



State of West Virginia Uniform Traffic Crash Report

DOH Form: 17-c
Revised: 02/2007

Crash Data

Crash Record Number Reporting Agency's Record Number: Page of

of Vehicles Involved: # of Non-Motorists Involved: # of Fatal Injuries: # of A B or C Injuries:

Date / Time of Crash: / Date / Time Crash Reported: / Time of Arrival:

County: Municipality or Place of Crash: GPS Coordinates:
Latitude Longitude

Highway Class: Interstate US WV
 County/HARP City Street State Park / Forest Road Not Applicable Spur North East Truck Route Other
 Private Road Private Property/Off-Roadway Other Alternate Ramp South West Toll

Route: / Milepost: Ramp: Street:

Other Description of Location: Intersecting Street:

Relation to Junction / Junction Type:
 Non-Junction Junction, Non-Interchange Area
 Intersection Intersection-Related Interstate to Interstate Railroad Grade Crossing #:
 Median Crossover-Related Business or Residential Driveway/Alley Access Other Non-Interchange
 Junction, Interchange Area
 Thru Roadway Merge/Diverge Area Intersection Intersection-Related Entrance / Exit Ramp Other Part of Interchange

Intersection Type:
 4-Way Intersection T Intersection Y Intersection Intersection as Part of Interchange Traffic Circle / Roundabout 5-Point or More

Manner of Collision:
 Single Vehicle Crash Rear End Head-On Sideswipe, Same Direction Sideswipe, Opposite Direction Rear-to-Side Rear-to-Rear
 Angle (Front to Side) Same Direction Right Angle Angle (Front to Side) Opp. Direction Angle - Direction Not Specified

Environmental Contributing Circumstances (Select Up to 3):
 None Weather Conditions Physical Obstruction(s) Glare Animal(s) in Roadway
Type:
 Other:

Weather (Select Up to 2):
 Clear Rain Blowing Snow Other
 Cloudy Sleet, Hail, or Freezing Rain Severe Crosswinds
 Fog, Smog, Smoke Snow Blowing Sand, Soil, Dirt

Lighting:
 Daylight Dawn Dark - Lighted Dusk Dark - Not Lighted Other:

Roadway Surface Condition:
 Dry Slush Mud, Dirt, Gravel, Sand Wet Ice / Frost Snow Water (Standing / Moving)

Location of First Harmful Event:
 On Roadway Roadside In Parking Lane or Zone Outside of Right-of-Way
 Shoulder Gore Off Roadway, Location Unknown Unknown
 Median Separator

Roadway Surface Type: Asphalt Concrete Gravel Dirt Brick Other:

First Harmful Event:
 Overturn / Rollover Fire / Explosion Immersion Jackknife Cargo / Equipment Loss or Shift Fell / Jumped from Motor Veh Thrown or Falling Object Other Non-Collision

COLLISION WITH:
 Pedestrian Pedalcycle Railway Vehicle Animal Motor Vehicle in Transport Parked Motor Vehicle Work Zone / Maintenance Equip Other Non-Fixed Object Impact Attenuator / Crash Cushion

Bridge Overhead Structure Bridge Pier or Support Bridge Rail Culvert Curb Ditch Embankment Guardrail Face Guardrail End Cable Median Barrier

Concrete Traffic Barrier Other Traffic Barrier Tree (Standing) Utility Pole/Light Support Traffic Sign Support Traffic Signal Support Other Post, Pole, or Support Fence Mailbox Other Fixed Object

Crash Record Number []

Reporting Agency's Record Number: 11068244

Page 2 of 8

Road - Contributing Circumstances: (Select Up to 3)

- None
- Road Surface Condition (Wet, Icy, etc.)
- Debris
- Ruts, Holes, Bumps
- Worn, Travel Polished Surface
- Obstruction in Roadway
- Pavement Markings Not Visible
- Shoulders
 - None
 - Low
 - Soft
 - High
- Problem w/ Traffic Control Device
 - Inoperative
 - Missing
 - Obscured
- Work Zone
 - Construction
 - Maintenance
 - Non-Highway Work
 - Other []
- Utility

School Bus Related:

- No
- Yes, School Bus Directly Involved
- Yes, School Bus Indirectly Involved

School Zone Related:

- No
- Yes

Type of School Zone Sign:

- When Present
- When Flashing
- Lists Specific Times
- None

School Zone Flashers:

- Present, Not Active
- Present, Active
- Not Present

School Zone Speed Limit: []

Work Zone Related:

- No
- Yes

Workers Present:

- Yes
- No
- Unknown

Work Zone Speed Limit: []

Location of Crash in Work Zone:

- Before 1st Warning Sign
- Advance Warning Area
- Transition (Merge) Area
- Activity Area
- Termination Area

Type of Work Zone:

- Lane Closure
- Lane Shift / Crossover
- Work on Shoulder or in Median
- Intermittent or Moving Work
- Other

NARRATIVE: Describe What Happened. Refer to Vehicles by Number Assigned on this Form.

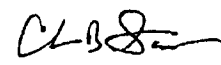
VEHICLE 1 WAS TRAVELING I-79 SOUTH BETWEEN THE 125 EXIT RAMP AND THE OVERPASS FOR RT 131 WHEN THE VEHICLE LEFT THE ROADWAY ON THE LEFT SIDE STRIKING A TRAFFIC SIGN SUPPORT. VEHICLE 1 THEN STRUCK THE CABLE GUARDRAIL AND GUARDRAIL FACE COMING TO A STOP JUST BEFORE THE OVERPASS WITH RT 131. VEHICLE 1 HAD 4 OCCUPANTS. THE RIGHT PASSENGER AND 2 REAR PASSENGERS WERE SLEEPING PRIOR TO THE ACCIDENT. THE REAR PASSENGER BEHIND THE DRIVER WAS DECEASED UPON OFFICERS ARRIVAL. THE DRIVER WAS INJURED AND TAKEN TO RUBY MEMORIAL HOSPITAL IN MORGANTOWN, WV. THE RIGHT FRONT AND RIGHT REAR PASSENGER WERE CHECKED BY EMS AND SIGNED OFF WITH THEM. ACCIDENT RECONSTRUCTIONISTS WERE CALLED TO THE SCENE. DAN RIGGS FROM DAN RIGGS GARAGE AND TOWING REMOVED THE VEHICLE FROM THE SCENE AND THE VEHICLE WAS TRANSPORTED TO HIS SHOP.

Reported By: State Police Sheriff's Dept Municipal PD Other

Photos Taken: Yes No
 Video Taped: Yes No

By Whom: L. D. JANSSEN, A. S. FLOYD

The information contained in this report reflects my best knowledge and judgment:

Investigating Officer's Name: C. B. SAYERS Number: S3298 Signature: 

Phone: (304) 842-8260 ORI Number: WV0170100 Agency: BRIDGEPORT POLICE DEPT.

Assisting Officer's Name(s): L. D. JANSSEN J. WILLIAMS A. S. FLOYD

Reconstructed: Yes No By Whom: J. WILLIAMS, A. S. FLOYD Date of Submission: 08/17/2011



State of West Virginia Uniform Traffic Crash Report

Vehicle Data

DOH Form: 17-veh
Revised: 02/2007

Crash Record Number: _____ Vehicle Number: 01 Reporting Agency's Record Number: 11068244 Page 4 of 9

Vehicle Type: Motor Veh In Transport Parked Motor Veh / Trailer Working Veh / Equipment Hit and Run: No, Did Not Leave Scene Yes, Driver Left Scene Yes, Car and Driver Left Scene Driver Presence at Time of Crash: Driver Operated Vehicle Driverless Vehicle

Owner's Name(s): ENTERPRISE FM TRUST % ENERGY SVCS LLC

Address: 4489 CAMPBELLS RUN RD PITTSBURGH PA 15205
City State Zip Code Home Phone Other Phone

Make: <u>FORD</u>	Model: <u>F-250 SUPER DUTY</u>	Model Year: <u>2011</u>	Body Type: <u>PICKUP</u>	Color: <u>WHITE</u>	Registration Status: <input checked="" type="radio"/> Properly Registered <input type="radio"/> Improperly Registered <input type="radio"/> No Registration Required	Proof of Liability Insurance: <input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not Req	Ins. Co: <u>STATE FARM</u>	
VIN: <u>1FT7W2B64BEC33752</u>	Plate Class: <u>B</u>	License Plate Number: <u>B208117</u>	State: <u>WV</u>	Reg Year: <u>2012</u>			Policy No: <u>200 0938-D25-06</u>	
Special Function of Motor Vehicle: <input checked="" type="radio"/> None <input type="radio"/> Used as School Bus <input type="radio"/> Used as Other Bus <input type="radio"/> Police <input type="radio"/> Ambulance <input type="radio"/> Fire Truck <input type="radio"/> Courtesy Patrol <input type="radio"/> Taxi <input type="radio"/> Military							Used as an Emergency Vehicle: <input type="radio"/> No <input type="radio"/> Yes	Vehicle Used as a Bus: <input type="radio"/> Public School Bus <input type="radio"/> Private School Bus <input type="radio"/> Scheduled Service Bus <input type="radio"/> Commuter Bus <input type="radio"/> Shuttle Bus <input type="radio"/> Modified for Personal/Private Use <input type="radio"/> Tour Bus <input type="radio"/> Church Bus

Direction of Travel Before Crash: Northbound Eastbound Not on Road Southbound Westbound Unknown

Applicable Speed Limit (MPH): 70

Roadway Description: Two-Way, Not Divided Two-Way, Divided, Unprotected Median Two-Way, Divided, with Median Barrier One-Way Roadway

Traffic Control Device Type: None Person (Flagger, etc.) Traffic Control Signal Flashing Overhead Signal Stop Sign Yield Sign School Zone Signs Warning Signs Railroad Crossing Device Other

Horizontal Alignment: Straight Curve Right Curve Left

Vertical Alignment: Level Uphill Sag (Bottom) Hillcrest Downhill

Extent of Damage: No Damage Minor Damage Functional Damage Disabling Damage

Vehicle Maneuver / Action: Essentially Straight Ahead Backing Changing Lanes Overtaking / Passing Parked Turning Right Turning Left Making U-Turn Slowing Stopped in Traffic Leaving Traffic Lane Entering Traffic Lane Negotiating a Curve Other

