**MCSAC Task 11-06: Hours-of-Service Requirements for Drivers**

**of Passenger-Carrying Vehicles**

**Subcommittee Report to MCSAC**

*Task 11-06: FMCSA requested that the MCSAC provide information, concepts, and ideas to the Agency relating to the hours-of-service (HOS) requirements for drivers of passenger-carrying vehicles.*

* *The ideas and concepts should take into account the applicable statutory requirements for FMCSA rulemakings and factors the Agency must consider prior to issuing safety regulations.*
* *In preparing its letter report to the Agency, the Committee should, wherever possible, indicate whether the ideas or concepts identified are supported by peer reviewed studies.*
1. **Understanding the Makeup of the Passenger Carrier Industry is Key**
	1. Recommendation: When considering whether to revise the motorcoach hours of service (HOS) rules (49 CFR part 395), FMCSA should endeavor to understand the operations of the different types of passenger carriers that make up the industry because the use of schedules, night driving, and fatigue management differs greatly between different types of motorcoach operators.
	2. A passenger carrier on any given day may be serving several different functions all in one day (shuttlebus, motorcoach, etc.).
	3. The list below represents some, but not all, of the different types of passenger carrier operations within the industry.
		1. Regular route motorcoach operators
		2. Tour motorcoach operators
		3. Charter motorcoach operators
		4. Commuter motorcoach operators
		5. Transit operators
			1. Interstate paratransit
		6. Construction and rail crew transport
		7. School bus
		8. College and high school transport
			1. Concern: These customers generally just take the lowest priced quote for service.
		9. Church buses
			1. Concerns: Sometimes churches decide to go into the charter business, but are not aware of regulatory obligations. This universe of carriers is difficult to identify.
		10. Migrant workers
		11. Airport motorcoach shuttles
2. **Data Needs**
	1. The subcommittee believes that it cannot determine whether or not the passenger carrier HOS rules need to be changed because there is a lack of data on passenger carrier-related crashes, passenger carrier HOS compliance, and the passenger carrier industry make up.
	2. En route inspections would produce considerably more data as to what vehicles and operations are on the road and whether or not they are complying with HOS regulations.
		1. FMCSA should examine the breakout of data from the 2011 National Passenger Carrier Strike Force.
			1. How many HOS violations were recorded for how many different carriers?
			2. How many different carriers were inspected in total?
			3. What percentage of the total number of motorcoarch carriers were inspected?
		2. Could a State conduct such research as a Motor Carrier Safety Assistance Program (MCSAP) Special Study?
		3. FMCSA should work with Commercial Vehicle Safety Alliance (CVSA) to pursue such data needs, and to communicate such data needs to States.
		4. States often engage in such targeted enforcement exercises. FMCSA should request any relevant motorcoach inspection data from State partners.
	3. FMCSA should endeavor to understand what data is needed (by Rulemaking and by Legal) to justify any sort of proposed change to current passenger carrier HOS regulations.
		1. Bill Bannister (FMCSA) has suggested that having all data to MUCK data standards (the standard for Fatality Analysis Reporting System [FARS] reporting) would be ideal to support a motorcoach HOS rule.
			1. Not just fatal crash data, but get FMCSA’s crash data (e.g., on tow-away, fender benders, etc.) reported to MUCK data standards. ***[Need to get definition of MUCK acronym from Mr. Bannister.]***
	4. FMCSA should review and consider the Belenkey sleep study (currently under peer-review).
	5. FMCSA should evaluate any data that the Agency has on motorcoach HOS violations, especially those involved in crashes, and how that compares to trucking HOS violations. Those violations should be looked at in detail to determine how exactly the HOS rules are being violated (e.g., is someone working more than one job and not accounting for those hours).
		1. This data would help the Agency understand when and where fatigue is truly an issue.
	6. Talking to actual drivers and asking detailed questions can provide a lot of information about when and where fatigue is an issue.
	7. Potential Sources of Information:
		1. United Motorcoach Association
		2. Pennsylvania Bus Association
		3. Virginia Motorcoach Association
		4. California Bus Asociation
		5. Greater New Jersey Motorcoach Association
		6. New England Motorcoach Association
		7. National Association of Motorcoach Operators
		8. Insurance companies
		9. American Gaming Association (casinos)
		10. Paratransit operator associations
		11. Private and public school bus associations
		12. Airport carriers (e.g., Supershuttle)
		13. CVSA Passenger Carrier Committee
		14. National Limousine Association
3. **Unique Motorcoach Fatigue Issues**
	1. Many drivers are not full-time drivers; many have other jobs. Often a driver may technically be within the maximum driving hours requirements, but that driving could have occurred after a full day of different work.
		1. Part-time drivers are very common because of the seasonal nature of many passenger carrier operations.
		2. Part-time drivers do not always have two jobs; sometimes they are retirees, or school bus drivers that driver motorcoaches on the weekend.
	2. Caravan issues.
	3. The extendable day is still an option under the motorcoach HOS rules, but is no longer permitted in the trucking HOS rules.
		1. Motorcoach drivers can still “stop the clock” waiting for passengers somewhere, and then continue driving with the break not counting towards their maximum hours.
