

The Transportation Brief®



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FMCSA Releases New Hours of Service Rules

On December 22, 2011, the Federal Motor Carrier Safety Administration (FMCSA) released the long-awaited new Hours of Service (HOS) rules for property-carrying commercial truck drivers. Importantly, the new rules do not eliminate the 11th hour of available driving time as initially feared by many within the motor carrier industry.

Still, the rules create some important changes for truck drivers. The most significant changes do not take effect for drivers until July 1, 2013, and separate but now consolidated lawsuits have already been filed by both the American Trucking Associations and Advocates for Highway and Auto Safety in the U.S. Court of Appeals for the District of Columbia.

A summary of the HOS changes, including the more minor changes that became effective on February 27, 2012, includes:

PROVISION	CURRENT RULE	NEW RULE – COMPLIANCE DATE JULY 1, 2013
Total On-Duty Time In Each Shift	14 consecutive hours	Still 14 consecutive hours, but must include a 30-minute rest break for maximum on-duty time in 14-hour window of 13.5 hours. Non-driving work after 14 th hour permitted, but NO driving after the 14 th hour.
Restart Provisions	Drivers Allowed: 34 consecutive hours off-duty resets driver's cumulative on-duty to zero at any point in driver's 7 day cycle. (This restarts driver's work week)	Drivers Allowed: The minimum length of a restart period is 34 consecutive hours off-duty. However, the restart must include (1) two periods between 1 am and 5 am and (2) may only be used once in a 7-calendar-day week (168 hours)
Mandatory Rest Break	NONE	Drivers are not permitted to drive if 8 hours have passed since their last break of 30 minutes or more
COMPLIANCE DATE FEBRUARY 27, 2012		
Definition of On-Duty Time	Includes any time in CMV except in sleeper berth	Does not include any time resting in a parked CMV. In a moving CMV, does not include up to 2 hours in the passenger seat immediately before or after 8 consecutive hours in the sleeper berth.
Oilfield Exemption	Record keeping for "waiting time" is not specified	"Waiting time" for certain drivers must be shown on logbook or electronic equivalent as "off-duty" and identified in remarks.
Penalties	"Egregious" violations not specifically defined	"Egregious" violations defined as allowing driver to drive 3 or more hours beyond the drive-time limit. These violations can be subject to the maximum civil penalty. \$2,750 fine per offense for drivers and \$11,000 fine per offense for companies. Also applies to passenger-carrying drivers.

On a related note, with the release of the HOS rules for property-carrying drivers, the FMCSA now will tackle new rules for passenger-carrying drivers. On January 9, 2012, the agency held its first listening session to begin gathering comments and information in order to issue proposed rulemaking by the end of 2012.

Timothy W. Wiseman, Indianapolis *Annette M. Sandberg, Spokane*

Briefly...

FMCSA Signals Possible SMS Changes

The Compliance Safety Accountability (CSA) Safety Measurement System (SMS) has been publicly available for well over a year now. Since its implementation, the Federal Motor Carrier Safety Administration (FMCSA) continues to “tweak” the SMS based on industry concerns and the agency’s own initiative.

Recent publications by the FMCSA signal further changes the agency is considering in 2012, including the following:

1. Removing “cargo securement” violations from the “Cargo-Related” BASIC and moving them to the “Vehicle Maintenance” BASIC. This would leave only hazardous materials violations in the “Cargo-Related” BASIC.
2. Making improvements in assigning vehicle maintenance violations to intermodal equipment providers where appropriate.
3. Eliminating from the SMS vehicle violations that are derived from “driver-only” inspections and eliminating driver violations from “vehicle-only” inspections.
4. More accurately identifying motor carriers that are involved in transporting passengers or hazardous materials.
5. Differentiating between “safety” and “non-safety” related license suspensions.
6. Providing a process for challenging crash accountability.

Stay tuned for these and other changes.

*Timothy W. Wiseman,
Indianapolis*

*Annette M. Sandberg,
Spokane*

FMCSA, Congress Working On Broader EOBR Mandate

In August of 2011, the U.S. Court of Appeals for the Seventh Circuit struck down the FMCSA’s rule mandating EOBRs for certain carriers with poor hours-of-service compliance ratings, agreeing with the Owner-Operator Independent Drivers Association that the FMCSA’s rulemaking process failed to address privacy concerns posed by the devices. Despite this setback, the FMCSA is working on a follow-up rule that will attempt to address those privacy concerns, as well as clarify certain technical requirements for EOBRs and make them mandatory for a larger number of carriers. Apart from this agency rulemaking activity, legislation proposed in the Senate would mandate EOBRs on an industry-wide basis. With a rulemaking and proposed legislation in play, many in the industry are closely watching this issue, as it signals that a broader EOBR mandate is on the horizon.