Crash Avoidance Maneuver: None Evident or Reported Braking - Skidmarks Evident Braking - Driver Stated Braking - Other Evidence Steering - Evidence or Stated Steering and Braking Other

Contributing Circumstances, Motor Vehicle (Select up to 2): None Brakes Wipers Steering Power Train Mirrors Suspension Tires Wheels Lights (Head, Signal, Tail, etc.) Windows Truck Coupling/Trailer Hitch/Safety Chains Other

GVWR or GCWR: Less Than or Equal To 10,000lbs 10,001 - 26,000 lbs More Than 26,000lbs

Number of Axles: 02

Total / Max Occupants of Veh: 0 / 4 / 0 / 5

Traffic Control Functioning Properly: Yes No

Underride / Override: No Underride or Override Underride, Compartment Intrusion Underride, No Compartment Intrusion Underride, Compartment Intrusion Unknown Override, Motor Vehicle in Transport Override, Other Motor Vehicle

Displaying Hazardous Materials Placard: No Yes

Occurrence of Fire: No Fire Yes, Vehicle Caught Fire

Modified Vehicle: No Yes

Vehicle is Primarily Used to Transport Goods, Property, or People for Commerce: No Yes

Manner, in which Vehicle was Removed from Scene: Driven Towed Due to Damage Towed Due to Driver Condition Left at Scene

Towed to: DAN RIGGS Towed by: DAN RIGGS

Crash Record Number: _____ Vehicle Number: 01 Reporting Agency's Record Number: 11068244 Page 5 of 8

- | | | | | |
|--|---|--|--|--|
| Crash Events:
01 Overturn / Rollover
02 Fire / Explosion
03 Immersion
04 Jackknife
05 Cargo/Equipment Loss or Shift
06 Equipment Failure
07 Separation of Units
08 Ran Off Road Right
09 Ran Off Road Left | 10 Cross Median / Centerline
11 Downhill Runaway
12 Fell / Jumped from Motor Vehicle
13 Thrown or Falling Object
14 Other Non-Collision
COLLISION WITH:
15 Pedestrian
16 Pedalcycle
17 Railroad Vehicle
18 Animal | 19 Motor Vehicle in Transport
20 Parked Motor Vehicle
21 Struck by Falling / Shifting Cargo or Anything Set in Motion by Veh
22 Work Zone / Maintenance Equip
23 Other Non-Fixed Object
24 Impact Attenuator / Crash Cushion
25 Bridge/Overhead Structure
26 Bridge Pier or Support
27 Bridge Rail
28 Culvert | 29 Curb
30 Ditch
31 Embankment
32 Guardrail Face
33 Guardrail End
34 Cable Median Barrier
35 Concrete Barrier
36 Other Traffic Barrier
37 Tree (Standing)
38 Utility Pole / Light Support | 39 Traffic Sign Support
40 Traffic Signal Support
41 Other Post, Pole, or Support
42 Fence
43 Mailbox
44 Other Fixed Object |
|--|---|--|--|--|
- Sequence of Events: 09 39 34 32
 Most Harmful Event: 34

Select the ONE Diagram that best matches the involved vehicle and identify damaged areas:

<input checked="" type="radio"/> Single Unit Vehicle <input type="checkbox"/> 13 Top <input checked="" type="checkbox"/> 14 Undercarriage	<input type="radio"/> Motorcycle <input type="checkbox"/> 13 Top <input type="checkbox"/> 14 Undercarriage	<input type="radio"/> ATV <input type="checkbox"/> 13 Top <input type="checkbox"/> 14 Undercarriage	<input type="radio"/> Pass. Veh, Towing Unit <input type="checkbox"/> 13 Top <input type="checkbox"/> 14 Undercarriage	<input type="radio"/> Bus <input type="checkbox"/> 13 Top <input type="checkbox"/> 14 Undercarriage	<input type="radio"/> Tractor Trailer <input type="checkbox"/> 13 Top <input type="checkbox"/> 14 Undercarriage
---	--	---	--	---	---

Using the Numbers from the Diagram Above, Identify the Following: Area of Initial Impact: _____ Most Damaged Area: _____

Number of Trailing Units: 1
 Trailing Unit #1: Same as Power Unit Carrier / Owner's Name: JUSTICE WADE

Address: RR 2 BOX 476 BRIDGEPORT WV 26330 Phone: _____

VIN	Plate Class	License Plate Number	State	Year	Make	Model	Model Year	Body Type
5JWU2225B1038990	CP	C222362	WV	PERM	NOV	14000	2011	FLAT-BED

Trailing Unit #2: Same as Power Unit Carrier / Owner's Name: _____
 Address: _____ Phone: _____

VIN	Plate Class	License Plate Number	State	Year	Make	Model	Model Year	Body Type

Trailing Unit #3: Same as Power Unit Carrier / Owner's Name: _____
 Address: _____ Phone: _____

VIN	Plate Class	License Plate Number	State	Year	Make	Model	Model Year	Body Type

- Property Damaged Other Than Vehicles:
- None
 - Work Zone / Maintenance Equipment
 - Impact Attenuator / Crash Cushion
 - Bridge / Tunnel
 - Culvert
 - Guardrail
 - Concrete Barrier
 - Cable Median Barrier
 - Other Traffic Barrier
 - Utility Pole / Light Support #:
 - Traffic Sign Support
 - Traffic Signal Support
 - Other Post, Pole or Support
 - Fence
 - Mailbox
 - Other Fixed Object
- Damaged Property Owner(s):
- WVDOH Private
 - City Utility Company
 - Other: _____
- Damaged Property Location:
- On Pavement
 - Right Side of Road
 - Left Side of Road



State of West Virginia Uniform Traffic Crash Report

DOH Form: 17-drv
Revised: 02/2007

Driver Data

Crash Record Number: Vehicle Number (from Vehicle Data Page) Page of

Reporting Agency's Record Number:

Driver's Name: LOWTHER MICHAEL SHAWN
Last First Middle Suffix

Address: Same as Veh Owner 212 BROADWAY AVE CLARKSBURG WV 26301
City State Zip Code

Home Phone: (304) 677-5029 Other Phone:

Driving License:

License Type:
 Not Licensed GDL Level 1 CDL Instruction Permit CDL Class:
 Driving License GDL Level 2 Motorcycle Instruction Permit A B C
 Instruction Permit GDL Level 3 Motorcycle Only

Issuing State: WV
Lic. Number: E921332
Date of Birth: 07/22/1980

License Restrictions: (Select All that Apply)

<input checked="" type="checkbox"/> None	<input type="checkbox"/> Limited - Other
<input type="checkbox"/> Corrective Lenses	<input type="checkbox"/> CDL Intrastate Only
<input type="checkbox"/> Mechanical Devices	<input type="checkbox"/> Motor Vehicles w/o Air Brakes
<input type="checkbox"/> Prosthetic Aid	<input type="checkbox"/> Military Vehicles Only
<input type="checkbox"/> Automatic Transmission	<input type="checkbox"/> Except Class A Bus
<input type="checkbox"/> Outside Mirror	<input type="checkbox"/> Except Class A and Class B Bus
<input type="checkbox"/> Limit to Daylight Only	<input type="checkbox"/> Except Tractor - Trailer
<input type="checkbox"/> Limit to Employment	<input type="checkbox"/> Farm Waiver
<input type="checkbox"/> Must Be Accompanied by Adult	<input type="checkbox"/> Other <input type="text"/>

Endorsements: (Select Up to 5)

<input type="checkbox"/> None	<input checked="" type="checkbox"/> T - Double/Triple Trailers
<input type="checkbox"/> P - Passenger Vehicle	<input type="checkbox"/> S - School Bus
<input checked="" type="checkbox"/> N - Tank Vehicle	<input type="checkbox"/> H - Hazardous Materials
<input type="checkbox"/> X - Combined Tank / Haz. Materials	<input type="checkbox"/> F - Motorcycle (WV Only)
<input type="checkbox"/> Other - Non-WV Licenses Only	

Status:

<input checked="" type="radio"/> Valid
<input type="radio"/> Expired
<input type="radio"/> Suspended
<input type="radio"/> Revoked
<input type="radio"/> Probation
<input type="radio"/> Surrendered
<input type="radio"/> Valid/Interlock
<input type="radio"/> Fraudulent

Driver Condition at Time of Crash:

<input type="radio"/> Apparently Normal	<input type="checkbox"/> None	<input type="checkbox"/> Ran Off Road	<input type="checkbox"/> Improper Turn	<input type="checkbox"/> Operated Veh in Aggressive Manner
<input type="radio"/> Emotional	<input checked="" type="checkbox"/> Failed to Yield Right of Way	<input type="checkbox"/> Disregarded Traffic Signs	<input type="checkbox"/> Improper Backing	<input type="checkbox"/> Swerved or Avoided
<input type="radio"/> Ill	<input type="checkbox"/> Ran Red Light	<input type="checkbox"/> Disregarded Other Road Markings	<input type="checkbox"/> Improper Passing	<input type="checkbox"/> Over Correcting / Over Steering
<input checked="" type="radio"/> Fell Asleep, Fainted, Fatigued	<input type="checkbox"/> Exceeded Posted Speed Limit	<input type="checkbox"/> Drove Too Fast For Conditions	<input type="checkbox"/> Wrong Side or Wrong Way	<input type="checkbox"/> Other Improper Action
<input type="radio"/> Under the Influence of Medication/Alcohol/Drugs			<input type="checkbox"/> Followed Too Closely	
<input type="radio"/> Other <input type="text"/>			<input type="checkbox"/> Failed to Keep in Proper Lane	

Action(s) of Driver that Contributed to the Crash: (Select Up to 4)

Driver Use of Alcohol Suspected:

