

## HOURS-OF-SERVICE RULES

### ATA POSITION:

The Hours-of-Service (HOS) rules – as promulgated by the federal Department of Transportation (DOT) in August 2005 - should be adopted because of the positive impact they have had on safety performance and promoting greater driver alertness.

### BACKGROUND:

The HOS rules for truck drivers were originally established by the federal government in 1939. Those rules limited the amount of time that a truck driver could be driving (no more than 10 hours) and on-duty (no more than 15 hours) in a 24 hour period, provided the driver was off-duty for 8 hours between driving/on duty shifts. Additionally, the rules limited the amount of time a driver could be on duty on a “weekly” basis (60 hours in a seven day period or 70 hours in an eight day period). Because of this latter restriction, long-haul drivers could be required to remain away from home for a period of up to two or three days before the on duty clock could restart. Finally, drivers had the ability to “log-off” for rest breaks that did not count against their on-duty time.

In 1995, Congress directed DOT to establish new rules that incorporated current science about fatigue and alertness. What followed was a series of rulemakings that attempted to revise the HOS rules, taking into account the need for safety and driver alertness as well as the demands of a modern, transportation and distribution system (e.g., Just in Time deliveries) that relies heavily on truck transportation. Various versions of the revised rule were challenged by the trucking industry, Congress and ultimately a third-party litigant in the courts.

The result was that in August 2005, DOT issued new HOS rules that INCREASED the amount of rest time between shifts by 2 hours (8 to 10 hours) and DECREASED the maximum on-duty time by 1 hour (15 to 14 hours). Additionally, the 2005 Rule required that rest breaks would count against the 14 hour on-duty time, thus eliminating the ability of drivers to “log-off” for those breaks. The rule also allowed 1 additional hour of driving (10 to 11 hours) and provided the driver with the flexibility to “restart” their weekly on-duty time limit after taking at least 34 consecutive hours off-duty.

In July 2007, in response to a legal challenge, the U.S. Court of Appeals for the D.C. Circuit overturned two portions of the 2005 Rule: the 11 hour driving maximum time and the 34 hour restart provisions. The Court made clear that its decision to vacate was based on procedural errors: *(W)e conclude both that FMCSA failed to provide an opportunity for comment on the methodology of its operator-fatigue model, and that it failed to provide an explanation for the elements of that methodology.* In response to an ATA motion, the Court granted a 90-day stay of its decision until December 27, 2007.

On January 24, 2008 the United States Court of Appeals for the District of Columbia Circuit issued a terse order denying Public Citizen's request to invalidate the recently issued hours-of-service (HOS) Interim Final Rule (IFR). Public Citizen claimed that the Court's prior decisions in the case effectively prohibited the agency from issuing an IFR that included an 11-hour daily driving time limit and a 34-hour restart provision. ATA, the Federal Motor Carriers Safety Administration (FMCSA), and shipper interests all filed briefs opposing the Public Citizen motion. Those filings highlighted the need for retention of the 11 and 34-hour provisions in an IFR to avoid significant disruptions to the industry and to law enforcement and the significant safety gains achieved under the current HOS rules. The decision means that the 11 and 34-hour provisions will remain in place pending further FMCSA consideration of a final HOS rule. The Court did expressly note that its denial of the motion did not preclude Public Citizen from challenging the IFR in a separate legal proceeding. However such a proceeding would, even if expedited, take many months to pursue, with a final HOS rule likely to be issued before the litigation could be completed.

#### KEY POINTS FOR CONTINUATION OF THE 2005 RULE:

- Continual changes in the HOS rules will only cause confusion and misunderstanding among the truck driver population and law enforcement personnel about what rules apply.
- 2006 – the first full year of trucking operations under the 2005 Rule – showed a decline in fatalities in truck-involved crashes. Fatalities declined by 4.7 percent in 2006, the largest decrease in 14 years.
- The inability of many states to immediately adapt to the new requirements will result in a patchwork of enforcement which could undermine overall, federal safety efforts.
- It will be impossible for the trucking industry and the industries that rely on truck transportation – trucks exclusively serve over 80 percent of all U.S. communities – to adapt to immediate changes in the daily driving limit and restart provisions without significant and costly impacts to the supply chain.

#### ACTION REQUESTED:

Support the adoption of the 2005 Hours of Service rule as a responsible and balanced approach toward promoting driver alertness and overall highway safety. Encourage DOT to complete the rule this year.