

## **HOURS OF SERVICE FINAL RULE PETITION FOR RECONSIDERATION SUMMARY**

On September 23, 2005, Advocates and Public Citizen, along with other safety organizations and the International Brotherhood of Teamsters, filed a petition for reconsideration of the final rule issued by the Federal Motor Carrier Safety Administration (FMCSA) establishing the hours of service (HOS) for drivers of commercial motor vehicles. The new final rule still allows drivers to drive longer hours, up to 77 hours in a 7-day period and up to 88 hours in an 8-day period. This allows drivers to accrue as much as 300 hours of driving in a month, and over 3,000 hours in a year. The petition is a detailed analysis of the flaws in reasoning and the contradictions between agency decisions and the scientific research and data.

In 2004, a unanimous decision of the U.S. Court of Appeals for the District of Columbia Circuit overturned and vacated the prior HOS final rule that FMCSA had issued in April, 2003. The Court held that the 2003 final rule violated the law protecting truck driver health, based on the argument in Advocates' *amicus* brief, and cited a number of other legal and factual problems with the rule. Congress gave the agency one year, until September, 2005, in which to change the HOS rule to comply with the Court ruling. FMCSA, however, once again adopted essentially the same rule that the Court had struck down. The petitioners ask the agency to reconsider its decisions in the final rule based upon the reasoning and analysis set out in the petition.

Citizens for Reliable and Safe Highways (CRASH), Parents Against Tired Truckers (P.A.T.T.), and Trauma Foundation also joined in the petition. The Insurance Institute for Highway Safety also filed a petition for reconsideration opposing the HOS final rule.

Below is a summary of the major arguments in the petition for reconsideration.

### **Driver Health:**

- ▶ Failure to justify the dangerous consequences of dramatic increases in exposure to adverse health impacts from longer working/driving hours per shift, over 7/8 day work periods;
- ▶ Failure to evaluate the adverse health and safety impacts of the much longer cumulative working and driving hours;
- ▶ Agency failure to fairly evaluate and accept large body of medical research showing a correlation between long hours of shift work and driver health;

### **11<sup>th</sup> Consecutive Hour of Driving:**

- ▶ FMCSA does not properly analyze safety impact of permitting an 11<sup>th</sup> consecutive hour of driving in each work shift;

### **Regulatory Impact Analysis:**

- ▶ The agency's regulatory impact analysis (RIA) does not model the 14-hour work shift adopted in the final rule;
- ▶ The RIA does not take into account cumulative increases in driving/work hours permitted by the final rule;
- ▶ The RIA does not use the pre-2003 HOS regulation as the baseline cost/benefit analysis;

### **34 hour “restart”:**

- ▶ FMCSA evaluates the 34-hour “restart” provision, the minimum time period permitted at the end of a tour of duty, only by looking at whether a driver can obtain two sleep periods within a 34-hour off-duty period;
- ▶ The agency failed to evaluate the effect of the 34-hour “restart” in terms of the dramatic increase in the number of driving/working hours that a truck driver can accrue over 7 or 8 consecutive calendar days compared to the pre-2003 final rule;

### **Circadian Schedule:**

- ▶ FMCSA fails to analyze its decision in prior HOS final rule that drivers are permitted to drive and rest on a non-circadian, 21-hour rearward rotating shift schedule;
- ▶ The agency determined that 24-hour cycle is safest but decided to permit non-24-hour drive/rest cycle solely to accommodate commercial interests of trucking industry;

### **Short Haul Hours Expanded:**

- ▶ FMCSA fails to justify safety or necessity for allowing a second 16-hour work day for short haul drivers who operate commercial motor vehicles without commercial driver licenses (CDLs) between 10,001 and 26,000 pounds gross vehicle weight if they operate within a 150 airmile radius of their work reporting location to which they must return at the end of each work day;

### **Omission of Electronic On-Board Recorders:**

- ▶ Despite statutory mandate requiring FMCSA to deal with issue of EOBRs, this final rule fails to mention or address rulemaking for time-certain action on the issue;

### **Procedural Issues:**

- ▶ FMCSA’s 2005 proposed rule claimed that it was using the 2003 HOS rule as a “starting point” for discussion, but since the 2003 HOS rule was vacated by the Court the agency should have used the pre-2003 rule as the starting point;
- ▶ In using the 2003 rule as a proposed rule, the agency did not tell the public what changes it actually decided to make in the HOS rule, a process that deprives the public of full and fair opportunity to participate and comment;
- ▶ Agency failure to make key data and research studies relied on by the agency fully available to public in a timely fashion prevented public from full participation in rulemaking proceeding;

### **General Issues:**

- ▶ Failure to abide by agency mission to make safety its highest priority;
- ▶ Improper balancing of trucking industry burdens and economics over driver health and public safety;
- ▶ Misuse of data including improper use of unscientific industry surveys, use of anecdotal industry information, and inappropriate reliance on police accident reports (PARS) and data from the Fatal Analysis Reporting System (FARS).

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