurement system. Targeted roadside inspections occur at permanent and temporary roadside inspection locations where connectivity to the SMS information is available. As Commercial Vehicle Information Systems and Networks (CVISN) technologies evolve, they will be incorporated into the roadside inspections.

INVESTIGATION

Offsite Investigation - A carrier is required to submit documents to FMCSA or a State Partner. These documents are used to evaluate the safety problems identified through the SMS and to determine their root causes. Types of documents requested may include third-party documents such as toll receipts, border crossing records, or drug testing records. The goal is to identify issues responsible for who may be subject to an onsite investigation or to subpoena records (see below).

Onsite Focused Investigation - The purpose of this intervention is to evaluate the safety problems identified through the SMS and their root causes. An onsite focused investigation may be selected when alerts in one or two BASICs exist. Onsite "focused" investigations target specific

problem areas (for example, maintenance records), while onsite "comprehensive" investigations address all aspects of the carrier's operation.

Onsite Comprehensive Investigation - This intervention is similar to a CR and takes place at the carrier's place of business. It is used when the carrier exhibits broad and complex safety problems through continually alerted BASICS, worsening multiple BASICS (three or more), or a fatal crash or complaint.

FOLLOW-UP

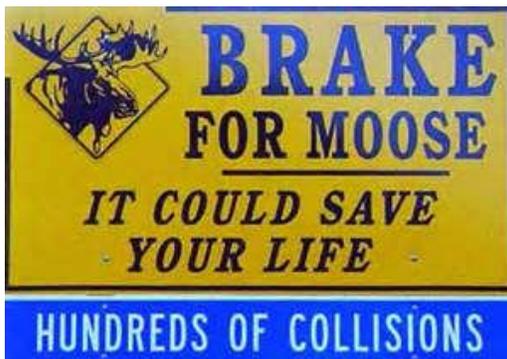
Cooperative Safety Plan (CSP) - Implemented by the carrier, this safety improvement plan is voluntary. The carrier and FMCSA collaboratively create a plan based on a standard template to address the underlying problems resulting from the carrier's substandard safety performance.

Notice of Violation (NOV) - The NOV is a formal notice of safety alerts that requires a response from the carrier. It is used when the regulatory violations discovered are severe enough to warrant formal action but not a civil penalty (i.e., a fine). It is also used in cases where the violation is immediately correctable and the level of, or desire for, cooperation is high. To avoid further intervention, including fines, the carrier must provide evidence of corrective action or initiate a successful challenge to the violation.

Notice of Claim (NOC) - A NOC is issued in cases where the regulatory violations are severe enough to warrant assessment and issuance of civil penalties.

Operations Out-of-Service Order (OOS) - An OOS order is an order requiring the carrier to cease all motor vehicle operations.

MAINE DOT, SHERIFF WARN MOTORISTS TO 'BEWARE OF MOOSE'



Five crashes in four days involving drivers and moose throughout Franklin County have the Maine Department of Transportation and the local sheriff's department warning drivers to be alert.

The crashes occurred over a four-day period from July 26-29 in the northwestern county, which borders the Canadian province of Quebec. The collisions with moose happened on Route 27 in Wyman Township, Route 4 in Sandy River Plantation, Route 16 in Coplin Plantation, and Route 4 in Rangeley, according to sheriff's department Lt. David Rackliffe. No injuries were reported in the collisions.

"We do, on a fairly regular basis, see trucking issues with moose," Rackliffe said "Typically those involve trucks going back and forth to the Canadian border on Route 27 between Stratton and the

Coburn Gore. None of the last five have resulted in serious injuries, but we've certainly seen those in the past."



This is the second warning issued in 2013 to alert motorists of increased danger from wildlife. Rackliffe said Franklin County has seen an increase in collisions with deer as well as moose.

"It's early for the rut," he said. "Typically the roads travel through some very remote areas. The construction of the roads creates some natural bogs, which are natural moose-feeding areas. They come out there for two reasons: to eat and to get some relief from the bugs, which are thicker in the woods."

TRANSTRENDS was not going to stoop to this kind of low level humor for fear that some readers would be offended by the car load of moose. But, sadly, TRANSTRENDS could not help itself!

