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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.