



ADVOCATES
for Highway & Auto Safety

The Facts
Driver Fatigue and the Hours of Service Rule for Truck Drivers
Rebutting the American Trucking Associations' (ATA)
“Alleged Myths and Facts”

Driving Fatigue Is the Problem

The controversy regarding the hours of service (HOS) rules for truck drivers centers on the high rates of truck driver fatigue and fatigue-related truck crashes documented for decades in research studies by government and other scientists. The Federal Motor Carrier Safety Administration (FMCSA) found that under the HOS rule in effect prior to 2004 (pre-2004 rule), fatigue-related crashes increased dramatically after 8 consecutive hours of driving up to the allowed maximum 10th hour of consecutive driving. Accordingly, the decision under the new HOS rule to allow an 11th consecutive hour of driving alarmed safety organizations because this would increase truck driver fatigue. In addition, permitting drivers to return to work after only 34 hours off-duty, instead of over two days off-duty (as provided in the pre-2004 rule), allows drivers to substitute more hours of driving for hours previously spent resting – a major factor in producing cumulative fatigue that builds up from week to week.

The ATA View: Relies on Data that has nothing to do with Driving Fatigue

The ATA asserts that the recent downturn in national truck crash and fatality statistics proves that the longer 11-hour driving limit and 34-hour restart provision are safe.

The Facts:

- **General, national data about truck fatal crashes prove nothing about *fatigue related* crashes.** The FMCSA is unable to demonstrate any link or scientific relationship between reduced fatalities or a lower fatality rate and any hours of service regime, including the new HOS rule.
- **The same general data shows a decline occurred in fatality statistics *before* the HOS rule took effect.** According to FMCSA, *large truck crash fatalities declined four years in a row before FMCSA issued its new rule* in 2003. The fact that truck crash fatalities also declined in the years before the new HOS rule took effect shows that overall improvements in truck safety statistics are driven by many other operating and safety factors unrelated to the new HOS rule.
- **Trucking-involved fatalities and the fatality rate actually *increased in 2003-2005*.** Truck-involved fatalities *increased three years in a row, 2003 to 2005, the last two years after the new HOS rule took effect*, according to the National Highway Traffic Safety Administration (NHTSA). FMCSA data show that the large truck fatality rate actually *increased* in both 2004 and 2005, *after* the new HOS rule was in effect.
- **Fatigue-related crashes *increased* after the new HOS rule took effect.** FMCSA separately analyzed fatigue as a factor and found that the percentage of fatal fatigue crashes *increased by 20 percent* from 2004 to 2005 under the new HOS rule.

The ATA View: Inaccurately claims that longer driving and working hours has *improved* the health and well being of truck drivers and that drivers prefer the new HOS rule. ATA relies on FMCSA findings to argue that the “combined effects” of the new HOS rule is beneficial to the health and physical condition of truck drivers, provides drivers with adequate time for rest, and that truck drivers prefer the new HOS rule.

The Facts:

- **FMCSA presented no data to show that longer working and driving hours improve truck driver health.** FMCSA does not rely on any Department of Labor or Bureau of Labor Statistics studies to justify its expansion of the maximum hours truck drivers can drive and work over consecutive days and its reduction in the amount of minimum off-duty time between tours of duty due to the 34-hour restart provision. This claim is advanced only by the ATA, and it has no basis in the relevant scientific and medical research.
- **FMCSA rejected all studies proving that truck driver working conditions and on-duty hours directly affect the health of truck drivers.** The National Academy of Sciences reviewed the scientific literature on driver health and found that medical conditions, such as lung cancer, were linked with truck driver work. The study found that adverse health risks were elevated for truck drivers *because of their long working and driving hours*. In 2003, the Proceedings of the National Institute for Occupational Safety and Health (Occupational Safety and Health Administration) stressed the severe health problems among truck drivers *due to long, irregular hours of work*, and itemized the multiple, adverse health effects of accumulated sleep debt and irregular work/sleep schedules, including ischemic heart disease, and other serious health conditions.
- **FMCSA has no scientific support for claims that the limited increase in rest time offsets the significant increase in overall driving and work time.** FMCSA asserted that the significant increases in driving and work time under the 11 consecutive hours of driving and the 34-hour restart provisions, are offset by providing a 10-hour off-duty rest period between shifts and a 14-hour cap on combined driving/work shifts. FMCSA has provided no scientific data or research evidence to support this position.
- **FMCSA never seriously addressed the issue of accumulated fatigue.** FMCSA failed to respond on the issue of cumulative driver fatigue produced over several consecutive days of working and driving. FMCSA first claimed that it could not model cumulative fatigue, but later derived a fatigue model based on only a single day of the week that it generalized to the entire multi-day tour of duty. Cumulative fatigue is a real, serious product of very long and irregular working hours that has been found in many research studies stretching back over 30 years and more.
- **Independent surveys refute the ATA position.** Surveys conducted both before and after the new HOS regulation by the Insurance Institute for Highway Safety (IIHS) have shown repeatedly that, in fact, drivers are getting home less, are driving and working longer hours under the new HOS rule, and are still highly fatigued.
- **IIHS found that there was no reliable science to support FMCSA’s claims for the new HOS rule.** The IIHS repeatedly filed comments with FMCSA demonstrating that the agency’s reliance on certain studies for the benefits of the new HOS regulation was completely misplaced and that FMCSA had no reliable science to back up its claims that drivers driving and working longer hours were just as well off as under the prior HOS rule that demanded fewer driving and working hours.

