

New York Times; Wednesday, July 25, 2007

**HEADLINE: Court Strikes Down Longer Hours for Truckers**

Associated Press (Washington, DC); Tuesday, July 24, 2007, 4:58 PM ET

**HEADLINE: Court Strikes Down Truckers' Hours Rule**

Byline: CHRISTOPHER S. RUGABER

Associated Press (Washington, DC); Tuesday, July 24, 2007, 5:44 p.m.

**HEADLINE: Court Stops Longer Drives for Truckers**

Byline: JESSE J. HOLLAND, AP Labor Writer

Press release from Public Citizen; Tuesday, July 24, 2007

**HEADLINE: Appeals court again rejects Bush rules to increase work hours for tired truckers**

Commercial Carrier Journal; Tuesday, July 24, 2007

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**HEADLINE: Court Strikes Down Longer Hours for Truckers**

Byline: STEPHEN LABATON

WASHINGTON, July 24 — A federal appeals court on Tuesday struck down a Bush administration rule that loosened the work hours of truck drivers after concluding that officials had failed to justify the changes adequately.

In a unanimous decision, a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit said that the federal agency that oversees the truck industry did not provide enough evidence to demonstrate the safety of its 2005 decision to increase the maximum driving hours of truck drivers. The hours of service were increased to 77 from 60 over 7 consecutive days, and to 88 hours from 70 over 8 days.

The court found that the agency, the Federal Motor Carrier Safety Administration, a unit of the Department of Transportation, had ignored the results of a database it commissioned to catalog more than 50,000 truck accidents from 1991 to 2002. Using the data, the study extrapolated that the risk of fatigue-related accidents would be substantially higher in the extra hours of service allowed by the new rules.

“F.M.C.S.A. failed to provide an adequate explanation for its decision to adopt the 11-hour daily driving limit,” the court said.

The new rules had been adopted after heavy lobbying by politically connected leaders of the trucking industry. The changes were part of the broader strategy by the Bush administration to reduce regulations on businesses.

Safety experts and insurance analysts challenged the changes. They said longer driving hours have contributed to the high number of truck accidents. About 100 people die each week in truck-related accidents, making trucking America's most treacherous industry as measured by overall deaths and injuries.

Supporters of the loosened standards say they have made it faster and cheaper to move goods across the country. They say the changes promote safety because shorter hours would force the industry to put more drivers with little experience behind the wheel. And they note that the fatality rate, or the number of deaths per miles traveled, has continued a long decline.

Still, the fatality rate for truck-related accidents remains nearly double that involving only cars. And the Bush administration has repeatedly missed its own targets for reducing the number of fatalities from truck accidents.

The decision today came in a case filed by Public Citizen, a consumer advocacy group. It was the third time in three years that the courts have been critical of the motor carrier agency.

A different appeals panel criticized the agency in December 2005 for failing to issue adequate rules for the training of drivers, saying the agency had ignored its own studies on the need for more comprehensive training.

And in 2004, a third panel of the appeals court struck down virtually identical new hours of service rules as the ones at issue in Tuesday's decision, saying that they had been "arbitrary and capricious."

After Congress, at the urging of the Bush administration and the trucking industry, intervened to block the enforcement of the 2004 court order, the motor carrier agency issued the 2005 rules. At the time, the agency said it had addressed the concerns raised by the appeals court's 2004 decision.

In a regulatory impact analysis accompanying the 2005 changes, the agency concluded that the economic costs to the industry of tightening the hours of service rules, as consumer groups had proposed, outweighed the safety benefits.

But the court said today that analysis was flawed. The opinion was written by Judge Merrick B. Garland and signed by Chief Judge Douglas H. Ginsburg and Judge Karen LeCraft Henderson.

Safety groups hailed Tuesday's ruling and said the court had confirmed their view that the agency had failed to adequately justify relaxing the rules.

"The court is saying once again, no," said Jacqueline S. Gillan, vice president of Advocates for Highway and Auto Safety, an alliance of consumer, health and insurance organizations. "For three and a half years this agency has tried every which way to defend a rule that would result in longer consecutive driver hours and longer total work hours. This has a dramatic dangerous impact on the lives of truck drivers and on the lives of everyone sharing the roads with trucks. And once again the court has said, 'No, you cannot go ahead with a rule when it violates the law and you clearly have not justified it.' "

The agency would not say whether it would appeal the decision or seek a stay of the court's order, which is set to go into effect in September.

