



ADVOCATES
for Highway & Auto Safety

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Lifesaving Truck Safety Rule Under Assault in Congress

Safety Groups, Victims and Survivors, and Labor Urge Congress Not to Bow to Special Interests on Life and Death Safety Issue

WASHINGTON, DC (November 30, 2011) Safety groups, families of truck crash victims, and labor today joined U.S. Representatives Dennis Kucinich (D-OH) and Jackie Speier (D-CA) at a press conference to support revising the truck driver hours of service (HOS) rule to reduce driver fatigue, a major safety issue. A House Oversight and Government Reform Subcommittee hearing scheduled for today entitled “The Price of Uncertainty: How Much Could DOT’s Proposed Billion Dollar Service Rule Cost Consumers?” is stacked with industry witnesses that ignore the true economic, medical and social costs of widespread trucker fatigue.

“This Committee is attempting to drive a Mack truck through the rulemaking process which is moving forward as a result of a legal agreement,” said Representative Speier. “Unfortunately, the Majority has decided to hold a lop-sided hearing that pays little attention to the benefits to jobs and the increased safety of our constituents this rule will create.”

Every year on average 4,000 people are killed in truck crashes and 100,000 more are injured at a cost of more than \$40 billion, according to the Federal Motor Carrier Safety Administration (FMCSA). Under the current rule truck drivers can drive 77 hours a week and work up to 84 hours a week. Some long-haul drivers can drive even longer hours, up to 88 hours per week, more than twice the 40 hour work week of most Americans.

Agency actions to revise the current HOS rule are the result of a legal agreement between the U.S. Department of Transportation (DOT) and safety and labor groups while a lawsuit is held in abeyance. The groups have challenged the current HOS rule three times in the U.S. Court of Appeals for the District of Columbia. In 2004, the Court unanimously vacated the Bush Administration HOS rule on the grounds that the government did not adequately consider the effects of longer driving hours on individual truck driver health and safety. In 2007, the court once more unanimously overturned the rule because the agency did not subject its analysis to public comment. After issuing the same rule again, as a “midnight” rule in late 2008, FMCSA was sued for a third time which led to the legal settlement. The revised proposed rule is currently under review by the White House Office of Management and Budget.

“This Subcommittee hearing is another example of industry’s pervasive and well-funded lobbying strategy in Congress to try to block a Court-ordered revision of the HOS rule,” said Joan Claybrook, Chair of Citizens for Reliable and Safe Highways. “Moreover, the hearing is completely biased with special interest industry views. It is a hearing on cost to consumers, but there are no consumers on the

witness panel. This so-called billion dollar rule is going to save American taxpayers up to \$2.4 billion in lives saved, injuries prevented and reduced health and medical costs. It also has the potential to create nearly 40,000 new jobs in the trucking industry.”

Ed Slattery of Cockeysville, MD, attended the hearing with his 14-year-old son, Matthew. Ed’s wife Susan was killed last year in a horrific crash on the Ohio Turnpike when a driver behind the wheel of a triple-trailer truck fell asleep. Matthew and his brother, Peter, were critically injured, and Matthew sustained lifelong injuries that require round-the-clock care. “This Subcommittee wants to get information about the cost of DOT’s proposed rule to consumers. My family’s crash alone cost millions of dollars and Matthew’s lifelong medical care is estimated to be more than \$18 million,” said Slattery. “Unfortunately, while there are five industry witnesses there is no one representing the victim’s point of view about how just one crash involving a tired trucker has imposed a severe and substantial economic cost and traumatic disruption to the lives of our family, not to mention the suffering we experience every day.”

“As a mother who lost her daughter in a preventable truck crash I urge Congress not to put the economic interests of the trucking industry before the safety interests my family,” said Marchelle Wood of Falls Church, VA. “The profession of driving a truck has been turned into a modern day ‘sweatshop-on-wheels’ where drivers are pushed to drive and work beyond human limits. Changes to the hours of service rule that put safety first are overdue and urgently needed.” Wood’s daughter Dana was killed when an overly fatigued truck driver who had HOS violations crashed into her car when she was driving on I-95 in Virginia, returning to school at East Carolina University after fall break.

According to DOT surveys 65 percent of truck drivers report that they often or sometimes feel drowsy while driving, and nearly half of truck drivers admit that they had actually fallen asleep while driving the previous year. Additionally, 79 percent of the public supports returning to the 10 hours of maximum consecutive driving time

Jackie Gillan, President of Advocates for Highway and Auto Safety, said, “Congress should be focusing on the numbers that show how pervasive fatigue is throughout the trucking industry. If half of the commercial airline pilots admitted to falling asleep while in the cockpit every plane would be immediately grounded, and Congress would take swift action to correct the problem rather than adding more flying and working hours for pilots.”

Fred McLuckie, Legislative Director for the International Brotherhood of Teamsters noted, “Our drivers are more stressed than ever because of increased traffic volume, tighter delivery times and deteriorating road conditions.”

The proposed rule would create nearly 40,000 additional jobs in the trucking industry and result in direct health benefits to truck drivers of as much as \$1.48 billion.

List of Speakers

Victims, Safety Advocates and Labor Demand Congress Put Safety, Healthcare and Jobs First
Urge Improvements to the Truck Driver Hours of Service Rule

Press Conference

November 30, 2011 ▪ 9:30am ▪ 2103 Rayburn House Office Building

U.S. Representative Dennis Kucinich (D-OH): He is the Ranking Member of the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending of the House Committee on Oversight and Government Reform. He is a leader in Congress on numerous health and safety issues and is a co-sponsor of the Safe Highways and Infrastructure Preservation Act (SHIPA), H.R.1574.

U.S. Representative Jackie Speier (D-CA): She is a member of the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending of the House Committee on Oversight and Government Reform. She has authored numerous safety bills in Congress and is also a co-sponsor of SHIPA.

Ed Slattery, (Cockeysville, MD): While driving home from a family reunion in Rocky River, Ohio, his wife was killed and two sons severely injured on August 16, 2010, when a truck driver fell asleep at the wheel of his triple-trailer truck and rear-ended their car. Following the impact, the truck went on to hit two other tractor-semi-trailers and four more passenger vehicles before stopping in the median and bursting into flames. One of his sons is now permanently disabled as a result of the crash.

Marchelle Wood, (Falls Church, VA): Her daughter Dana Wood and her East Carolina University classmate were killed on October 15, 2002, when their car was struck and pushed 1,500 feet, more than four times the length of a football field, by a fatigued trucker with a suspended license.

Joan Claybrook, Chair Emeritus, Public Citizen and Chair, Citizens for Reliable and Safe Highways

Jackie Gillan, President, Advocates for Highway and Auto Safety

Fred McLuckie, Legislative Director, International Brotherhood of Teamsters

Statement of Ed Slattery
Regarding the Hearing on “The Price of Uncertainty: How Much Could DOT’s Proposed Billion Dollar Service Rule Cost Consumers?”
Held by the Committee on House Oversight and Government Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

November 30, 2011

Good morning. My name is Ed Slattery and I am here today with my 14-year-old son, Matthew. We came to Capitol Hill today to raise awareness about an important public health and safety issue affecting everyone on our roads and highways – truck driver fatigue. I am deeply concerned about the growing political pressure by the trucking industry to stop progress on the truck driver Hours of Service Rule. I am also alarmed that trucking interests are circulating misleading information about the costs and burdens of revisions to this rule. I am here to talk about the real costs of truck crashes involving tired truckers.

It was a beautiful, clear day on August 16, 2010, when my family’s lives were changed forever. My wife, Susan, and our two sons, Peter and Matthew, were returning home from a big family reunion in Rocky River, Ohio. Susan grew up in Cleveland and all of her family still lives in Ohio. In fact, I have six nieces and nephews currently attending Ohio State. Susan and our boys were on the same route that we take every year, and I would have been with them but I wasn’t able to travel because I was recovering from shoulder surgery.