COURT UPHOLDS ALL BUT ONE PROVISION OF NEW HOURS OF SERVICE REGULATIONS

The never-ending warfare over the hours of service may very well be coming to a close as the U.S. Court of Appeals for the District of Columbia Circuit upheld all but one provision of the regulations in an opinion filed Friday, Aug. 2.

The decision responds to a pair of challenges brought against the regulation. The first challenge was filed by the American Trucking Associations and the second was filed by the Advocates for Highway and Auto Safety, Public Citizen, and the Truck Safety Coalition.

The 22-page decision written by Judge Janice Rogers Brown concludes with Judge Brown being very clear that the court upholds the lion's share of the current hours-of-service regulation.

"It is often said the third time's a charm. That may well be true in this case, the third of its kind to be considered by the circuit. With one small exception, our decision today brings to an end much of the permanent warfare surrounding the HOS rules," Judge Brown wrote.

However, she did not credit the rulemaking processes followed by the Federal Motor Carrier Safety Administration. "Though FMCSA won the day not on the strengths of its rulemaking prowess, but through an artless war of attrition, the controversies of this round are ended."

The decision vacates one small provision within the regulations.

Short-haul drivers will not be subject to the 30-minute off-duty break requirement.

“In all other respects, the petitions of both the ATA and Public Citizen are denied,” Judge Brown wrote in the decision.

WHAT DOES ALL OF THIS MEAN: The current hours-of-service regulations, which went into effect July 1, essentially stay as is thanks to the court’s ruling – minus the exemption for short-haul drivers.

ARE YOU AN UNLICENSED PROPERTY BROKER

Effective October 1, 2013 motor carriers that routinely engage in “brokering” of loads to other carriers without holding a broker’s license may find that they are in violation of a new regulation pursuant to MAP-21 - Moving Ahead for Progress in the 21st Century.

Any entity providing brokering services must hold a broker’s license. Many motor carriers do not hold a broker’s license but engage in brokering on a daily basis. Currently it is legal to provide such service but after October 1, 2013 it will be illegal and the penalty is \$10,000.00 for each violation.

AND, to complicate matters after October 1, 2013 applicants for a broker’s license will have to prove itself worthy of a broker’s license through training and/or documentary evidence. All brokers after October 1, 2013 will have to produce a surety bond in the amount of \$75,000.00 rather than the current \$10,000.00 requirement.

The new surety bond requirement should cost about \$7,000.00 according to industry estimates. Many entities may find that they cannot qualify for the new bonding requirement even if they have the money!

It should be noted that the motor carriers should form new companies in order to avoid carrier liability from combining the two types of service, motor carriage and brokering, into one entity. In fact, current holders of both motor carrier authority and a broker’s license in the same entity should consider a change in operations as well.

Currently, there is no prohibition from one entity from holding a motor carrier authority and a broker’s license.

The reason for my recommendation to have separate entities comes from the liability issues that arise when one entity acts in both capacities.

The issue will originate when the B/L is cut. The name will most likely be the name of the carrier/broker. The confusion begins at this point. If there is an incident either cargo or highway accident the shipper will most certainly assert that the “carrier” handled the freight in its capacity as that of an insurer of the goods and not in the capacity of the “broker”.

Brokers who are also carriers may pick up the liability of a carrier for the acts of a standalone carrier that it engaged to handle the traffic.

Carriers and brokers have diametrically opposed positions with respect to liability. It is difficult at best to determine the parties when there is an incident. You will find that most courts will favor the position that the broker was actually acting as a carrier when it holds both types of authority.

If a motor carrier is also licensed as a broker or freight forwarder, courts may impose carrier liability on the company even when loads are moved through the broker channel. The fact that a broker also has motor carrier authority is not necessarily determinative but the joint venture theory holds that brokers and carriers are essentially the same entity if there is co-operation for profit and one exercises sufficient control over the other (see Realty Development Co. v. Feit and Toledo v. Vanwater & Rogers).

It is also very possible that a plaintiff will argue that the broker company was actually acting as a motor carrier company and not a broker when this was not the intention of the company. Confusion arises because a motor carrier hiring an owner operator (who has MC authority) and a broker hiring that same owner operator will appear to be very similar. Only the bill of lading will likely differ. From a liability standpoint, however, the implications can be significant.

