Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Chairman

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June 18, 2013

Christopher P. Bertram, Staff Director

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Highways and Transit
FROM: Staff, Subcommittee on Highways and Transit
RE: Subcommittee Hearing on "The Impacts of DOT's Commercial Driver Hours of Service Regulations"

PURPOSE

The Subcommittee on Highways and Transit will meet on Tuesday, June 18, 2013, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to the Department of Transportation's hours of service regulations for commercial drivers. At this hearing, the Subcommittee will hear from the Federal Motor Carrier Safety Administration (FMCSA), the American Trucking Associations (ATA), the Owner-Operator Independent Drivers Association (OOIDA), the Commercial Vehicle Safety Alliance, the National Ready Mixed Concrete Association, and Advocates for Highway and Auto Safety on the impacts of the commercial driver hours of service regulations.

BACKGROUND

History of Commercial Driver Hours of Service Regulations

The authority to regulate commercial driver hours of service first originated under the Motor Carrier Act of 1935 (P.L. 74-255), codified in section 31502 of title 49, United States Code. The Act authorized the Interstate Commerce Commission (ICC) to establish qualifications and maximum hours of service for drivers working for private and for-hire interstate property carriers and for-hire interstate passenger carriers. The ICC promulgated its regulations through a rulemaking on December 29, 1937. Under the regulations, motor carriers could not permit or require drivers to be on-duty for more than 15 out of 24 hours. Within the 15-hour on-duty period, the regulations set a 12-hour maximum daily work period for drivers. The regulations also set a weekly on-duty limit of 60 hours in any 7 consecutive days or 70 hours in 8 consecutive days.

Shortly after the regulations were promulgated, industry stakeholders requested and were granted a stay by the ICC. After oral arguments were heard, the ICC revised the regulations. The ICC decided to change the 12-hour maximum daily work period to a 10-hour driving limit in a 24-hour period. Motor carriers were required to give drivers 8, rather than 9, consecutive hours off-duty each day. The daily on-duty limit was rescinded, which allowed drivers to be kept on-duty for a maximum of 16 hours out of a 24-hour period. The 60- and 70-hour limits remained unchanged. These revised regulations would remain virtually unchanged until 1962.

The next major revision to the hours of service regulations occurred in 1962. The ICC retained the 8-hour off-duty requirement and the 10-hour driving limit, but dropped the applicable 24-hour period requirement. This change allowed drivers who came on-duty and started driving at 12:01 a.m. through 10:00 a.m., followed by 8 hours off-duty, to continue driving from 6:00 p.m. until midnight.

In 1995, Congress directed the Department of Transportation to conduct a rulemaking "dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety" (Section 408 of the ICC Termination Act of 1995 (P.L. 104-88)). FMCSA proposed comprehensive revisions to the hours of service regulations in a Notice of Proposed Rulemaking (NPRM) in 2000. FMCSA collected relevant studies and completed the *Commercial Motor Vehicle Driver Fatigue and Alertness Study*, as well as holding eight nationwide public hearings, before promulgating a final rule on April 28, 2003.

The 2003 rule revised the regulations for property-carrying operations by extending driving time from 10 to 11 hours, but limited the driving window to 14 consecutive hours after coming on-duty. The daily rest period was extended from 8 to 10 hours. These new rules re-established a fixed 24-hour period for drivers, with 14 hours maximum on-duty, followed by 10 hours required off-duty. Prior to the 2003 changes, drivers were able to switch to off-duty time while waiting, such as while being delayed or refueling, and subtract that time from their on-duty totals for the day. Under the 2003 rule, the 60- and 70-hour weekly limits were effectively increased because the rule allowed drivers to restart their weekly hour calculation after they took an off-duty break of at least 34 consecutive hours. Therefore, a driver who maximized the use of the restart provision could work over 80 hours a week.

On June 12, 2003, the final rule was petitioned for review by safety advocates with the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). On June 16, 2004, the D.C. Circuit vacated the rule on the grounds that FMCSA did not consider the impacts of the rule on the health of drivers. Congress directed that the 2003 rule would remain in effect until FMCSA issued a new final rule addressing the issues raised by the Court. On August 25, 2005, FMCSA published a new final rule that left the vacated rule largely intact, by retaining the 11 hours of driving time, 14-hour driving window, 10 hours off-duty, and the 34-hour restart. The new final rule made some revisions to the sleeper-berth provision, to require at least 8, but less than 10, consecutive hours in the sleeper-berth. Drivers using the sleeper-berth provision had to take an additional 2 hours either off-duty or in the sleeper-berth, which is included in the calculation of the 14-hour driving window. The rule also provided an exception for drivers who operate within 150 air-miles of their work location and who drive commercial motor vehicles (CMVs) that don't require a commercial driver's license to operate.

Safety advocates and labor again challenged the daily driving limit and restart provisions in 2005. Separately, the sleeper berth provisions in the rule were unsuccessfully challenged by OOIDA. The D.C. Circuit concluded that FMCSA did not satisfy the Administrative Procedures Act which requires the agency to explain its reasoning and provide an opportunity for notice and comment on portions of the regulatory evaluation. The Court vacated the 11-hour driving time and the 34-hour restart provisions.

In response, ATA petitioned the court and secured a 90-day stay of the rule while FMCSA responded to the court decision. On December 17, 2007, FMCSA published an interim final rule (IFR) while the agency responded to the issues identified by the Court. The IFR retained the 11 hours of driving time and the 34-hour restart provisions. On November 19, 2008, FMCSA published a Final Rule which continued the 2005 rule without changes, including the provisions twice vacated by the court.

On December 18, 2008, safety groups petitioned FMCSA to reconsider the research and crash data justifying the 11-hour driving rule and the 34-hour restart provision. FMCSA denied the petition. On March 9, 2009, these same groups filed a petition for review of the 2008 rule in the D.C. Circuit. In October 2009, FMCSA and the petitioners reached a settlement agreement. FMCSA agreed to publish a final rule by July 26, 2011 under this agreement. On December 29, 2010, FMCSA issued a NPRM seeking comments on the agency's proposed changes to the hours of service rules.

After reviewing comments submitted for the record to the NPRM, FMCSA issued a final rule on December 27, 2011. The rule promulgated the following regulations for property-carrying CMVs:

- the daily driving limit remains at 11 hours,
- the maximum "driving window" remains at 14 consecutive hours after coming on-duty,
- drivers are permitted to drive only if they have had a break of at least 30 minutes sometime within the previous 8 hours,
- the 34-hour restart provision can be used once every 168 hours (7 days) and must include two periods of rest between 1:00 a.m. and 5:00 a.m., and;
- the weekly driving limit remains at 60- and 70-hours.

Several provisions of the final rule went into effect on February 27, 2012. Drivers subject to the final hours of service rule must be in compliance with the restart and rest break provisions by July 1, 2013.

Safety advocates once again challenged the additional hour of driving allowed in the rule. Separately, the trucking industry petitioned the D.C. Circuit to review several provisions of the final rule. The Court heard oral arguments on March 15, 2013.

WITNESS LIST

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration

Mr. Steve Williams
Chairman and CEO
Maverick USA, Inc.
On behalf of the American Trucking Associations

Mr. Mark Savage
President
Commercial Vehicle Safety Alliance

Mr. Edward Stocklin
President
Stocklin Trucking, LLC
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Ms. Joan Claybrook
Consumer Co-Chair
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Mr. Jeffrey Dean Hinkle
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On behalf of the National Ready Mixed Concrete Association