

September 8, 2004

The Honorable Richard C. Shelby  
Chair  
Subcommittee on Transportation, Treasury and General Government  
United States Senate  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Subcommittee on Transportation, Treasury and General Government  
United States Senate  
Washington, DC 20510

Dear Senator Shelby and Senator Murray,

We are writing to oppose any Congressional action that interferes with the operation of the judicial branch and seeks to overturn the decision of the Federal Court of Appeals for the District of Columbia holding the hours of service (HOS) regulations for commercial (truck) drivers to be arbitrary and capricious. Despite the unanimous decision by a 3-judge panel overturning the regulation because it was issued in violation of federal law, there may be an attempt to usurp the authority of the Court and to override the decision with legislation allowing the U.S. Department of Transportation to continue to enforce the invalid HOS rules.

#### **The New HOS Rules Are A Clear and Present Safety Risk**

The Federal Motor Carrier Safety Administration (FMCSA) issued new HOS regulations in April, 2003, that are demonstrably less safe than the prior driving and working rules for commercial drivers. First, the new rules allow truck drivers to drive and work much longer hours than before, including 11-hour driving shifts instead of 10 hours, and work weeks of up to 77 hours of driving on a 7-day schedule and 88 hours of driving on an 8 day schedule. This is an increase of nearly 30 percent more driving hours than under the previous rules. The new HOS rules legally allow long-haul drivers, those most prone to fatigue and crashes, to drive more and rest less. While the new rules require more time off between daily 11-hour shifts, 10 hours off duty instead of 8, the new rule also dramatically reduced the rest and recovery time off between work-weeks, shaving the weekend down to a mere 34 hours off duty before driving again. The new rule allows more driving hours, creates more tired truckers, and is inherently unsafe.

#### **Unanimous Appeals Court Decision Finds HOS Rules Invalid**

In a scathing, unanimous 3-judge decision, written by Judge David B. Sentelle, the U.S. Court of Appeals for the District of Columbia held the new rules arbitrary and capricious because the FMCSA had violated federal law and produced rules that were fundamentally flawed in every major respect. The Court held that the FMCSA violated federal law by ignoring the impact of the new HOS rules on the health of truck drivers as required by law. The agency chose to simply disregard the deleterious effect that longer driving and working hours would have on the health of drivers forced to endure longer driving shifts and greatly extended work weeks.

The Court's decision went on to demonstrate numerous other errors. The Court found that the FMCSA's position on longer work and driving hours was not supported by scientific studies and

evidence. The decision termed “dubious” and not legally sufficient agency explanations for extending driving shifts from 10 to 11 hours, as well as the agency’s failure to address the fact that the dramatic increase in weekly driving hours may well offset any decrease in fatigue from shorter overall daily tours of duty. The Court also said that the agency engaged in circular reasoning and used implausible assumptions in its cost/benefit analysis to support an 11-hour driving shift. The decision stated that the agency had misapplied scientific evidence in continuing to allow the split sleeper-berth exception, and the Court had “grave doubts” about the validity of that decision. The decision also referred to the “questionable rationality” of the agency’s justification for failing to test or evaluate existing on-board recorder systems for enforcement purposes. The Court characterized this “lack of knowledge [as] willful.”

In sum, the Court found that the FMCSA HOS rules were not based on scientific evidence or careful analysis and explanation and that the new HOS rules were riddled with errors. These are not technical matters but issues that go straight to the heart of whether the new HOS rules are safe for commercial drivers and safe for the public and families using our highways. The Court’s decision makes it plain that there is no way for the agency to argue that continuing the use of the new HOS rules serves the public interest or enhances safety.

### **Respect for Constitutional Separation of Powers**

The Court’s role is to determine whether agencies have complied with the law, and Congress should not intervene or override the rule of law. The violation of law in this case is obvious. The failure of the FMCSA to draft a legally sufficient, scientifically sound, and safe set of HOS rules is undoubted. Congress should not intervene where the judicial branch has done its job properly and rendered a fair and reasonable decision. Usurpation of the judicial process in this case will undermine the constitutional separation of powers and the U.S. democratic form of government. Moreover, since the FMCSA has not asked for the case to be reheard by the Court, and has not appealed to the Supreme Court, the agency, therefore, concedes that it has no legal case and that the HOS rule is flawed, legally insufficient, and must be rewritten.

Since even the FMCSA acknowledges that redrafting HOS rules will take many months or even longer because new studies and scientific research are required, the rules that have been held by the Court of Appeals to be arbitrary and capricious, issued in violation of existing federal law, and that pose grave questions for public safety, should not be perpetuated by an Act of Congress.

Sincerely,

Jacqueline Gillan  
Vice President  
Advocates for Highway and Auto Safety

Joan Claybrook  
President  
Public Citizen

Daphne Izer  
Founder  
Parents Against Tired Truckers (P.A.T.T.)

Jennifer Tierney  
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Citizens for Reliable and Safe Highways  
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Andrew McGuire  
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Jeffrey Burns  
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