

The Transportation BriefSM



The Transportation Brief

A quarterly newsletter of legal news for the clients and friends of Scopelitis, Garvin, Light & Hanson.

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Indianapolis Office:
10 W. Market Street, Suite 1500
Indianapolis, IN 46204
phone (317) 637-1777
fax (317) 687-2414

8

Chicago Office:
120 S. LaSalle Street, Suite 1700
Chicago, IL 60603
phone (312) 422-1200
fax (312) 422-1224

8

Washington, D.C. Office:
1500 K. Street, N.W., Suite 910
Washington, DC 20005
phone (202) 783-9222
fax (202) 783-9230

8

Editor
Lynne D. Lidke

Assistant Editor
Karla Cooper-Boggs

8

Please mail, fax or e-mail address changes to:
The Transportation Brief
Scopelitis, Garvin,
Light & Hanson
10 West Market St., Suite 1500
Indianapolis, IN 46204
fax (317) 687-2414
tbrief@scopelitis.com



Trucking Industry May See Flurry of New Federal Safety Regulations by Year's End

With only a few months left in the Clinton Administration, the federal regulatory agencies in Washington, D.C., have never been busier. Listed below are four major safety regulations that are on the "fast track" and will, if enacted, have a significant impact on the trucking industry, its customers, and the American economy:

- ❖ **Hours-of-Service Rules:** The Federal Motor Carrier Safety Administration (FMCSA) has proposed new rules governing maximum work hours for commercial truck drivers, including the replacement of driver logbooks with mandatory electronic on-board recorders and new recordkeeping obligations. The comment period closes on October 30, 2000, and, unless this rulemaking is stopped legislatively, FMCSA expects to publish the new rules in early 2001.
- ❖ **Driver Training Standards:** FMCSA also intends to promulgate new mandatory training requirements for entry-level drivers and drivers of "multiple trailer combination vehicles," including longer-combination vehicles. These rulemakings have not yet begun, but FMCSA's proposed rules (at least with respect to entry-level training) are expected by the end of the year.
- ❖ **Diesel Engine Emissions and Fuel Standards:** The Environmental Protection Agency (EPA) has published proposed new regulations governing heavy-duty highway engine standards, targeting nitrogen oxide and particulate emissions from diesel engines. According to EPA's estimates, the proposed new standards will add \$2,768 to the cost of a new heavy-duty truck and an additional \$3,362 over the lifetime of the truck. The comment period in this rulemaking closed August 14, 2000, and final rules could be issued by December.
- ❖ **Federal Ergonomics Standard:** The Occupational Safety and Health Administration has proposed a new federal ergonomics standard designed to minimize repetitive motion, heavy lifting, vibration, and other so-called "ergonomic risk factors" in the workplace. The final rules are expected to be issued by the end of the year.

Trucking industry representatives have the right to submit written comments or otherwise participate in these important proceedings and are encouraged to contact the Firm for further information.

Laurie T. Baulig, Washington, D.C.
Timothy W. Wiseman, Indianapolis

SCOPELITIS, GARVIN, LIGHT & HANSON

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Briefly...

SafeStat Used to Select Carriers for DOT Audit

The Department of Transportation (DOT) is now using a computer program called SafeStat to assist in targeting motor carriers for compliance audits. The program compiles historical data on all motor carriers, including roadside inspection data, compliance reviews and enforcement case information.

The historical data is evaluated in four Safety Evaluation Areas, including drivers, vehicles, safety management and accidents. The evaluations are used to compare carriers with respect to their safety and compliance efforts, and the DOT generates periodic reports listing which carriers are targeted for on-site compliance reviews.

The SafeStat Analysis Report is available on-line by accessing www.ai.volpb.dot.gov, where information can be obtained on a carrier's ranking, prior DOT enforcement cases, and information regarding the carrier's vehicle and driver out-of-service rates. Motor carriers should ensure that the SafeStat information is accurate and up to date. This information may be used by customers as a basis for carrier selection.

*Timothy W. Wiseman
Indianapolis*

*Daniel R. Barney
Washington, D.C.*

Vehicle Marking Rules Revised

The Federal Motor Carrier Safety Administration has substantially revised its vehicle identification requirements. Important changes include the following:

- ❖ Effective July 3, 2000, commercial motor vehicle additions to a fleet, including a for-hire motor carrier fleet, must display the USDOT number.
- ❖ For vehicles placed into service prior to July 3, 2000, carriers have 2 years to begin displaying the USDOT number, with the option of continuing to display only the MC number prior to that time.
- ❖ For new fleets, Motor Carrier Identification Reports (Form MCS-150) must be submitted by mail or facsimile prior to commencing operations, thereby eliminating the previous 90-day grace period. The existing rule requires periodic updates of the MCS-150 (an initial update is required by December, 2000), but updating issues are to be further addressed by the DOT.
- ❖ The city and address of the motor carrier need no longer be displayed.

To the extent state vehicle marking requirements are not inconsistent with the new federal rules, they are not impacted by the changes listed above.

