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Committee on Transportation

James E. "Jim" King, Jr., President

COMMERCIAL DRIVERS' HOURS OF SERVICE

SUMMARY

In 1939, the first hours of service regulations were adopted by the federal government to limit motor carriers to 10 hours of driving in any 24-hour period unless the drivers were off duty for 8 consecutive hours immediately following the 10 hours of driving. In addition, the drivers were limited to 60 hours on duty in any 7-day period and 70 hours on duty in any 8-day period. In 1963, these regulations were slightly modified to provide drivers may not be on duty more than 15 hours following 8 consecutive hours off duty. These federal hours of service regulations have been adopted in Florida for its interstate drivers, but have not been adopted for many of Florida's intrastate drivers.

In April 2003, the Federal Motor Carrier Safety Administration (FMCSA) proposed revisions to the hours of service regulations in order to require motor carriers of property to provide drivers with better opportunities to obtain sleep and, thereby, to reduce the incidence of crashes attributed in whole or in part to drivers operating commercial vehicles while fatigued. The proposed revisions are the result of decades of studies and political compromise. The trucking industry and safety groups have criticized FMCSA's studies and proposed regulations, but in spite of the opposition, the proposed regulations will take effect on January 1, 2004.

Because of the probable loss of federal funding, the legislature should review the new hours of service regulations and consider adopting the regulations for its interstate drivers. The legislature should also consider the appropriateness of Florida's current hours of service regulations for intrastate drivers.

This report will examine the history of the federal hours of service regulations for commercial motor vehicle drivers, including exemptions to those regulations. The report will also look at Florida's adoption of the federal regulations, and Florida's exemptions to those regulations for intrastate drivers. Next, the report will examine the impetus behind the proposed changes to the federal hours of service regulations and the previous attempts to change them. The "Findings" portion of this report will examine the new regulations.

Existing Federal Hours of Service Regulations

In 1928, the United States Interstate Commerce Commission recommended the federal regulation of commercial motor vehicles because of the lack of uniform state standards. In 1935, Congress passed the Motor Carrier Act authorizing the Interstate Commerce Commission to regulate the economic health and operational safety of the commercial motor vehicle industry. In 1938, the first study addressing driver fatigue as related to hours of service for commercial truck drivers was conducted by the United States Public Health Service at the request of the Interstate Commerce Commission. The Public Health Service study supported the need for regulatory limitation of hours of service to help ensure highway safety, and in 1939 the Interstate Commerce Commission established the first hours of service regulations for commercial motor vehicle drivers. The Interstate Commerce Commission made minor adjustments to the regulations in 1963.

The Interstate Commerce Commission's safety functions under the Motor Carrier Act were subsequently transferred to the United States Department of Transportation (USDOT) when that department was created in 1966. In 1967, the responsibilities concerning commercial vehicle drivers and vehicle safety were transferred to the Bureau of Motor Carrier Safety of the Federal Highway

BACKGROUND

Administration (FHWA), an agency within the newly-created USDOT.

The Motor Carrier Safety Improvement Act of 1999 established the FMCSA as a separate agency within the USDOT on January 1, 2000. Today, the FMCSA is the agency within the USDOT which is responsible for regulating commercial motor vehicle hours of service.

The current hours of service regulations are found in 49 CFR Part 395 and provide commercial motor vehicle drivers may not drive:

- For more than 10 hours in any 24 hour period unless the drivers have 8 hours off-duty.
- After 15 hours on-duty following 8 hours off-duty.
- After 60 hours on-duty in 7 consecutive days.
- After 70 hours on-duty in 8 consecutive days.

There are also many exceptions to the federal hours of service rule:

- During adverse driving conditions or an emergency, a driver may drive up to 2 extra hours.
- The hours of service rules do not apply to a driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days. In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.
- A driver is exempt from keeping a log book if the driver operates within a 100 air-mile radius of the normal work reporting location and the motor carrier that employs the driver maintains and retains records of the drivers on-duty time for a period of six months.
- There is an hours of service exemption for drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25.

