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

**of Passenger-Carrying Vehicles**

**Subcommittee Report to MCSAC**

Introduction

In 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 (hereinafter referred to as passenger carrier HOS requirements). The first part of this report includes recommendations within topic areas that the subcommittee believes are of great import as they relate to potential revisions to the passenger carrier HOS regulations. The second part of the report includes the specific recommended changes to the passenger carrier HOS rules from the subcommittee.

1. **Understanding the Makeup of the Passenger Carrier Industry is Key**
   1. Subcommittee Recommendations:
      1. When considering whether to revise the passenger carrier 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 passenger carrier operators.
      2. FMCSA should define the different types of passenger carrier vehicles including motorcoaches and consider the regulatory implications of applying those definitions to different vehicles.
   2. A passenger carrier on any given day may be serving several different functions all in one day (shuttlebus, charter, scheduled service, 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 often 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. Subcommittee Recommendations:
      1. 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. The data examined should include but not be limited to the following:
         1. FMCSA should review and consider the Motorocoach Driver Fatigue Study conducted by Dr. Gregory Belenkey.
         2. Bill Bannister (FMCSA) has suggested that having all data to Model Minimum Uniform Crash Criteria (MMUCC) data standards (the standard for Fatality Analysis Reporting System [FARS] reporting) would be ideal to support a passenger carrier HOS rule.
            1. Ideally, FMCSA should attempt to evaluate not just fatal crash data, but all FMCSA crash data (e.g., on tow-away, fender benders, etc.) reported to MMUCC data standards.
      2. FMCSA should evaluate any data that it has on passenger carrier 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. For example is a driver poorly managing his/her off-duty time (e.g., working another job during off-duty hours).
         1. Rationale: This data would help the Agency understand when and where fatigue is truly an issue.
      3. FMCSA should evaluate the application of fatigue research on commercial vehicle drivers generally when determining whether the passenger carrier HOS rule is appropriate.
      4. FMCSA should review fatigue research from other segments of the transportation industry (e.g., Federal Aviation Administration-regulated fatigue).
      5. 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.
      6. Review whether the carriers involved in those crashes had systemic failures or issues relating to schedule or fatigue management.
   2. Potential sources to obtain other useful data:
      1. 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 passenger carriers were inspected?
         2. FMCSA should consider whether a State could 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 passenger carrier inspection data from State partners.
      2. Talking to actual drivers and asking detailed questions could also provide information about when and where fatigue is an issue.
   3. Other 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 Passenger Carrier Fatigue Issues**
   1. Many drivers are not full-time drivers; some have other jobs. Often a driver may technically be within the boundaries of maximum driving hours and off-duty 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 drive motorcoaches on the weekend.
   2. The extendable day is still an option under the passenger carrier HOS rules, but is no longer permitted in the trucking HOS rules.
      1. Passenger carrier drivers can still “stop the clock” during off-duty time waiting for passengers somewhere, and then continue driving with the break not counting towards their maximum 15-hour on-duty window.
   3. Much of passenger carrier industry is profit- and passenger demand-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 passenger carrier industry is 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. Subcommittee Recommendations: Enforce and strengthen passenger carrier HOS penalties, such as:
         1. FMCSA must revoke operating authority for repeat critical (i.e., non-form and manner) passenger carrier HOS violations.
         2. The Agency should consider raising fines. Fines have been minimal in the past.
         3. For repeat violations, FMCSA should consider impounding a carrier’s vehicles.
      5. Customer education of HOS rules and fatigue impact on crash risk may help prevent customers from putting pressure on carriers and drivers.
   4. 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.
   5. Because en route inspections are prohibited, bus inspections are probably not occurring as much as they could.
      1. How many unique passenger carriers are inspected each year? What percentage of total passenger carriers are inspected each year?
4. **Best Practices**
   1. Subcommittee 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 driving time 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 and/or fatigue-related driver education.
      1. This education or training ensures that drivers know what the rules are.
      2. Some education also includes driving-related fatigue issues for the driver and the family (e.g., fitness, nutrition, impacts of night-time driving, etc.).
      3. Company 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. The American Bus Association has laminated cards that it gives out that displays the HOS rules that companies can hand out.
   8. Fatigue Management Programs
      1. The keys to fatigue management programs are commitment from senior management, employee engagement and involvement, and education.
      2. Scheduling policies should be developed from an understanding of how circadian rhythms and work schedules affect a driver’s ability to operate a vehicle safely.
   9. Some trucking companies test for sleep apnea and encourage fitness and exercise for their employees.
5. **Other Comments**
   1. Subcommittee Recommendation: Training should include fatigue management education (including supervisors/dispatchers, drivers, drivers’ families, and safety managers).
   2. The Safety Measurement System (SMS) should separate out HOS violations that are form and manner versus violations that are willful.
   3. The 9-15 passenger van industry is not very well regulated or monitored.
      1. Insurance companies have a lot of incidents with these vehicles.
   4. FMCSA should evaluate Canada’s experience with its passenger carrier HOS rules (10-hours off duty must consist of at least one 8-hour continuous off duty period and the other 2 hours can be taken at 30 minute intervals).

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. Subcommittee Recommendation: All passenger carriers (including non-business private and transit carriers) should be required to comply with all HOS requirements, including record keeping requirements.
2. **Maximum Driving Time for Passenger-Carrying Vehicles (49 CFR 395.5)**
3. Current Rules:
   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.
4. Subcommittee Recommendations:
   * 1. The minimum off-duty time period and the on-duty time window should add together to create a 24-hour window. The 24-hour clock should allow for a (minimum) 8-hour sleep opportunity.
        1. Rationale: A 24-hour clock would prevent the backward rotation or drift of wake times and shift times, and attempt to keep circadian rhythm consistent.
     2. FMCSA should require a minimum off-duty period before a driver who has been working a day shift is assigned to a night on-duty shift (i.e., switching shifts).
     3. FMCSA should consider whether required break time is appropriate for passenger carrier drivers who are subject to more than 8 hours of continuous driving.
5. **Off-Duty Time**
6. “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.
7. Under FMCSA guidelines, the following conditions 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.
8. Subcommittee Recommendations:
9. FMCSA should provide clarification on its current off-duty guidelines. For example, VIII.B.1 and VIII.B.2 seem conflicting with a driver being able to take off-duty time in the vehicle.
10. The guidance should clarify whether 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.
11. 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 passenger carrier drivers.
    * + 1. Such allowance may be appropriate for off-duty breaks, but not for the entire off-duty rest period.