

HOURS OF SERVICE FACTS & CHRONOLOGY

KEY LAWS AFFECTING MOTOR CARRIERS

1937: Current Hours-of-Service rules issued by Interstate Commerce Commission (ICC):

- ICC Commissioners expressed misgivings that rules might not be conducive to safety.

1938: Fair Labor Standards Act exemption:

- trucking industry exempted from overtime compensation;
- creates incentive to drive long hours putting drivers and the public at risk;
- no major profession in the U.S. accrues more work hours under a formal regulatory regime than truck and motor coach (bus) drivers.

1984: Motor Carrier Safety Act requires DOT standards that must ensure:

- commercial vehicles (trucks and buses) are operated safely;
- driver responsibilities do not impair ability to operate vehicles safely;
- physical condition of drivers is adequate to operate their vehicles safely;
- operation of trucks does not have a deleterious effect on the physical condition of drivers.

1995: Interstate Commerce Commission Termination Act:

- directs FHWA (predecessor agency to FMCSA) to deal with a variety of fatigue-related issues pertaining to commercial motor vehicle safety;
- specifically mentions need to address amount of sleep after driving time, loading/unloading, automated recording devices, rest/recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, other measures to reduce fatigue-related crashes and increase driver alertness.

1999: Motor Carrier Safety Improvement Act of 1999:

- requires creation of a new safety agency, the Federal Motor Carrier Safety Administration (FMCSA);
- emphasizes need to focus on and improve commercial motor vehicle safety;
- establishes safety as the highest priority of new agency.

2004: Congress enacts temporary extension of surface transportation authorization legislation:

- following July, 2004, U.S. Court of Appeals decision finding FMCSA HOS final rule of April, 2003, to be in violation of law and probably arbitrary and capricious, Congress supersedes court decision and allows agency to continue to enforce final rule until completion of new rulemaking or September 30, 2005, whichever comes first.

HISTORY OF THE HOURS-OF-SERVICE RULEMAKING

1937: Interstate Commerce Commission adopts hours of service for interstate commercial drivers:

- drivers are required to work on 24-hour cycle, drive maximum 10 hours, rest minimum 8 hours;
- drivers can accrue up to 60 hours of driving over 7 consecutive days, 70 hours of driving over 8 consecutive days.

1962: Interstate Commerce Commission Eliminates Requirement for work/rest on a 24 hour cycle:

- commercial drivers can now constantly alternate maximum 10 hours of driving with minimum 8 hours of rest - an 18-hour, non-circadian cycle that increases sleep deprivation and fatigue;
- commercial drivers can exhaust available 60 hours of driving over 7 consecutive days, in less than 5 days and 70 hours of driving over 8 consecutive days, in slightly more than 5 days;
- when drivers are “out of driving hours,” they must lay over until the beginning of a new 7- or 8-day tour of duty that allows them another 60 or 70 total hours of driving.

1978: Federal Highway Administration (FHWA) issues Advanced Notice of Proposed Rulemaking (ANPRM) to provide drivers with more rest time:

- proposal to improve driver rest and recovery without increasing driver duty and driving hours;
- stressed elevated health risks to drivers including chronic problems of diet, sleep deprivation leading to hazardous driving, mental and physical stress, emotional/psychological deficits resulting from long periods away from home and family, and exposure to excessive heat and carbon monoxide;
- rulemaking was proposed by the Carter Administration and withdrawn by the Reagan Administration in 1981.

1992: FHWA issues Notice of Proposed Rule Making (NPRM) to increase on-duty hours and shorten weekly off-duty layover period:

- over 70,000 comments filed, with the overwhelming majority opposed to longer hours;
- leading Congressional members opposed longer hours;
- major health, safety, union, insurer, law enforcement, consumer, victims and some industry groups opposed longer driver hours;
- FHWA stated supporters of rule provided no substantive research to justify increasing duty hours and reducing off-duty time;
- rulemaking was proposed by the Bush Administration in 1992 and withdrawn by the Clinton Administration in 1993.

