

Hi-Way --- --- Hi-Lites

VOLUME 10, NUMBER 4

NOVEMBER 2008



REGULATORS TAKE AIM AT BIG-RIG EMISSIONS

LOS ANGELES – The Associated Press

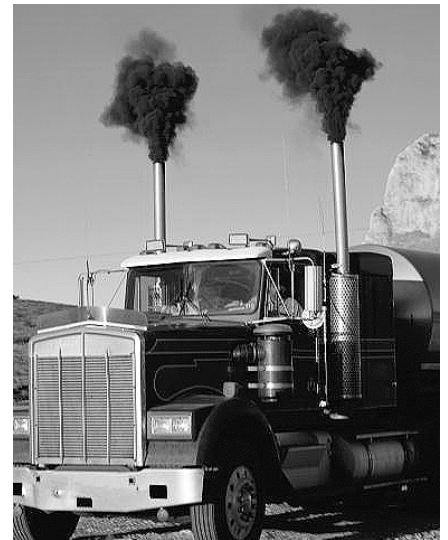
California's Air Resources board released draft rules on Friday aimed at curbing pollution from the more than 1 million trucks that shuttle goods along state roads.

The air board will vote Dec. 11 on whether to adopt two rules that would address diesel emissions that contribute to asthma, cancer and heart disease.

The first would force California trucks and big rigs crossing the state to install filters or upgrade their engines to reduce particulate pollution, while the second would require the use of existing technology to reduce greenhouse gases. The rules are scheduled to take effect in 2010.

Diesel truck transport from the ports of Long Beach and Los Angeles and the state's agricultural industry in the San Joaquin Valley is the second largest source of nitrogen oxide emissions and toxic particulates.

While Southern California ports recently banned older trucks, San Joaquin Valley and Los Angeles areas cannot meet federal air-quality standards without stricter truck emission rules, air officials said.



Truckers and agribusiness interests have argued it is too expensive for truckers to invest the money in clean vehicles when gas prices are high and the economy is weakening.

But Air Resources Board chairwoman Mary Nichols said the state is offering industry more than \$1 billion in loans and grants to help defray the costs. Nichols said the rules would "improve both public health and the economy, especially when you account for the reduced health-care costs thanks to fewer hospital visits, mortalities and work days lost caused by exposure to big-rig diesel exhaust." ■

IN THIS ISSUE

STATEWIDE ISSUES.....2

IMPACT OF OBAMA'S BIG WIN AND WHAT DOES IT MEAN?.....3

REGULATIONS CALENDAR.....3

INJURED DRIVER LOSES COURT BATTLE INVOLVING FAILURE TO INSPECT CARGO.....4

FOUR MAJOR RULES UNDERGOING WHITE HOUSE REVIEWS.....6

2009 UCR REGISTRATIONS DUE.....7

DRIVER WINS BATTLE IN SEEKING AIR CONDITIONED TRACTOR.....7

NEW MEMBERS.....8

Sustaining Member



PUBLISHED BY
NorthAmerican
Transportation Association

EDITOR/PUBLISHER
Wayne Schooling

HEADQUARTERS
2533 N. Carson Street, Suite 346
Carson City, Nevada 89706
(775) 883-4374

GRAPHICS AND PRODUCTION
Nova Graphic Services

Copyright 2008, NorthAmerican Transportation Association. Reproduction in whole or part without permission is prohibited.

Published exclusively for the members of the NorthAmerican Transportation Association. The contents of this publication represent the opinions of the individual authors and contributors only and do not, except where expressly stated, represent the official and unofficial position of the NTA.

DISPLAY ADVERTISING RATES

Full Page \$300
Half Page \$175
Quarter Page \$ 70
Business Card \$ 50

Additional Charges:

Border Around Ad add \$10.00
Photo in Ad add \$10.00

CLASSIFIED ADVERTISING RATES

\$5.00 per line (35 characters per line)
Bold Print add \$1.00 per line

Ads must be submitted on disk or as high quality black and white camera ready art. Call office for information.

HEALTH BENEFITS NOW AVAILABLE

Did you know that one in six people will be hospitalized in the next year?