"We are analyzing the decision issued today to understand the court's findings as well as determine the agency's next steps to prevent driver fatigue, ensure safe and efficient motor carrier operations and save lives," said a statement issued by the agency.

The American Trucking Associations, which defended the changes to the rules in the proceeding, said they would ask the court to stay its ruling to give the agency time to provide a better justification of the changes.

End.

Associated Press (Washington, DC); Tuesday, July 24, 2007, 4:58 PM ET

**HEADLINE: Court Strikes Down Truckers' Hours Rule**

Byline: CHRISTOPHER S. RUGABER

WASHINGTON - A federal court dealt a blow to U.S. trucking companies Tuesday by striking down rules on working hours that were strongly criticized by safety advocates.

The decision is the latest chapter in a long-running battle between advocacy groups such as Public Citizen and the Transportation Department's Federal Motor Carrier Safety Administration, which have fought over a rule extending truckers' hours of service since 2003.

Judge Merrick B. Garland, writing for a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit, invalidated a rule issued by the federal safety agency in August 2005 that allowed truckers to drive 11 hours in a row, rather than the previous limit of 10.

The judge also threw out a rule that would have effectively increased weekly time limits on drivers' hours by at least 25 percent, critics said.

The agency had failed to follow proper procedures in issuing the two measures, the court said, such as allowing public comment on the 11-hour limit. The provisions were part of a larger regulation that was allowed to stand.

The FMSCA said it was still analyzing the decision and considering its next steps.

The American Trucking Associations said it would seek a stay of the ruling until the federal safety agency can address the court's concerns. ATA's members include United Parcel Service Inc., FedEx Corp., JB Hunt Transport Services Inc. and YRC Worldwide.

The two measures will otherwise remain in place until Sept. 14, when the court's ruling takes effect, the FMCSA said.

"The good news in the decision is that the flaws that the court found were procedural in nature and can be corrected by the agency," the ATA said.

"We're delighted with the decision," Bonnie Robin-Vergeer, a senior attorney for the Public Citizen Litigation Center, said. "Long-haul truckers drive too many hours, and a rule that allows them to drive more hours is dangerous for the public and for the drivers themselves."

Robin-Vergeer said the court's decision expressed "grave doubts" about many aspects of the rule and argued the court would be unlikely to uphold it on substantive grounds.

As part of the same decision, the court rejected a challenge by the Owner-Operator Independent Drivers Association regarding parts of the rule that reduced the number of on-duty hours to 14 from 15.

The FMCSA first extended consecutive drivers' hours to 11 and increased weekly limits in a 2003 rule. Before that, the limit in consecutive hours had stood at 10 for over 60 years.

But that rule was struck down by the same court in 2004, after a challenge by Public Citizen. The rule FMCSA issued in August 2005 was largely the same as its predecessor, with some changes in an effort to mollify the court.

End.

Associated Press (Washington, DC); Tuesday, July 24, 2007, 5:44 p.m.

**HEADLINE: Court Stops Longer Drives for Truckers**

Byline: JESSE J. HOLLAND, AP Labor Writer

WASHINGTON -- A federal appeals court on Tuesday threw out a Bush administration decision to allow long-haul truckers to drive for up to 11 hours straight.

For 60 years, truckers could drive for 10 hours at a time. The Federal Motor Carrier Safety Administration has been trying to change the rule to allow truckers another hour of driving time.

But the U.S. Court of Appeals for the District of Columbia Circuit said in Tuesday's ruling that the FMCSA did not adequately explain its reasoning for adding the extra hour.

The court's decision repealing the 2005 rule takes effect Sept. 14.

"We are analyzing the decision issued today to understand the court's findings as well as determine the agency's next steps to prevent driver fatigue, ensure safe and efficient motor carrier operations and save lives," the FCMSA said in a statement.

The American Trucker Association, which supports the existing 11-hour rule, said it would ask the court to stay its decision and keep the current rule in effect.

