



December 16, 2005

Docket No. FMCSA-2005-22660
U.S. DOT Dockets, Room PL-401
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

**Comments on Hours of Service of Commercial Drivers –
United States Postal Service Application for Exemption for Contract Drivers,
Notice with Request for Comments,
70 FR 69625 *et seq.*, November 16, 2005**

Public Citizen submits the following comments concerning the United States Postal Service's (USPS) application to exempt contract drivers from the hours-of-service (HOS) regulations. We note first that both the previous and current hours of service rules fall badly short of what would be needed to assure safe highways. The USPS application for exemption contains a serious flaw, which renders it procedurally defective, and is plagued by a misunderstanding of HOS rules for short-haul drivers. In addition, USPS does not demonstrate that the exemption would achieve a level of safety equivalent to or greater than compliance the HOS rules from which it seeks exemption, as it must. For these reasons, the Federal Motor Carrier Safety Administration (FMCSA) must deny the application. Public Citizen endorses comments submitted to the docket by Advocates for Highway and Auto Safety (Advocates).

Application for Exemption is Procedurally Defective

The USPS application to exempt certain short-haul contract drivers from the hours-of-service regulations contains a serious flaw that renders it procedurally defective. The USPS application is dated August 11, 2004,¹ and requests that certain USPS contract drivers be exempted from the HOS rules in effect at the time, and instead be allowed to adhere to the previous HOS rules. However, the HOS rules in effect at the time of the USPS application were replaced by FMCSA's HOS final rule issued in August 2005, and thus the USPS application requests exemption from HOS rules no longer in effect. This flaw renders the USPS application procedurally defective.

¹ FMCSA-2005-22660-3.

Application for Exemption is Plagued by a Misunderstanding of HOS Rules

As Advocates notes in comments to the docket, though it is unclear, USPS appears to believe that the 100-air-mile-radius short-haul exemption was eliminated in the 2003 HOS final rule. Yet the 100-air-mile-radius exemption was expanded in the 2003 rule and further expanded in the 2005 rule.²

USPS Fails to Demonstrate that the Requested Exemption Would Provide an Equivalent or Greater Level of Safety than Current HOS Rules

It is the duty of the party seeking an exemption to demonstrate that the requested exemption would provide a level of safety equivalent to or greater than the level provided by compliance with the regulation.³ USPS, however, does not meet this burden.

USPS asserts that the exemption would allow drivers to spend the night in their own beds, which it argues would offset increases in allowed driving and on-duty time under the old HOS rules. USPS provides no evidence that drivers being able to sleep in their own beds would offset increased allowable on-duty hours under the old rule. USPS does not provide evidence that drivers are not able to sleep in their own beds under the current HOS rules, nor that the old HOS rules would provide them with this benefit. In fact, USPS provides practically no data concerning the work/driving routines of the drivers for which it seeks the exemption. Also conspicuously missing are the critical data showing that driver work and rest schedules under the old HOS rules provide greater safety than those under the new HOS rules.

Additionally, USPS touts its driver screening process as more stringent than those employed by many private carriers. However, this is irrelevant, as it does not address whether the exemption would provide a level of safety equivalent to or greater than that offered under the current HOS rules. USPS also argues that its contract suppliers are provided with schedules to which they are contractually bound, and that this provides no incentive for drivers to arrive early. The point that USPS is apparently making is that its contract drivers likely will not drive long hours or speed because they are not motivated by by-the-mile pay. However, a schedule-based system, especially one that is contractually binding, might result in these same practices. If a driver is stuck in unforeseen traffic, he or she will have to drive faster and longer than normal in an attempt to adhere to the schedule.

In comments to the docket, Advocates notes that the requested exemption would allow drivers to spend more time on the clock than under the current regulations.⁴ The HOS rules in place prior to the 2003 rules permitted drivers to be placed off-the-clock for indefinite periods of time, allowing work days to be extended beyond the number of allowable on-the-clock hours and contributing to irregular work days. The requested

² See analysis of USPS's apparent misunderstanding in comments to the docket submitted by Advocates for Highway and Auto Safety at 2.

³ 69 FR 51591.

⁴ See Advocates comments to the docket at 4.

exemption, thus, would reduce driver rest time, and, further, would reduce pay for those drivers compensated only for on-the-clock time, potentially leading to low morale and drivers taking second jobs, both of which would affect driver performance. In addition, increased weekly work is associated with greater fatigue. For example, a 1999 peer-reviewed, case-controlled study prepared for the AAA Foundation for Traffic Safety, found that working more than 60 hours a week increased the odds of a sleep-related crash by 40 percent.⁵ The new rules, however, put a cap on the maximum number of duty hours for drivers by limiting, as a whole, both driving and non-driving time.

Another major difference between the current HOS regulations and the regulations prior to April 2003 is that the new rules provide drivers with a minimum of 10 hours off-duty rest time – two hours more than the rest time provided under the old rules. A return to the old rules would deprive the drivers of these extra two hours of off-duty time, restricting the amount of time they are given to sleep. FMCSA is well aware of the dangers of sleep deprivation. In its 2005 HOS NPRM, the agency admits that “[s]erious adverse health conditions appear to be associated with chronic sleep deprivation.”⁶ The agency cites a 1991 review of sleep loss research, which noted problems such as an increased incidence of myocardial infarcts and cardiovascular disease.⁷ In addition, a 1999 study found that sleep deprivation over numerous days seemed to result in prominent alterations in metabolic and endocrine function.⁸ And another study done in 1999 indicated that sleep deprivation may worsen age-related chronic disorders like diabetes and hypertension.⁹

USPS fails to address any of the detrimental consequences that would come with a grant of its application for exemption. Both the new and old HOS rules are deficient, yet there remain serious safety issues raised by the USPS application for exemption that the applicant does not address. USPS must address these issues, which pertain to the specific provisions affecting the drivers for which it requests the exemption.

Requested Exemption May Hamper Effective Enforcement of HOS Rules

Public Citizen agrees with Advocates’s concern that the requested exemption will complicate enforcement of HOS rules. As Advocates notes, FMCSA provided an exemption to short-haul drivers in the August 2005 regulation, which would bring the number of exemptions for short-haul drivers three if FMCSA approves the USPS application for exemption.¹⁰ Three different HOS rules would impact the efficacy of enforcement activities. Given the already crippled enforcement environment that FMCSA grapples with, *see* Government Accountability Office, *Truck Safety Federal Enforcement Efforts Have Been Stronger Since 2000, but Oversight of State Grants*

⁵ J. Stutts, *et al.*, *Why Do People Have Drowsy Driving Crashes?: Input From Drivers Who Just Did*, AAA Foundation for Traffic Safety, Washington, D.C., Nov. 1999.

⁶ 70 FR 3344.

⁷ 70 FR 3344.

⁸ 70 FR 3344.

⁹ 70 FR 3344.

¹⁰ *See* Advocates comments to the docket at 6 and 7.

Needs Improvement, GAO-06-156, it is imperative that FMCSA not further complicate these efforts.

Conclusion

FMCSA must deny the USPS application. It contains a serious error that renders it procedurally defective. In addition, USPS has not demonstrated that its requested exemption would provide a level of safety equivalent to or greater than compliance with the current HOS regulations. Both the old and new HOS regulations are deficient, yet USPS fails to address any of the safety issues pertaining to its request to exempt certain short-haul carriers from the current HOS rules, providing the agency with no legal or factual basis for an exemption.