As they neared the 190-mile marker on the Ohio Turnpike in Streetsboro at around 11:45 in the morning, a truck driver behind the wheel of a triple trailer truck had fallen asleep and crashed into the back of our car. In an instant I lost my wife, and Peter and Matthew were in emergency surgery. Following the impact with our car, the truck went on to hit two other semis and four more passenger vehicles before stopping in the divider and bursting into flames.

The weeks following the crash were spent juggling surgeries for both boys, meeting with doctors, lawyers and funeral directors, all while ensuring that someone was always at Peter’s and Matthew’s side. For some time, I spent each day wondering if Matthew would make it to the next. After about a month, the boys were stable enough to return to Baltimore where we began the journey dealing with the long term effects of the crash including the loss of my wife Susan.

Peter, who suffered a broken pelvis and a facial fracture, was conscious and being moved to a helicopter when he overheard the paramedics pronounce his mom dead. He will recover physically, but the long term psychological effects are yet to be determined. Matthew, who was in a coma from massive head trauma, continues to make progress every day but is permanently disabled and requires round-the-clock care. Our lives will never be the same.

Since our crash, I’ve learned that truck driver fatigue is an industry-wide health crisis. In a recent survey 65 percent of truckers report that they are often or sometimes drowsy and 48 percent admit that they have actually fallen asleep while driving during the previous year.

I have also learned that truck crash risk increases exponentially after 8 consecutive hours of driving and that the highest level of crash risk occurs during the 10th and 11th hours of consecutive driving. Decreasing truck driver’s Hours of Service by one hour would limit the time they are on the road during this period of highest crash risk.

The truck driver Hours of Service rule must be based on scientific studies, not the financial desires of the trucking industry. While the trucking industry may claim that reducing the Hours of Service to 10 consecutive hours would negatively impact their bottom line, I want to point out that it would produce more than 2 billion dollars a year in crash, injury and health cost savings. My family’s crash alone cost millions and health care costs for the rest of Matthew’s life are estimated at beyond 18 million dollars.

What happened to my family is clear and compelling proof of why the current rule must be changed. Our lives will never be the same but I am here to urge Congress and the White House not to cave to the political pressures of the trucking industry. Do the right thing - reduce truck driver fatigue so that another family will not have to suffer the tremendous loss that my family lives with every single day.

Thank you.

Statement of Marchelle Wood
Regarding the Hearing on “The Price of Uncertainty: How Much Could DOT’s
Proposed Billion Dollar Service Rule Cost Consumers?”
Held by the Committee on House Oversight and Government Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight and
Government Spending

November 30, 2011

Good morning. My name is Marchelle Wood. I am here today to support a safer Hours of Service rule for truck drivers because the current rule allows too many fatigued drivers on our roadways. Unfortunately I know firsthand the destruction that results from fatigue and inattention behind the wheel.

My daughter Dana and a friend were returning to East Carolina University after spending the fall break of their freshman year with us at home in Falls Church, Virginia. As they were driving on I-95 in Virginia, a truck slammed into their car, pushing it 1,500 feet down the highway – the length of more than 4 football fields – or, over a quarter of a mile, before coming to a complete stop. Dana and her friend were both killed.

The truck driver could have either stopped or changed lanes, but he didn’t brake and he smashed into Dana’s car. During the investigation of this crash, numerous violations came to light from the truck driver and the trucking company, one of which was a HOS violation. The truck driver produced two sets of log books, or “comic books” as they are commonly known as, and they were both inaccurate. He was on his normal route from North Carolina to Baltimore, Maryland, and back, a trip that takes about 12 hours, not counting any traffic in the congested cities along the way.

According to two experts in crash reconstruction, this crash could have been avoided and it was likely due to fatigue. Like many crashes, we will never know the truth because the HOS violator, who has an economic interest to preserve his livelihood, is the only survivor.

I would also like to dispel the inaccurate information being spread by some members of the trucking industry who are falsely claiming that recent reductions in annual truck crash fatalities are somehow linked to the current Hours of Service rule. Recent decreases in truck crash deaths are primarily the result of improvements in automobile safety and challenging economic times. In fact, during the first two years of the current Hours of Service rule, 2004 and 2005, truck crash deaths actually went up, but trucking interests have conveniently failed to mention that statistic.

The economic downturn has also resulted in the loss of between 120,000 and 180,000 trucking jobs according to government data. The changes in the Hours of Service rule, however, will create nearly 40,000 additional jobs in the trucking industry for out-of-work drivers. And, the direct health benefit of an improved rule to drivers is estimated to result in a savings of between 840 million and 1.24 billion dollars. At a time when the President and Congress are trying to create jobs, the new rule will be beneficial for truck drivers and the economy.

To conclude, I am here in Dana’s loving memory (*hold up photo*) to protect the lives of other innocent motorists. There truly are no words to describe the lifelong pain and daily suffering that a fatigued truck driver inflicted upon my family and me, and thousands of other families every year. Our family just spent another holiday without our beautiful daughter. I urge Congress and the President to put the safety of motorists before the greed of the trucking industry and issue a safer HOS rule. The safety of our families depends on it. In fact, all our lives depend on it.

Thank you.



**Statement of Jackie Gillan, President
Advocates for Highway and Auto Safety (Advocates)
on Revising the Hours of Service (HOS) Rule for Truck Drivers
November 30, 2011**

Good morning. My name is Jackie Gillan and I am President of Advocates for Highway and Auto Safety, a coalition of the leading consumer, health, and safety groups and insurance companies and agents.

We are here today to discuss a serious and chronic problem in the trucking industry – truck driver fatigue. Earlier this year when an air traffic controller fell asleep on the job at Reagan National Airport and in 2009 when two pilots flew past their destination because they were dozing in the cockpit, the public, the media, Members of Congress and the Secretary of Transportation were justifiably outraged, angry, and motivated to take immediate action to address the problem. Yet, the current hours of service rule for truck drivers promotes fatigue and every day tired truckers are regularly falling asleep behind the wheel with devastating, deadly and predictable results. We have several family members here today, Ed Slattery and Marchelle Wood, who live everyday with the tragic consequences of a truck driver dozing off while operating an 80,000 pound truck traveling at high speeds on our public roads and highways.

This morning the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending is holding a hearing to explore the costs to consumers of revising and improving the hours of service rule on holiday purchases. Unfortunately, the industry witnesses will only talk about costs to the industry and not the significant financial benefits to the public and truck drivers in dollars saved, lives spared, injuries prevented and jobs created.

Furthermore, the industry doesn't want to focus on the "numbers" that really matter. Studies sponsored by the Federal Motor Carrier Safety Administration (FMCSA) reveal that 65 percent of truck drivers reported that they often or sometimes felt drowsy while driving, and that 48 percent of truck drivers, nearly half, said they had fallen asleep while driving in the previous year. Earlier this year, a public opinion poll published by Lake Research Partners reported that nearly 80 percent of Americans support a change in the hours of service rule to reduce the number of consecutive driving hours back to ten, where it was before it was increased with trucking industry support. These statistics clearly demonstrate that driver fatigue is a pervasive problem and the public supports improvements.

We are honored to be joined this morning by Rep. Dennis Kucinich (D-OH) and Rep. Jackie Speier (D-CA), who are Members of the House Oversight and Government Reform Committee, Fred McLuckie, Legislative Director of the International Brotherhood of Teamsters, and Joan Claybrook, Chair of Citizens for Reliable and Safe Highways. Additionally, we will hear from two individuals who know all too well the personal costs of large truck crashes. Ed Slattery's wife was killed and his two sons, Peter and Matthew were severely injured in August 2010 when a truck driver fell asleep at the wheel of his triple-trailer truck and rear-ended their car. Marchelle Wood's daughter, Dana, and her classmate were killed while driving back to college when their car was struck and pushed 1,500 feet by a fatigued trucker with a suspended license.