- Drivers using sleeper berths or who are off duty at a natural gas or oil well location, may accumulate the required 8 consecutive hours off duty resting in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.
- In the instance of a driver of a commercial motor vehicle which is used primarily in the transportation of a ground water well drilling rig, construction materials or equipment, or a utility service vehicle, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

Florida's Hours of Service Regulations

Florida has adopted by reference the federal hours of service rules for interstate commercial motor vehicle drivers. However, Florida does not require many intrastate truck drivers (drivers who operate only within Florida) to comply with federal hours of service standards.

In 1987, the Florida Legislature amended s. 316.302, F.S., and adopted the Federal Motor Carrier Safety Regulations found in 49 CFR, including Part 395, Hours of Service of Drivers. The section was further amended to exempt commercial vehicle drivers from the federal 10 hour driving time limitations, and provide for a 12 hour driving time limitation for intrastate drivers. Additionally, it provided an exemption for intrastate agricultural operations from federal limitations which prohibit driving after having been on duty for 60 hours in a 7 day period, or 70 hours in an 8 day period, if the carrier operates every day of the week.

During a special legislative session in 1987 and during the 1988 regular legislative session, s. 316.302, F.S. was amended several more times, ultimately changing the hours of service limitations for intrastate commercial vehicle drivers as follows:

- Sets a 15 hour driving time limitation in any 24 hour period;
- Limits on-duty time to 72 hours in a 7 consecutive day period; or 84 hours in an 8

consecutive day period, if the carrier operates every day of the week;

- Provides that 24 consecutive hours off-duty constitutes the end of any 7 or 8 day period; and;
- Exempts agricultural operations from the 72/84 hour limitations.

These intrastate exemptions to the federal hours of service rules have cost the state some federal funding for safety projects. The Motor Carrier Safety Assistance Program (MCSAP) was created by Congress in 1987, and the program's objective is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles through State implementation of a balanced program of enforcement, education, and crash data analysis.

MCSAP funds may be used:

- For enforcement of motor carrier safety and hazardous materials regulations, as adopted by each of the States.
- For enforcement of the commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, such as hazardous driving conditions, or at seaports where intermodal shipping containers enter and exit the United States.
- For detecting the unlawful presence of a controlled substance in a commercial motor vehicle or on the person of any occupant (including the operator) of such a vehicle.
- For enforcement of State traffic laws and regulations designed to promote safe operation of commercial motor vehicles.

Such activities must be carried out in conjunction with an appropriate type of inspection of the commercial motor vehicle for enforcement of federal or state commercial motor vehicle safety regulations.

After the original exemptions were put into Florida law in federal fiscal year 1987-1988, Florida received full MCSAP funding. The changes made to the Florida Statutes were determined by FHWA to be compatible with, or within the tolerance allowances, of the

MCSAP funding guidelines (49 CFR, Part 350). However, the subsequent intrastate exemptions made to Florida law in 1988 allowing for the additional driving time for intrastate drivers was determined by FHWA (currently, the FMCSA) to be beyond the MCSAP funding tolerance allowances, and therefore, were incompatible. Florida did not receive MCSAP funding until 1994.

Changes to federal regulations in 1994 allowed for fifty percent MCSAP funding for states enforcing compatible regulations on interstate motor carriers, but not enforcing compatible regulations on intrastate motor carriers. Florida began receiving MCSAP funding at the fifty percent allocation level beginning in October 1994.

Florida continues to receive MCSAP funding at the fifty percent allocation level (approximately \$3,628,000 for federal FY 02 - 03), due primarily to the intrastate hours of service exceeding the tolerances. It is not yet known whether the new hours of service rules will have any effect on the MCSAP tolerance allowances. It is not known what positive impact the intrastate hours of service regulations have on the State's economy. To help determine this, the Florida Trucking Association has commissioned a study of the impact Florida's intrastate hours of service rules have on the economy.