*Andrew K. Light
Indianapolis*

Key Changes in Hours-of-Service Proposal

- ❖ **Types of Operations.** The proposal defines five types of trucking operations and prescribes hours-of-service limitations for each type. It will be difficult for carriers to identify their "type" of operations, and it will be equally difficult for enforcement personnel to determine which regulations apply to each driver.
- ❖ **Daily On-Duty Limits.** The proposal allows drivers to drive up to 12 hours in a 24 hour period. However, the proposal eliminates the 15-hour "on-duty" rule and requires 10 hours of consecutive off-duty time after 12 hours of on-duty time have been met. The proposal also eliminates the use of sleeper berth time for single drivers.
- ❖ **Mandatory Weekend Requirement.** Under the proposal, drivers are limited to working (both driving and on-duty time) no more than 60 hours in a 7-day period. However, in each work week, all drivers must be provided an off-duty period of at least 32 to 56 consecutive hours.
- ❖ **Mandatory On-Board Recorders.** The ultimate goal under the proposal is to eliminate paper logbooks within 2 to 3 years and instead require all carriers to utilize on-board recording technology to record a driver's driving and on-duty time.

*Timothy W. Wiseman
Indianapolis*

*Laurie T. Baulig
Washington, D.C.*



Mileposts

A Special Edition of The Transportation Brief

The Clinton Administration is focusing at the end of its term on a regulatory agenda that addresses a broad range of safety issues at potentially great expense to the industry. This Special Edition of *The Transportation Brief* focuses on those issues and the role the Firm's attorneys are playing in response.

Laurie Baulig sees the proposed ergonomics standard as a "top priority" for the Clinton Administration, one that will cost the trucking industry billions within its first year if enacted. Baulig has played a key role in the industry's opposition to the ergonomics standard through her testimony at OSHA's hearings in March and her preparation of written comments challenging the assumptions on which the standards were developed. Jerry Cooper testified at OSHA's Chicago hearings last spring.

Tim Wiseman and Baulig are also monitoring the hours-of-service rulemaking through the Federal Motor Carrier Safety Administration (FMCSA) and have attended hearings in D.C. and Indianapolis over the past several months. They will continue to update clients on hours-of-service developments as they arise. In the meantime, Wiseman advises that the FMCSA has raised the bar on safety concerns with its announced plans to double the number of safety audits this year. The increased scrutiny places a higher premium on training, compliance, and recordkeeping, according to Wiseman, who conducts DOT mock audits for clients and speaks widely on trucking safety issues.

Baulig and Wiseman, along with Norm Garvin, Andy Light and Dan Barney, continue to counsel trucking industry clients regarding safety matters such as placarding, DOT driver qualification file maintenance, drug screening requirements, OSHA safe workplace requirements, and hazardous materials training for employees.

For the Record

Sylvia F. James recently joined the firm as an associate in the Washington, D.C., office. Sylvia will continue her practice in labor and employment, which she established in the D.C. office of Akin, Gump, Strauss, Hauer, and Feld, LLP. Sylvia earned her undergraduate degree at Vassar College in 1993 and her law degree at the Duke University School of Law in 1996.

Billing coordinator **Kim Frederick** of the Indianapolis office has been assigned new responsibilities as Bookkeeping Manager. **Shane Mays**, formerly a technology systems engineer with Cornerstone Systems, Inc., has been selected for the firm's newly-created position of Information Technology Manager. Shane will coordinate the firm's multi-office computer network from the Indianapolis office. Congratulations to Kim and Shane.

With regret and best wishes, we note the departure of associate **David C. Milne** from the Indianapolis office. Dave has accepted a position as associate general counsel at Consolidated Products, Inc., in Indianapolis.

On the Road

Tim Wiseman will moderate and serve as featured speaker at the "Haz Mat Transportation Seminar" sponsored by the Indiana Propane Gas Association on August 23 in **Indianapolis**.

Dan Barney will present an update on Washington, D.C., legal and policy issues at the General Session of the Truckload Carriers Association Independent Contractor Division Annual Meeting, September 15, in **Dallas**.

Laurie Baulig will participate in a panel discussion on the Occupational Safety and Health Administration's proposed ergonomics standard at the National Meeting of the American Trucking Associations' (ATA) Safety Management Council, October 2-4, in **St. Louis**.

Norm Garvin and Tim Wiseman will attend the Indiana Motor Truck Association's Annual Convention, October 12 - 16, in **Amelia Island, Florida**.

Tom Farrell will speak on "Defending Closed-Head Injuries" at the Trucking Insurance Defense Association, October 13, in **Las Vegas**.

Greg Feary and Steve Pletcher will attend the National Association of Professional Employer Organizations' Annual Convention, October 17 - 19, in **Las Vegas**.

Andy Light, Greg Feary, Jerry Cooper, and Dan Barney will attend ATA's 2000 Management Conference & Exhibition, October 29 - November 1, in **San Diego**. Dan will lead an educational session on "E-Commerce and Online Exchanges."

Greg Feary will speak on "Hard Market Insurance Issues for the Trucking Industry" at the Ontario Trucking Association's Annual Convention, November 10, in **Toronto**.



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Dispatches



Driver qualification file maintenance is an essential part of any carrier's safety compliance program. One common violation cited during DOT compliance reviews is incomplete documentation in driver qualification files. To avoid fines and an unfavorable safety rating, Tim Wiseman and Norm Garvin advise motor carriers to do the following:

- ◆ Ensure that the files contain all records required by law, which include a complete driver application form, motor vehicle record, current medical certification card or long form physical, copy of current driver's license, annual review certificate, certificate of violations and evidence of required background investigations.
- ◆ Develop a system to ensure the timely renewal of each driver's annual review certificate, medical certification and driver's license.
- ◆ Keep sensitive information such as medical certification information and drug test results in a secure location to prevent breaches of confidentiality and tampering.
- ◆ Verify that each driver meets the minimum DOT medical qualification standards.