Chronic worker fatigue, falling asleep on the job, and threats to public health and safety would never be tolerated in any other sector of the transportation industry. And, neither is it acceptable in the trucking industry where every year truck crashes kill thousands of people and injure tens of thousands more at an unacceptable cost of \$40 billion.

Thank you.

**Statement of Joan Claybrook, President Emeritus, Public Citizen
And
Chair, Citizens for Reliable and Safe Highways (CRASH)**

**Press Conference on the Need to Reform the
Truck Driver Hours of Service Rule**

Good morning. My name is Joan Claybrook, I am president emeritus of Public Citizen and chair of Citizens for Reliable And Safe Highways (CRASH). Also, I formerly was Administrator of the National Highway Traffic Safety Administration (NHTSA) during the Carter Administration. I have been involved in motor carrier safety since the 1970s, and for the past 25 years have lobbied for safer truck driver hours of service. There are compelling and legal reasons the Federal Motor Carrier Safety Administration is revising the current hours of service rule for truck drivers. The most important is that FMCSA failed to produce a scientifically and legally sound rule. Claims by industry that changes to the current HOS rule are unwarranted are complete hogwash and ignore the explicit demands of the courts.

The HOS reform rule is currently under review at the Office of Management and Budget (OMB) and is expected to be issued by the end of the year. The rule has been in development for over 20 years. Whenever the trucking industry doesn't get what they want they run to Congress and find sympathetic Members to block efforts to improve safety. It has been a stark example of private economic interests trumping public health and safety with greedy governance and reprehensible regulation.

Over the past eight years, the Federal Motor Carrier Safety Administration (FMCSA) has released three nearly identical final rules on truck driver hours of service. In 2003, 2005 and 2008, each rule contained serious legal flaws and ignored decades of convincing and extensive research on the dangers and problems of worker fatigue. Two separate and unanimous panels of the U.S. Court of Appeals issued scathing criticisms of the faulty support and reasoning for issuing a rule that ignored public safety and unfairly sided with industry.

In 2004 the Court of Appeals held that the FMCSA failed to consider the effect of the rule on the health of truck drivers as required by law. The decision went on to state that the agency had failed to adequately justify the increase in consecutive hours of driving from 10 to 11, and ignored the real possibility that shortened off-duty time between work weeks, as little as 34-hours merely one day and 10 hours, would increase driver cumulative fatigue.

The next version of the current, flawed HOS rule was issued in 2005 and overturned again in 2007. Just before leaving office in 2008 the Bush Administration gave the trucking industry a parting gift by issuing the same flawed rule for a third time. And we sued again and agreed to a settlement in order to give the agency an opportunity to revise and improve the HOS rule so that it would finally be based on sound science and not junk science.

Today's hearing is yet another example of the industry's strategy to attempt to spin reality. Noticeably absent from a hearing on the cost to consumers of the DOT hours of service rule is a single witness representing "consumer" interests. Five of the seven witnesses represent the trucking industry or are paid by the trucking industry to develop research to support their views.

For example one of the witnesses is Dr. Jesse David from Edgeworth Economics. Earlier this year, Edgeworth Economics was hired by the American Trucking Association (ATA) to review the FMCSA's Regulatory Impact Analysis (RIA). They actually suggest that FMCSA should have eliminated entirely from the cost benefit analysis the annual \$690 million economic benefit due to improved driver health that would result from reforming the HOS rule. This completely contradicts the 2003 decision by the Court of Appeals that overturned the rule for the agency's failure to consider the effects of any rule upon the health of the drivers.

In conclusion, the Bush Administration hours of service rule decreased safety and increased unemployment. The trucking industry has been operating for the past eight years, since 2004, under a set of rules which have twice been vacated by the Courts of Appeals, eliminated nearly 50,000 jobs in the trucking industry, and contributed to fatigue. Despite this devastation, the industry continues to suffer from "fact" fatigue with their misleading and phony arguments for the current rule. Maybe they should take a break -- heaven knows they aren't giving their drivers one.

The Numbers that Matter—

65%

of truck drivers report that they often or sometimes feel drowsy while driving¹

47.6%

of truck drivers admit that they had actually fallen asleep while driving in the previous year¹

79%

of Americans favor returning to 10 hours of maximum consecutive driving time for truck drivers²

¹The Truck Driver Fatigue Management Survey, referenced in HOS NPRM, 75 FR 82170, 82177 (Dec. 29, 2010).

²“Americans Support Efforts to Increase Truck Safety on Our Highways, Oppose Efforts to Derail Progress” Public Opinion Poll, Lake Research Partners (Apr. 28, 2011).

Why the DOT Hours of Service (HOS) for Truck Drivers Needs to be Reformed The Current Rule is Illegal and Contributes to High Levels of Fatigue and Fatalities

FACTS *v.* **INDUSTRY FICTION** of the Proposed HOS Reform Rule

ISSUE: Highway Safety Under the Current HOS Rule—

INDUSTRY FICTION: Truck safety has improved as truck crash rates have declined in recent years.

FACT: There is no connection between the recent drop in annual crash rates and truck crash fatalities and the current HOS rule. The Federal Motor Carrier Safety Administration (FMCSA) acknowledges this fact in the proposed rule.¹ Fatalities in large truck crashes actually increased in the first two years (2004-2005) of the current HOS rule.² Recent decreases in truck crash rates are occurring for entirely separate reasons, such as the economic conditions, high diesel gas prices and other safety initiatives having nothing to do with the HOS rule. **FURTHERMORE,** there has been no decline in the portion of truck crashes associated with driver fatigue.³ Not only have the levels of police crash reports that cite fatigue as a causal factor remained constant from 2003 to 2008, but surveys of truck drivers also show higher levels of driver fatigue than before – 65% of truckers report that they are often or sometimes drowsy, and 48% admit that they have actually fallen asleep while driving in the previous year.⁴

ISSUE: Legality of the Current HOS Rule—

INDUSTRY FICTION: The current HOS rule adopted by FMCSA in 2008 is perfectly legal.

FACT: The current HOS rule has been struck down twice in 2 separate, unanimous federal court cases brought by safety and labor groups.⁵ In each case, unanimous panels of the Federal Court of Appeals in Washington, D.C. vacated the rule with scathing criticism of the agency rationale for increasing driving and work hours. The HOS proposed rule is the result of a settlement agreement in a third lawsuit that has been held in abeyance pending the outcome of the rulemaking.

The Federal Court Of Appeals Found: The FMCSA's explanations and reasoning for increasing the maximum consecutive driving hours and use of the 34-hour restart to be dubious and lacking in legal support. As noted above, the Court questioned the lack of consistency between the agency's findings of fact regarding driver fatigue and its decisions to increase the limits on driving and work time. The Court expressed "doubts" whether the justifications for the 11-hour limit were "legally sufficient[]",⁶ found the agency's cost-benefit analysis predicated on a "dubious assumption" which rendered reliance on the analysis "circular" and "doubtful,"⁷ and stated that the "rationality" for adopting the 34-hour restart without addressing the issue of cumulative fatigue was "questionable."⁸ The second Court of Appeals case, which was decided on different legal flaws, restated the criticisms noted in the earlier decision,⁹ and these legal problems remain relevant and actionable in the event the current HOS rule is kept in place.

ISSUE: Increasing Consecutive Hours of Driving to 11 Hours—

INDUSTRY FICTION: 11 consecutive hours of driving is safe and does not promote driver fatigue.

FACT: Truck crash risk increases exponentially after 8 consecutive hours of driving and the highest level of crash risk occurs during both the 10th and 11th hours of consecutive driving.¹⁰

The Federal Court of Appeals Found: "We have our doubts about whether the[] justifications [for extending the limit on consecutive hours of driving from 10 to 11 hours] are legally sufficient."¹¹ "The agency freely concedes that 'studies show [] that performance begins to degrade after the 8th hour on duty and increases geometrically during the 10th and 11th hours' on duty."¹² 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."¹³

ISSUE: 34-Hour Restart –

INDUSTRY FICTION: Drivers can get 2 full sleep periods in the 34-hour off duty restart period.