Alcohol Use Suspected: <input type="radio"/> No <input type="radio"/> Yes <input checked="" type="radio"/> Unknown	Alcohol Test Given: <input type="radio"/> Test Given <input checked="" type="radio"/> None Given <input type="radio"/> Test Refused	Type of Alcohol Test Given (Select Up to 2): <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input type="checkbox"/> Serum <input type="checkbox"/> Field <input type="checkbox"/> Other: <input type="text"/>	PBT Results: <input type="radio"/> Pass <input type="radio"/> Fail	BAC Results: <input type="radio"/> <input type="text"/> <input type="radio"/> Pending <input type="radio"/> Unknown
---	--	---	--	--

Driver Use of Drugs Suspected:

Drug Use Suspected: <input type="radio"/> No <input type="radio"/> Yes <input checked="" type="radio"/> Unknown	Drug Test Given: <input type="radio"/> Test Given <input type="radio"/> None Given <input type="radio"/> Test Refused <input checked="" type="radio"/> Unknown if Tested	Type of Drug Test Given: <input type="radio"/> Blood <input type="radio"/> DRE <input type="radio"/> Serum <input type="radio"/> Urine <input type="radio"/> Other <input type="text"/>	Drug Test Results (Check All that Apply): <input type="checkbox"/> None <input type="checkbox"/> Amphetamine <input type="checkbox"/> Pending <input type="checkbox"/> Marijuana <input type="checkbox"/> PCP <input type="checkbox"/> Cocaine <input type="checkbox"/> Other Controlled Substance <input type="checkbox"/> Opiate <input type="checkbox"/> Other Drug
--	--	--	--

Driver Distracted By:
 Not Distracted
 Electronic Communication Device
 Other Electronic Device
 Other Inside Vehicle
 Other Outside Vehicle

Crash Record Number:

Vehicle Number (from Vehicle Data Page)

Page of

Reporting Agency's Record Number:

Known or Suspected Violation(s) by Driver:

No Violations

Reckless/Careless/Hit and Run Type Offenses

- Negligent Homicide
- Reckless Driving; Driving to Endanger; Negligent Driving
- Inattentive, Careless, Improper Driving
- Fleeing or Eluding Law Enforcement
- Failure to Obey Law Enforcement, Fireman, Authorized Person Directing Traffic
- Hit and Run, Failure to Stop After Accident
- Serious Violation Resulting in Death

Impairment Offenses

- Driving While Intoxicated (Alcohol or Drugs) or BAC Above Limit
- Driving While Impaired
- Driving Under Influence of Controlled Substance
- Driving Under Influence of Non-Controlled Substance
- Drinking While Operating
- Illegal Possession of Alcohol or Drugs
- Driving with Detectable Alcohol (CDL or Under 21 Years of Age)
- Refusal to Submit to Chemical Test

Speed Related Offenses

- Failure to Maintain Control of Vehicle
- Racing
- Speeding (Above Speed Limit)
- Speed Greater than Reasonable and Prudent
- Exceeding Special Limit
- Driving too Slowly

Rules of the Road - Traffic Signs and Signals

- Failure to Stop for Red Signal
- Failure to Stop for Flashing Red Signal
- Violation of Turn on Red
- Failure to Obey Flashing Signal (Yellow or Red)
- Failure to Obey Signal, Generally
- Violation of RR Grade Crossing Device or Regulations
- Failure to Obey Stop Sign
- Failure to Obey Yield Sign
- Failure to Obey Traffic Control Device

Rules of the Road - Lane Usage

- Unsafe or Prohibited Lane Change
- Improper Use of Lane
- Certain Traffic to Use Right Lane
- Lane Violations, Generally

Rules of the Road - Wrong Side

Passing and Following

- Driving Wrong Way on One-Way Road
- Driving on Left, Wrong Side of Road, Generally
- Improper, Unsafe Passing
- Passing on Right (Drive Off of Pavement to Pass)
- Passed Stopped School Bus
- Failure to Give Way When Overtaken
- Following Too Closely
- Wrong Side, Passing, Following Violations, Generally

Rules of the Road - Turning, Yielding, Signaling

- Turn in Violation of Traffic Control
- Improper Method and Position of Turn
- Failure to Signal for Turn or Stop
- Failure to Yield to Emergency Vehicle
- Failure to Yield, Generally
- Enter Intersection when Space Insufficient

Non-Moving License and Registration Violations

- Driving While License Suspended or Revoked
- Other Driver License Restrictions
- Commercial Driver Violations
- Vehicle Registration Violations
- Failure to Carry Insurance Card
- Driving Uninsured Vehicle
- Non-Moving Violations, Generally

Equipment

- Lamp Violations
- Brake Violations
- Failure to Require Restraint Use
- Motorcycle Equipment Violations
- Violation of Hazardous Cargo Regulations
- Size, Weight, Load Violations
- Equipment Violations, Generally

Other Violations

- Parking
- Theft, Unauthorized Use of Motor Vehicle
- Driving Where Prohibited
- Other Moving Violation

Citation(s) Issued to Driver:

Charge	State Code / Municipal Ordinance	Citation Number	Warning
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>

STATEMENT OF DRIVER:

WE HAD FINISHED WORK IN CANTON OHIO (TIME NOT SURE) LEFT MAYBE 9 OR A LITTLE AFTER. WE CAME DOWN THROUGH OHIO TO RT. 18 - 70 - TO 79 CALLED AND TALKED TO MY GIRLFRIEND AT AROUND 12 & THEN TALKED TO TIMS WIFE CAUSE HE HAD BEEN USING MY PHONE ALL DAY TO TALK TO HER. SHE CALLS ASKED TO TALK TO HIM I TOLD HER HE IS SLEEPING SO ISNT EVERYONE ELSE. THIS WAS WHEN I WAS BETWEEN MORGANTOWNA ND FAIRMONT. NEXT THING I KNOW I HEAR BANG (CAME TOO) WAS HEADED TOWARD THE MEDIAN AFTER GLANCING OFF SOMETHING ON THE RIGHT SIDE OF THE ROAD. I TRIED TO TURN RIGHT BUT IT WAS TOO LATE. ALL I REMEMBER AFTER THAT IS A LOT OF PAIN.



State of West Virginia Uniform Traffic Crash Report Driver and Vehicle Passenger Data

DOH Form: 17-pas
Revised: 02/2007

Crash Record Number:

Reporting Agency's Record Number:

Page of

Indiv #	Name				Veh #	Occupant Type	Social Security #	Birthdate	Age	Gender	Injury	Seating Position			Occupant Protection		
	Last	First	Middle Init.	Suffix								Row	Seat	Other	Type Used	Proper Use	App. Helmet
01	LOWTHER	MICHAEL	S		01	01	232-31-5304	07/22/1980	031	M	A	1	1		02	01	
02	SCHINDLER	KENNETH	C		01	02	234-23-7832	03/09/1983	028	M	O	1	3		02	01	
03	TALKINGTON	JONATHAN	L		01	02	234-37-7212	05/24/1988	023	M	O	2	3		02	01	
04	ROTH	TOMOTHY	M		01	02	235-31-1478	09/05/1984	026	M	K	2	1		11	03	

Occupant Type Codes:
 01 Driver
 02 Passenger
 03 Occupant of Motor Veh Not in Transport
 04 Unknown Vehicle Passenger

Gender:
 M Male
 F Female

Injury Status Codes:
 A Incapacitating Injury
 B Non-Incapacitating Injury
 C Possible Injury
 K Killed
 O No Injury
 M Medical Condition Non-Crash Related Death or Injury

Seating Position Codes:

ROW	SEAT	OTHER
1 Front	1 Left	1 Sleeper Section of Cab
2 Second	2 Middle	2 Other Enclosed Cargo Area
3 Third	3 Right	3 Unenclosed Cargo Area
4 Fourth	4 Other	4 Trailing Unit
5 Other Row	5 Unknown	5 Riding on Motor Vehicle Exterior
6 Unknown		6 Unknown

Type of Occupant Protection System Used Codes:

01 None Used	07 Booster Seat
02 Shoulder and Lap Belt Used	08 Helmet Used
03 Shoulder Belt Only Used	09 Restraint Used - Type Unknown
04 Lap Belt Only Used	10 Other
05 Child Restraint System - Forward Facing	11 Unable to Determine - Due to Vehicle Damage
06 Child Restraint System - Rear Facing	

Proper Use of Occupant Protection:
 01 Used Properly
 02 Used Improperly
 03 Unknown

DOT Approved Helmet:
 01 Yes
 02 No
 03 Unknown

Indiv #	From Above	Air-bag	Trapped	Extricated	Ejected	Ejection Path	Medical Transport By	Responding EMS Agency ID #	EMS Response Run Number	Receiving Facility Name	Notified Time	Scene Time	Hospital Time	Date of Death	Time of Death	Place of Death
01	04	02	02	01	02			11068244	11068244	RUBY MEMORIAL HOSPITAL	0155	0159	0250			
02	04	01	01		04											
03	02	01	01		04											
04	02	02	01		02			11068244	11068244	UNITED HOSPITAL CENTER	0152	0159	0336	07/30/2011	0145	01

Airbag Deployed Codes:

DEPLOYED (This Seat):	NOT DEPLOYED (This Seat):
01 Front	05 Available, Didn't Deploy
02 Side	06 Available, Turned Off
03 Other	07 None Installed
04 Multiple Directions (Front and Side)	08 Previously Deployed - Not Replaced
	09 Disabled or Removed
10 Unable to Determine - Due to Vehicle Damage	

Trapped / Extricated Codes:
 01 Not Trapped
 02 Trapped / Extricated
 03 Unknown

Ejection Codes:
 01 Not Ejected
 02 Ejected, Partially
 03 Ejected, Totally
 04 Unknown

Ejection Path:

01 Thru Side Door Opening	05 Thru Back Door / Tailgate Opening	08 Other Path
02 Thru Side Window	06 Thru Roof Opening	09 Unknown Path
03 Thru Windshield	07 Thru Convertible (Top Up) Roof	
04 Thru Back Window		

Medically Transported By:
 01 Not Transported
 02 EMS
 03 Law Enforcement
 04 Refused
 05 Other
 06 Unknown

Place of Victim's Death:
 01 At Scene
 02 En Route
 03 At Medical Facility
 04 Home
 05 Other

State of West Virginia Uniform Traffic Crash Report

DOH Form: 17-st
Revised: 02/2007

Statement

Crash Record Number:

Page of

Reporting Agency's Record Number: 11068244

Statement of: Involved Vehicle Passenger / Driver Involved Non-Motorist Uninvolved Witness

Vehicle Number:

Person Number:

Person Number:

Name: Lawther Michael Stewart
Last First Middle Suffix

Home Phone: 304 677-5029

Address: 812 Broadway Ave Clarksburg WV 26301
City State Zip Code

Other Phone:

STATEMENT:

We had finished work in Canton OH (time not sure) left maybe around 9 or a little after. We came down through Ohio to Rt. 18-70 - to 79 called and talked to my girlfriend at around 12 + then talked to Tms wife cause he had been using my phone all day to talk to her. She calls asked to talk to him I told her he is sleeping so isn't everyone else. This was when I was between Morgantown + Fairmont. Next thing I know I hear humming (came too) was headed toward the median after glancing off something on the right side of the road. I tried to turn right but it was to late. All I rem. after that is a lot of pain.