However, federal regulations (49 CFR s. 350.345) allow states to apply for a variance to federal regulations which could authorize Florida for full MCSAP funding. The federal regulations state any state may apply to the FMCSA for a variance from the federal motor carrier safety regulations for intrastate commerce. The variance will be granted only if the state satisfactorily demonstrates the state law, regulation or enforcement action:

- Achieves substantially the same purpose as the similar federal regulations;
- Does not apply to interstate commerce; and
- Is not likely to have an adverse impact on safety.

To qualify for such a variance, the state must have accurate commercial vehicle crash data. The Office of Motor Carrier Compliance (OMCC), within the Florida Department of Transportation (FDOT), is attempting to ascertain if fatigue is a factor in intrastate commercial vehicle crashes. OMCC has reconfigured the post-crash

inspection reports to capture the data needed to fully comprehend the causes of fatal commercial vehicle crashes. Now, when there is a fatal crash involving a commercial vehicle, OMCC, if possible, is called to the scene to determine causation. If the commercial vehicle driver is found to be at fault, the hours of service are closely examined to see if fatigue was a factor in the accident. According to OMCC, preliminary data collected may be enough to satisfy the FMCSA variance requirements.

In addition to the federal hours of service exemptions, Florida offers further exemptions for intrastate drivers who do not transport hazardous materials. Hazardous material drivers must follow all federal rules.

- Section 316.302 (2)(a), F.S., provides a person who operates a commercial vehicle only in Florida is not required to comply with 49 C.F.R. ss. 391.11(b)(1), requiring a commercial driver be at least 21 years of age, and 395.3(a) and (b), the hours of service rule.
- The weekly hours of service limit (7/72 8/84) does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products that are subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market. However, upon request of the FDOT, motor carriers must furnish time records or other written verification to FDOT so that they can determine compliance. These time records must be furnished to the FDOT within 10 days after receipt of the request. Falsification of such information is subject to a civil penalty not to exceed \$100.
- A person who operates a commercial motor vehicle solely in intrastate commerce is not required to meet federal safety fitness standards and record keeping and reporting requirements while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market. Such a vehicle weighing 26,001 pounds or more or having three or more axles on the power unit, regardless of weight, must display the name of the vehicle owner or motor carrier and the municipality or town where the vehicle is based on each side of the power unit in letters that

contrast with the background and that are readable from a distance of 50 feet.

- A person who is an employee of an electric utility, as defined in s. 361.11, F.S., or a telephone company, as defined in s. 364.02, F.S., and who operates a commercial motor vehicle solely in intrastate commerce and within a 200 air-mile radius of the location where the vehicle is based, is exempt from federal rules requiring the driver to perform a safety inspection on their vehicle before driving and from having to fill out daily vehicle safety reports. (49 C.F.R. ss. 396.11 and 396.13) Such drivers are also exempt from driver qualification road tests and from the physical qualifications examination (49 C.F.R. part 391, subparts D and E).
- A person who is otherwise physically qualified as a driver under 49 C.F.R. part 391, who has an established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control is allowed to operate a commercial vehicle in intrastate commerce. As provided in 49 C.F.R. part 391, subpart E, ss. 391.41(b)(3) and 391.43(e), federal law prohibits such persons from operating a commercial motor vehicle in interstate commerce.

Florida's Enforcement of Commercial Vehicle Regulations

Pursuant to chapters 207 and 316, F.S., the OMCC enforces state and federal laws and rules regulating the safety of commercial motor vehicles and their drivers, and the weight and size of commercial vehicles operating on the state's highways. The OMCC officers perform vehicle safety inspections to determine whether commercial drivers are appropriately licensed, are not under the influence of drugs or alcohol, have maintained required logbooks of their hours of service, and are not operating their vehicles in an unsafe manner. In addition, the OMCC conducts compliance reviews at truck and bus terminals to examine company vehicles and records. In the course of performing these duties, OMCC officers also check to see that other commercial motor vehicle-related laws, such as registration and fuel taxes, are complied with. This program helps to ensure trucks and buses operating in Florida are mechanically sound, are licensed, do not exceed size and weight limits, and vehicle operators are properly qualified, licensed, and driving their vehicles in a safe manner.