ARE YOU PREPARED?

NTA

OFFERS TWO BENEFIT PLANS TO PROTECT YOU AND YOUR FAMILY FROM THE HIGH COST OF MEDICAL EXPENSES.

CALL TODAY!

(562) 279-0557
(800) 805-0040

STATEWIDE ISSUES

ALABAMA

FMCSR adoption

The Alabama Department of Public Safety has adopted Parts 382-384 and 390-399 of the Federal Motor Carrier Safety Regulations (FMCSRs), including all future amendments.

Included in this action is an exemption to the adopted FMCSRs for intrastate commercial motor vehicles which do not equal or exceed 26,001 pounds. This exemption is not applicable to vehicles of any size which transport a placardable amount of hazardous materials or to vehicles designed or used to transport 16 or more passengers, including the driver.

FLORIDA

Engine idling

Effective December 15, 2008, owners or operators of heavy-duty diesel-engine-powered motor

vehicles are prohibited from idling while stopped for more than five consecutive minutes.

A heavy-duty diesel-engine-powered motor vehicle is a motor vehicle with a gross vehicle weight rating equal to or greater than 8,500 pounds, used on roads for the transportation of passengers or freight, and serving a commercial, governmental, or public purpose.

The law provides an exemption that allows a bus to idle for ten minutes prior to passenger loading and when passengers are onboard if needed for passenger comfort.

There are also exemptions for emergency vehicles, the operation of auxiliary equipment (controlling cargo temperature, operating a mixer, crane, etc.), resting in a sleeper-berth, and other situations. The sleeper-berth exemption expires September 30, 2013.

NorthAmerican Transportation Association Inc

is proud to announce a partnership with

IntelliCorp

A ISO Company

Background Checks mean Better Decisions

IntelliCorp is a nationwide provider of background checks and employment screening products. Their secure and instant online access to criminal records and other public information helps companies and organization reduce exposure to fraud, workplace violence and negligent-hiring lawsuits. IntelliCorp is FCRA compliant and delivers the most comprehensive, accurate and reliable information necessary to make the best possible risk decisions for our members.

Avoid costly hiring and recruiting mistakes Choose the best drivers for your organization

NTA and IntelliCorp have partnered to provide an online background check package for NTA Members.

NTA Members will receive the deeply discounted rate of **\$14.95**. We encourage you to take advantage of this service to make the transportation industry as safe as possible.

The NTA Members Background Package includes:
SSN Verification with Address History (needed for DOT)
Criminal SuperSearch • Sex Offender Registry of 50 States
Terrorist Search • 1 Single-County Criminal Search

Note: All activation fees and monthly fees will be waived upon registration.

IMPACT OF OBAMA'S BIG WIN AND - WHAT DOES IT MEAN?

cont. on page 6

Let there be no mistake about it, President-Elect Obama's win was historic, and big! The democrats had the advantage of an unpopular war, an unpopular President, most importantly, the greatest financial crisis to hit the country since the Great Depression.

During 2008 virtually all Democrats in Congress voted to support pro-labor legislation, such as the Employee Free Choice Act (the card-check bill), but only one Republican Senator supported the measure.

The "card check" bill is just another reason NOT to have employee drivers. The proposed law has been vigorously pushed by labor. The

key provision of the bill would allow unions to organize companies if a majority of employees sign union membership cards, rather than voting in a secret ballot. Business organizations charge that such a change would worsen existing labor-management relations and kill jobs. President-elect Barack Obama has said he would sign the bill if delivered to his desk.

The early word from Washington is somewhat encouraging. Obama's election could lead to more transportation spending, but at the cost to trucking of more stringent regulations and White House support for labor legislation

unfavorable to business.

Don't forget that earlier in the year I warned everyone that Barack Obama filed bill (S.2044) regarding independent contractors. Obama's bill would amend the Revenue Act of 1978 in three key areas; 1) It would require the employers to treat workers misclassified as independent contractors as employees for tax purposes; 2) It would repeal a ban on Treasury regulations or revenue rulings on employee and independent contractor classification issues; and

cont. on page 6

Regulations Calendar

The following are upcoming rulemaking actions and significant, pending compliance deadlines related to motor carrier safety. The entries are arranged in date order.