State of West Virginia Uniform Traffic Crash Report

DOH Form: 17-st
Revised: 02/2007

Statement

Crash Record Number:

Page of

Reporting Agency's Record Number:

Statement of: Involved Vehicle Passenger / Driver Involved Non-Motorist Uninvolved Witness

Vehicle Number:

Person Number:

Person Number:

Name:

Home Phone:

Address:

Other Phone:

STATEMENT:

We was working in Carrollton Ohio. When we finished we was coming back & Mike Lowther was driving. I fell asleep before we came through Washington, pa. I was awoken when we crashed. I 79 South beside Exit 125 4:30 am started working 7/29/11

Kenny Schindler II
Kenny Schindler II



State of West Virginia Uniform Traffic Crash Report Statement

DOH Form: 17-st
Revised: 02/2007

Crash Record Number:

Page of

Reporting Agency's Record Number:

Statement of: Involved Vehicle Passenger / Driver Involved Non-Motorist Uninvolved Witness

Vehicle Number:

Person Number:

Person Number:

Name:

Home Phone:

Address:

Other Phone:

STATEMENT:

I was asleep in the Back passenger seat of the truck when the wreck happened. We started work at 4:30 on 7/29/11. Location I-79 South 125 mile marker

Reg & OLN Responses : VehAccInj : I79 125 MM : Inc 11068244

Rasmussen, Shelley A.

Sent: Saturday, July 30, 2011 2:42 AM

To: Sayers Bart; Williams Jay D.; Floyd A. S.

1L016C0S1MRI0004649
WV0170105
NO RECORD LIC/B208117 LIS/WV

IN NCIC NBR 01301 AT 02:25 07/30/2011
OUT HEM5 NBR 00016 AT 02:25 07/30/2011 MRI 004650

RESPONSE FOR /B208117/
NAM/ENTERPRISE FM TRUST %ENERGY SVCS LLC
ADR/4489 CAMPBELLS RUN RD PITTSBURGH OUTS PA 15205
LIC/B208117 LIT/B WGT/ 6560 EXP/07/2012 VIN/1FT7W2B64BEC33752
VMA/FORD VMO/SRWF VST/CW VYR/2011 TTL/DA91332 TDT/05/23/2011
DSP/ 0378 VFL/FLX FUEL VSE/F250 SUPER DUTY
STATUS/ REPL. TITLE

IN LUDPS3 NBR 00457 AT 02:25 07/30/2011
OUT HEM5 NBR 00017 AT 02:25 07/30/2011 MRI 004651

1L016C0S1MRI0004393
WV0170105
NO RECORD LIC/C222362 LIS/WV

IN NCIC NBR 01243 AT 02:15 07/30/2011
OUT HEM5 NBR 00003 AT 02:15 07/30/2011 MRI 004394

RESPONSE FOR /C222362/
NAM/WADE, JUSTICE
ADR/RR 2 BOX 476 BRIDGEPORT HARR WV 26330
LIC/C222362 LIT/CP WGT/14000 EXP/07/NX VIN/5JWU2225B1038990
VMA/NOV VMO/TRAI VST/TL VYR/2011 TTL/CW71346 TDT/02/03/2011
DSP/ 0000 VFL/ VSE/
STATUS/

IN LUDPS3 NBR 00431 AT 02:15 07/30/2011
OUT HEM5 NBR 00004 AT 02:15 07/30/2011 MRI 004395

1L01FE0S1MRI0004472
WV0170105
***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.
WARNING - DO NOT ARREST BASED ON THIS INFORMATION
MKE/PROBATION OR SUPERVISED RELEASE STATUS
ORI/WWUCP027G NAM/LOWTHER, MICHAEL SHAWN SEX/M RAC/W POB/WW DOB/19800722
HGT/600 WGT/185 EYE/BR0 HAI/BR0 FBI/809181VB1

NO NCIC WANT NAM/TALKINGTON,J D0B/19880524

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

IN NCIC NBR 01287 AT 02:21 07/30/2011

OUT HEM5 NBR 00010 AT 02:21 07/30/2011 MRI 004582

RESPONSE FOR TALKINGTON J

LIC NUM -----DRIVER NAME----- HGTH WGT BIRTH DT ---CITY--- STATS

I228007 TALKINGTON JONATHAN L 5-11 137 05/24/88 BRIDGEPORT 07

F375142 TALKINGTON JONATHAN L 6-00 155 05/24/88 BRIDGEPORT 01

IN LUDPS1 NBR 00584 AT 02:21 07/30/2011

OUT HEM5 NBR 00011 AT 02:21 07/30/2011 MRI 004583

1L01FE0S1MRI0004586

WV0170105

NO NCIC WANT 0LN/F375142

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

IN NCIC NBR 01288 AT 02:21 07/30/2011

OUT HEM5 NBR 00012 AT 02:21 07/30/2011 MRI 004587

RESPONSE FOR F375142

NAM/TALKINGTON JONATHAN LEON

ADR/319 WATER ST BRIDGEPORT HARRISON WV 26330

SOC/234377212 RST/2 CORRECTIVE LENSES

SEX/M RACE/U WGT/155 HGT/6-00 EYE/BE DOB/05/24/88

LN/F375142 ISU/03/17/11 EXP/05/24/18 DONOR/Y

LIC-TP/CHAUFFEUR DOC-TP/RENEWAL LIC-ST/ VALID POINTS/04

CDL-ST/VALID CLS/D END/

MOTORCYCLE INSTRUCTION PERMIT EFF 05/02/11 EXPIRES 07/31/11

CONVICTIONS (2YRS TO PRESENT AND ALL DUIS)

BATCH DATE/03/28/11 SERIAL#/0172 CIT#/100-1221176 COURT CD/017

CONV-DT/03/22/11 CONV-CD/OPER VEHICLE WITHOUT LNSURANCE POINTS/0

BATCH DATE/06/24/11 SERIAL#/0696 CIT#/100-0164682 COURT CD/327

CONV-DT/03/17/11 CONV-CD/VIOLATION OF RESTRICTIONS POINTS/0

BATCH DATE/03/05/11 SERIAL#/0100 CIT#/100-0000000 COURT CD/017

IN LUDPS1 NBR 00585 AT 02:21 07/30/2011
OUT HEM5 NBR 00013 AT 02:21 07/30/2011 MRI 004588

1L01FE0S1MRI0004607
WV0170105
***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.
MKE/WANTED PERSON
2 - LIMITED EXTRADITION SEE MIS FIELD
ORI/TX0150000 NAM/SCHINDLER,CLAY WILLIAM SEX/M RAC/W POB/TX DOB/19830307
HGT/511 WGT/140 EYE/HAZ HAI/BLN FBI/42035RB3 SKN/FAR
SMT/SC R ARM
SOC/457637954
OFF/PROB VIOLATION - SEE MIS - MTRP
OOC/TRAFFIC OFFENSE
DOW/20080410 OCA/1233102
MIS/N0EX EXTRADITION WITHIN TEXAS ONLY,ORIG CHARGE DRIVING WHILE LICENSE
MIS/INVALID,REMAND W/O BOND,COUNTYCOURT,CONTACT BEX CO S O 210-335-6000,MOT TO
MIS/REVOKE PROB/SID/TX06616813
DNA/N
ORI IS BEXAR CO SO SAN ANTONIO 210 335-6000
DOB/19830309
NIC/W604180625 DTE/20080411 1201 EDT DLU/20080411 1201 EDT
IMMED CONFIRM WARRANT AND EXTRADITION WITH ORI

IN NCIC NBR 01291 AT 02:22 07/30/2011
OUT HEM5 NBR 00014 AT 02:22 07/30/2011 MRI 004608

RESPONSE FOR F113699
NAM/SCHINDLER KENNETH CHARLES II
ADR/ RT 2 BX 6 LOST CREEK HARRISON WV 26385
SOC/234237832 RST/
SEX/M RACE/U WGT/200 HGT/6-02 EYE/BN DOB/03/09/83
LN/F113699 ISU/03/10/08 EXP/03/09/13 DONOR/U
LIC-TP/OPERATOR DOC-TP/RENEWAL LIC-ST/ VALID POINTS/00
CDL-ST/VALID CLS/E END/

CONVICTIONS (2YRS TO PRESENT AND ALL DUIS)

BATCH DATE/10/31/08 SERIAL#/1990 CIT#/100-0622396 COURT CD/017
CONV-DT/10/08/08 CONV-CD/DRIVING UNDER THE INFLUENCE POINTS/0



U.S. Department
of
Transportation

**Federal Motor
Carrier Safety
Administration**

60 Day Property Carrier

1200 New Jersey Ave., S.E.
Washington, DC 20590

July 27, 2010

In reply refer to:
Your USDOT No.: 1804207
Review No.: 811583/CR

CELESTINA MCCLURE
OFFICE MANAGER
JESTUS WADE
ENERGY SERVICES LLC
PO BOX 4541
GRAND JUNCTION, CO 81502

Dear CELESTINA MCCLURE:

The proposed motor carrier safety rating for your company is:

UNSATISFACTORY

This proposed UNSATISFACTORY rating is the result of an onsite compliance review and evaluation of your safety fitness completed on July 23, 2010. An UNSATISFACTORY rating indicates that your company does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences of violations listed in 49 CFR 385.5(a-k), and indicates that your company is operating at an unacceptable level of compliance.

