



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 (May 2, 2000):

- HOS Proposed Rule: requires that work and rest alternate only within a 24 hour period; mandates electronic onboard recorders for long-haul and regional drivers; increases

2000:

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 increases maximum driving hours (April 28, 2003):

- Key anti-safety elements in HOS Final Rule: 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 retaining dramatic increase in 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 Proposed Rule and Court Again Strikes Down FMCSA 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

FMCSA reissues HOS rule without change — Petition for Reconsideration Filed:

- 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, proposal 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.
- American Trucking Association and 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.