1997: FHWA issues ANPRM request for research on driver fatigue:

- FHWA failed to cite numerous studies on fatigue and performance;
- FHWA spent \$4.5 million on deeply flawed Driver Fatigue and Alertness Study (DFAS) which was partly directed by the trucking industry;
- FHWA tries to avoid inclusion and public review of DFAS in the ANPRM;
- FHWA withholds expert panel report severely critical of DFAS until required to release report under Freedom of Information Act.

2000: FMCSA issues NPRM that increases the maximum consecutive driving hours (May 2, 2000):

- proposed rule requires that work and rest alternate only within a 24 hour period;
- proposed rule mandates electronic onboard recorders for long-haul and regional drivers;
- proposed rule expands the maximum consecutive driving hours from 10 to 12 hours;
- proposed rule increases the off-duty rest time from 8 to 9-12 hours, depending on the type of driver;

- proposed rule provides no distinction between driving and non-driving on-duty time;
- there is no research that shows increasing off-duty time counteracts the decreased performance and elevated risk produced by more driving hours.

2003: FMCSA issues a final rule that further increases maximum driving hours (April 28, 2003):

- final rule allows work and rest to alternate on a 21 hour rotation;
- final rule does not require electronic onboard recorders;
- final rule reduces time for rest in each shift to 10 hours;
- final rule re-establishes split rest time periods in sleeper berths;
- final rule increases former consecutive driving time in each shift from 10 to 11 hours;
- final rule allows drivers to take off a minimum of 34 consecutive hours, after which they can again start driving another 70 or 80 hours;
- 34 hours layover forces drivers to drive during what formerly was layover time between tours of duty;
- final rule increases maximum driving hours from 60 to 77 hours over 7 consecutive days, and increases maximum driving hours from 70 to 88 hours over 8 consecutive days;
- FMCSA provides no support for these changes in the final rule or in the accompanying regulatory evaluation and benefit-cost analysis.

2003: Public Citizen, with Advocates as amicus curiae, files suit against the FMCSA challenging validity of HOS final rule (June 12, 2003):

- suit alleges that the agency acted arbitrarily, capriciously, and not in accordance with law;
- suit alleges that the agency failed to fulfill a statutory requirement to address the need for electronic onboard recorders;
- suit emphasizes that none of the changes in the final rule are adequately supported in the administrative record;
- suit shows that the agency has ignored earlier admissions about the dangers of increasing consecutive driving time;
- suit demonstrates that the benefit cost analysis on which the final rule relies is fundamentally flawed.

2004: U.S. Circuit Court of Appeals decision overturns and vacates entire final rule and remands to the agency (July 16, 2004):

- opinion holds that the agency violates the Motor Carrier Safety Act of 1984 by failing to ensure that the regulation protects the health of commercial drivers;
- remainder of opinion vacates the entire rule and indicates that each of the major features of the final rule is inadequately supported in the existing rulemaking record;
- remainder of opinion states that agency failed to satisfy all of the requirements of Sec. 408 of the Interstate Commerce Commission Termination Act of 1995;
- FMCSA begins work to attempt to justify the April 2003 final rule by forming an expert intra-agency task force to study how to defend or modify the regulation;
- Congress approves special provision that retains HOS rules for one year giving FMCSA until September 30, 2005 to complete new HOS rulemaking in response to court decision.

2005: FMCSA issues new HOS rule that retains dramatic increases of maximum driving hours

- FMCSA publishes proposed HOS rule on January 24, 2005 that merely restates the 2003 rule;
- On August 16, 2005, FMCSA issues new HOS final rule that is identical to the 2003 HOS rule in most respects, keeping the longer 11-hour limit on consecutive driving hours, the minimal 34-hour off duty “restart”, and allowing more cumulative work and driving hours than the pre-2003 rule;
- Only changes in new HOS from 2003 rule is to allow short-haul drivers to work even longer hours twice each week, and to require, and to require at least one 8-hour rest period in sleeper berths;
- Petition for Reconsideration filed by Public Citizen, Advocates, CRASH, P.A.T.T., Trauma Foundation and the International Brotherhood of Teamsters on September 23, 2005