

March 9, 2009

The Honorable Raymond H. LaHood
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Secretary LaHood:

Congratulations on your appointment and confirmation as Secretary of Transportation. On behalf of Public Citizen, Advocates for Highway and Auto Safety, the International Brotherhood of Teamsters, and the Truck Safety Coalition (comprised of Parents Against Tired Truckers and Citizens for Reliable and Safe Highways), we look forward to working cooperatively with you on the transportation safety issues confronting the Department and the nation.

One of the most important and well-documented safety problems in the motor carrier industry is driver fatigue. As you may know, we have opposed aspects of the rules governing the hours of service (HOS) of interstate truck drivers issued by the Federal Motor Carrier Safety Administration (FMCSA) in recent years. Our first two challenges were successful: The D.C. Circuit has twice struck down nearly identical HOS rules—the first issued in 2003 and the second in 2005.¹ Unfortunately, late last year the FMCSA chose to adopt the very same rules for the third time.² We write to inform you that today we have once again filed a lawsuit in the U.S. Court of Appeals for the D.C. Circuit challenging the HOS final rule issued by the agency on November 13, 2008.

We have taken this action with the conviction, based on research and scientific data, that longer driving and working hours are unsafe and promote driver fatigue. We challenged the two major features of the HOS rule that promote even greater driver fatigue: the provision increasing permissible consecutive driving hours from 10 hours to 11 hours and the provision commonly called the “34-hour restart,” which enables drivers to drive and work substantially longer hours per week than under the HOS rules that prevailed until the 2003 HOS rule took effect. These provisions of the HOS regulation adopted by the previous Administration not only increased the daily and weekly driving hours beyond those already proven to generate high levels of driver fatigue, but also exacerbated the chronic health problems that are widespread among professional

¹ See *Public Citizen v. FMCSA*, 374 F.3d 1209 (D.C. Cir. 2004) (*Public Citizen I*); *Owner-Operator Indep. Drivers Ass'n v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007) (*Public Citizen II*) (adjudicating both *Public Citizen et al. v. FMCSA*, No. 06-1078 and *OOIDA v. FMCSA*, No. 06-1035).

² See 73 Fed. Reg. 69567 (Nov. 19, 2008). On December 18, 2008, these four groups filed a joint petition for reconsideration of the rule with FMCSA. The agency denied the petition on January 16, 2009.

drivers. These excessive driving and work hours impose enormous scheduling burdens on drivers that increase stress and further compound underlying medical conditions that commercial drivers are prone to develop. Surveys indicate that more drivers operate their vehicles when sleepy and report higher incidents of falling asleep at the wheel now than under the previous HOS rule.³

In your role as Secretary of Transportation in a new Administration, you have the authority and the duty to ensure that the HOS rules support the public health and safety policies sought by President Obama. We believe that the way forward is for FMCSA to commence a new HOS rulemaking and to begin that work promptly. We strongly support a regulation on interstate truck drivers' HOS that improves truck safety, reduces fatigue-related crashes, and safeguards truck driver health. These are goals that have been mandated by Congress and are strongly supported by the American public.

Let us briefly review for you the findings of the two Court decisions that support our position. In both its 2004 and 2007 rulings, the D.C. Circuit struck down nearly identical HOS rules issued by FMCSA, determining that the agency had failed to justify the rule's significant increases in consecutive and weekly driving hours. Thus, twice in three years, unanimous panels of the Court of Appeals —six different judges in all—have agreed with our arguments that the current HOS rule is flawed.

In its 2007 ruling, in an opinion written by Judge Garland and joined by Chief Judge Ginsburg and Judge Henderson, the court vacated the 2005 HOS rule, holding that FMCSA had committed "serious procedural error" in denying the public an opportunity to comment on the new model it used in its regulatory impact analysis to evaluate the costs and benefits of increased driving hours. *Public Citizen II*, 494 F.3d at 199. The court went further, however, explaining that our critique of the model demonstrated that FMCSA had failed to provide an adequate justification for its decision to adopt the 11-hour consecutive driving limit and the 34-hour restart provision. The court quoted FMCSA's own admission that "the risk of . . . a fatigue-related crash in the 11th hour of driving or later is notably higher than in the 10th hour of driving." *Id.* at 200. The court reiterated that in 2004, it had "expressed 'very real concerns' about the increase in the daily driving limit from 10 to 11 hours," especially given that the "agency freely concedes that 'studies show[] that performance begins to degrade after the 8th hour on duty and [the degradation] increases geometrically during the 10th and 11th hours.'" *Id.* at 196 (quoting *Public Citizen I*, 374 F.3d at 1218).