Under 49 CFR 385.13, a motor carrier that receives a final safety rating of UNSATISFACTORY is prohibited from operating a commercial motor vehicle in interstate and intrastate commerce. Additionally, 49 USC 31144 and 49 CFR 385.13(a)(1) provide that this prohibition takes effect unless, within 60 days of the date of this notice, you take the necessary steps to improve the rating to conditional or satisfactory.

Pursuant to 49 USC 13905(f)(1)(B), the registration of a motor carrier that has been prohibited from operating in interstate and intrastate commerce for failure to comply with the safety fitness requirement shall be revoked.

UNLESS YOU IMPROVE YOUR PROPOSED UNSATISFACTORY RATING, IT WILL BECOME FINAL AND YOU WILL BE PROHIBITED FROM OPERATING COMMERCIAL MOTOR VEHICLES IN INTERSTATE AND INTRASTATE COMMERCE BEGINNING ON SEPTEMBER 26, 2010, AND YOUR REGISTRATION SHALL BE REVOKED, IF APPLICABLE.

If you have been subject to any Order(s), prohibition(s), registration suspension(s) and/or registration revocation(s) in any other case(s) or proceeding(s), the prohibitions and registration revocation in this case will be in addition to, and will not supersede, amend, or modify any Orders, notices, and/or requirements in any other case(s) or proceeding(s). Further, the orders, prohibitions and/or registration revocation may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of a "final" unsatisfactory safety rating.

Immediate action must be taken to correct any deficiencies or violations discovered during the compliance review. Your operation was found to be deficient with respect to the applicable safety regulations in the following areas:

Part 391	QUALIFICATIONS OF DRIVERS
Part 396	INSPECTION, REPAIR AND MAINTENANCE
Part 382	CONTROLLED SUBSTANCE AND ALCOHOL USE AND TESTING
Part 395	HOURS OF SERVICE OF DRIVERS

INSPECTION OUT OF SERVICE RATE

Please refer to the copy of the compliance review left at your office for more specific guidance regarding areas in need of corrective action.

APPEAL RIGHTS: Owners or operators of commercial motor vehicles may appeal the proposed safety rating in the following manners:

<A> REQUESTS FOR A CHANGE TO SAFETY RATING BASED UPON CORRECTIVE ACTIONS (49 CFR 385.17): A request for a change to a safety rating for a corrective action may be made at any time. This request must be made in

(Over)

writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business (See 49 CFR 390.27). The request must be based upon evidence that the carrier has taken corrective actions and that its operations currently meet the safety fitness standards and factors specified in 49 CFR 385.5 and 385.7. The FMCSA will make a final determination based upon the documentation submitted and any other additional relevant information. A written decision will be issued by the FMCSA. Any motor carrier whose request for change is denied may, within 90 days after the denial, request administrative review under 49 CFR 385.15.

 ADMINISTRATIVE REVIEW (49 CFR 385.15): A request may be made to the FMCSA to conduct an administrative review if you believe that an error was committed in assigning the proposed safety rating or when your request under 49 CFR 385.17 was denied. This request must be made within 90 days of the date of the proposed safety rating issued under 49 CFR 385.11(c) or within 90 days of an Order denying your request for a rating change under 49 CFR 385.17.

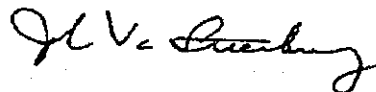
Owners or operators may seek administrative review (49 CFR 385.15) by filing a Petition for Review at the following address: U.S. DOT Dockets, United States Department of Transportation, 1200 New Jersey Ave., S.E., Washington, D.C. 20590. A copy of the Petition MUST also be sent to: The Chief Safety Officer, Federal Motor Carrier Safety Administration (Attention: Adjudications Counsel), 1200 New Jersey Ave., S.E., Washington, DC 20590. The appeal should include a copy of this compliance review and the forthcoming official notice from the FMCSA headquarters office. All subsequent filings must also be served in the same manner.

The FMCSA will conduct a review of the request and issue a decision within 30 days of receipt of that request (49 CFR 385.15(e)(1) and 385.17(e)(1)). The FMCSA highly recommends that hazardous material and passenger owners and operators file requests for administrative review (49 CFR 385.15) within 15 days from the date on the notice of the "proposed" rating (49 CFR 385(c)(1)). This will allow sufficient time to review the request and issue a written decision before the prohibitions on operating in interstate and intrastate commerce take effect. Administrative review requests must be made within 90 days of the date on the notice of the "proposed" rating (49 CFR 385.15(c)(2)). However, failure to petition within 15 days from the date on the notice of the "proposed" rating may prevent the FMCSA from issuing a final decision before the prohibitions on interstate and intrastate transportation and, if applicable, the registration revocation take effect (49 CFR 385.15(c)(1)).

A petition to contest the rating or a request for a change in the rating will not automatically postpone the effective date of your final rating.

You may obtain further information from the local Federal Motor Carrier Safety Information office listed below:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
12300 WEST DAKOTA AVENUE, SUITE 130
LAKEWOOD, CO 80228
Telephone No.: 720-963-3130



John Van Steenburg
Director, Office of Enforcement and
Compliance

** The rating for Part 396 was comprised of the vehicles placed out of service during roadside inspections in the twelve months prior to the compliance review and/or inspected at the time of the review, and non-compliance with the Part 396 inspection, repair and maintenance systems requirements.



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Western Service Center

Golden Hills Office Centre
12600 W. Colfax Ave. Suite B-300
Lakewood, CO 80215

Phone: (303) 407-2350

Fax: (303) 407-2339

UPS 1Z A47 62W 03 9960 4400

Certified Receipt Number: UPS

September 17, 2010

Celestina McClure, Office Manager
Jestus Wade
dba Energy Services LLC
PO Box 4541
Grand Junction, CO 81502

NOTICE OF CLAIM¹ -- Violations of 49 CFR § 382.301(a); 391.45(a) /391.11(a);
395.8(a); 396.17(a).

CIVIL PENALTY: \$21,170

Case Number: CO-2010-0134-CO0114

US DOT Number: 1804207

Dear Ms. McClure:

A compliance review was conducted at Grand Junction, CO on July 23, 2010. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against Energy Services LLC for the amount of \$21,170.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit Energy Services LLC from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.

1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

Case Number: CO-2010-0134-CO0114

SUMMARY OF VIOLATIONS

Your company is charged with:

1. Two (2) violations of 49 CFR § 382.301(a)- Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
2. One (1) violation of 49 CFR § 391.45(a) /391.11(a)- Using a driver not medically examined and certified.
3. Three (3) violations of 49 CFR § 395.8(a)- Failing to require driver to make a record of duty status.
4. One (1) violation of 49 CFR § 396.17(a)- Using a commercial motor vehicle not periodically inspected.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Do not allow a driver to perform a safety-sensitive function until the driver submits to a pre-employment controlled substances test and a negative test result is obtained, in accordance with 49 CFR Part 382.
2. Ensure that each driver is medically examined and certified as qualified to operate a commercial motor vehicle in interstate commerce in accordance with 49 CFR Part 391.
3. Require all drivers to prepare complete and accurate records of duty status for each day and to submit them within 13 days. Maintain all duty status records on file, along with all supporting documents (any record, document, receipt, etc. generated as a result of a driver making a trip) for at least six months in accordance with 49 CFR Part 395.
4. Do not operate any commercial motor vehicle unless it has been the subject of and has passed a periodic (annual) inspection conducted in accordance with 49 CFR Section 396.17 and Appendix G within the past 365 days. Ensure a properly prepared periodic (annual) inspection report is maintained on file for at least 14 months from the date of inspection for each commercial motor vehicle.

Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions.

PENALTY

Case Number: CO-2010-0134-CO0114

Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901 (c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the compliance review, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

History of Prior Violations

Your history of prior violations of the FMCSRs, HMRs and/or FMCCRs, where applicable, also may have increased the civil penalty beyond that which would have otherwise been proposed in this Notice of Claim. [The following enforcement actions have been considered in the calculation of the civil penalty proposed herein:]

CO-2010-0079-CO5161

Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)

A pattern of and/or repeated violations of the same or related acute or critical regulations will result in the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during an investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to the "Section 222" provision and maximum penalties

Case Number: CO-2010-0134-CO0114

have been assessed pursuant to statute. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION²</u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§222 APPLIED</u>	<u>TOTAL</u>
382.301(a)	NR	2	\$4,700.00		\$9,400.00
391.45(a) /391.11(a)	NR	1	\$4,830.00		\$4,830.00
395.8(a)	R	3	\$900.00		\$2,700.00
396.17(a)	NR	1	\$4,240.00		\$4,240.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$21,170.

HOW TO REPLY TO THE NOTICE OF CLAIM

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) PAYMENT OF PENALTY: Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at 303-407-2350. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <<http://safer.fmcsa.dot.gov>> by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation
Federal Motor Carrier Safety Administration

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalty assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commerical Regulations.

Case Number: CO-2010-0134-CO0114

Western Service Center
 Golden Hills Office Centre
 12600 W. Colfax Ave. Suite B-300
 Lakewood, CO 80215

Personal or company checks will not be accepted and will be returned.

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

(2) REQUEST FOR ADMINISTRATIVE ADJUDICATION: You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim.

Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1)(iii). Once you select an adjudication option, you are bound by that selection.

You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(3) REQUEST FOR BINDING ARBITRATION: If you dispute **only** the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <<http://www.fmcsa.dot.gov/>>. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR §

Case Number: CO-2010-0134-CO0114

386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,



Steve Kleszczynski
Division Administrator
Federal Motor Carrier Safety Administration

Enclosures

Case Number: CO-2010-0134-CO0114

APPLICABLE STATUTES

Section 521(b)(2)(A) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 USC §§ 31131 et seq.) (except sections 31138 and 31139) or 49 USC §§ 31301 and 31306, or section 31502 of 49 USC, shall be liable for a civil penalty in an amount not to exceed \$11,000 for each offense. No civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,750 (49 USC § 521(b)(2)(A) and 68 Fed. Reg. 15381 (March 31, 2003)). Section 5123(a) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under chapter 51 shall be liable for a civil penalty in an amount not to exceed \$50,000 (71 FR 8487; February 17, 2006) for each offense. If the violation results in death, serious illness, or severe injury to any person, or in substantial destruction of property, the civil penalty may be increased to not more than \$ 105,000 for each offense (72 FR 55102; September 28, 2007).