The OMCC also employs non-sworn weight inspectors who weigh trucks and check truck registrations at 21 fixed-scale stations located along Florida's major highways. The OMCC sworn officers use portable scales to weigh trucks when the trucks do not pass fixed-scale stations or when drivers deliberately avoid weighing at the fixed-scale stations. The OMCC has an FY 02-03 budget of \$26.5 million and 448 positions. The office is funded through the State Transportation Trust Fund; therefore, the sources of money financing the office's law enforcement activities are a combination of transportation revenues, such as fuel taxes and motor vehicle registration fees. Motor carrier registration fees and compliance penalties are not specifically earmarked for the OMCC's operating budget. According to FDOT's budget office, in FY 01-02, the OMCC collected \$8.4 million in overweight penalties, \$2.4 million penalties for safety violations, and about \$88,000 for fuel-tax permit violations.

Section 316.3026, F.S., authorizes the OMCC to issue Out-of-Service Orders which prohibit commercial motor vehicles from operating on the highways of Florida if the vehicle or driver are found to be in violation of safety and other motor carrier laws. The OMCC has estimated about 20 percent of the vehicles stopped by its officers are placed "out-of-service" until the defects are repaired or the driver is able to continue driving without causing a safety hazard.

Chapter 316, F.S., provides various penalties which may be assessed by OMCC for a variety of motor carrier violations. For example, s. 316.3025, F.S., provides a number of different penalties, including operating a commercial motor vehicle cited for being out of compliance; violations discovered during law enforcement audits at commercial terminals; and failing to have the proper cargo shipping documents. Penalties range between \$50 and \$5,000, depending on the violation. In 2002, OMCC issued 1,887 citations for various interstate hours of service violations.

The Need for Change

In the late 1980's and early 1990's, the USDOT received numerous requests for industry specific exemptions and waivers from the hours-of-service regulations. These requests for exemptions highlight one of the chief criticisms of the existing regulations, they are not sensitive to differences in operations characteristics of modern commercial motor vehicle operations. Failing to receive relief from the USDOT, these industries sought and obtained limited relief from

the Congress (Section 345 of the National Highway System Designation Act of 1995).

The USDOT and other federal agencies have conducted and participated in studies on commercial vehicle driver fatigue over the years. None resulted in changes being made to the federal hours of service regulations until the most recent studies. In 1988, the Congress directed the FHWA to conduct research to determine the relationships among hours of service regulations, driver fatigue, and the frequency of serious accidents involving commercial vehicles. Also in 1988, the FHWA hosted a Symposium on Truck and Bus Driver Fatigue, which brought together experts from the motor carrier industry, the scientific and medical communities, law enforcement, and public policy. The Commercial Motor Vehicle/Driver Fatigue and Alertness Study began in 1989, and was completed in 1996.

Congress directed the USDOT, in section 408 of the Interstate Commerce Commission Termination Act of 1995, to issue an advance notice of proposed rulemaking dealing with a variety of fatigue-related issues, including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operation, automated and tamper-proof recording devices, and rest and recovery cycles.

In the 1990s, driver fatigue has continued to be a major industry and public safety concern. In 1995 FHWA sponsored the Truck and Bus Safety Summit. According to FMCSA, the summit was attended by over 200 national leaders in commercial vehicle and highway safety, including a large contingent of drivers, identified driver fatigue as the top priority commercial vehicle safety issue.

In November of 1996, the FHWA published an advance notice of proposed rulemaking advising the public it was nearing completion of the Commercial Motor Vehicle/Driver Fatigue and Alertness Study. The notice also solicited information about other research or information relevant to the subject, and requested public comment on how the existing rules could be revised to improve safety. The USDOT received 1,650 comments in response. The USDOT reviewed nearly 150 research studies and other documents, and an expert panel was convened to evaluate the current rules and various proposals.