	4. Much of motorcoach industry is profit driven.
		1. For example, tour and charter companies do not necessarily scrutinize an itinerary submitted by a customer to ensure that a driver could make the trip without violating HOS requirements.
		2. Drivers should not be made the scapegoats because the problem is more often with the carrier’s scheduling management and culture.
		3. Because the motorcoach industry is very profit-driven, behavior (i.e., scheduling management culture within companies) might only change by increasing penalties for violations so that carriers actually pay attention to the rules and plan for them.
		4. Recommendations:
			1. FMCSA should consider whether it has the authority and whether it would be reasonable to revoke operating authority for repeat motorcoach HOS violations.
			2. FMCSA should consider raising fines. Fines have been minimal in the past.
			3. For repeat violations, consider impounding that carrier’s motorcoaches.
		5. Customer education of HOS rules and fatigue impact on crash risk may help prevent customers from putting pressure on carriers and drivers.
	5. Transit drivers do not have to fill out logs.
		1. FMCSA may want to consider examining whether these drivers have additional driving jobs, and whether they should be documenting their hours.
	6. Because en route inspections are prohibited, bus inspections are probably not occurring as much as they could.
		1. How many unique motorcoach companies are inspected each year? What percentage of total motorcoach companies? (FMCSA)
4. **Best Practices**
	1. Recommendation: FMCSA should review, evaluate, and consider industry best practices because some companies likely have seen results from implementing those practices (e.g., reduced accidents or money saved).
	2. Scheduling is generally done for less than the maximum allowable driving hours to account for delays such as traffic.
		1. This practice appears to be consistent across many companies belonging to the American Bus Association.
	3. Some companies follow a 9 hour maximum rule as internal company policy.
		1. At least one of these companies has noticed a decline in certain crashes as a result of this policy.
	4. Many companies undertake some form of HOS or fatigue-related driver education.
		1. Companies ensure that drivers know what the rules are, that the driver and the family know about what it means to be behind the wheel and fatigue issues (fitness, nutrition, impacts of night-time driving, etc.).
		2. Alertness management programs that include both driver education and scheduling management have been effective.
	5. Some companies take into account a driver’s schedule as well as the maximum driving time.
	6. Some student transportation companies do not do overnight trips as a practice so that their drivers can sleep on a regular schedule.
	7. Some charter and tour companies send customers information on HOS requirements.
		1. ABA has laminated cards that it gives out that displays the HOS rules that companies can hand out.
	8. Fatigue Management Programs
		1. The key to fatigue management programs are commitment from senior management, employee engagement and involvement, and education.
		2. Scheduling policies developed from an understanding of how circadian rhythms and work schedules affect a driver’s ability to operate a vehicle safely.
		3. One paper discusses how fatigue management program elements work together to address the issues. (Someone from the subcommittee was going to locate and send this to Shannon for distribution?)
	9. Some trucking companies test for sleep apnea and encourage fitness and exercise for their employees.
5. **Other Comments**
	1. Do the current passenger carrier HOS rules need to be changed?
		1. Some subcommittee members believe the motorcoach HOS rules may be workable as they are and that FMCSA should consider requiring passenger carriers to implement fatigue management programs instead of changing the rule. The Agency could require various education components in the regulations.
		2. Other subcommittee members expressed concerns that only education requirements would not result in change in behavior for all companies.
			1. Advocates for Highway and Auto Safety (Advocates) and Parents Against Tired Truckers believe there should be a change in the motorcoach HOS rule to reach the behavior of all drivers.
		3. Recommendation: FMCSA should obtain enough data (see “Data Needs” above) to be able to answer the following question: Do the current regulations create or allow a safety vulnerability for those operators that are not following best practices or the current regulations? If yes, modify the passenger carrier HOS rule to eliminate the safety vulnerability. If no, leave the rule as is.
	2. Recommendation: Driver training should include fatigue management education.
	3. The Safety Measurement System (SMS) should separate out violations that are form and manner versus violations that are willful.
	4. The 9-15 passenger van industry is not very well regulated or monitored.
		1. Insurance companies have a lot of incidents with these vehicles.
	5. Recommendation: FMCSA should examine whether there should be a different standard for overnight driving. Should there be some other level of certification (level of awareness) that carriers or drivers must go through?
		1. Not necessarily appropriate for regular schedule carriers, but for tour/charter operations.
		2. One option: Companies that choose to make overnight trips should be required to show that they have a fatigue management program and an understanding of the effects of night driving.
	6. Recommendation: FMCSA should consider whether required break time is appropriate for passenger carrier drivers who are subject to more than 8 hours of continuous driving.

