

Final Hour for HOS

DOT readies 'midnight' final rule on trucker hours of service; Democrats eye challenge

In its final hours, the Bush administration is preparing to release its final rule on truck driver hours of service, and Democrats in Congress are setting up a roadblock.

"The Federal Motor Carrier Safety Administration is again planning to expand by 10 percent the number of hours a truck driver can drive without adequate rest, threatening the safety of all drivers," House Speaker Nancy Pelosi, D-Calif., wrote on her Web site.

The final rule, expected next month, isn't expected to differ substantially from the interim final rule FMCSA released last year.

Opponents of the interim rule unsuccessfully tried to stop it a third time in federal court. The FMCSA in February extended the comment period on the interim final rule until March. The agency has been quiet on the topic since June, when it said it was still committed to issuing a final rule this year.

rent hours of service rule "a sham" during a hearing last January.

Supporters of the current rule note the 11-hour limit has been in effect since 2005, when FMCSA added an hour of driving time to the truck driver's clock. A return to a 10-hour driving limit could have drastic effects for trucking companies and other logistics professionals who have tailored their supply chain networks of warehouses, distribution centers and other hubs around the distance 11 hours of driving affords.

"If you change the amount of time our guys can drive, all of a sudden our terminals are not set up in the right places," said C. Randall Mullett, vice president of trucking and logistics giant Con-way. "It has the ability to impact your entire network."

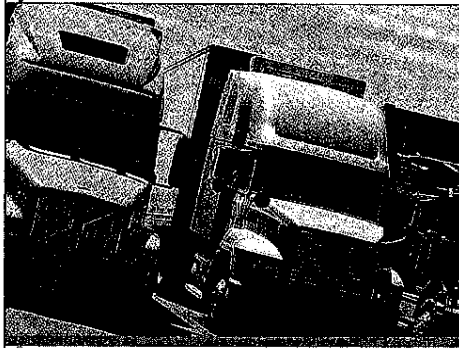
Timothy Lynch, senior vice president at the American Trucking Associations, said he was unaware of Pelosi's concerns, but said he would meet with her or her staff to make his case. "The safety numbers under that rule have been far better than they were under the prior rule," he said.

McCown, who helped craft the hours of service rules released in 2005, said the 11-hour and 34-hour restart provisions have been supported by DOT career staff who are generally considered to be non-partisan. "Once the Democrats are in power in the White House they will find out there is no Bush agenda," McCown said. "I would not be surprised if the 111th Congress asked the Department of Transportation under the Obama administration to take another look at the regulations and report back their findings."

But opponents say they stand ready to renew their legal challenge.

"I imagine if they issue a final rule that is essentially identical to the interim final rule, we will have to go back and consider suing them a third time," said Jerry Donaldson, a senior research director for the Advocates for Highway and Auto Safety. "I would be very surprised if they radically lowered the hours of service regimen."

BY ARI NATTER



"The safety numbers have been far better than under the prior rule."

The last days of the Bush White House may witness the end game in a long-running battle between the Department of Transportation and the trucking industry and congressional Democrats, the Teamsters union, Public Citizen and highway safety advocates. Since 2003, critics have challenged the DOT's hours of service regulations in federal court three times and the rules were vacated in part or in their entirety twice, putting a major regulatory issue in limbo.

At stake is an 11th hour of driving time and 34-hour restart period widely supported by the trucking industry but opposed by the Teamsters and consumer and safety groups.

Truckers currently operate under an interim final rule, and though DOT has been working on a final rule since 2007, Pelosi calls it a "midnight regulation" that will trigger "increasing road hazards by weakening truck driver limits."

Even if a new final rule from DOT makes it past Congress late this year, it may not make it past Jan. 20, when President-elect Obama's administration takes office.

The incoming Democratic administration is determined to overturn some Bush-era regulations by executive order. If that's not possible in this case, the new Congress could step in.

"Safety groups and others opposed to the 11th hour have generally found allies on the Democratic side of the aisle," said Brigham McCown, a former chief counsel at the DOT under the Bush administration. "And some of those individuals believe the Bush administration has catered to the trucking industry."

Opponents of the 11th driving hour will likely find an ally in Sen. Frank Lautenberg, D-N.J., chairman of the Senate subcommittee with jurisdiction over surface transportation, who called the cur-