12/2008 New Rules

- A variety of significant new rules are expected in December from the Federal Motor Carrier Safety Administration. Among them:
- A final rule that will combine the CDL licensing process with medical certification, making it unnecessary for CDL drivers to carry their medical card.
- A final rule containing many new requirements for those who offer intermodal container chassis for transportation in interstate commerce.
- A proposed rule that will establish a registry of medical examiners who are certified to perform medical exams on commercial drivers. See related article, p. 15.

12/11/2008 HOS Rules

The Federal Motor Carrier Safety Administration has said it would like to issue new rules for hours of service and electronic on-board recorders before the end of the year. The latest agency agenda says both rules could be published around December 11th.

1/1/2009 UCR Registration

Unified Carrier Registration (UCR) for 2009 began in September, and the UCR Board of Directors is recommending January 1, 2009, as the date enforcement should begin. Participating states, however, are free to set their own compliance deadlines. See related article, p. 10.

6/1/2009 Reflective Tape

June 1, 2009, is the last day carriers can use colors other than red and white for reflective sheeting or reflectors on the sides or lower rear area of trailers and semitrailers. See section 393.13(b).

9/30/2009 Grape Harvesters

A rule that exempts certain New York grape haulers from having to comply with federal hours-of-service rules expires on September 30, 2009. The exemption applies only to the transportation of grapes west of Interstate 81 within a 150 air-mile radius of where the grapes were picked or distributed. See section 395.1(q).

INJURED DRIVER LOSES COURT BATTLE INVOLVING FAILURE TO INSPECT CARGO

A recent Tennessee court ruling has reaffirmed the notion that drivers, not shippers, are responsible for the proper loading and securement of cargo.

The case involved a driver who injured his back in 2002 while trying to pick up some soft drinks that had fallen off pallets while in transit. The driver sued the shipper for loading his trailer in a negligent manner, but a Tennessee appeals court ruled against him, saying he had a duty under federal safety rules to make sure his trailer was loaded and secured properly before driving the vehicle.

The driver said he knew the cargo was improperly loaded, but decided to accept it anyway to avoid a conflict with his employer.

In the appellate court's ruling, Judge D. Michael Swiney found that because the driver knew about the improper loading, responsibility did not shift to those who loaded the cargo. Finding otherwise "would completely negate the provisions of 49 C.F.R. §392.9," Swiney wrote.

The driver "was required by 49 C.F.R. §392.9 to ensure that his cargo was 'properly distributed and adequately secured....' It is undisputed that [the driver] not only did not do this, but knew before starting his trip that his cargo was not safely loaded. Because [the driver] had the primary responsibility, his negligence, in essence, trumps any negligence by" the shipper.

Under federal transportation safety rules, §392.9 says "a driver may not

operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless... the commercial motor vehicle's cargo is properly distributed and adequately secured..."

Savage

The case falls in line with a 1953 federal appeals court ruling stating

that the carrier has responsibility for safe loading. In *United States v. Savage Truck Line*, the appeals court concluded that "the primary duty as to the safe loading of property is therefore upon the carrier. When the shipper assumes the responsibility of loading, the general rule is that he becomes liable for the defects which are latent and concealed and cannot be discerned by ordinary observation

continued on page 5

YOU COVERED YOUR TRUCKS! YOU COVERED YOUR CARGO! DID YOU COVER YOUR OWNER-OPERATORS?

NTA offers alternative protection for Independent Sole Proprietors who are not required to carry Workers' Compensation, but who want protection from on-the-job injuries.

- \$1,000,000 Medical Expense
- \$300,000 Death Benefit
- \$500 per week Disability

Contact NTA today
(800) 805-0040
you can't afford to delay!



by the agents of the carrier; but if the improper loading is apparent, the carrier will be liable notwithstanding the negligence of the shipper.”

This principle has come to be known as the “Savage rule.”