FACT: Drivers do not get 2 full nights of sleep in the foreshortened 34-hour off duty period. The 34- restart is a serious safety problem because:

- Drivers get shorter off duty time for rest and recovery at the end of weekly tours of duty. Prior to the current HOS rule and the restart, drivers who reached their 60- or 70-driving hour limit had to go off duty until the end of the work week, sometimes as much as 72 hours off duty. But with the current restart drivers can begin a new tour of duty after as little as 34 hours – less than a day and one-half – off duty;
- Many long-haul truckers drive at night and try to sleep during daytime hours, which conflicts with the normal human nocturnal sleep cycle and makes getting adequate rest during the 34-hour restart period even more difficult;
- Drivers who use the 34-hour restart build up cumulative fatigue from week to week that cannot be overcome by just a short, 34-hour off duty rest period.

The Federal Court of Appeals Found: “[T]he agency’s explanation . . . does not even acknowledge, much less justify, that the rule . . . dramatically increases the maximum permissible hours drivers may work each week. That increase is likely ‘an important aspect of the problem.’ And the agency’s failure to address it, accordingly, makes this aspect of the [current HOS] rule’s rationality questionable.”¹⁴ “FMCSA gave no explanation for the failure of its operator-fatigue model to account for cumulative fatigue due to the increased weekly driving and working hours permitted by the 34-hour restart provision. . . [t]he agency’s failure of explanation renders the restart provision arbitrary and capricious.”¹⁵

ISSUE: The Effect of Increased Off Duty Times—

INDUSTRY FICTION: By increasing off-duty time to 10 hours between shifts, and limiting the work day to 14 hours, the current HOS rule makes up for allowing more driving and work hours.

FACT: The current HOS rule, which allows 11 hours of consecutive driving and use of a 34-hour restart, dramatically increases the driving and working hours for truck drivers by more than 25%. Studies show that a large majority of drivers are using the added hours permitted under the current HOS rule. However, there are no research studies or data to support the view that the added 2 hours off duty between shifts, or the 14-hour limit on total work hours per shift, *provide any benefit* to offset driver fatigue toward the end of the 11-hour driving shift or to balance out cumulative fatigue from the additional hours of driving and working from week to week. Studies show just the opposite. Recent research conducted under the current HOS rule found that driver performance degraded and crash risk increased for driving occurring 10 or more hours after reporting for duty.¹⁶ Moreover, FMCSA concluded that to be alert and perform the driving task safely truck drivers need to get at least 7 to 8 hours of sleep each night. However, research has shown that under the current HOS rule truck drivers are getting *only 6 hours of rest* on work nights.¹⁷

ISSUE: Cost Effectiveness of the Proposed HOS Reforms—

INDUSTRY FICTION: Since the cost to the trucking industry would be about \$1 billion, the proposed reform rule is not cost effective.

FACT: The proposed changes to the HOS rule will provide more than \$2 billion in crash cost savings and driver health benefits that will benefit the American taxpayer in reduced crash and injury costs, lower medical and health payments and longer, healthier driver life expectancy.¹⁸

ISSUE: Impact of the HOS Rule Reform Proposal on Industry Jobs—

INDUSTRY FICTION: The current HOS rule enhanced productivity but the proposed rule is inefficient.

FACT: The current HOS rule provided a windfall profit to the trucking industry of over \$900 million dollars by eliminating nearly 50,000 driving jobs in the trucking industry.¹⁹ The current HOS rule adopted by the Bush Administration in 2003 is a jobs killing regulation. By contrast, the HOS rule reform proposal, by returning to the traditional 10 hour limit on consecutive hours of driving and allowing the 34-hour restart to be used only once each week, will create almost 40,000 new jobs for truck drivers.²⁰

INDUSTRY FICTION: The proposed rule will result in more trucks, adding to highway congestion.

FACT: By creating additional jobs the proposed reform rule will result in more truck drivers but because those drivers will be moving the same amount of freight the number of trucks will not have to be increased. The option to put additional trucks on the road is one motor carriers and shippers may choose to make, but it is not required by the proposed rule.

ISSUE: The HOS Rule Reform Proposal Effect on the Industry—

INDUSTRY FICTION: The proposed rule would be a drag on the U.S. economy and negatively impact the \$600 billion trucking industry.

FACT: The exaggerated claims of a calamitous impact on the trucking industry and the economy are patently false. The estimated billion dollar cost for the proposed HOS reform rule is a minute fraction of the overall cost to industry and represents less than one half of one percent (.005) of annual revenues from the trucking industry.²¹ In contrast, large truck crashes resulted in 3,380 deaths in 2009, at a cost to the nation of nearly \$20 billion, about one-half of all truck related crash costs. Moreover, the reformed HOS rules will not affect most drivers but will be targeted to those drivers most in danger of operating vehicles while fatigued, “primarily impact[ing] the 15 percent of drivers who average 70 or more hours on-duty per week.”²²

**SAVE LIVES, MONEY AND JOBS
SUPPORT THE HOS RULE REFORM PROPOSAL**

End Notes

- ¹ 75 FR 82176.
- ² Large Truck and Bus Crash Facts 2008, page 4, Table 1, FMCSA, Mar. 2010.
- ³ Trucks Involved In Fatal Accidents Factbooks 2003-2008, Transportation Research Institute, University of Michigan.
- ⁴ HOS Notice of Proposed Rulemaking, 75 FR 82170, 82177 (Dec. 29, 2010).
- ⁵ *Public Citizen v. FMCSA*, 374 F.3d 1209, 1218 (D.C. Cir. 2004); *Owner-Operator Independent Drivers Association, Inc. (OOIDA) v. FMCSA*, 494 F.3d 188, 206 (D.C. Cir.2007).
- ⁶ *Public Citizen* at 1218.
- ⁷ *Id.* at 1219.
- ⁸ *Id.* at p. 1222.
- ⁹ *OOIDA op cit.*
- ¹⁰ 65 FR 25540. FMCSA includes Chart 5 that graphs the steeply rising increase in relative risk of fatigue crash after 8 consecutive hours of driving, *id.* at 25544, and goes on to state that there was a dramatic and consistent increase in crash risk after 8 hours, *citing* Lin, *et al.* (1993), *id.* at 25546.
- ¹¹ *Public Citizen, op cit.*, at 1218.
- ¹² *Id.* (citation omitted).
- ¹³ *Id.* at 1219.
- ¹⁴ *Id.* at 1222-1223 (citation omitted).
- ¹⁵ *OOIDA, op cit.*, at 206.
- ¹⁶ See e.g., Blanco, M., Hanowski, R.J., *et al.*, The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations, FMCSA, May, 2011. Despite the 10-hour off duty period and 14-hour day work limit of the current HOS rule, drivers still experience increases fatigue and crash risk when operating vehicles more than 9 hours after reporting for duty. Driving during the 10th through the 14th hour of the work day are associated with higher crash risk ("if a driver drives deep into the 14-hour workday, driving-related SCE [safety-critical event] risk increased", Blanco, page xxi).
- ¹⁷ 75 FR 82176 (emphasis added) citing the Virginia Tech Transportation Institute (VTTI) naturalistic study, Hanowski, *et al.*, "The Sleep of Commercial Vehicle Drivers Under the 2003 Hours-of-Service Regulations," *Accident, Analysis and Prevention*, Vol. 39, No. 6, pp. 1140-1145 (Nov. 2007) (VTTI study), FMCSA-2004-19608-3977. The VTTI study "provides the most reliable data on sleep under the current rule." 75 FR 82177.
- ¹⁸ 75 Federal Register 82172.
- ¹⁹ Regulatory Impact Analysis and Small Business Analysis for Hours of Service Options, page ES-5, Table ES-2, FMCSA (Dec. 2002).
- ²⁰ 2010-2011 Hours of Service Rule Regulatory Impact Analysis (2010-2011 RIA), page 6-17, Exhibit 6-26 FMCSA (Dec. 20, 2010).
- ²¹ 2010-2011 RIA.
- ²² *Id.*, page 3-1 to 3-2.