The ATA View: Asserts that few drivers are making use of the additional driving hours under the new HOS rule. ATA relies on FMCSA assertions that use of longer driving hours is “hypothetical,” with few drivers actually driving more hours.

The Facts:

- **Greater use of longer driving hours is being phased-in year by year.** FMCSA shows in its own survey results that by 2004 the 11th hour of driving was being used increasingly from year to year. The survey showed that in 2004, one year after taking effect, 22.9 percent of over-the-road drivers already were driving into the 11th hour. FMCSA subsequently admitted that the percentage of drivers using the 11th hour had increased to 27 percent, and that motor carriers were increasingly building the use of the 11th hour of driving into their schedules.
- **Use of additional driving hours that could result in driving fatigue is NOT hypothetical.** FMCSA was forced to admit that the new HOS rule permits truck drivers to accrue 88 hours of driving over eight consecutive days of operation as contrasted with the maximum of 70 hours under the previous regulation, and up to 98 or more hours of work, as contrasted with 70 under the old regulation. It is not necessary for all truck drivers immediately to take advantage of the maximum number of increased driving hours in order for there to be a commensurate increase in fatigue-related truck crashes and fatalities.
- **FMCSA claimed vast economic benefits to the trucking industry to justify the new HOS rule.** FMCSA’s cost/benefit analysis showed that the trucking industry would reap enormous economic benefits from the new HOS rule by allowing drivers to drive and work for more hours. These benefits could only be derived if drivers are actually using the additional driving hours.

The ATA View: Ignores the fact that two Federal Courts have struck down the new HOS rule. The ATA “Myths and Facts” document makes no mention of the fact that two panels of the U.S. Court of Appeals – six different judges – have found major legal problems with the new HOS rule.

The Facts:

- **In 2004 the Court admonished FMCSA about the unsubstantiated increases in driving hours:** “The exponential increase in crash risk that comes with driving greater numbers of hours . . . raises eyebrows about the agency’s increase of daily driving time.” **The Court emphasized the increase in crash risk,** “The agency freely concedes that ‘studies show[] that [driver] performance begins to degrade after the 8th hour on duty and increases geometrically during the 10th and 11th hours’ on duty. Despite this finding, the agency cited absolutely no studies in support of its notion that the decrease in daily driving-eligible tour of duty from fifteen to fourteen hours will compensate for these conceded and documented ill effects from the increase [in consecutive driving hours].” **Finally, as to cumulative fatigue, the Court questioned** “the agency’s failure to address it [the increase in the number of weekly driving hours] . . . makes this aspect of the rule’s rationality questionable.” *Public Citizen v. FMCSA*, 374 F.3d 1209 (D.C. Cir. 2004) at 1219, 1218, and 1223, respectively.
- **In 2007 the Court reiterated the same points about the increase in crash risk:** “First, we expressed ‘very real concerns’ about the increase in the daily driving limit from 10 to 11 hours. [cite omitted]. We noted that the ‘agency freely concedes that ‘studies show[] that performance begins to degrade after the 8th hour on duty and [the degradation] increases geometrically during the 10th and 11th hours’ []’ ” **and, as for the agency’s failure to address the issue of cumulative fatigue,** “[W]e regarded as ‘problematic’ the fact that FMCSA’s justification for the 34-hour restart provision ‘[did] not even acknowledge, much less justify, that the rule . . . dramatically increases the maximum permissible hours drivers may work [i.e. drive] each week.’ [citation omitted]. That increase, we said, ‘is likely an important aspect of the problem[,] [a]nd the agency’s failure to address it . . . makes this aspect of the [2003] rule’s rationality questionable.’ ” *Owner-Operator Independent Drivers Association, Inc. v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007) at 196 and 197, respectively.