



# NEWS RELEASE

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The Canadian Trucking Alliance is a federation of the seven Canadian provincial trucking associations representing approximately 4,500 motor carriers and is dedicated to serving the national and international interests of Canadian motor carriers.

## U.S Court of Appeals Issues Hours of Service Decision

(July 25, 2007) -- The United States Court of Appeals for the D.C. Circuit issued yesterday its long-awaited decision on the Public Citizen and Owner Operator Independent Driver Association (OOIDA) challenges to the 2005 Hours of Service rules. The Court rejected across the board the OOIDA claims, and ruled in favor of Public Citizen on its challenge to the 11-hour drive time limit and the 34-hour restart provision. FMCSA has 45 days to petition for reconsideration; after that time, within 7 days, the Court's decision will become effective. Therefore, **THE COURT'S DECISION WILL NOT BECOME EFFECTIVE FOR AT LEAST 52 DAYS, WHICH MEANS THAT THE 11-HOUR LIMIT AND 34-HOUR RESTART STAY IN PLACE FOR AT LEAST THAT TIME FRAME.**

The principal elements of the Court's ruling are:

### **Public Citizen**

The Court described its concerns as procedural, in that FMCSA had failed to comply with the *Administrative Procedure Act* which requires that a federal agency provide appropriate public notice and opportunity to comment before it implements a final rule.

The Court found that FMCSA had not given adequate notice to interested parties of the basis for its decision to allow 11 hours of daily driving time. The Court also found that once that basis had been disclosed, the agency did not adequately explain its reasoning. In particular, the Court found that the agency had failed to provide information and explain how it had constructed an operator-fatigue model that showed a much smaller increased risk of a fatigue related accident from the 10<sup>th</sup> to the 11<sup>th</sup> hour of driving time than had previous studies.

The Court also found that the agency had not provided an adequate explanation as to why its operator-fatigue model had not considered possible cumulative fatigue caused by longer weekly driving hours possible under the 34 hour restart.

### **OOIDA**

The Court rejected completely the three grounds raised by OOIDA.

With respect to the loading and unloading and 14-hour daily duty limit,

the Court found that the agency had properly considered the issues raised by OOIDA and deferred to the agency's judgment, noting the pro-safety aspects of the 14-hour provision.

With respect to the split sleeper berth provision, the Court rejected OOIDA's claims that there had been inadequate notice of an 8-hour continuous period rule and that it had properly considered the effect of the rule on team drivers. Responding to arguments raised by interveners supporting OOIDA, the Court also rejected the claim that the record did not support the need for an 8 hour period. In doing so, the Court noted that there was "ample support" for the agency's view that an 8 hour period would reduce fatigue related accidents. This decision will make it more difficult in the future for the agency to relax the 8 hour requirement, unless new evidence to support shorter split rest periods is introduced in a rulemaking.

Importantly, the Court vacated only the 11-hour daily drive time and 34-hour restart provisions, leaving the rest of the rule in place.

From the trucking industry's standpoint, the good news in the decision is that the flaws that the Court found were procedural in nature and could be corrected by the agency, if it chose to do so. The Court of Appeals does not have the authority to vacate a federal regulation on substantive grounds. In other words, even if the Court were of the opinion that 11 hours driving is somehow less safe than 10 hours, or that the 34-hour restart results in too many driving hours per week, it could not overturn those parts of the rule based on its interpretation of the facts. The Court's only authority is to determine whether FMCSA, in its rulemaking process, complied with the *Administrative Procedure Act*. The general view is that if FMCSA had covered all the bases during the rulemaking process, the court would have had no justification to overturn the 11-hour driving and 34-hour restart provisions. Throughout the decision, the Court made it clear that it was not directing the agency to any particular direction, but rather forcing it to provide explanations of the provisions it adopted. Re-adoption of the two provisions remains an option for the agency with need to introduce another rulemaking that fully explains its reasoning and provides adequate opportunity for public comment.

Although an option for FMCSA, reconsideration of a decision is seldom granted, and so ATA plans to seek a stay from the Court that would allow the current provisions to remain pending the agency's reevaluation of them.

**To read the Court's full decision, go to the following link:**

<http://www.cadc.uscourts.gov/bin/opinions/allopinions.asp>