ADVOCATES
for Highway & Auto Safety

Hours of Service Laws, Fact & 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.

The Hours of Service Rule Chronology

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.
- proposed rule issued by the Carter Administration 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;
- proposed rule issued by Bush Administration (1992) withdrawn by Clinton Administration (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:

- HOS Proposed Rule (May 2, 2000): requires that work and rest alternate only within a 24 hour period; mandates electronic onboard recorders for long-haul and regional drivers; increases maximum consecutive driving hours from 10 to 12 hours; increases off-duty rest time from 8 to 9-12 hours, depending on the type of driver; 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:

- Key anti-safety elements in HOS Final Rule (April 28, 2003): allows work and rest to alternate on a 21 hour rotation; does not require electronic onboard recorders; reduces time for rest in each shift to 10 hours; re-establishes split rest time periods in sleeper berths; increases former consecutive driving time in each shift from 10 to 11 hours; allows drivers to take off a minimum of 34 consecutive hours, after which they can again start driving another 70 or 80 hours; 34-hour layover forces drivers to drive during what formerly was layover time between tours of duty; 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.

Public Citizen and other safety groups, with Advocates as *amicus curiae*, file suit against the FMCSA challenging validity of HOS final rule (June 12, 2003):

Lawsuit challenges HOS rule as arbitrary, capricious, and not in accordance with law; shows that the agency failed to fulfill a statutory requirement to address the need for electronic onboard recorders; emphasizes that none of the changes in the final rule are adequately supported in the administrative record; shows agency ignored earlier admissions of the dangers of increasing consecutive driving time; demonstrates that the benefit cost analysis on which the final rule relies is fundamentally flawed.

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

- 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; 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.

2006: Groups File Lawsuit Opposing 2005 HOS Rule:

- Petition for reconsideration filed by Owner-Operator Independent Drivers Association (OOIDA) is denied on December 5, 2005; OOIDA files suit over the sleeper berth issue on Jan. 23, 2006.
- After waiting 5 months with no response from FMCSA to the petition for reconsideration, Advocates, Public Citizen, CRASH, PATT, and the International Brotherhood of Teamsters withdraw petition from agency and file petition for review in federal court of appeals on Feb. 27, 2006. The case was argued in court on Dec. 4, 2006.

2007: FMCSA Issues Weak EOBRs Proposal and Court Again Strikes Down HOS Rule:

FMCSA announces weak proposed rule on Electronic On Board Recorders (EOBRs) that will require few, if any, motor carriers to install currently available technology to monitor driver hours of service compliance and other aspects of commercial vehicle operation. Notice of proposed rulemaking, Jan. 11, 2007, 71 FR 2340 (Jan. 18, 2007).

U.S. Circuit Court of Appeals decision, issued July 24, 2007, again overturns and vacates major portions of 2005 final rule:

- Court's opinion reiterates flaws in reasoning on major issues found by previous panel in first case;
- Opinion vacates the increase to 11 consecutive driving hours and 34-hour restart provision;
- Court holds that agency revised model used to explain reasoning is flawed and fails to properly represent data on truck crashes during and after the 11th hour of driving;
- Court also rules that FMCSA failed to afford public notice and an opportunity to comment on the agency model before it was issued as part of the final rule;
- Court grants 90-day stay of the issuance of the order to vacate the two provisions, giving FMCSA to Dec. 27, 2007, to provide the trucking industry and law enforcement with guidance regarding the changes in hours of service rules that will take effect after the mandate is issued.

FMCSA Issues Interim Final Rule reinstating rules vacated by Court of Appeals:

- FMCSA, citing no legal authority, reinstates both the 11th hour of driving and 34-hour restart provisions that the Court held were promulgated in violation of law;
- FMCSA claims that disruption of trucking industry and inability to get states to change enforcement policies necessitated this action, even though the Court of Appeals already rejected these arguments when FMCSA presented them seeking a one-year stay of the Court's order;
- Interim Final Rule continues the 2005 HOS rule intact while agency collects data and information to support eventual reissuing the same rule sometime in 2008;
- Interim Final Rule reinstates provisions vacated by Court of Appeals without giving public prior notice or opportunity for public comment, one of the reasons the Court cited in its July, 2007 opinion for vacating the two rules; provides public with after-the-fact comment period of 60 days.

Senate Holds Public Hearing on Hours of Service Regulations:

December 19, 2007, before the Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Subcommittee of the Commerce, Science and Transportation Committee.

Safety Groups and Labor Union Seek to Set-Aside Interim Final Rule:

Groups file motion in on Dec. 19, 2007, requesting that Court of Appeals enforce its decision to vacate features of the 2005 HOS rule and set-aside agency interim final rule. Court denies request.

2008: FMCSA Issues New HOS Final Rule, Petition for Reconsideration Filed with Agency: FMCSA reissues HOS rule without change:

- Agency issues final rule on December 17, 2008, that formally adopts the HOS provisions contained in the interim final rule and the prior 2005 HOS regulation.
- Safety groups and labor union file petition for reconsideration of HOS final rule on Dec. 18, 2008.

2009: Petition for Reconsideration Denied , Parties File 3rd Lawsuit, Reach Settlement:

Agency responds by denying petition for reconsideration of safety groups and labor union on Jan. 16, 2009, just three days before leaving office.

Safety groups and labor union file third HOS Lawsuit challenging FMCSA rule:

- Third HOS law suit filed by safety groups and labor union on March 9, 2009, seeking review of the HOS final rule and the denial of the petition for reconsideration in U.S. Court of Appeals, and send contemporaneous letter to Transportation Secretary Ray LaHood requesting new HOS rulemaking.
- Petitioners and FMCSA file a joint motion on October 26, 2009, requesting that the Court hold the Petition for Review in abeyance pending fulfillment of a settlement agreement between the parties in which FMCSA agrees to reopen rulemaking on hours of service by forwarding a draft notice of proposed rulemaking to the Office of Management and Budget within nine months of the date of the settlement agreement (by July 26, 2009), and by issuing a final rule within 21 months of the settlement date (by July 26, 2010).
- The FMCSA federal advisory committee, the Motor Carrier Safety Advisory Committee (MCSAC), meets in early December to discuss HOS rules and compile list of issues and ideas the agency should consider in developing revised HOS rule.

2010: FMCSA Undertakes New HOS Rulemaking:

Agency conducts outreach and listening sessions to prepare draft of new rule:

- FMCSA holds five public listening sessions around the country to take public comment on HOS rule.
- The FMCSA MCSAC holds a second meeting in early February to complete deliberations and list of issues and ideas the agency should consider in developing revised HOS rule.
- Court of Appeals issues an order on March 3, 2010, granting the October, 2009, joint motion to hold the petition for review in abeyance pending further proceedings before the FMCSA consistent with the joint motion and settlement agreement.
- FMCSA adheres to deadline in litigation settlement agreement by sending proposed HOS rule to Office of Management and Budget (OMB) on July 26, 2010.
- OMB Office of Information and Regulatory Affairs (OIRA) completes review on Dec, 17, 2010.