A motor carrier has primary responsibility for bodily injury and property damage even if an owner operator is working under the motor carrier's authority. That is why the Translaw Group, Inc. always advises clients to hold the carrier authority in one entity and the broker's license in another entity in an effort to reduce liability exposure.

To learn more about this dramatic and perhaps unintended result of MAP-21 call the office for more specifics that will address your particular situation.

AS FREDDIE MERCURY SAID "ANOTHER ONE BITES THE DUST!"

A man convicted of the road-rage killings of two truck drivers was executed in Texas on Wednesday, July 31. This was the 11th execution in the Lone Star State this year! Even in the final moments of his life, Douglas Alan Feldman, 55, who admitted to killing Robert Stephen Everett, 36, of Marshfield, Mo., and Nicolas Velasquez, 62, of Irving, Texas, blamed the victims for their own deaths.

Jason January, former Dallas County assistant district attorney who prosecuted Feldman, said that on Thursday, Aug. 1, that Feldman showed no remorse as he was about to be executed. January, along with three family members of each of the victims, attended Feldman's execution in Huntsville, Texas, on Wednesday.

January said Feldman read a prepared statement prior to being put to death: "I hear by declare Robert Stephen Everett and Nicolas Velasquez guilty of crimes against me, Douglas Alan Feldman, either by fact or by proxy. I find them both guilty. I hear by sentence both of them to death, which I carried out in August 1998, as of that time the state of Texas has been holding me illegally in confinement and by force for 15 years. I hear by protest my pending execution and demand immediate relief."

Well, apparently Mr. Feldman got the relief that he sought as he was put to death by lethal injection.



January said Feldman displayed similar behavior at his trial 15 years ago before he was sentenced to death in September 1999 for killing Everett and Velasquez. He said Feldman “had rage that carried on throughout his whole life.”

“He kept his rage consistent for decades up until yesterday when he was executed,” January said Thursday. “He still had rage and was anti-remorseful. He was still attacking the victims to the very, very end.” Feldman’s final clemency petition with the Texas Board of Pardons and Paroles was turned down on July. 29. His other appeals, including the U.S. Supreme Court, were also rejected.

According to court documents, on Aug. 24, 1998, Feldman chased Everett on his Harley-Davidson motorcycle, firing shots into the back of Everett’s trailer, near Plano, Texas, after the truck driver allegedly cut him off on the highway. When Everett didn’t stop, Feldman then pulled up alongside the truck driver and “fired several times directly at Everett, killing him.”

The police report states that Feldman fired a total of 12 shots into Everett’s truck. After killing Everett, he then pulled into a mall parking lot for a time, then decided to ride back to where Everett’s truck was stopped “to determine whether Everett was dead,” according to court documents.

Approximately 45 minutes later, Feldman spotted another truck driver, Nicolas Velasquez, a tanker truck driver who worked for Exxon, who was filling the ground tanks at an Exxon gas station. Feldman fired four shots, hitting Velasquez twice in the back, killing him.

At trial, Feldman admitted that he shot Velasquez because he was still angry about the road-rage altercation with Everett previously. More than a week later, Feldman “drove by and opened fire” on Antonio Vega, who was talking on a pay phone at a fast-food restaurant. Vega was injured, but survived. A witness at the scene wrote down Feldman’s license plate, which led to his arrest.

CHARGES PENDING IN HIT-AND-RUN DEATH OF TRUCK DRIVER ON I-95



Investigators say alcohol may have played a factor in a deadly hit-and run crash. A 57-year-old truck driver was standing near his disabled rig on the shoulder of Interstate 95 on July 25 near Baltimore, Md., when he was hit.

According to a news release by the Maryland Transportation Authority, Jeffrey R. Anderson of Chicopee, Mass., was killed around 11:20 a.m. after a northbound vehicle on I-95 struck him

and then hit his tractor-trailer, as well as a service vehicle that was on-site fixing Anderson's tire.

The driver of the vehicle then fled the scene. The MDTA Police release states that Peggy Kathleen Turner, 45, was later stopped several miles from the crash scene. Her 2004 Pontiac had "significant front-end damage consistent with a pedestrian collision."

"The charges will not be determined until the Collision Investigation Report is finalized and the State's Attorney is consulted," reports indicated.

THE END

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