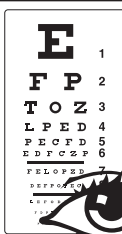
The Facts

The following are the basic facts of the recent Tennessee case:

The truck driver was picking up a load of bottled soft drinks in Bradley County, Tennessee, for delivery to Georgia. Toward the end of the loading process, the driver told the shippers’ employees that the soft drinks had not been loaded properly. Specifically, some of the pallets were only single wrapped prior to transport, and they should have been double wrapped. The truck driver argued about it with the forklift driver, but was eventually told to “take it or leave it.”

“Well, I was not going to argue with him at that point because he probably would have said jack the trailer down and get out of here, and then I would have been fired,” the driver said in his deposition before trial.

After accepting the load, the driver drove to Georgia. Upon arrival, he discovered that several cases of soft drinks had fallen to the floor of the trailer. Without help, the driver says he began picking up and restacking all of the product, and as he did so, he experienced a “very sharp, stabbing pain” in his back. In addition, as he was picking up and restacking the product, a stack also fell onto him causing further injury to his back. He then sued the shipping company for negligence. ■



NorthAmerican Transportation Association Inc Announces a New NATIONWIDE Vision Plan for Fleets & Independent Owner-Operators

With the NTA SightSelect Plan, you and your eligible dependents will receive comprehensive, high-quality vision care.

Our vision care plan offers:

- A complete annual eye examination by an optometrist or ophthalmologist
- Your choice of a wide range of covered-in-full frames after a small co-pay; or apply the frame allowance to any frame on the market
- Full coverage for select contact lenses after co-pay (in lieu of glasses) – including up to four boxes of covered disposables (depending on prescription)
- Access to discounted laser eye surgery procedures
- 100% coverage within Network

EXAM every 12 Months • LENSES every 12 Months • FRAMES every 24 months
FULLY INSURED – 100% Voluntary

Single rate is \$13.25 per month. Couple rate is \$22.25 per month. Family rate is \$32.25 per month.

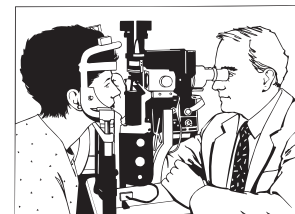
A small administration charge will be added to the premium. A three-month premium is due upon sign-up. Payments must be received before the 15th of the month prior to the month due to ensure eligibility. Members may choose quarterly, semi-annual or annual payments.

CALL 800-805-0040

NOTE: This is a Partial Listing of the NTA SightSelect Plan. The vision plan benefits summary must be consulted to determine the exact terms and conditions of coverage. A specimen copy of the benefits summary is available upon request for examination at the Administration Office of NorthAmerican Transportation Association.

The Group Plan is unwritten by UnitedHealthcare Insurance Company for NTA members only.

NTA Inc. *Helping others to succeed in business™*



SELECT DOT GUIDANCE FOR §392.9:

Question 2: *Does the [FMCSA] have authority to enforce the safe loading requirements against a shipper that is not the motor carrier?*

Guidance: No, unless HM as defined in §172.101 are involved. It is the responsibility of the motor carrier and the driver to ensure that any cargo aboard a vehicle is properly loaded and secured.

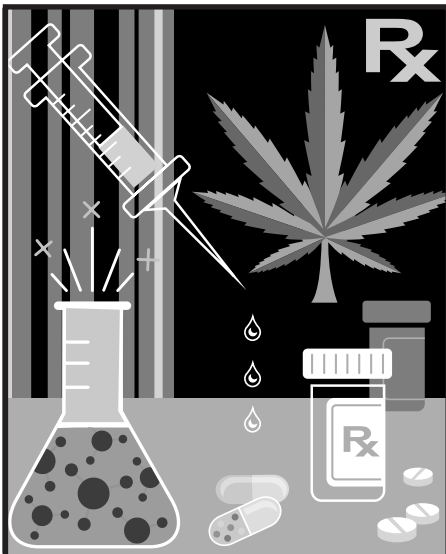
Question 3: *How may the motor carrier determine safe loading when a shipper has loaded and sealed the trailer?*

Guidance: Under these circumstances, a motor carrier may fulfill its responsibilities for proper loading a number of ways.