FMCSA issues new proposed HOS rule (Dec. 20, 2010):

- Notice of proposed rulemaking (75 FR 82170, Dec. 29, 2010) issued, proposed rule includes—
 - consideration of return to imposing maximum of 10 consecutive hours of driving per shift; requiring minimum one-half hour rest breaks after seven hours on duty if further driving is contemplated;
 - requiring 34-hour restart be taken over two night time periods of midnight to 6 a.m. and limiting use of restart to once every seven days;
 - reducing on-duty time during 14 hour daily work window from 14 to 13 hours per day;
 - allowing non-work extension of 14-hour day to 16 hours twice each week;
 - and permitting sleeper berth 2-hour off duty period to be taken in-cab immediately before or immediately following 8-hour off duty period.
- FMCSA holds public listening session and on-line question and answer public availability on Feb. 17, 2011.
- Trucking interests mount media campaign and effort in Congress to prevent proposed rule from being issued as final rule.

2011: FMCSA reopens docket for new research publications (May 9, 2011):

FMCSA publishes four new studies –

- Hanowski, et al, “The Impact of Driving, Non-Driving Work, and Rest Breaks On Driving Performance in Commercial Vehicle Operations,” FMCSA (April 2011);
- Jovanis, et al, “Hours of Service and Driver Fatigue – Driver Characteristics Research,” FMCSA (April 2011);
- Sando, et al, “Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions,” TRB 90th Annual Meeting (Nov. 2010); and
- Sando, et al, “Potential Causes of Driver Fatigue: A Study On Transit Bus Operators In Florida,” TRB 90th Annual Meeting (Nov. 2010);
- FMCSA reopened HOS rulemaking docket to accept public comment on the studies;
- FMCSA files third status report on pending litigation stating intent to publish final rule on or before October 28, 2011.

Electronic On-Board Recorders –

- Motor Carrier Safety Advisory Committee establishes subcommittee on EOBRs;
- OOIDA wins 7th Circuit lawsuit against FMCSA remedial EOBRs rule, agency failed to define what actions constitute illegal use of EOBRs to harass operators.

HOS Reform Proposed Rule –

- Final Rule sent to OMB for review (Nov. 1).
- Advocates for Highway and Auto Safety testifies on pending HOS reform proposal at hearing before the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending (Nov. 30).

DECADES OF COMPELLING AND CONVINCING RESEARCH HAS SHOWN THE DANGERS OF FATIGUED COMMERCIAL DRIVERS

Operator fatigue and sleep deprivation are serious, worldwide safety problems in all modes of transportation. Operator fatigue has been identified by several major national governments and the European Union as a serious contributor to air, maritime, railroad, motor carrier and passenger vehicle crashes and other incidents leading to losses of lives, the infliction of severe injuries, and extensive property damage. For example, the report of the Parliament of the Commonwealth of Australia (October 2000) concluded that fatigue is the “core safety issue in the transport industry.” Although the problem of fatigue pervades commercial transportation, the drivers of commercial motor vehicles (large trucks and buses) are the leading commercial transportation source of fatigued, sleep-deprived operators. Drivers of large trucks and buses are allowed to operate very long shifts without adequate sleep and to rotate their time on duty. This forces commercial vehicle drivers to sleep on a piecemeal basis and often to drive through the night, the most dangerous time to operate a large truck or bus. Under the current hours of service (HOS) rule, 65% of drivers have reported being drowsy while driving and 48% admit to having fallen asleep while driving in the previous year. The result is an unacceptable number of preventable crashes that is recognized as a major reason for highway fatalities.

COMMERCIAL DRIVER FATIGUE FACTS

- Current U.S. federal HOS regulations allow truck and bus drivers to drive up to 11 hours in a 21-hour period and up to 77 hours in 7 days or 88 hours in 8 days with only a minimum of 10 hours off-duty for sleep after each 11 hours of driving. HOS Final Rule, 73 FR 69567 (Nov. 19, 2008).
- These unsafe freight and passenger transportation practices of long duty and driving hours, shift rotation, and inadequate sleep have been recognized by research conducted by government agencies such as the National Transportation Safety Board (NTSB), the National Highway Traffic Safety Administration (NHTSA), and the Federal Highway Administration (FHWA) and the Federal Motor Carrier Safety Administration (FMCSA) as fatiguing and dangerous. (FMCSA, 2011, 2007; NTSB, 1995; NHTSA, 1999, 1998, 1994; U.S. Office of Technology Assessment, 1991; FHWA 1990, 1988, 1987, 1980).
- Numerous studies performed by independent researchers worldwide have shown that long hours per shift and lengthy weekly work periods promote fatigue among workers, especially commercial vehicle operators. (Blanco & Hanowski, 2011; Jovanis, 2011; Sandos 2010; Campbell, 2005; Jovanis, 2005; Abrams 1997; Akerstedt, 1997; Folkard, 1997, 1995; Smiley and Heslegrave, 1997; Sanquist, 1996; Brown, 1994; Frith, 1994; Kurumatani, 1994; Rosa, 1993, 1991; Kaneko and Jovanis 1992, 1990; Dinges and Kribbs, 1991; Rosa and Colligan, 1989; Haworth, Triggs, and Grey, 1988; Hamelin, 1987; Jones and Stein, 1987; Rosa *et al.*, 1985; Fuller, 1983; Linklater, 1980; Knauth 1979; Harris and Miller, 1978, 1972).
- Commercial drivers frequently exceed even the allotted hours permitted by federal regulation for on-duty driving time, and regularly falsify paper logbooks to conceal actual driving hours. Some drivers even accumulate up to 100 driving hours per week. (McCartt (Insurance Institute for Highway Safety), 2005, 2003; Belzer, 1999; UMTRI, 1997-1999; Braver, *et al.*, 1992; van Ouwerkerk (European Economic Community), 1988).
- Research conducted for FMCSA confirms that crash risk increases along with the driving time for at least the 7th through the 11th consecutive hours of driving. (Jovanis, 2011).

- Another recent FMCSA contracted study confirms that driving towards the end of the 14-hour shift, that is, more than 10 hours after reporting for duty (*i.e.*, during hours 10 through 14) increases crash risk reflected in safety-critical events. (Blanco, Hanowski, *et al.*, 2011).
- The prevalence of fatigue and sleep deprivation leading to truck and bus crashes is severely underreported and is usually not detectable by police and other crash investigators. (Australian Federal Office of Road Safety, 1988, 2000; AAA Foundation for Traffic Safety, 1999; NTSB, 1995; NHTSA, 1994).
- Fatigue and sleep deprivation, with their associated dangers of falling asleep at the wheel, inattention, and loss of alertness, are judged by several researchers and agencies to be responsible for 15 percent to as much as 50 percent of heavy truck crashes. (FMCSA, 2000; Parliament of the Commonwealth of Australia, 2000; NTSB, 1995; Australian Federal Office of Road Safety, 1988; NHTSA, 1994).
- Numerous researchers have stressed that long consecutive driving hours, long duty weeks, and inadequate and interrupted sleep are directly related to increased crash risks. In fact, many researchers, as well as the FMCSA, have shown that the risk of having a crash rapidly increases after 8th or 9th hour of driving. (FMCSA, 2000; Saccamano and Yu, 1996, 1995; Folkard, 1995; Lin, Jovanis, and Yang, 1994; Frith, 1994; Rosa and Bonnet 1993).
- Numerous researchers have also shown that long working hours per day and per week are related to adverse health effects, including obesity, reduced cardio-vascular capacity, some cancers, endocrine and hormonal changes, and musculo-skeletal disorders. (National Academy of Sciences Transportation Research Board, 2005; National Institute of Occupational Safety and Health (NIOSH), 2004).
- Although it is clear that long consecutive driving hours and longer weekly driving hours increase commercial driver fatigue and loss of alertness, while raising the risk of crashes, the current HOS rule increased the number of consecutive and weekly driving hours in direct contradiction to previous U.S. DOT agency statements about the dangers of increasing work hours. (FMCSA, 2000; FHWA, 1990, 1981).
- Although several research studies have consistently shown that short rest periods do not allow worker and driver recovery from long, fatiguing shift work and driving, the current HOS rule only allows drivers a minimum of 34 hours off-duty for sleep and recuperation after having driven as much as 60 hours in less than 5 days or 70 hours in about 5 days before starting a new tour of duty. (FMCSA, 2003; Belenky, 2000; Balkin, 2000; Smiley and Heslegrave, 1997; Wylie, *et al.*, 1997; Sanquist, *et al.*, 1996; Kecklund and Akerstedt, 1995; Kurumatani, 1994).
- Although numerous shiftwork and driver studies have shown that fatigue and sleep deprivation are especially severe during late night hours and that late-night driving dramatically increases the risk of injuries and crashes, the FMCSA did not restrict nighttime commercial driving in the 2003 and 2005 final rules and will allow commercial drivers to accumulate all of their driving time during hours of darkness. (FMCSA, 2000; Folkard, 1997; Rosekind, n.d.; Fuller, 1983; EEC, 1985; Akerstedt, 1997; Hamelin, 1987; Wylie, 1997; Smiley and Heslegrave, 1997).