The National Transportation Safety Board's (NTSB) 1999 safety study on the role of operator fatigue in transportation industries showed that this problem is

widespread. The NTSB found operating a vehicle without the operator's having adequate rest, in any mode of transportation, is the physical equivalent of operating the vehicle while being intoxicated. In the NTSB "Most Wanted Transportation Improvements" they state the laws, rules, and regulations governing this aspect of transportation safety are archaic and are not adequate to address the problem.

Since 1990, the NTSB has issued an annual list of Most Wanted Safety Recommendations. Human fatigue has been on that list since its inception. National Transportation Safety Board Chairman Ellen Engleman said in a April 24, 2003 press release that revised hours-of-service rules issued by the USDOT's FMCSA are "an important step toward addressing fatigue on our nation's highways."

The Motor Carrier Safety Improvement Act of 1999, established the FMCSA as a separate agency within the USDOT on January 1, 2000. Section 104 (f) of the Act also directed the FMCSA to expedite rulemaking proceedings for driver hours-of-service regulations.

In May of 2000, the FMCSA published draft regulations which were a comprehensive revisions of the hours of service regulations. During national public hearings, the FMCSA received many complaints about the draft regulations from the trucking industry. The generally unfavorable comments led Congress to intervene and prohibit the FMCSA from moving toward final regulations that year (2001 USDOT Appropriations Act, Pub.L. 106-346).

According to FMCSA, the trucking industry did not find fault in the actual research into the science of fatigue conducted by the agency, the industry consistently faulted the agency for the way it applied that science in the real world. The industry commented to FMCSA that the proposed regulations lacked the flexibility necessary to apply the science in an operationally practical manner.

The FMCSA proposal also attempted to categorize commercial motor vehicle operations to address the diversity in the industry. The proposed hours of service rules proposed five types of operations which separated long-haul drivers from more local drivers. This proposal included probably the most controversial requirement: electronic on-board recording devices to monitor the hours of service of long-haul drivers. In general the trucking industry opposed these proposals.

The trucking industry also disagreed with FMCSA's analysis of the accident and compliance data used to justify many of the provisions in the new hours of service proposal. The American Trucking Association (ATA) found little support for FMCSA's position that the proposed regulations would save 755 lives annually. The ATA cited crash statistics of the National Highway Traffic Safety Administration and FMCSA showing fatigue to be a factor in no more than five percent of fatal accidents involving trucks.

METHODOLOGY

Staff reviewed federal laws and regulations relating hours of service for commercial vehicle drivers. Staff also reviewed state law and documents related to hours of service regulations in Florida. Staff conducted interviews, by phone, electronic mail and in person, with participants, affected parties or other stakeholders.

FINDINGS

In April 2003, the FMCSA proposed revising its hours of service regulations to require motor carriers of property to provide drivers with better opportunities to obtain sleep, and thereby reduce the incidence of crashes attributed in whole or in part to drivers operating commercial vehicles while fatigued. The FMCSA stated this action is necessary because they estimate that 196 to 585 fatalities occur each year on the nation's roads because of fatigued commercial vehicle drivers transporting property. The FMCSA estimates the final regulations when adhered to fully will save nationally between 24 and 75 lives each year as a result of giving truck drivers an increased incremental amount of time to obtain rest and sleep.

After decades of studies, the FMCSA's proposed final hours of service regulations are the result of political compromise. The two groups which have had the most influence on the regulation making process, the trucking industry and safety groups, have alternately criticized FMCSA studies and rules for various reasons. While Congressional mandates creating the FMCSA succinctly stated the primary function of the FMCSA is commercial vehicle safety, the FMCSA states in the new rule "While recognizing the primacy of its safety mission, the agency must comply with a variety of statutes and executive orders requiring detailed analysis of the cost of regulations and consideration of their impact on regulated entities and other segments of society."

