

**STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
U.S. HOUSE OF REPRESENTATIVES
*OPPORTUNITIES AND CHALLENGES TO MEETING THE NEW HOS REGULATIONS***

JUNE 18, 2013

Mr. Chairman, Ranking Member DeFazio, and Members of the Subcommittee, thank you for inviting me to testify today on the impacts of the Federal Motor Carrier Safety Administration's (FMCSA) changes to the hours-of-service (HOS) regulations for drivers of large trucks.

Safety is FMCSA's number one priority and our employees and State partners are committed to saving lives. Since FMCSA's inception in 2000, we have witnessed a drop in the fatality rate from 0.205 fatalities in large truck and bus crashes per 100 million vehicle miles traveled by all motor vehicles to 0.136 in 2011, the most recent calendar year for which we have the final highway safety data. We have also seen a 29 percent decrease in the number of people killed in large truck- and bus-related crashes, from 5,620 in 2000 to 4,018 in 2011.

While we are aware of this progress, more must be done. Every life is precious and even one person injured or killed is one too many.

The December 2011 HOS final rule makes reasonable and common sense changes to the current HOS rules while helping to realize important safety benefits for the American public. We estimate these rules will prevent 1,400 crashes and 560 injuries, and save 19 lives each year.

Changes to the HOS Rules Will Improve Safety

Fatigue is a leading factor in large truck crashes. Under the HOS rules in effect until July 1, 2013, drivers operating large trucks may face demanding driving schedules, including workweeks in excess of 80 hours, averaging 13 hours per day. These schedules increase both the risk of fatigue-related crashes and long-term health problems for drivers.

The objective of the 2011 HOS final rule is, therefore, to reduce both acute and chronic fatigue by limiting the maximum number of hours per day and week that the drivers can work, thereby reducing the risk of fatigue-related truck crashes. The rule reduces a driver's average maximum allowable hours of work per week from 82 to 70 hours, ensuring that drivers have enough time off to obtain adequate rest on a daily and weekly basis.

The final rule is the product of years of fatigue research, safety studies, and analysis of public comments. FMCSA sought input from a wide range of stakeholders, including trucking companies, drivers, law enforcement, unions and safety advocates, and held numerous public listening sessions as it developed the 2011 final rule. This unprecedented public engagement

contributed to a fair and balanced final rule that provides a net gain in public safety and driver health.

Overview of Changes to HOS Rules

In general, the changes in the 2011 final rule are designed to impact only those drivers working the most intense schedules. As a result, the changes primarily impact the 15 percent of drivers who average 70 or more hours of work per week. Drivers who average less than 70 hours per week would not be affected by the changes included in this rule, including the new restart provision, and would not likely approach the daily driving, on duty, or weekly on duty limits set by the 2011 final rule. Drivers working more moderate schedules may approach 11 hours of driving, or 14 hours on-duty without the imposed 30-minute break, on a particular day they do so only occasionally. As a result, drivers working more moderate schedules are largely unaffected by the changes.

The HOS final rule reduces the maximum allowable weekly on-duty hours from 82 to 70 hours per week. Our research shows that 85 percent of the truck driver workforce (1.36 million drivers) has an average weekly work time of 60 hours or less. Of the remaining 15 percent (240,000 drivers), 160,000 work an average of 70 hours per week and approximately 80,000 drivers work an average of 80 hours per week. Overall, the reduction in maximum weekly on-duty hours to 70 hours will have a limited impact on the truck driver workforce, while helping to prevent 1,400 crashes and 560 injuries, and save 19 lives each year.

The HOS rule limits the use of the “34-hour restart” to once a week (or once every 168 hours). This change limits a driver’s work week to an average of 70 hours in 7 days, compared to the current rule which allows up to approximately 82 hours when the restart is used more than once in a 7-day period. The Agency took this action because FMCSA research shows that working long daily and weekly hours on a continuing basis is associated with chronic fatigue, a high risk of crashes, and a higher risk of death for drivers. As stated above, the new restart provision does not affect drivers averaging 60 hours or less per week of work time. For those drivers working an average of 70 hours per week, the new restart is estimated to result in a loss of half an hour per week due to the 2-night restriction in the restart provision. The impact of the restart for drivers working an average of 80 hours per week is estimated to result in an average loss of 8.7 work hours per week.

Under existing rules, alternating 14 hours on-duty and 10 hours off-duty, a driver would reach 70 hours in less than five full days. After a 34-hour break, the driver could then begin this same cycle again, totaling 70 hours on-duty every 6 calendar days, for an average of almost 82 hours per calendar week. Limiting restarts to once every 168 hours – measured from the beginning of the previous restart – prevents this excessive buildup of on-duty hours, while still allowing the driver to use the restart provision to his/her advantage and avoiding the safety risks associated with more frequent restarts.