"ATA believes the existing rules have proven to be a significant improvement over the old rules in terms of reducing driver fatigue and related incidents," said Bill Graves, ATA's president and chief executive officer.

But opponents of the new rule cheered the decision.

"We never thought it was a good idea to allow drivers 11 hours behind the wheel of a heavy piece of machinery," said Teamster President James Hoffa. "I hope this ruling forces the Bush administration to start paying attention to highway safety."

Public Citizen, Parents Against Tired Truckers, Citizens for Reliable and Safe Highways, Advocates for Highway and Auto Safety and the International Brotherhood of Teamsters sued to get the rule thrown out.

"In today's ruling, the court has once again sided with public safety and rejected FMCSA's illogical proposition that driving longer hours and working longer days will somehow solve truck driver fatigue," said Judith L. Stone, president of Advocates for Highway and Auto Safety.

The FMCSA first decided to increase number of hours truckers can drive in 2003, but the D.C. appeals court struck it down the next year. Congress reinstated the rule later that year.

The rule that was overturned by the court Tuesday was then created by the administration in 2005.

End.

Press release from Public Citizen; Tuesday, July 24, 2007

**HEADLINE: Appeals court again rejects Bush rules to increase work hours for tired truckers**

A federal appeals court today struck down for the second time a Bush administration regulation that increased the number of hours that truck drivers are permitted to drive without rest.

The U.S. Court of Appeals for the D.C. Circuit again sided with Public Citizen in its contention that the Federal Motor Carrier Safety Administration's (FMCSA) hours-of-service rule for truckers, issued in Aug. 2005, could put motorists at risk.

**About the Case**

Like the nearly identical rule issued by FMCSA in April 2003 – which the court unanimously struck down in 2004 – the 2005 rule dramatically increased both the consecutive number of hours that truckers may drive before taking a rest and the total number of hours truckers may drive per week.

Public Citizen's second lawsuit against FMCSA challenged these same two aspects of the 2005 rule: a provision that allowed truck drivers to drive for 11 consecutive hours before taking rest time, increased from the old rule of 10 hours; and a provision which allowed drivers to "restart" their weekly tally of hours after they had taken a break as short as 34 hours.

The 34-hour restart allowed truckers to drive 77 hours in seven days or 88 hours in eight days – a more than 25 percent increase over the pre-2003 rules. On-duty hours during which truckers may drive also climbed, so that a driver working 14-hour shifts under the new rules can now work as many as 84 hours in seven days or 98 hours in eight days – the latter a 40 percent increase over the old limits.

The lawsuit also criticized the agency's regulatory impact analysis used to justify these changes. FMCSA created a new model in response to the court's 2004 decision striking down the 2003 rule – supposedly to take into account the increased risk associated with driving longer hours – without providing any notice or opportunity for public comment.

### **About the Decision**

The three-judge panel agreed with Public Citizen that the agency did not provide any opportunity for notice and comment on its new model or explain the methodology and assumptions that underlay it.

The court also faulted the agency's model for failing to deal with the problem of the added cumulative fatigue that would be caused by the 34-hour restart, which permitted significantly greater hours of driving per week.

The court struck down the portions of the rule that permitted the eleventh hour of driving and the 34-hour restart.

"This is the second time that a unanimous panel of the D.C. Circuit, totaling six different judges, has found that the agency failed to justify the rule's increases in daily and weekly driving and working hours. Congress directed FMCSA to make safety its highest priority and to revise the hours-of-service rules to decrease fatigue-related truck crashes. It also charged the agency with the obligation to safeguard truck drivers' health," said Bonnie Robin-Vergeer, the Public Citizen lawyer who argued the case. "Remarkably, in 2003 and again in 2005, the agency responded by issuing regulations that dramatically increased daily and weekly driving and working hours. The 2005 rule, like the 2003 rule before it, runs afoul of every one of these congressional mandates."

### **A Pattern of Failure**

Public Citizen, Parents Against Tired Truckers (PATT) and Citizens for Reliable and Safe Highways (CRASH) successfully challenged the hours-of-service rule promulgated by the Bush administration in April 2003. The D.C. Court of Appeals agreed with the groups in a July 16, 2004, ruling that found FMCSA had failed to consider the effect of its new hours-of-service rules on the health of truck drivers as it is required to do under law. The court ordered the agency to revise its regulation.

