



Blog by Tommy Ruke, The King Pin – Leading Expert in Truck Insurance

THE GOVERNMENT ERUPTS

Last week's Transport Topics' editorial titled "Government Erupts" pointed out some of what we have discussed, been surprised by, worried about and explored options because of the FAST bill that hid the CSA scores. By now, things have calmed down and we understand with CAB and Carrier Software the past information will be available; just now have to take steps and "yes" pay something to access the information. Now we are back to the continuing discussion of do the CSA scores have a relationship with crashes and how flawed the scores are?

A couple of happenings follow. The long awaited Electronic Log Device Rule has been issued. Commercial motor vehicles must have ELD's within two years. We have stated before that we believe an insured should start equipping their units now and not wait until the last months. They are not that expensive. The Rule does not require a two-way communication system so no monthly fees are required. The ELD units will become even more reasonably priced now that the Rule has been issued and equipment providers will soon have new models that meet the requirements of the Rule. If the motor carrier does not start using ELD's, then they will not be able to control their HOS BASIC. I know the score is hidden but enforcement officers will still use and intervention will be possible if their threshold is exceeded. Insurance carriers will be able to access the information with CAB and Carrier Software so controlling the HOS BASIC is still important.

In James Jaillet's December 15, 2015 article, "OOIDA asks for court review of ELD mandate, files legal petition" –

OOIDA President and CEO Jim Johnston also said the group intends to "fight the mandate with everything we have available. This regulation is absolutely the most outrageous intrusion into the rights of professional truckers imaginable and will do nothing at all to improve highway safety. In fact, we firmly believe it will do exactly the opposite by placing even more pressure and stress on drivers than they already deal with.

Yes, OOIDA represents small motor carriers. My question is what is the concern with ELD's? I wrote a blog a couple years ago when the Rule was first

suggested. The article quoted a carrier, “I was against electronic logs until I realized why I was against them – I want to cheat and I cannot cheat any longer so I now support.”

When providing insurance to a motor carrier, I would ask why no ELD’s. If the answer is cost, the new Rule reduces the cost. If they say, I do not want an invasion of my privacy, I do not want big brother watching me. The bottom line is they are saying, I do not want the government to be able to see if I am complying with the HOS rule. Does an insurance provider want to provide insurance to an insured with that mentality? When will ELD’s be a part of underwriting considerations? I would suggest soon.

In James Jaillet’s December 14, 2015 article, “Carrier Scoring Safety Fitness Determination Rule ready for publication following OMB clearance,”

The DOT has been working on the rule since 2007. Few details are known about what it entails. According to the agency’s regulatory summary, it would give FMCSA a new system to “determine when a motor carrier is not fit to operate.” The safety determination, however, would be in part based on the BASIC categories in the agency’s Compliance, Safety, Accountability program, and it’s unclear whether recent Congressional action to remove CSA rankings from public view will impact the SFD rule.

Language in the highway bill expressly prohibited use of SMS BASIC “alerts and the relative percentile for each BASIC developed under the CSA program” to be used for carrier Safety Fitness Determination until FMCSA acts on the required revamp of the CSA program. The highway bill directed the agency to, within 18 months, commission a study by the National Academies to recommend improvements to the CSA SMS, with implemented changes then following before returning the SMS to public view.

The NPRM will likely be published before year’s end.

Will it happen? Again, conflicts between FMCSA and Congress, but if it happens, it will be a game changer. It will be challenged in the courts and maybe by Congress. Even if the Rule is published and started, it might be a while before it is settled.

Depending how the new rating is developed, published and implemented, it could make the CSA scored not as important. This will be something to watch.

The URS was pushed back from October 23rd with the first provision being application for a new DOT number must be done on line using the new portal and the MCSA-1 application. This will be the way a motor carrier updates their information that they furnish the government now on the 150. After 9/30/16 they will have to use the portal. Remember the MC# will go away as well as the MCS150 and OP1. I wanted to see how this was done and started to apply for a DOT#, took 1 ½ hours and when I thought I was at the end, there was an error message – My reaction was Help! Our friend, Hank Seaton, sent me an email that he shared with others as well. Moving forward a lot of motor carriers, particularly smaller ones and ones like me who do not understand on line forms, will require help to obtain a new DOT# – a new cottage industry?

From Hank:

The FMCSA's "Wizard" went active on Saturday, December 12 for the limited purpose of filing applications by new registrants. The website is functional, if still confusing, and to date approximately 342 applications have been filed.

Given the Christmas rush, we suggest the following:

- (1) The agency is having a final user conference on Friday, December 18th at 2 pm ET. Registration for this conference is still open to interested members of the public. See: <https://conectdot.connectsolutions.com/admin/show-event-catalog?folder-id=1129332877>
There are also training modules available at: <https://portal.fmcsa.dot.gov/urstraining/US%20Canadian%20Modules.html>
- (2) If you regularly file applications for clients, go onto the registration page at: <https://portalfmcsa.dot.gov/UrsRegistrationWizard/> and complete a dummy application which will run you through the questions and answers *ad seriatim*. As long as you do not post any money, your application will be dormant and unprocessed, but you can see the areas in which there are questions
- (3) On Tuesday of next week (December 22), FLAPS will sponsor a conference call at 2 pm ET to discuss any residual questions you may have including our concerns. The dial-in number is 1-888-205-5513 then enter passcode 470097.

The first part of URS is on time. Remember the real important date is 9/30/16 when exempt interstate motor carriers will have to have a filing as well as

private motor carriers hauling anything hazardous in interstate commerce or bulk in intrastate commerce. The MC# will go away and there will only be DOT#'s. As last week's webinar showed, the FMCSA SMS/CSA website has a new icon – Insurance & Others, so when the unit is stopped the DOT enforcement officer will be able to see if insurance is in place from that website. Today it is not relevant except at an on-site inspection.

A lot is going on – I hope you all have a great holiday and look forward to a great 2016.