When developing the latest regulations the FMCSA conducted a cost-benefit analysis of three alternative proposals. One alternative was proposed by the American Trucking Association (ATA) which was basically the current regulations including some additional exemptions. The FMCSA found the ATA proposal would have marginally reduced fatigue-related fatalities and somewhat increased the cost of regulatory compliance. This resulted in a negative cost-benefit ratio.

The second option was proposed by Parents Against Tired Truckers (PATT), and according to FMCSA would have reduced fatalities far more than the ATA options, but would have generated significant increases in compliance and operational expenses. This resulted in a cost-benefit ratio far more negative than the ATA option.

The third alternative was proposed by FMCSA staff. The staff's analysis showed this option would save many more lives than the ATA alternative although not quite as many as the PATT option. While it would cost more than the ATA option, it would be much cheaper than the PATT alternative. The net result is a cost-benefit ratio slightly more negative than the ATA option but not nearly as negative as the PATT option.

The third alternative was adopted for the final hours of service regulations. According to the FMCSA, the regulations represent a substantial improvement in addressing driver fatigue over the current regulation. Among other things it:

- Increases required time off duty from 8 to 10 consecutive hours;
- Prohibits driving after the end of the 14th hour after the driver began work;
- Allows an increase in driving time from 10 to 11 hours; and
- Allows drivers to restart the 60 or 70-hour clock after taking 34 hours off duty.
- The FMCSA expects the provisions of the new hours of service regulations to reduce the effect of cumulative fatigue and prevent many of the accidents and fatalities to which fatigue is a contributing factor. The new hours of service regulations are effective January 1, 2004.

Old HOS Rules	NEW HOS RULES	INTRASTATE HOS RULES
10 hrs. driving	11 hrs. driving	10 hrs. driving
15 hrs. on-duty (breaks may extend time on duty)	14 consecutive hrs. on-duty (breaks <u>do not extend</u> on-duty time)	15 consecutive hrs. on-duty (breaks may extend time on duty)
60/70 in 7/8 days	60/70 in 7/8 days 34 hr. restart	72/84 in 7/8 days 24-hr. restart

The FMCSA found no serious challenges to the scientific finding human beings are subject to a circadian, biological clock of about 24 hours, which controls the natural wake/sleep cycles. Neither did the agency find any serious opposition concerning the conclusion humans require about eight hours of restorative sleep daily and a longer off-duty period than currently required is necessary so the needed sleep can be obtained

The current hours of service regulations apply to all motor carriers and commercial drivers, while the new regulations apply only to property carrying motor carriers. Interstate passenger carriers will be required to comply with the hours of service rules in affect on October 1, 2002.

According to the FMCSA, there was no basis to conclude fatigue affects passenger carrier drivers differently than truck drivers; therefore, passenger carriers were originally included in the draft hours of service rules. The interstate passenger carrier industry challenged the rule. The National Tour Association argued none of the 150 studies undertaken or reviewed the FMCSA dealt with bus drivers. The American Bus Association (ABA) questioned some of FMCSA's statistics and pointed out significant differences, both operational and mechanical, between buses and trucks. For instance, the ABA stated all intercity bus drivers are paid by the hour and run on preset schedules (most commercial truck drivers are paid by the mile), thereby eliminating any incentives to violate the present hours of service standards.

Further, Congress gave some direction in the Conference Report for the 2001 USDOT Appropriations Act which stated there is little known about the operation of over-the-road buses and motor coaches. The conferees stated that there should be additional study of the operations, driver practices and driver fatigue issues specific to buses and motor

coaches. (H. Conf. Rept. No. 106-940, 106th Cong., 2d Sess., p. 113). The FMCSA was persuaded by the comments and concluded it does not have enough data to indicate a problem in the motor coach industry and decided to not adopt any new regulations for the industry.

RECOMMENDATIONS

Because of the probable loss of federal funding, the Committee should consider sponsoring a bill adopting the new interstate hours of service regulations.

After the OMCC has completed its study on the effects of fatigue on intrastate commercial vehicle crashes, and after reviewing relevant economic impact data, the Committee should consider the appropriateness of Florida's current intrastate hours of service exemptions.