In response, FMCSA issued new rules that took effect Oct. 1, 2005. The new rule was virtually identical to the one struck down by the court and continued to place in harm's way truck drivers and passenger vehicle occupants on the highways, the groups said.

The three groups were joined this time in their challenge by Advocates for Highway and Auto Safety, who filed a critical amicus brief in 2003, and the International Brotherhood of Teamsters.

### **Why It Matters**

"In today's ruling, the court has once again sided with public safety and rejected FMCSA's illogical proposition that driving longer hours and working longer days will somehow solve truck driver fatigue," said Judith L. Stone, president of Advocates for Highway and Auto Safety, which challenged the 2005 rule and participated as an amicus in the 2003 lawsuit. "The ruling

reassures us that public health and safety should always come first and must be the highest priority of federal transportation officials.”

“The trucking profession has become ‘sweatshops on wheels’ because of the excessive and unsafe hours of work and driving time required of truck drivers,” said Daphne Izer, founder of PATT. “I have paid the ultimate price for government policies that legally allow truck drivers to work and drive exhausted. My 17-year old son Jeff and his three close friends were killed in a preventable crash caused by truck driver fatigue. I welcome the court’s decision that puts people before profits.”

Each year more than 5,000 people are killed and more than 110,000 are injured in large truck crashes. Truck driver fatigue is a major contributor to severe crashes. Many studies have shown that truck driver alertness and performance begin to dangerously deteriorate after about eight hours of consecutive driving. After eight hours of driving, the risk of a truck driver having a crash begins to increase rapidly.

End.

Commercial Carrier Journal; Tuesday, July 24, 2007

**HEADLINE: Court rejects HOS restart, additional hour of driving**

Byline: Avery Vise

In a significant setback for many trucking companies, the U.S. Court of Appeals for the District of Columbia Circuit today, July 24, invalidated two significant pieces of the Federal Motor Carrier Safety Administration’s hours-of-service regulations – the increase of the daily driving limit to 11 hours from the previous 10 hours, and the 34-hour restart option for drivers’ weekly on-duty limits.

In addition, the court rejected the petition filed by the Owner-Operator Independent Drivers Association for greater flexibility in use of the sleeper berth, including allowing team drivers to continue to split rest in sleeper berths as they could before the August 2005 revision.

FMCSA's failings in the case appear to have been mainly in how it put the rule together, rather than in what the rule contained. The court concluded FMCSA “violated the Administrative Procedure Act because it failed to give interested parties an opportunity to comment on the methodology of the crash-risk model that the agency used to justify an increase in the maximum number of daily and weekly hours that truck drivers may drive and work.” The court also held that the agency “failed to provide an explanation for critical elements of that methodology.”

What happens now is unclear. When the appeals court rejected the first revised hours-of-service regulation in July 2004, Congress held the new rules in place for about a year while FMCSA worked on a new version. It remains to be seen whether a Democrat-controlled Congress will be so inclined to intervene. On the other hand, given that the flaws cited are essentially procedural, lawmakers might be inclined to hold the current rule in place pending a new rule.

For a copy of the appeals court decision, click:

<http://pacer.cadc.uscourts.gov/docs/common/opinions/200707/06-1035a.pdf>

End.

Reuters News Service; Tuesday, July 24, 2007

**HEADLINE: Court sets aside trucker driving regulation**

WASHINGTON (Reuters) - A U.S. appeals court on Tuesday set aside federal rules that permit long-haul truckers to drive longer hours.

The U.S. Appeals Court for the District of Columbia vacated provisions in a 2005 Transportation Department rule that increased allowable driving time from 10 hours daily, where it had stood for decades, to 11.

The court also rejected a provision that allowed truckers to "restart" their weekly allotment of driving time after a 34-hour rest period.

The provisions were at the center of government and industry efforts to rewrite trucker rest rules to improve efficiency and boost safety. But consumer and safety groups have now won two court challenges on grounds the measure does not adequately address safety or the impact on worker health of driving longer hours.

End.