Recommendations Relating to the Current Passenger Carrier HOS Rules

1. **49 CFR Part 395, Hours of Service for Motor Carriers of Passengers**
	1. The hours of service rules for drivers of passenger-carrying commercial motor vehicles (CMVs) are different from the rules for property-carrying CMVs.
	2. Note that Non-business Private Motor Carriers of Passengers are not subject to the record keeping requirements of this part, such as maintaining a logbook or record of duty status.
	3. *Recommendation: All passenger carriers (including non-business private and transit carriers) should be required to comply with the HOS requirements.*
2. **Maximum Driving Time for Passenger-Carrying Vehicles (49 CFR 395.5)**
	1. No motor carrier of passengers shall permit or require any passenger-carrying CMV driver to drive:
		1. More than 10 hours following 8 consecutive hours off duty, or
		2. For any period after having been on duty 15 hours following 8 consecutive hours off duty.
	2. No motor carrier of passengers shall permit or require any passenger-carrying CMV driver to drive, regardless of any number of motor carriers using the driver’s services, for any period after the driver has been on duty:
		1. 60 hours in any 7 consecutive days if the carrier does not operate CMVs every day of the week; or
		2. 70 hours in any 8 consecutive days if the carrier operates CMVs every day of the week.
	3. *Recommendations:*
		1. *FMCSA should evaluate the application of fatigue research on commercial vehicle drivers generally when determining whether the motorcoach HOS rule is appropriate.*
		2. *FMCSA should review fatigue research from other segments of the transportation industry (e.g., FAA-regulated fatigue).*
		3. *FMCSA should consider if 8 hours off duty should be modified, based on fatigue research relating to shift work generally.*
		4. *FMCSA should examine recent crashes in which fatigue was an issue, and evaluate whether the situation would have been different if the HOS rules were different.*
			1. *Review whether the carriers involved in those crashes had systemic failures or issues relating to schedule or fatigue management.*
3. **Off-Duty Time**
	1. “Off-duty time” is not specifically defined in the regulations. In effect, it is any time that is not “driving time,” “on-duty time,” or “sleeper berth” as defined in 49 CFR 395.2.
	2. The following guidelines must be met before a driver is considered off duty:
		1. During a trip, the driver must be relieved of all duty and responsibility for the care and custody of the bus or passenger-carrying CMV, its accessories, and any passengers, baggage, and freight that it may be transporting.
		2. During a trip, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the bus or passenger-carrying CMV is parked.
		3. The driver must not be performing any work in the capacity, employ, or service of a bus company or motor carrier.
		4. The driver must not be performing any compensated work for a person or company that is not a motor carrier.
	3. *Recommendations:*
		1. *Driver education regarding fatigue is critical for efficient use of off-duty period.*
		2. *B.1 and B.2 seem conflicting with a driver being able to take off-duty time in the vehicle. The guidance should be clear that the off-duty time could be in a vehicle resting if the driver is choosing to spend his/her off-duty time in the vehicle.*
4. **On-Duty Time (49 CFR 395.2)**
	1. When a driver at the direction of a motor carrier is traveling, but not driving any vehicle or assuming any other responsibility to the carrier (“cushioning”), such time shall be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he/she shall be considered off duty for the entire period.
5. **December 2011 Hours of Service Final Rule**
	1. Any time spent resting in a parked CMV may be counted as off-duty.
	2. *Recommendation: FMCSA should consider whether it may not be appropriate to apply the definitional change that allows CMV drivers to log off-duty time while sitting in a parked vehicle to motorcoach drivers.*
		1. *Such allowance may be appropriate for off-duty breaks, but not for the 8-hour rest period.*