

Advocacy Recommends That FMCSA Re-Assess Effect of Proposed Hours of Service of Drivers Rule on Small Businesses

On February 25, 2011, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Federal Motor Carrier Safety Administration (FMCSA) on FMCSA's proposed Hours of Service of Drivers rule. [75 Fed. Reg. 82170 (December 29, 2010)].

FMCSA's proposed rule would revise its regulations for hours of service for drivers of property-carrying commercial motor vehicles (CMV) by, among other things, reducing the daily maximum driving limit, reducing the maximum on-duty time limit, instituting mandatory breaks, and altering the current 34-hour restart provision. According to FMCSA, the purpose of the proposed rule is to improve safety, protect driver health, and provide flexibility. The agency has been forthright in acknowledging that there are significant data limitations in equating driving and duty time with safety and health improvements. FMCSA's hours of service rule has been the subject of ongoing litigation since 2003 and the agency is required by a settlement agreement to that litigation to publish a final rule by July 26, 2011.

In response to the publication of the proposed rule, Advocacy hosted a small business roundtable on February 9, 2011, to discuss the proposed rule and obtain small business input on it. Advocacy also attended FMCSA's public listening session on the proposed rule on February 17, 2011. Advocacy's comments are reflective of the issues raised during the roundtable discussion and at FMCSA's public listening session.

A complete copy of Advocacy's letter to FMCSA is available at: www.sba.gov/advo/laws/comments/.

- Small business representatives were uniformly opposed to the proposed rule and prefer the current regulations, which they say they have adjusted to and are working well. Given admitted data limitations by the agency, Advocacy recommends that FMCSA consider retaining its current regulations while conducting additional research to determine whether changing the current rules will in fact achieve the agency's stated objectives concerning enhanced safety, driver health, and flexibility.
- Small business representatives were concerned that the proposed rule would reduce flexibility and could actually impede safety and driver health by compressing driving and duty windows, increasing traffic and congestion, and adding stress. Accordingly, Advocacy recommends that the agency assess potential unintended effects that could offset the purported benefits of the rule.
- Small business representatives stated that the proposed rule would be operationally disruptive and costly by requiring more drivers, more trucks, and less efficient operations. They also cited declining truck-related injury and fatality rates under the current rules, despite increased truck miles driven, as a justification for retaining the current rules. As such, Advocacy recommends that the agency further consider these costs and operational impacts before proceeding.

For more information about rule, please visit Advocacy's Web page at www.sba.gov/advo or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 (or bruce.lundegren@sba.gov).