October 7, 2011

The Honorable Barack Obama
President of the United States of America
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500
VIA FAX: 202-456-2461

Dear President Obama:

As parents, spouses and children who have had loved ones needlessly killed or seriously injured in truck crashes caused by fatigued truck drivers, we are writing to request urgent adoption of necessary and lifesaving reforms to the current Hours of Service (HOS) rule for truck drivers proposed by Secretary Ray LaHood at the U.S. Department of Transportation (DOT). The current rule allows truckers to drive and work hours that are excessively long, contribute to fatigue and threaten the lives of truck drivers as well as the lives of families who share the roads with big trucks. Reasonable changes to the current rule will reduce driver fatigue, decrease crashes by tired truckers, save taxpayer money and make our roads and highways safer for everyone.

Each one of us has lived through a personal tragedy resulting from a truck driver who never should have been on the road. We are just a few of the approximately 3,000 families who have been forced to endure a tragic, sudden death and the 100,000 people who have suffered debilitating and costly injuries due to truck crashes every year. We are all painfully aware that driver fatigue has been cited as a major cause of crashes by the National Transportation Safety Board and the Insurance Institute for Highway Safety.

The current HOS rule allows many truckers to drive up to 77 hours a week, and long-haul drivers up to 88 hours a week as well as perform non-driving work beyond those limits. This means that some truckers work more than *twice* the normal 40-hour work week of most Americans, often pushing themselves beyond their limits. Under the current HOS rule 65 percent of drivers report that they often or sometimes felt drowsy while driving and 48 percent said they had fallen asleep while driving in the previous year. Because this is happening while they are in control of loads weighing 80,000 lbs. or more, and while they are operating at highway speeds alongside families in small passenger vehicles, the results can be catastrophic.

The DOT proposed rule will improve safety by reducing the maximum consecutive hours that truck drivers can drive in one sitting. This would reduce the amount of time drivers are exposed to the highest truck crash rate, and especially during the time that drivers are often most fatigued. The 10-hour limit on consecutive hours of driving was in place for more than 70 years and there is no legal or scientific justification for DOT to permit more than 10-consecutive hours of driving in a daily shift.

The pending changes will also improve safety by requiring the most fatigued truck drivers, those who drive continuously and use up their driving hours as quickly as possible, to take more than the minimum 34-hour rest time after driving as much as 88 hours in a week. There is no safety reason to permit tired truckers to take as few as 34-hours off duty -- less than a day and a half -- after operating for long hours week in and week out.

The Bush Administration HOS rule permitting tired truckers to drive and work longer hours not only defies commonsense and well-documented research and scientific data, but it also was overturned in two unanimous back-to-back decisions of the U.S. Court of Appeals for the District of Columbia which

remanded the rule to the agency to be revised. In the first case the court ruled that the Federal Motor Carrier Safety Administration (FMCSA) had ignored the impact of the longer hours on driver health as well as safety. The Court stated that DOT's decision to allow longer driving hours was at odds with the underlying facts that crash risk increases and safety declines when truckers are permitted to drive for more hours. In fact, six federal appellate judges in two cases have found the Bush Administration HOS rule arbitrary and capricious.

Trucking interests have misleadingly claimed that the current HOS rule is responsible for recent reductions in truck crash deaths when there is no evidence or data supporting that position. Recent decreases in truck crash deaths are primarily the result of improvements in automobile safety and challenging economic times. During the first two years of the current HOS rule, 2004 and 2005, truck crash deaths actually went up but trucking interests have conveniently failed to mention that statistic.

The changes in the proposed HOS rule will add to the economic recovery by increasing trucking industry payrolls by an estimated 40,000 jobs. Also important to note is that a portion of these jobs will likely go to small businesses – the owner operator independent drivers who make up a large percentage of carriers.

Truck crashes not only exact a significant personal toll on families like ours but also an enormous financial burden. In 2009 the cost of fatal large truck crashes was approximately \$19.6 billion, and this figure does not include costs associated with injuries, which significantly outnumber fatalities, including physical damage to vehicles, freight cleanup, congestion costs and lost time. We can't bring back our loved ones but we want to make sure other families are spared the suffering ours have had to endure. The proposed rule will save lives, improve driver health, reduce costs to society and provide jobs. We ask that you move forward and adopt the improved rule. It is a "win-win" for safety, the economy and families.

Thank you for your time and attention to this important public health and safety issue.

Sincerely,

Daphne Izer, Founder, Parents Against Tired Truckers
Steve Izer, Board Member, Parents Against Tired Truckers
Lisbon, Maine
Son Jeffrey and three other teenagers were killed in a crash caused by a tired trucker.

Jane Mathis, Board Member, Parents Against Tired Truckers and Member, FMCSA's Motor Carrier Safety Advisory Committee
St. Augustine, FL
Son David and his wife Mary Kathryn were killed when a truck driver, who had fallen asleep behind the wheel, rear-ended their car setting it on fire.

Bruce King
Dawn King, Board Member, Citizens for Reliable and Safe Highways
Davisburg, MI
Dawn's father, Bill Badger, was killed by a tired trucker who fell asleep at the wheel and crashed into his car.

Patricia Liberatore
Lawrence Liberatore, Board Member, Parents Against Tired Truckers
Severn, MD
Son Nick was killed by a fatigued truck driver who veered across 3 lanes of traffic and ran over his car.

Nikki Hensley, Board Member, Parents Against Tired Truckers
Fostoria, OH

Husband Virgil was killed when a fatigued truck driver ran a stop sign and crashed into his car.

Gary Wilburn

Linda Wilburn, Board Member, Parents Against Tired Truckers
Weatherford, OK

Son Orbie was killed instantly when a tired truck driver slammed his semi into the rear of Orbie's car doing an estimated 75 miles per hour. Orbie's car exploded on impact.

Paul Badger

Davidson, NC

Father, Bill Badger, was killed by a tired trucker who fell asleep at the wheel and crashed into his car.

Kate Brown

Gurnee, IL

Son Graham was hit by a drunk, drugged and fatigued truck driver who fell asleep and swerved into the oncoming lane, hitting Graham's car and sending it airborne into a field.

Jackie Novak

Hendersonville, NC

Son Charles "Chuck" Novak and his girlfriend Theresa Seaver, were two of five people who died in a crash when a fatigued, speeding tractor-trailer crashed into a line of cars stopped due to an earlier crash.

Michelle Novak

Franklinville, NY

Nephew Charles "Chuck" Novak and his girlfriend Theresa Seaver, were two of five people who died in a crash when a fatigued, speeding tractor-trailer crashed into a line of cars stopped due to an earlier crash.

Ed Slattery

Baltimore, MD

Wife Susan and sons Peter and Matthew were hit by a truck driver who had fallen asleep behind the wheel. Susan was killed and Peter and Matthew were critically injured.