Examples are: a. Arrange for supervision of loading to determine compliance; or b. Obtain notation on the connecting line freight bill that the lading was properly loaded; or c. Obtain approval to break the seal to permit inspection.

Question 4: *Is there a requirement that a driver must personally load, block, brace, and tie down the cargo on the property carrying CMV he/she drives?*

Guidance: No. But the driver is required to be familiar with methods and procedures for securing cargo, and may have to adjust the cargo or load securing devices pursuant to §392.9(b).



**ARE YOU AT RISK
FOR COSTLY FINES?**

**NorthAmerican
Transportation
Association, Inc.**

is the **ONLY**
Transportation Benefits
Organization with a Nationally-
Accredited Drug & Alcohol Testing
Program in the United States



If you are not familiar with Title 49, Code of Federal Regulations and the Federal Motor Carrier Safety Regulations on Controlled Substance Abuse, and are currently doing drug testing through a local medical clinic, you may be doing drug testing but, **MAY NOT** have a **FULL Drug Testing Program** as mandated by the Federal Regulations.

**Avoid fines and
unsatisfactory ratings...
Call us Today!
800-805-0040**

FOUR MAJOR RULES UNDERGOING WHITE HOUSE REVIEW

The Federal Motor Carrier Safety Administration (FMCSA) has sent four major rules to the White House's Office of Management and Budget (OMB) for review, one of the final steps before a new rule is published.

The rules include:

- A final rule that will combine the commercial driver's licensing (CDL) process with the medical qualification process, eliminating the need for CDL-holding drivers to carry their medical cards. The rule will require interstate CDL holders subject to federal physical qualification requirements to provide their medical examiner's certificates to their state driver licensing agency. States would then be required to suspend the CDL of anyone whose medical qualifications have expired.
- A proposed rule that would establish a registry of certified medical examiners. The rule would subject examiners to training, testing, and certification standards in an effort to make sure the



examiners are qualified to perform exams on commercial drivers. The names of qualified examiners would then appear on a national database (or registry).

- A final rule that will change the New Entrant Safety Assurance Process by raising the standard of compliance for passing the new-entrant safety audit.
- A final rule that will require companies that offer intermodal container chassis for transportation in interstate commerce to comply with a variety of FMCSA regulations.

The rules went to OMB on August 19 and September 25, 2008, and the office has up to 60 days to review them. ■

IMPACT OF OBAMA'S BIG WIN AND - WHAT DOES IT MEAN?

cont. from page 3

3) it would eliminate the defense of "Industry Practice" as a viable justification for misclassifying independent contractors. The bill would enable workers to petition the Treasury Secretary for classification of their status and it would prohibit an employer from retaliating against any worker filing these petitions. Language describing the petition process would be added to the required workplace postings regarding employment rights. Finally, the bill

would also require any employer hiring an "independent contractor" to provide the following notice to every individual; " Each employer shall notify any individual who is hired as an independent contractor of their Federal tax obligations as an independent contractor, the labor and employment law protections that do not apply to independent contractors, and the right of such independent contractors to seek a status determination from the IRS." ■

2009 UCR REGISTRATIONS DUE

If you aren't already registered with the Unified Carrier Registration (UCR) program for 2009, now is the time to act.

UCR registration began in September, and the UCR Board of Directors is recommending January 1, 2009, as the date enforcement should begin, although participating states are free to set their own compliance deadlines.

Registration is required of interstate and international

- for-hire property carriers,
- private property carriers,
- for-hire passenger carriers,
- exempt commodity carriers,
- freight forwarders,
- leasing companies, and
- brokers.

Carriers based in Canada and Mexico that operate in the United States are subject to the UCR requirements, as are carriers that are based in and/or operate solely in non-participating UCR states.



States began sending notification letters and registration forms during September, though qualifying carriers not receiving notification packets are still required to register. The 2009 fees remain at the same level as the 2008 fees.

Those NOT subject to UCR registration include:

- companies that receive USDOT numbers as "registrants" but have no interstate operating authority;
- private passenger carriers; and
- purely intrastate carriers, that is, those that do not handle interstate freight or make interstate movements, unless the state has elected to apply UCR requirements to such carriers.