Section 521(b)(2)(B)(ii) of 49 USC provides for a maximum civil penalty of \$10,000 for anyone who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in a record about an operation or business fact or transaction, or knowingly makes, prepares or preserves a record in violation of a regulation or order of the Secretary, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation. (49 USC § 521(b)(2)(B)(ii); August 10, 2005).

Section 521(b)(2)(B)(i) of 49 USC provides for a maximum civil penalty of \$1,000 for each recordkeeping offense, (including the failure to make a required report; or making a required report that does not specifically, completely, and truthfully answer a required question; or does not make, prepare, or preserve a record in the form and manner prescribed), and each day of the violation shall constitute a separate offense. The maximum of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000 (49 USC § 521(b)(2)(B)(i); August 10, 2005).

STATEMENT OF CHARGES

Violation 1 --- 49 CFR 382.301(a) - Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.

CHARGE #1:

On or about 04/03/2010, Energy Services LLC allowed its driver, James Bishop, to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from Woodward, OK to Canadian, TX, before the carrier received a negative pre-employment controlled substances test result.

CHARGE #2:

On or about 06/16/2010, Energy Services LLC allowed its driver, Dennis Day, to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from Denver, CO to Smithton, PA, before the carrier received a negative pre-employment controlled substances test result.

Violation 2 --- 49 CFR 391.45(a) /391.11(a) - Using a driver not medically examined and certified.

CHARGE #1:

On or about 04/03/2010, Energy Services LLC required or permitted its driver, Daniel Murdy, to drive a commercial motor vehicle in interstate commerce from Canadian, TX to Woodward, OK. At the time of this transportation, Daniel Murdy had not been physically examined and certified.

Violation 3 --- 49 CFR 395.8(a) - Failing to require driver to make a record of duty status.

CHARGE #1:

On or about 04/01/2010, Energy Services LLC, used driver, James Bishop, to drive a commercial motor vehicle in interstate commerce from Woodward, OK to Canadian, TX, without requiring the driver to prepare a record of duty status for that date.

CHARGE #2:

On or about 04/03/2010, Energy Services LLC, used driver, Daniel Murdy, to drive a commercial motor vehicle in interstate commerce from Woodward, OK to Canadian, TX, without requiring the driver to prepare a record of duty status for that date.

CHARGE #3:

On or about 06/16/2010, Energy Services LLC, used driver, Dennis Day, to drive a commercial motor vehicle in interstate commerce from Denver, CO to Smithton, PA, without requiring the driver to prepare a record of duty status for that date.

STATEMENT OF CHARGES

Violation 4 --- 49 CFR 396.17(a) - Using a commercial motor vehicle not periodically inspected.

CHARGE #1:

On or about 04/01/2010, Energy Services LLC operated commercial motor vehicle 3D7MX48C07G723314 in interstate commerce from Woodward, OK to Canadian, TX, which had not passed an inspection in accordance with 49 CFR § 396.17 during the preceding 12-month period.

SERVICE LIST

This is to certify that on September 17, 2010, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Celestina McClure, Office Manager
Jestus Wade
dba Energy Services LLC
PO Box 4541
Grand Junction, CO 81502

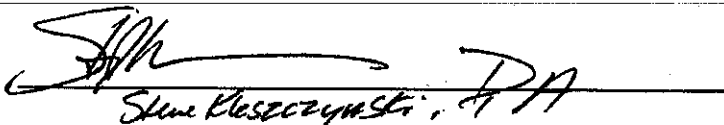
Original
UPS 1Z A47 62W 03 9960 4400

Steve Kleszczynski, Division Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
12300 West Dakota Avenue
Suite 130
Lakewood, CO 80228

One Copy
Personal Delivery

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
FMCSA Docket Clerk
Western Service Center
Golden Hills Office Centre
12600 W. Colfax Ave. Suite B-300
Lakewood, CO 80215

One Copy
U.S. Mail or Electronic Mail


Steve Kleszczynski, PA

Case Number: CO-2010-0134-CO0114

TABLE 1: VIOLATIONS DISCOVERED DURING REVIEW/INSPECTION

NUMBER	VIOLATION	IDENTIFYING INFORMATION: DRIVER EQUIPMENT COMMODITY	DATE OF VIOLATION
1	382.301(a)	James Bishop	04/03/10
2	382.301(a)	Dennis Day	06/16/10
3	391.45(a)	Daniel Murdy	04/03/10
4	391.45(a)	Daniel Murdy	04/09/10
5	395.8(a)	Daniel Murdy	04/01/10
6	395.8(a)	Daniel Murdy	04/02/10
7	395.8(a)	Daniel Murdy	04/03/10
8	395.8(a)	Daniel Murdy	04/04/10
9	395.8(a)	Daniel Murdy	04/05/10
10	395.8(a)	Daniel Murdy	04/06/10
11	395.8(a)	Daniel Murdy	04/07/10
12	395.8(a)	Daniel Murdy	04/08/10
13	395.8(a)	Daniel Murdy	04/09/10
14	395.8(a)	Daniel Murdy	04/10/10
15	395.8(a)	Daniel Murdy	04/11/10
16	395.8(a)	Daniel Murdy	04/12/10
17	395.8(a)	Daniel Murdy	04/13/10
18	395.8(a)	Daniel Murdy	04/14/10
19	395.8(a)	Daniel Murdy	04/15/10
20	395.8(a)	Daniel Murdy	04/16/10
21	395.8(a)	Dennis Day	06/08/10
22	395.8(a)	Dennis Day	06/09/10
23	395.8(a)	Dennis Day	06/10/10
24	395.8(a)	Dennis Day	06/11/10
25	395.8(a)	Dennis Day	06/12/10
26	395.8(a)	Dennis Day	06/13/10
27	395.8(a)	Dennis Day	06/14/10
28	395.8(a)	Dennis Day	06/15/10
29	395.8(a)	Dennis Day	06/16/10
30	395.8(a)	Dennis Day	06/17/10
31	395.8(a)	Dennis Day	06/18/10
32	395.8(a)	Dennis Day	06/19/10
33	395.8(a)	Dennis Day	06/20/10
34	395.8(a)	Dennis Day	06/21/10
35	395.8(a)	Dennis Day	06/22/10
36	395.8(a)	Dennis Day	06/23/10
37	395.8(a)	Dennis Day	06/24/10
38	395.8(a)	Dennis Day	06/25/10
39	395.8(a)	Dennis Day	06/26/10
40	395.8(a)	Dennis Day	06/27/10
41	395.8(a)	Dennis Day	06/28/10
42	395.8(a)	Dennis Day	06/29/10
43	395.8(a)	Dennis Day	06/30/10
44	395.8(a)	James Bishop	04/01/10
45	395.8(a)	James Bishop	04/02/10
46	395.8(a)	James Bishop	04/03/10
47	395.8(a)	James Bishop	04/04/10

Case Number: CO-2010-0134-CO0114

48	395.8(a)	James Bishop	04/05/10
49	395.8(a)	James Bishop	04/06/10
50	395.8(a)	James Bishop	04/07/10
51	395.8(a)	James Bishop	04/08/10
52	395.8(a)	James Bishop	04/09/10
53	395.8(a)	James Bishop	04/10/10
54	395.8(a)	James Bishop	04/11/10
55	395.8(a)	James Bishop	04/12/10
56	396.17(a)	Daniel Murdy	04/03/10
57	396.17(a)	James Bishop	04/01/10



U.S. Department of
Transportation

Federal Motor Carrier
Safety Administration

Western Service Center

UPS
1ZA4762T0398607736

October 25, 2010

Golden Hill Office Centre
12600 W. Colfax Ave. Suite B-300
Lakewood, CO 80215

Phone: (303) 407-2350
Fax: (303) 407-2339

**NOTICE OF DEFAULT
AND
FINAL AGENCY ORDER**

**Jestus Wade dba ENERGY SERVICES LLC
PO BOX 4541
GRAND JUNCTION, CO, 81502**

**Re: Case Number: CO-2010-0134-CO0114
US DOT#: 1804207**

Dear Sir or Madam:

This letter is a notice of default and final agency order ("Order"), and demand for payment of the outstanding debt owed to the United States Department of Transportation, Federal Motor Carrier Safety Administration, for violation(s) of Federal Motor Carrier Safety Regulations, Hazardous Material Regulations, and/or Federal Motor Carrier Commercial Regulations.

Justus Wade dba ENERGY SERVICES LLC was notified of the proposed penalty assessment in the amount of **\$21,170.00** by a Notice of Claim served on Jestus Wade dba ENERGY SERVICES LLC on September 17, 2010.

Pursuant to 49 C.F.R. § 386.14(c), because Jestus Wade dba ENERGY SERVICES LLC failed to reply to the Notice of Claim within thirty (30) days of the service of the Notice of Claim, Jestus Wade dba ENERGY SERVICES LLC is in default. The default causes the Notice of Claim, including the civil penalty proposed in the Notice of Claim, to automatically become the Final Agency Order in this proceeding. The Final Agency Order is effective five (5) days after the service of this Order. **In this case the Final Agency Order is effective on November 1, 2010.** The default constitutes an admission of all facts and violations alleged in the Notice of Claim and a waiver of Jestus Wade dba ENERGY SERVICES LLC's opportunity to contest the claim. These violations shall constitute a history of prior offenses in any future civil penalty proceeding and may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

EXHIBIT

tabbles

RPD #5

ROTH 000203

Payment of the outstanding balance in the amount of **\$21,170.00** is due and payable on **November 1, 2010**. You may pay electronically through our SAFER website at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" option under the FMCSA Service section. Alternatively, you can mail your **cashier's check, certified check or money order** payable to the **Federal Motor Carrier Safety Administration**. The payment should be mailed to:

Federal Motor Carrier Safety Administration
 Western Service Center
 Golden Hill Office Centre
 12600 W. Colfax Ave. Suite B-300
 Lakewood, CO 80215

Pursuant to 49 C.F.R. § 386.14(c)(3), failure to pay the civil penalty as directed in this Order constitutes a violation of the Order, and subjects Jestus Wade dba ENERGY SERVICES LLC to additional penalties as prescribed in the regulations. Additionally, Jestus Wade dba ENERGY SERVICES LLC may be liable for interest and administrative penalties.