Another key element of the 2011 final rule is the requirement that the 34-hour restart must include at least 2 periods between 1:00 a.m. and 5:00 a.m. We did not opt for two periods between midnight and 6:00 a.m. as proposed in the 2010 Notice of Proposed Rulemaking for the

changes to the HOS rules. Only nighttime drivers who work more than 60 hours in 7 consecutive days, or 70 hours in 8 consecutive days will be impacted by this change. Generally, the drivers most likely to be impacted by this provision work grueling and irregular schedules that include some nighttime driving. By contrast, nighttime operations of the major less-than-truckload (LTL) carriers should be impacted minimally, as their drivers generally receive 2 days off-duty per week.

In an effort to address acute fatigue during the workday, the final rule requires drivers to take a 30-minute break, if more than 8 consecutive hours on-duty have passed since the last off-duty (or sleeper berth) period of at least 30 minutes, before continuing to drive. The driver can take this break at a time and place of his or her choosing, and may include meals, rest stops, and other rest periods.

A Net Gain for the U.S. Economy

In 2009 alone, large truck and bus (also called commercial motor vehicles or CMV) crashes resulted in \$20 billion in societal costs, including medical, insurance, infrastructure damage, lost wages and productivity. These far-reaching impacts on the economy and taxpayers point to the need for policies that reduce dangerous truck driver fatigue and prevent needless tragedies on our highways.

The estimated annual cost of the 2011 final rule is more than 50 percent less (\$530 million) than FMCSA's preliminary estimates discussed in the 2010 notice of proposed rulemaking. The new HOS rule will result in many public safety benefits, as well as benefits to the industry, through reduced health care costs associated with crash injuries and overall improved driver health. FMCSA estimates the rule will provide \$280 million in savings from fewer crashes and \$470 million in savings from improved driver health (i.e., reduced mortality).

Opportunities and Challenges to Implementing the New HOS Rules

February 27, 2012, was the implementation date for those provisions in the rule that provide increased flexibility for carriers and drivers. The Agency's outreach efforts have resulted in a smooth transition by the industry and enforcement community. FMCSA selected a later implementation date, July 1, 2013, for other provisions of the rule to ensure adequate time for training of enforcement officials, motor carriers, and drivers, with the expectation that the affected parties would not postpone their training efforts because of the litigation. Generally, the Agency sets shorter compliance dates for new safety rules. However, FMCSA recognized that industry and law enforcement may need extra time to train personnel and to adjust schedules and automated systems to adapt to the changes to the 34-hour restart.

Definition of "On-Duty Time"

Prior to February 2012, the definition of "on-duty time" included all time that the driver spends in the CMV, with the exception being the time the driver spends in the sleeper berth. The 2011 final rule changed the definition to provide drivers with greater flexibility. As a result, the time a driver spends resting in a parked CMV may be considered "off-duty time" provided the driver is

relieved of all duties and responsibilities for performing work, including paperwork. This change applies to both truck and bus drivers. Drivers were allowed to begin using the new provision on February 27, 2012.

The final rule also allows truck drivers in team-driver operations to include up to 2 hours in the passenger seat immediately before or after 8 consecutive hours in the sleeper berth to log the time as off-duty time. This means the driver may log up to 2 hours in the passenger seat as off-duty time and combine it with the 8 consecutive hours in the sleeper berth to accumulate 10 consecutive hours off duty. As an alternative, the driver may use 1 hour in the passenger seat before the 8-hour sleeper berth period and 1 hour in the passenger seat after the sleeper berth period to accumulate 10 consecutive hours. Truck drivers were allowed to begin using this new, more flexible regulatory provision on February 27, 2012.

Egregious Violations of the HOS Rule

Current Federal statutes concerning civil penalties require that the Agency consider a number of factors, including the nature, circumstances, extent, and gravity of the violation, as well as the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and certain other matters. Congress also requires that the Agency calculate each penalty to increase compliance (49 U.S.C. 521(b)(2)(D)). Although some of the statutory factors may limit the Agency's ability to impose penalties, others – like the extent and gravity of the violation – support enhanced penalties.

The final rule includes a provision to support imposing the maximum penalty for a first HOS offense that has significant potential to cause serious injury or death, such as excessively long driving hours. We will consider a violation of 3 or more hours beyond the driving time limit (10 hours for bus drivers, 11 hours for truck drivers) as an egregious violation subject to maximum civil penalties. The new penalty applies to both truck and bus drivers, and took effect February 27, 2012.