*Gregory M. Feary,
Indianapolis*

*Braden K. Core,
Washington, D.C.*

Federal Hand-Held Mobile Phone Ban Takes Effect

Effective January 3, 2012, the Federal Motor Carrier Safety Regulations prohibit commercial drivers from using hand-held mobile phones while operating a commercial truck or bus. This prohibition is in addition to the previously-adopted “texting ban” as well as state and local prohibitions. The ban prohibits holding a phone to talk, dial, or answer a call in a manner that requires pushing more than one button and reaching for a phone in a manner that causes the driver to not be properly restrained by a seatbelt. “Driving” includes time spent stopped in traffic. Violations of the new rule can result in fines of up to \$2,750 to drivers and \$11,000 to motor carriers. Habitually-offending drivers of this rule can be disqualified from operating a commercial motor vehicle.

*Nathaniel G. Saylor,
Indianapolis*



Mileposts

Scopelitis Opens Dallas/Fort Worth Office

Transportation attorneys John W. Greene and John P. Dimitry have joined the Scopelitis law firm in the firm's newest office – its 8th nationwide – in Dallas/Fort Worth. The office opened February 1, 2012.

The Dallas/Fort Worth presence further broadens the firm's reach in two very important ways, according to Greg Feary, President of the Scopelitis firm and one of its managing partners. It does so first by adding two very talented and well respected transportation attorneys, and second by providing clients in the Southwest transportation market ready access to the firm's national transportation law knowledge-base, as well as a transportation knowledge-base specific to the region.

John Greene has been practicing law since 1985, almost exclusively in transportation law. He currently serves as General Counsel for the Texas Motor Transportation Association (TMTA), one of the nation's largest state trucking trade organizations. He also serves on the TMTA's Executive Committee and is a member of its Board of Directors. He is a frequent speaker on a wide range of topics in transportation law at a number of Texas state and regional conferences.

Greene is the managing partner in the Dallas/Fort Worth office. His practice focuses on motor carrier litigation, employment law, administrative and regulatory law, highway accident defense, and civil trial litigation.

John Dimitry's path to the Scopelitis firm included a number of key roles over the past 13 years as inside counsel to leading US domestic and global logistics providers, including most recently DHL. Dimitry has negotiated hundreds of contracts with major multinational companies, developed and implemented numerous contracting and compliance policies, and has been involved in a number of key corporate restructuring projects.

Dimitry has joined the Scopelitis firm as of counsel. His practice will focus upon domestic and international transportation contracts, regulatory and compliance matters, taxation, and other legal issues relevant to freight forwarders, warehouse operators, logistics providers, and transportation intermediaries.

For the Record

We are pleased to announce that attorneys **John W. Greene** and **John P. Dimitry** have joined the firm and will practice from its recently-opened Dallas/Fort Worth office.

Greg Feary has been re-elected to the Scopelitis firm's Management Committee and will continue to serve as managing partner with Indianapolis partners **Lynne Lidke** and **Tim Wiseman**.

On the Road

Todd Metzger and Bob Henry will present an owner-operator update on independent contractor issues in mergers and acquisitions at the Truckload Carriers Association 2012 Annual Convention, March 4-7, in **Orlando**.

Chris McNatt and John Dimitry will attend AirCargo 2012, March 18-20, in **Miami**.

Fritz Damm will attend the Michigan State Bar Labor & Employment Seminar, April 12-13, in **Plymouth, Michigan**.

Jim Golden is speaking on the Negotiation Counsel Model® at the Harvard Business School, April 19, in **Boston**.

Mike Tauscher will moderate a panel on "Selecting Carriers and Brokers" at the TLP&SA Conference, April 22-25, in **Orlando**.



GARVIN LIGHT HANSON & FEARY

Lynne D. Lidke, Editor
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Dispatches

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY

◆ Jim Golden, the pioneer of the Scopelitis firm's Negotiation Counsel Practice, is featured on a **new website dedicated to promoting the Negotiation Counsel Model®**. To see Jim in action using his innovative approach in negotiating reasonable settlements, and to view a one-on-one interview, please visit www.jim-golden.com

◆ John Greene predicts that, with shifting of enforcement authority from the Texas DOT to the Texas DMV, **the maximum amount of fine in any enforcement action for oversize/overweight vehicles may soon be capped at \$30,000**. The Texas DOT had interpreted the rules as permitting up to \$30,000 per violation, resulting in fines sometimes exceeding \$250,000. The DMV agrees with the position long advocated by the Texas Motor Transportation Association and the Texas trucking industry that relevant provisions of the Texas Transportation Code establish a maximum amount of fine in any enforcement action of \$30,000, regardless of the number of discrete violations.

The Transportation Brief® is intended as a report to our clients and friends on legal developments affecting the transportation industry. The published material does not constitute an exhaustive legal study and should not be regarded or relied upon as individual legal advice or opinion. Scopelitis, Garvin, Light, Hanson & Feary would be pleased to provide more specific information or individual advice on matters of interest to our readers.

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