If Jestus Wade dba ENERGY SERVICES LLC fails to pay this debt, Jestus Wade dba ENERGY SERVICES LLC will be prohibited from operating in interstate commerce pursuant to 49 C.F.R. § 386.83. If Jestus Wade dba ENERGY SERVICES LLC is registered as a for-hire motor carrier, freight forwarder, or broker, Jestus Wade dba ENERGY SERVICES LLC's registration will be suspended in accordance with 49 C.F.R. § 386.84. Jestus Wade dba ENERGY SERVICES LLC may, in accordance with State laws, be subject to additional penalties such as suspension and/or revocation of State vehicle registration privileges. Additionally, the Order will be referred to the United States Department of Treasury for collection, and may also be referred to the Attorney General for an action to be brought in the United States District Court to enforce the Final Agency Order and collect the civil penalty.

Pursuant to 49 C.F.R. § 386.64, Jestus Wade dba ENERGY SERVICES LLC may file a petition for reconsideration of the Final Agency Order within 20 days after the service of this Order. The original petition for reconsideration must be filed in accordance with 49 C.F.R. § 386.7 with the Assistant Administrator by personal delivery or mail addressed as follows:

U.S. Department of Transportation
 Docket Operations, M-30
 West Building Ground Floor, Room W12-140
 1200 New Jersey Avenue, SE
 Washington, DC 20590

Copies of the petition for reconsideration must also be served on all persons listed in the Certificate of Service of this Notice of Default and Final Agency Order, pursuant to 49 C.F.R. §§ 386.6 and 386.7. The petition must include the following, which must also be provided to all persons on the Certificate of Service:

- (a) A copy of the Notice of Claim served on **September 17, 2010** in this case,
- (b) A copy of the Notice of Default and Final Agency Order served on **October 25, 2010**,
- (c) All evidence you are relying upon in support of the petition for reconsideration,^[1] and
- (d) A Certificate of Service as required by 49 C.F.R. § 386.6(c).^[2]

Pursuant to 49 C.F.R. § 386.64(b), the only issue that will be considered upon reconsideration by the Assistant Administrator is whether a default has occurred under 49 C.F.R. § 386.14(c). The Final Agency Order may be vacated (set aside) where you can demonstrate excusable neglect, a

meritorious defense, or due diligence in seeking relief to the Notice of Claim. If Jestus Wade dba ENERGY SERVICES LLC files a petition for reconsideration in accordance with 49 C.F.R. § 386.64, the entire action will be stayed unless the Assistant Administrator orders otherwise.

For questions regarding this Order, you may contact an Enforcement Program Specialist at (303) 407-2350.

Sincerely,



William R. Paden, Field Administrator
Federal Motor Carrier Safety Administration
Western Service Center
Golden Hill Office Centre
12600 W. Colfax Ave. Suite B-300
Lakewood, CO 80215

[1] All written evidence shall be submitted in the following forms: (a) a written statement of a person having personal knowledge of the facts alleged, or (b) documentary evidence in the form of exhibits attached to a written statement identifying the exhibit and giving its source. See 49 C.F.R. § 386.49.

[2] A Certificate of Service shall accompany all documents served in a Civil Penalty Proceeding under 49 C.F.R. § 386. The certificate of service must show the date and manner of service, be signed by the person making service, and list the persons served. See 49 C.F.R. § 386.6(c).

CERTIFICATE OF SERVICE

This is to certify that on October 25, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the **Notice of Default And Final Agency Order** to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

<p>Jestus Wade dba ENERGY SERVICES LLC 685 WEST GUNNISON AVENUE 104 GRAND JUNCTION, CO, 81502</p> <p>Case # CO-2010-0134-CO0114 U.S. DOT # 1804207</p>	<p>One Copy by:</p> <p>UPS Tracking Number: 1ZA4762T0398607736</p>
<p>STEVE KLESZCZYNSKI, Division Administrator Colorado Division U.S. Department of Transportation Federal Motor Carrier Safety Administration 12300 West Dakota Avenue, Suite 130 LAKEWOOD, CO 80228</p>	<p>One Copy Internal Mail</p>
<p>Trial Attorney Federal Motor Carrier Safety Administration Western Service Center Golden Hill Office Centre 12600 W. Colfax Ave. Suite B-300 Lakewood, CO 80215</p>	<p>One Copy Internal Mail</p>
<p>U.S. Department of Transportation Federal Motor Carrier Safety Administration FMCSA Docket Clerk Western Service Center Golden Hill Office Centre 12600 W. Colfax Ave. Suite B-300 Lakewood, CO 80215</p>	<p>One Copy Internal Mail</p>

Cathy Beckett



U.S. Department of Transportation
Federal Motor Carrier Safety Administration
A&I Online: Safety Measurement System



JESTUS WADE

DOT#:1804207



The SMS provides an assessment of a motor carrier's on-road performance and investigation results within the Behavior Analysis and Safety Improvement Categories (BASICS). Assessments cover 24 months of activity and results are updated monthly. For current Motor Carrier Safety Ratings visit [SAFER](#) and for current operating authority and insurance information visit [Licensing and Insurance](#) (L&I) system.

NOTE: This Carrier is Currently Under an Out-of-Service Order from FMCSA and May Not Operate.

Fatigued Driving

Operation of CMVs by drivers who are ill, fatigued, or in non-compliance with the Hours-of-Service (HOS) regulations. (FMCSR Parts [392](#) and [395](#))

BASIC Overall Status

Cited with a serious violation within the previous 12 months.
(Based on a 24-month record ending July 22, 2011)

On-road Performance Overview



MEASURE: 1.52
PERCENTILE:
Inconclusive
(Threshold: 65%)



Relevant Inspections: 13
Total Inspections with Fatigued Driving Violations: 3
Total Fatigued Driving Violations: 5

FATIGUED DRIVING VIOLATIONS

Violation	Description	# Total Violations	# OOS Violations	Violation Weight
395.3(a)(2)	Requiring or permitting driver to drive after 14 hours on duty	2	0	7
395.8	Log violation (general/form and manner)	1	0	2
395.8(f)(1)	Driver's record of duty status not current	2	0	5

INSPECTION HISTORY

Report				Vehicle			Measure		
	Inspection Date	#	ST	Plate #	Lic ST	Type	Severity Weight (A)	Time Weight (B)	Time Severity Weight (AxB)
1	9/23/2009	NYSPE0090432	NY	566DGX	CO	Truck Tractor	7	1	7
Violation: 395.3(a)(2) Requiring or permitting driver to drive after 14 hours on duty (Non-OOS)							7		
2	9/14/2009	PAS286004908	PA	566DGX	CO	Truck Tractor	7	1	7
Violation: 395.8 Log violation (general/form and manner) (Non-OOS)							2		
Violation: 395.8(f)(1) Driver's record of duty status not current (Non-OOS)							5		
3	9/3/2009	UT09IX000284	UT	566DGX	CO	Truck Tractor	12	1	12
Violation: 395.3(a)(2) Requiring or permitting driver to drive after 14 hours on duty (Non-OOS)							7		
Violation: 395.8(f)(1) Driver's record of duty status not current (Non-OOS)							5		

Investigation Results Overview



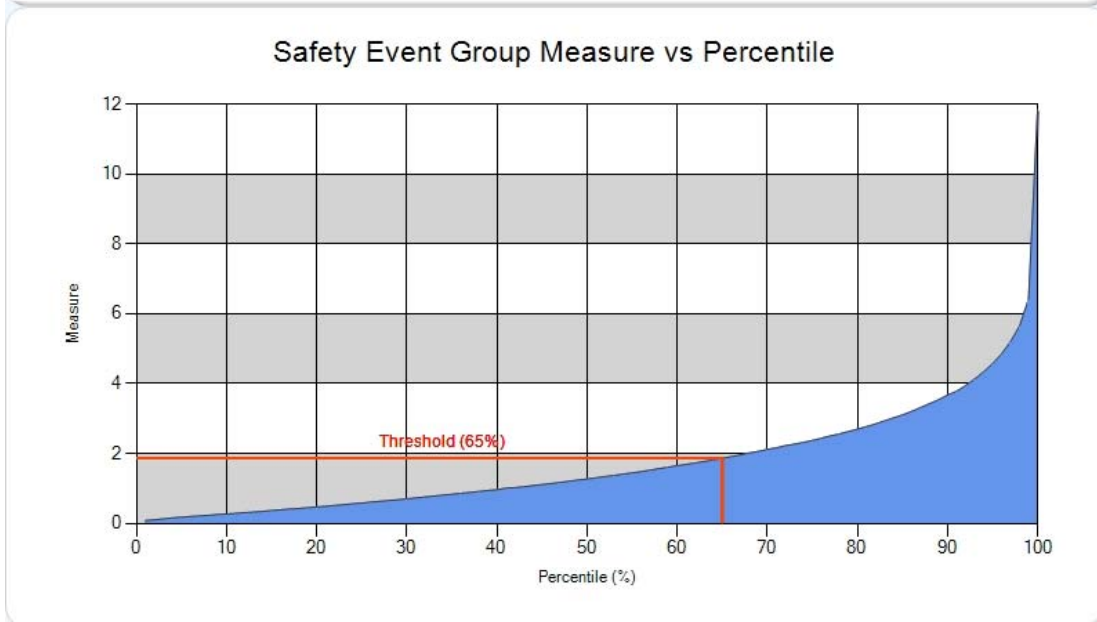
Serious violation discovered

Certain violations found during an investigation can result in a  for a BASIC. The status remains for 12 months following the investigation.