Equally important, the court also agreed with us in its 2007 ruling that the regulatory impact analysis "ignored cumulative fatigue from increased weekly driving and working hours allowed by the 34-hour restart." *Id.* at 205. The court emphasized that in 2004 as well, it had regarded FMCSA's rationale for the 34-hour restart as "problematic," especially given that the agency failed

³ See Anne T. McCartt, et al., Insurance Institute for Highway Safety, *Work Schedules of Long-Distance Truck Drivers Before and After 2004 Hours-of-Service Rule Change* (2008).

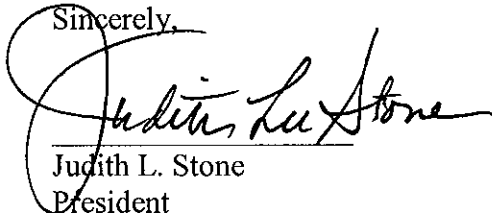
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to justify the rule's "dramatic[]" increase in "maximum permissible hours drivers may work each week." *Id.* at 197 (quoting *Public Citizen I*, 374 F.3d at 1222).

The court's 2004 decision, which was written by Judge Sentelle and joined by Judges Edwards and Tatel, focused on FMCSA's failure to address the serious health impact of its HOS rule on the regulated drivers, *Public Citizen I*, 374 F.3d at 1216-17, who were being permitted to operate large trucks for longer shifts, to drive over 25 percent more hours and to engage in 40 percent more non-driving work hours per week than under the pre-2003 rule. To date, the significant health problems engendered by driving longer hours have not been adequately addressed by the agency in any of its HOS rules, including the recent November 2008 rule, despite findings from FMCSA's own National Academy of Sciences panel that many commercial drivers suffer from serious adverse medical conditions fostered by their work. Faced with the dual congressional mandates of ensuring that its HOS rule has no detrimental effect on truck-driver health and of determining the costs and benefits of its HOS rule, the agency threw up its hands and refused to factor in the health consequences of its rule into its regulatory impact analysis *at all*—a refusal we doubt the D.C. Circuit will countenance. It is evident from the court opinions that these facts will continue to weigh heavily on its deliberations in any future hearing on the HOS rule.

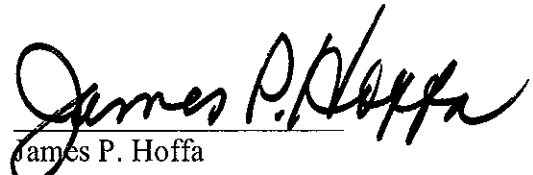
Each year nearly 5,000 people die, including more than 800 truck drivers in 2007, and over 100,000 people are injured in truck-related crashes. The Department of Transportation has an opportunity to change course and issue an HOS rule that will reduce the unacceptable annual death and injury toll on our highways and will promote truck-driver health. We urge you to direct FMCSA to commence a new HOS rulemaking without delay and look forward to working with you to advance motor carrier safety. Thank you for your consideration.

Sincerely,



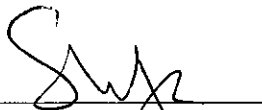
Judith L. Stone
President

Advocates for Highway and Auto Safety



James P. Hoffa
General President

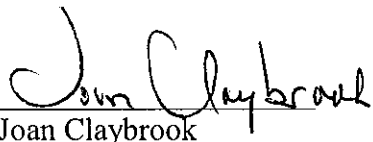
International Brotherhood of Teamsters



Sidney M. Wolfe
Acting President, Public Citizen
Director, Public Citizen's Health Research Group



John Lannen
Executive Director
Truck Safety Coalition



Joan Claybrook
President
Citizens for Reliable and Safe Highways



Daphne Izer
Founder and Co-Chair
Parents Against Tired Truckers