Once registered, there is no requirement to carry a credential in the vehicle, as compliance can be confirmed electronically. Penalties are determined by the states, with fines ranging from \$50 to \$1,100 for a first offense.

Registration can be performed online at www.ucr.in.gov. ■

Driver wins battle in seeking air-conditioned tractor

The U.S. Court of Appeals for the Ninth Circuit has ordered a lower court to re-examine whether a driver's health condition constitutes a disability under the Americans with Disabilities Act (ADA).

Due to a heart condition, the driver's cardiologist had ordered him not to engage in activities for more than 20 minutes at a time in temperatures above 90 degrees Fahrenheit. As a result, the driver

requested an air-conditioned vehicle for jockeying trailers in his employer's Arizona yard. The company denied the request.

A district court ruled in favor of his employer, finding that his disability was not substantially limiting "on its face" because he was able to perform the major life activities at issue, albeit for only 20 minutes at a time in high heat. The court said the driver "failed to submit any evidence as to the abilities of an

average person in the general population to participate in outdoor activities in the Phoenix summer."

The driver appealed the case to the Ninth Circuit, which recently ruled in his favor. The court said the driver was not required under the ADA to submit comparative evidence, so the district court should re-hear the driver's arguments. ■

WELCOME NEW MEMBERS

NTA 3RD QUARTER 2008 NEW MEMBERS

Still the Number 1 Trucking Organization for Small Business!

Badger State Western Inc	Abbotsford, WI	Castorena Trucking	Rialto, CA
Ready Two Roll Trucking LLC	Hawthorne, CA	Metalco Steel	Rolling Hills Estates, CA
M B Executive Transportation	Long Beach, CA	N R I Trucking	San Bernardino, CA
Long Nose Express	Long Beach, CA	Phom Phommalychan	Stockton, CA
Landis Transport LLC	Marrero, LA	J R G & Co	Wells Point, TX
Double J Livestock	Moses Lake, WA	Trophy Transport	West Paris, ME
A B M Engineering Services	Oakland, CA	D C Trucking	W Sacramento, CA
City to City Transportation	Peru, IN	The Bus	Whittier, CA
Lar-Go Trucking	Phoenix, AZ		

NEW from NTA Inc.

THE LEADING TRANSPORTATION BENEFITS ORGANIZATION FOR THE TRANSPORTATION INDUSTRY

Your Association has these NEW publications available to provide helpful and authoritative information.

Federal Leasing Regulations	\$4.95	Biennial Inspection of Terminals (BIT) reference guide	\$49.95
The IRS, Independent Contractors and You!	\$95.95	Comparison of Tax Aspects of Business Entities	\$14.95
CHP Motor Carrier Safety Compliance Handbook.....	\$32.95	The Employee vs. Independent Contractor Dilemma	\$32.95
North American Uniform Out-of-Service Criteria (CVSA).....	\$32.95	The IRS Trucking Audit Manual	\$49.95
California Code of Regulations, Title 13 Excerpts	\$32.95	Transportation Agreement Package	\$695.00
Set up Corporations "C", "S" and "LLC"	\$700.00 plus filing fees		



LifeLock
Guarantee Your Good Name

My name is Wayne Schooling
and this is my story

I'm Wayne Schooling, President and CEO of NorthAmerican Transportation Association, Inc. I saw a newspaper ad from a company called LifeLock that protects individuals from identity theft. As President of one of the largest nationally accredited Drug and Alcohol Programs for the transportation industry, I also knew that as good as our security is, we still could not totally guarantee the confidentiality of our members from computer hackers. That is why I am not only endorsing this service, but I have arranged for every NTA member to receive a 15% discount off LifeLock's regular price. LifeLock will make your personal information useless to a criminal, it's GUARANTEED! *I use LifeLock and so should you!* **It's GUARANTEED — ONE MILLION DOLLAR GUARANTEED!**

30 Day Free Trial and 15% discount! Call 1-877-LIFELOCK and mention promotional code: NTA