

November 2008

Contacts

Brigham A. McCown

1445 Ross Avenue, Suite 3700
Dallas, TX 75202-2799
(214) 979-3086
bmccown@hunton.com

New Maximum Drive and Work Hours for Truckers Remain Unchanged

Today, the United States Department of Transportation (“USDOT”) announced a new final rule aimed at the trucking industry. 73 Fed Reg 27437 (November 19, 2008).

The USDOT’s Federal Motor Carrier Safety Administration (“FMCSA”) may once again face stiff opposition from safety advocates and some in Congress because the agency has decided to keep controversial provisions from earlier Hours-of-Service (“HOS”) rules. Opponents have twice sued successfully in court to stop the agency from issuing the rule they say diminishes safety, most recently in *OOIDA v. FMCSA*, 494 F.3d 188 (D.C.Cir.2007).

With FMCSA’s decision to keep intact the 11-hour driving limit within a 14-hour day and the 34-hour restart, opponents will have to decide whether to once again challenge the regulations in court. According to the agency, “[t]he final rule is based on an exhaustive scientific review

and designed to ensure truck drivers get the necessary rest to perform safe operations and the quality of life they deserve.” FMCSA press release of November 18, 2008.

Opponents have been fighting to remove the 11-hour driving limit, which first appeared in the agency’s 2003 HOS rule. Similarly, the 34-hour restart allows drivers to renew their weekly maximum allowable work hours by not working for 34 hours. The trucking industry has long argued that both these provisions are necessary to help the industry cope with logistical challenges after the agency removed a previously available “rest” option from a worker’s day.

For the trucking industry, the 2008 HOS rule does not change the previous rule that truck drivers have been following since 2005. The final rule is available at: http://www.federalregister.gov/OFRUpload/OFRRData/2008-27437_PI.pdf.