Ron Wood

Washington, DC

Mother Betsy Wood, sister Lisa Wood Martin and nephews Chance, Brock and Reid Martin, were killed just outside Sherman, Texas when a tractor trailer driver fell asleep behind the wheel and crossed a median into oncoming traffic, killing a total of ten people and injuring two more.

Please reply to the Truck Safety Coalition, John Lannen, Executive Director, jlannen@trucksafety.org, 703.294.6404.

cc: The Honorable Ray LaHood
The Honorable Anne Ferro

TRUCK DRIVER HOURS OF SERVICE (HOS) LIMITS OVERTURNED

U.S. COURT OF APPEALS VACATES KEY ASPECTS OF HOS RULE

SECOND UNANIMOUS DECISION AGAINST HOS RULE IN 3 YEARS

Twice in three years, in 2004 and again in 2007, unanimous 3-judge panels of the U.S. Court of Appeals for the District of Columbia Circuit (Washington, D.C.) held that the Hours of Service (HOS) rule issued by the Federal Motor Carrier Safety Administration (FMCSA) was adopted in violation of federal law. The Court first ruled that the FMCSA had not considered the health effects the rule would have on truck drivers required to drive and work the additional hours allowed under the rule change. Concern for driver health is a statutorily mandated consideration. The Court went on to point out that FMCSA had not substantiated the safety of two important aspects of the rule, the increase to a limit of 11 consecutive hours of driving each shift, and the “restart” provision permitting drivers to begin a new week of over 70 driving hours after only 34 hours off-duty. Given agency findings of fact regarding driver fatigue the decision to allow drivers to accumulate more driving and work hours did not appear to be legally justifiable.

In the second case, the Court in 2007 remanded the rule to the FMCSA again this time because the agency had failed to explain critical assumptions and data manipulations and failed to disclose its statistical methodology to public comment before issuing a final rule. In its ruling, the Court restated the findings of the prior decision regarding the agency’s lack of reasoned explanations for permitting longer driving and work hours which cast doubt on the safety of the 11-hour daily driving limit and the 34-hour restart requirements. The Court in both decisions ruled that these two critical parts of the rule must be vacated and the rule remanded to the agency for new rulemaking proceedings.

In each case, however, FMCSA reissued the same rule the agency first adopted in April, 2003. The 2003 HOS final rule was vacated by a unanimous 3-judge panel of the Federal Court of Appeals July 16, 2004. The second Court decision, by a different 3-judge panel, vacated the 2005 final rule that reinstated most of the original 2003 HOS rule. Thus, six federal judges of the appellate court that is directly below the U.S. Supreme Court have now found the HOS rule illegal. Beyond the specific legal holding in each case, the Court in both decisions criticized other shortcomings of the FMCSA HOS rule. The attached side-by-side includes quotations from each Court opinion about the various issues considered by the Court panels in each case.

ISSUE	ANALYSIS of July <u>2004</u> COURT OF APPEALS DECISION VACATING HOS RULE	ANALYSIS of July <u>2007</u> COURT OF APPEALS DECISION VACATING HOS RULE
Driver Health	<p>“The FMCSA points to nothing in the agency’s extensive deliberations establishing that it considered the statutorily mandated factor of drivers’ health in the slightest”</p> <p>“[The FMCSA’s] failure to [explain its reasons for not considering the effect of the rule on driver health], standing alone, requires us to vacate the entire rule as arbitrary and capricious, as the agency’s failure to consider this factor, to borrow a phrase from the agency’s brief, ‘permeated the entire rulemaking process.’ ”</p>	N/A
Cost-Benefit Analysis (Operator-Fatigue Model Methodology)	<p>“[T]his analysis assumes, dubiously, that time spent driving is equally fatiguing as time spent resting – that is, that a driver who drives for ten hours has the same risk of crashing as a driver who has been resting for ten hours, then begins to drive. [citation omitted]. In other words, the model disregarded the effects of ‘time on task’ because, the agency said, it did not have sufficient data on the magnitude of such effects.”</p> <p>“The exponential increase in crash risk that comes with driving greater numbers of hours, presumably caused by time-on-task effects, raises eyebrows about the agency’s increase in daily driving time. Yet the agency excluded time-on-task effects from the cost-benefit analysis. That analysis, then, assumes away the exact effect that the agency attempted to use it to justify. The agency’s reliance on the cost-benefit analysis to justify this increase is therefore circular, and the rationality of that explanation is correspondingly doubtful.”</p>	<p>“FMCSA’s decision to plot the data point for Hour 13 and beyond at Hour 17 – instead of at Hour 13 (or some other point) – was entirely unexplained in the RIA [regulatory impact analysis] and final rule. This complete lack of explanation of an important step in the agency’s analysis was arbitrary and capricious.”</p> <p>“Although we apply a deferential standard of review to an agency’s use of a statistical model, we cannot uphold a rule based on such a model when an important aspect of its methodology was wholly unexplained.”</p> <p>“FMCSA gives no explanation for the failure of its operator-fatigue model to account for cumulative fatigue due to the increased weekly driving and working hours permitted by the 34-hour restart provision. . . . [t]he agency’s failure of explanation renders the restart provision arbitrary and capricious.”</p>
Increase in Maximum Driving Time from Ten to Eleven Hours	<p>“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.”</p> <p>“[P]etitioners’ challenge raises very real concerns.”</p>	<p>“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.’ ”</p>

<p>Increase in Maximum Driving Time from Ten to Eleven Hours (Continued)</p>	<p>“We have our doubts about whether [the agency’s] two justifications are legally sufficient.”</p> <p>“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].”</p> <p>“The agency did refer generally to studies, but that generalized reference is of doubtful legal sufficiency.”</p> <p>“. . . the effects from the increased weekly driving hours may offset any decrease in fatigue flowing from the fact that drivers have overall [one hour] shorter tours of duty. For these [] reasons, it is unlikely that we would find the agency’s first explanation legally sufficient.”</p> <p>“The agency’s reliance on the cost-benefit analysis to justify this increase [in driving hours] is therefore circular, and the rationality of that explanation is correspondingly doubtful.”</p>	<p>“Second, we also found suspect the agency’s claim that the increase in daily driving limit to 11 hours could be justified by ‘the cost-benefit analysis it conducted.’ ”</p>
<p>34-Hour Restart Provision</p>	<p>“. . . this provision has the effect of increasing the number of hours drivers can work [i.e., drive] each week.”</p> <p>“While the agency’s explanation seems sound enough as far as it goes, it does not even acknowledge, much less justify, that the rule . . . dramatically increases the maximum permissible hours drivers may work [i.e., drive] each week.”</p> <p>“And 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.”</p>	<p>“[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.’ ”</p>

<p>Electronic On-Board Recorders (EOBRs)</p>	<p>“The agency’s justification for not requiring EOBRs to monitor driver compliance is another aspect of the final HOS rule of questionable rationality.”</p> <p>“The agency’s explanation in all likelihood does not conform to [its] statutory requirement.”</p> <p>“The agency concedes that it ‘did not test the (very few) EOBRs currently available.’ The agency offers no excuse for not doing so, and we can think of none that would suffice to fulfill the agency’s duty to ‘deal [] with’ the issue of EOBRs.”</p> <p>“We cannot fathom, therefore, why the agency has not even taken the seemingly obvious step of testing existing EOBRs on the road, or why the agency has not attempted to estimate their benefits on imperfect empirical assumptions.”</p> <p>“The agency has given no good reason for treating this problem with such passivity.”</p>	<p>N/A</p>
<p>Sleeper Berth Exception</p>	<p>“Despite the premise [that each driver should have an opportunity for eight consecutive hours of uninterrupted sleep every day], the agency offered several justifications for nevertheless permitting drivers to obtain the required continuous period of rest in two chunks, all of which are quite weak.”</p> <p>“In sum, we have grave doubts about whether the agency’s explanation for retaining the sleeper-berth exception would survive arbitrary and capricious review.”</p>	<p>N/A</p>