Compliance Assistance Materials for the Industry

FMCSA's expectation is that the overwhelming majority of companies with drivers subject to the HOS requirements would have conducted training sessions on ALL of the 2011 changes to the HOS rule by now. However, the Agency continues to provide comprehensive compliance assistance information at its website (<http://www.fmcsa.dot.gov/rules-regulations/topics/hos/index.htm>) for trucking companies that have not yet trained their drivers and dispatchers on the changes to the 34-hour restart and the new 30-minute rest-break requirement.

The Agency has posted "Hours of Service Logbook Examples" at its website – this publication provides detailed illustrations of how the new rules would apply in many common scenarios that truck drivers would face in filling out their logbooks. The examples cover the changes to the on-duty definition and how the time would be recorded in the logbooks and the changes to the 34-hour restart. The examples also cover the new 30-minute break requirement. In addition, as part of the 2013 "Roadcheck" inspection activity carried out two weeks ago by FMCSA and its State

partners, the Agency distributed visor cards summarizing the HOS changes and emphasizing the provisions that take effect on July 1, 2013.

In addition to our publications, FMCSA participates on a monthly basis on two separate satellite radio programs geared towards the trucking community (i.e., the Dave Nemo Show and the Mark Willis Show – the successor to the Evan Lockridge Report), during which senior agency officials provide updates on the Agency’s major safety initiatives and answer questions from drivers and carriers. Most of the broadcasts over the past year have included extensive discussions about the HOS requirements. We provided numerous clarifications of the new rule and frequent reminders of the approaching July 1, 2013, compliance date for the changes to the 34-hour restart, and the new 30-minute break requirement.

Through the development of compliance assistance materials and participation in satellite radio broadcasts, the Agency has provided carriers and drivers a means of learning about the new HOS requirements, at minimal cost.

The Agency also engages daily with the motor carrier industry and the law enforcement community through our field work and industry association meetings. We are committed to assisting with the implementation of this law.

Congressional Concerns About Training Costs to Meet the July 1 Deadline

The FMCSA acknowledges that some Members of Congress and certain stakeholders would like the Agency to delay the July 1, 2013, implementation date of the new HOS rule until 3 months after the U.S. Court of Appeals’ issues its decision on the current legal challenge. The industry cites the Agency’s estimates of the training costs and argues that these costs should not be imposed to achieve compliance with a rule that could be overturned.

However, the Agency continues to believe it is inappropriate to sacrifice several months of safety benefits from the timely implementation of the rule. The new HOS rule will:

- (1) Reduce excessively long work hours that increase the risk of fatigue-related truck crashes;
- (2) Give drivers more off-duty time to obtain more rest during the workweek; and
- (3) Help reduce both acute and chronic fatigue experienced by drivers who work the longest schedules.

Furthermore, in their request to delay the effective date, the organizations did not provide adequate support for their request. The uncertainty over the outcome of the HOS litigation does not create the likelihood that the industry or the enforcement community will suffer harm due to expenditures for training or the potential for confusion.

FMCSA selected the July 1 compliance date for its December 2011 final rule to ensure adequate time for training of enforcement officials, motor carriers, and drivers, with the expectation that the affected parties would not postpone their training efforts based solely on the assumption that the Court would vacate the 2011 final rule. The FMCSA has made no assumptions about the

Court's decision but has chosen to focus on the crashes and injuries that could be prevented through implementation of the rule on July 1 and the lives that could be saved while we await the outcome of the litigation.

The FMCSA emphasizes that most of the training costs associated with the new HOS rule involve re-training several million CMV drivers already operating on the Nation's highways. Almost all of these drivers had to undergo training to understand the changes that took effect on February 27, 2012, and it is reasonable to expect that most carriers would have trained them on all the changes rather than split the training into two modules, based on the expectation that the Court would only vacate the specific provisions that impose costs on the industry. And, once the drivers have been trained, there are no additional training costs in the subsequent years for these drivers. Any new drivers entering the industry would have to undergo training on the HOS requirements irrespective of any rule changes.

Conclusion

Since Congress directed the Department of Transportation to undertake an HOS rulemaking in 1995, the Department has focused on implementing a new rule that will help reduce the number of fatigue-related fatal crashes involving large trucks. While the cycle of rulemaking and litigation has created an atmosphere of uncertainty, FMCSA remains committed to working with its safety partners and stakeholders to provide an HOS regulatory approach that raises the safety bar for the industry and saves lives on our roadways.

Thank you for the opportunity to discuss FMCSA's implementation of the 2011 HOS final rule. I am glad to answer your questions.