

March 10, 2005

The Honorable Annette M. Sandberg
Administrator, Federal Motor Carrier Safety Administration
c/o Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, SW
Nassif Building, Room PL-401
Washington, DC 20590-0001

RE: Hours of Service of Drivers, Docket No. FMCSA-2004-19608

Dear Administrator Sandberg:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to submit these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) on the hours of service revised regulations. As FMCSA reviews and reconsiders the rule in the above-reference docket, I want to reiterate transportation labor's longstanding position that any change to the hours of service regulatory framework must make genuine safety improvements and protect the interest of drivers and travelers on our transportation network.

TTD, its 35 affiliated unions¹, and the millions of transportation workers we represent have long had a strong interest in ensuring that the rules governing motor carrier operations are crafted to enhance safety. Indeed, TTD, as well as the International Brotherhood of Teamsters (IBT) and the Amalgamated Transit Union (ATU), filed extensive comments in this docket regarding safety concerns and implementation problems with the changes to hours of service rules proposed prior to the issuance of a final rule in 2003. Many of our previous positions are particularly relevant now that FMCSA's 2003 rule has been vacated by the U.S. Court of Appeals for the District of Columbia for failing to take into account the impact of this rule on driver health.

At the outset, we note that the NPRM indicates that FMCSA does not intend to make changes to the hours of service regulations applicable to drivers and operators of passenger-carrying commercial motor vehicles (CMV). As we indicated in our previous comments, bus drivers and truck drivers operate differently and imposing these or other changes to bus operations would be a mistake. The fact is that fatigue-related issues are handled differently in the intercity bus industry and we are pleased that FMCSA is once again limiting the scope of this revision to the hours of service rules that relate to property carrying CMVs.

¹Attached at 1 is a complete list of TTD affiliated unions.

Transportation Trades Department, AFL-CIO

888 16th Street, NW • Suite 650 • Washington, DC 20006 • tel: 202.628.9262 • fax: 202.628.0391 • www.ttd.org
Edward Wytkind, President • Michael A. Ingrao, Secretary-Treasurer

With that said, transportation labor cannot support a rule that jeopardizes public safety by exacerbating, rather than addressing, the serious problem of driver fatigue in trucking operations. TTD and our unions argued in previous comments that hours of service rules, which had not been altered in 60 years, were in need of an overhaul. While we continue to believe this to be true, the Administration's 2003 revisions hurt, rather than helped those who toil in this dangerous occupation.

The revised rules increased the maximum number of hours a driver could be behind the wheel to 11 hours a day, up from 10 hours under the previous rules. Requiring a ten percent increase in driving time as a solution to driver fatigue makes little sense. Moreover, the inclusion of a "re-start" provision in the new rule, where drivers are only required to receive 34 hours off duty before beginning another marathon seven or eight day on-duty stretch, further contributes to physical exhaustion. A driver who uses the re-start provision would be able to drive 74 hours in seven consecutive days – an increase of 14 hours over the 60 hour cap under the old rule. This provision dramatically cuts into the time drivers who operate on a weekly schedule would otherwise have to recover, catch up on sleep, and spend with their families.

The rule did make one beneficial change with respect to rest time, providing two additional hours of rest per 24 hour period. By setting up a 24-hour clock – requiring 10 hours off after every 14 hours on duty – the revised rule provides a fixed schedule which scientific evidence has found is effective in addressing driver exhaustion. However, the cumulative fatiguing effects of an extra hour of driving each day and the 34-hour restart provision undermine and negate this improvement. For these reasons, we believe this rule is inherently flawed and fails to enhance public safety.

Indeed, in *Public Citizen v. Federal Motor Carrier Safety Administration*, 375 F.3d 1209 (D.C. Cir. 2004) the Court overturned this rule, citing FMCSA's failure to take into account the health of drivers in issuing the revisions to the hours of service regulations. Despite repeated warnings from transportation labor during the consideration of this rule, the Administration paid little attention to the deleterious effect that longer driving hours would have on the physical condition of motor carrier employees. The Court rightly realized that these changes push drivers to the point of exhaustion and that this reality must be considered. In addition, the Court also found that the decision to increase allowable on-duty time was not supported by scientific evidence, calling the decision to extend driving time "dubious," and questioning the reasoning and assumptions behind this change.

In its decision, the Court ordered FMCSA to re-evaluate its rule with attention to driver health considerations, and the request for comments to which this letter responds stems from that directive. Yet, instead of seriously committing to an improved rule, the NPRM does little more than challenge outside groups to demonstrate that some other rule or combination of provisions would be less harmful than the vacated rule. We find it unacceptable that a federal agency, after being found in clear violation of the law, would snub the Court's findings, evade responsibility to protect the public, and continue to advance a fundamentally unsafe hours of service regime.

It is even more objectionable that while this docket remains open for public comment, the Department of Transportation (DOT) is attempting to make a major end run around the regulatory process and seeks to alter the state of play around hours of service through legislative proposals. As you are well aware, by advancing a “technical amendment” to the highway and transit bill (TEA-LU/SAFE-TEA), DOT is urging Congress to re-instate and make permanent the court-rejected rule. Specifically, DOT makes the case that:

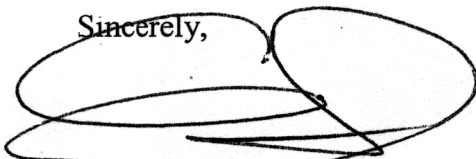
“Work on the hours-of-service regulation is time-consuming and involves a tremendous allocation of agency resources. Because the safety and operational results of the 2003 final rule *appear to be favorable*, and FMCSA may be required to undertake additional rulemaking activities without a significant increase in staff, the Department believes that it would be beneficial to end the prolonged struggle over hours of service and to ratify permanently the 2003 rule.”²

The fact that this Administration can call a rule that has been rejected by our judiciary system, denounced by safety groups, and condemned by hundreds of thousands of drivers “favorable” is shocking. Congress, over labor’s objections, has already granted FMCSA a temporary, one-year stay of this court-rejected rule – through September 2005 – in order to give the agency adequate time to issue a revised rule. It is troubling that while essentially wasting this time, FMCSA now wants the legislative branch to sanction a plan that would allow it to permanently shirk responsibility.

We will continue to work to ensure that Congress does not acquiesce to these unreasonable demands which would endanger the traveling public. Instead, we will insist that Congress oversee the completion of a rulemaking process that is grounded in both strong scientific evidence and an honest brokering of the needs and concerns of drivers, shippers, motor carriers, and safety advocates.

As an organization that represents workers in every mode of transportation, TTD understands the difficulties associated with constructing a viable, effective hours of service regime. We hope to continue to work with the DOT to establish new hours of service rules that will preserve and promote highway safety and find more suitable solutions to the problems of driver fatigue. Unfortunately, to date, FMCSA has not indicated its desire to focus attention on or resources to getting this crucial safety initiative done right.

Sincerely,



Edward Wytkind
President

² “Amendments to H.R. 2088, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, as introduced by request on May 14, 2003; Sectional Analysis, Hours of Service Rule.” Emphasis added.



TTD AFFILIATES

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen, IBT (BLET)
Brotherhood of Maintenance of Way Employees Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Brotherhood of Teamsters (IBT)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Retail, Wholesale and Department Store Union (RWDSU)
Service Employees International Union (SEIU)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
UNITE HERE
United Mine Workers of America (UMWA)
United Steelworkers of America (USWA)

January 2005