SERIOUS VIOLATIONS FROM INVESTIGATIONS

Investigation	Violation	Description	Investigation Date
Onsite Comp	395.8(a)	Failing to require a driver to make a record of duty status / No records of duty status	7/23/2010

Use this page to view graphs of various aspects of your safety performance.



Sum of Time Severity Weight (AxB) 26

Measure = _____ = 1.52 => Inconclusive
Sum of Time Weight (B) 17



[Feedback](#) | [Privacy Policy](#) | [USA.gov](#) | [Freedom of Information Act \(FOIA\)](#) | [Accessibility](#) | [OIG Hotline](#) | [Web Policies and Important Links](#) | [Site Map](#) | [Plug-ins](#)

Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE, Washington, DC 20590 •• TTY: • Field Office Contacts



National Transportation Safety Board

Washington, D.C. 20594

MAR - 3 2011

Office of the Chairman

Docket Management Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Attention: Rules Docket No. FMCSA-2004-19608

Dear Sir or Madam:

The National Transportation Safety Board (NTSB) has reviewed the Federal Motor Carrier Safety Administration (FMCSA) notice of proposed rulemaking (NPRM) titled "Hours of Service of Drivers," which was published at 75 *Federal Register* (FR) 82170 on December 29, 2010. The notice proposes to revise the regulations for hours of service (HOS) for drivers of property-carrying commercial motor vehicles (CMV).

Background of HOS Rule

The NTSB has a long history of making recommendations to reduce the likelihood of fatigue-related highway accidents, including recommendations concerning HOS, electronic on-board recorders (EOBR), obstructive sleep apnea (OSA), fatigue education and training, vehicle- and environment-based countermeasures, and fatigue risk management programs. With respect to HOS, in 1995, the NTSB issued Safety Recommendation H-95-1, which urged the Federal Highway Administration (FHWA)¹ to require sufficient rest provisions to enable drivers to obtain at least 8 continuous hours of sleep. At the same time, the NTSB issued Safety Recommendation H-95-2, which asked the FHWA to eliminate the provision that allowed drivers to split the required 8 hours off duty into two separate periods, so that drivers would have the opportunity to obtain 8 continuous hours of sleep. Both of these recommendations were added to the NTSB Most Wanted List of Transportation Safety Improvements (Most Wanted List) in 1995. On May 11, 1999, the NTSB classified both recommendations "Closed—Unacceptable Action/Superseded" and issued Safety Recommendation H-99-19,² which asked the FMCSA to do the following:

¹ At the time of issuance, the FHWA was responsible for motor carrier safety; the FMCSA now has this responsibility.

² Safety Recommendation H-99-19 was also on the NTSB Most Wanted List.

Establish within 2 years scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements. At a minimum, and as recommended by the National Transportation Safety Board in 1995, the revised regulations should also (a) require sufficient rest provisions to enable drivers to obtain at least 8 continuous hours of sleep after driving for 10 hours or being on duty for 15 hours, and (b) eliminate 49 *Code of Federal Regulations* 395.1 paragraph (h), which allows drivers with sleeper berth equipment to cumulate the 8 hours off-duty time in two separate periods. (H-99-19)

On April 28, 2003, the FMCSA promulgated a final rule (68 FR 22455) for CMV drivers³ that extended the driving time from 10 to 11 hours but limited the driving window to 14 consecutive hours after coming on duty. The daily off-duty period requirement was extended from 8 to 10 hours.⁴ Although the maximum weekly limits were not changed, drivers were allowed to restart the calculation of weekly hours by taking an off-duty break of 34 consecutive hours (termed the “34-hour restart” provision). Based on this new rule, the NTSB classified Safety Recommendation H-99-19 “Closed—Acceptable Alternate Action” at a Board Meeting on November 18, 2003. In a letter to the FMCSA dated February 23, 2004, the NTSB commended the FMCSA for revising the HOS regulations for truck drivers for the first time in more than 60 years and stated that, although the sleeper berth provision was not eliminated as requested, the revision met the main objectives of the safety recommendation.

On July 16, 2004, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated the 2003 rule, stating that the FMCSA “failed to consider the impact of the rules on the health of drivers, a factor that the agency must consider under its organic statute.” Subsequently, Congress directed that the 2003 regulations remain in force until the effective date of a new final rule or until September 30, 2005, whichever occurred first.

On January 24, 2005, the FMCSA issued an NPRM on CMV driver HOS published at 70 FR 3339. On March 10, 2005, the NTSB responded to this NPRM by first acknowledging the FMCSA’s efforts to develop a rule based on current scientific research on fatigue. Additionally, the NTSB’s comments on the proposed rule reiterated concerns about issues that were not addressed by the 2003 rulemaking. Specifically, the NTSB urged the FMCSA to eliminate provisions or exemptions that would permit a daily sleep period for drivers of less than 8 continuous hours. The NTSB also highlighted the continuing need for tamper-proof EOBRs to assist in the enforcement of HOS regulations.

³ The final rule did not apply to passenger-carrying vehicles, nor have any subsequent revisions.

⁴ An exception was made for drivers using sleeper berths, who were allowed to accumulate 10 hours off duty in two periods, neither of which could be less than 2 hours.

On August 25, 2005, the FMCSA published a revised final rule, which, while similar to the 2003 rule, also revised the sleeper berth provision to require at least 8 consecutive hours in the sleeper berth. Drivers using the sleeper berth provision were required to take an additional 2 hours either off duty or in the sleeper berth.⁵ The 2005 rule also provided an exception for CMV drivers who operate within 150 air miles of their work-reporting location and who drive CMVs that do not require a commercial driver's license (CDL). The rule permitted such drivers to extend the driving window and on-duty time to 16 hours twice a week.

Based on additional legal challenges to the 2005 rule, on July 24, 2007, the DC Circuit vacated provisions of the 2005 rule that involved the 11-hour driving limit and the 34-hour restart provision. Subsequently, the FMCSA published an interim final rule on December 17, 2007, and a final rule on November 19, 2008, which repromulgated both the 11-hour driving limit and the 34-hour restart provision and provided the full regulatory evaluation and an explanation of the agency's methodology in support of its rationale. In 2009, a new petition was filed with the DC Circuit challenging the 2008 rule, and a settlement was reached whereby the petition would be held in abeyance pending the publication of a revised final rule by July 26, 2011.

Proposed HOS Rule Revisions

The NTSB understands that the subject NPRM proposes to make several changes to the current HOS rule, as summarized in the table on page 4 of this letter.⁶

The NTSB supports those provisions of the proposed rule that are scientifically based and would reduce continuous duty or driving time, encourage break-taking, promote nighttime sleep, and foster scheduling patterns that are predictable and consistent with the normal human diurnal circadian rhythm, because extended periods of time awake and time on task, as well as inverted or rotating schedules, have been associated with fatigue-related performance decrements and increased accident risk.⁷ By limiting on-duty time to 13 hours and consecutive driving time without breaks to 7 hours, and by choosing to reduce the 11-hour maximum driving time to 10 hours, the FMCSA will reduce continuous time on task and increase rest periods for some drivers. Additionally, limiting how often drivers may use the restart provision and requiring that the 34-hour restart interval include two periods between midnight and 6 a.m. should have the effect of increasing the amount of sleep that drivers receive during the restart period and may encourage drivers to adopt schedules that are more diurnally oriented.

⁵ The additional 2 hours were included in the calculation of the 14-hour driving window.

⁶ Based on information in a table published by the FMCSA at <<http://www.fmcsa.dot.gov/rules-regulations/topics/hos-proposed/hos-proposed.aspx>>, accessed February 2, 2011.

⁷ (a) S. Park and others, "Safety Implications of Multiday Driving Schedules for Truck Drivers: A Comparison of Field Experiments and Crash Data Analysis," *Transportation Research Record*, no. 1922 (Washington, DC: Transportation Research Board, 2005), pp. 167–174. (b) P. Jovanis and others, *Factors Affecting Motor Carrier Crash Risk: Final Report*, Pennsylvania State University (University Park, Pennsylvania: Pennsylvania Transportation Institute, 2005). (c) J. Goode, "Are Pilots at Risk of Accidents Due to Fatigue?," *Journal of Safety Research*, vol. 34 (2003), pp. 309–313. (d) H. Summala and T. Mikkola, "Fatal Accidents Among Car and Truck Drivers: Effects of Fatigue, Age and Alcohol Consumption," *Human Factors*, vol. 36 (1994), pp. 315–326.

Table. Summary of changes to the current HOS rule proposed in the December 29, 2010, NPRM issued by the FMCSA.

Provision	Current Rule	Proposed Rule
Daily off-duty period	10 consecutive hours	No change
Daily driving window	For most drivers, 14 consecutive hours (may continue on duty/not driving after 14 hours); "Regional" drivers allowed one 16-hour period "weekly," but release from duty required after 16 hours; Non-CDL drivers within 150 miles of work-reporting location allowed two 16-hour periods "weekly" (may continue on duty/not driving after 16 hours)	For all property-carrying CMV drivers (unless excepted): <ul style="list-style-type: none"> • 14 consecutive hours with release from duty required at end of driving window; • 16 consecutive hours no more than twice "weekly," with release from duty required at end of driving window
Maximum on-duty time within driving window	Normally 14 hours; 16 hours once per week for "regional" drivers; 16 hours twice per week for non-CDL drivers within 150 miles of work-reporting location	13 hours*
Maximum driving within driving window	11 hours	10 or 11 hours (both being considered)
Maximum consecutive driving	No limit	May drive only if it has been 7 hours or less since last off-duty period of at least 30 minutes*
Weekly on-duty maximum	60 hours in 7 days or 70 hours in 8 days	No change
Weekly restart	May restart weekly limits after at least 34 hours off duty	34-hour restart retained but may only be used once per week and must include two off-duty periods between midnight and 6 a.m.
Sleeper berth exception	May split off duty into two periods: one period must be at least 8 consecutive hours in sleeper berth; the other, at least 2 hours in sleeper berth or off duty (shorter period does not extend the driving window)	No change, but apply same new driving, on-duty, and duty-period limits as proposed for non-sleeper-berth drivers
Definition of "on duty"	Includes any time in CMV except in sleeper berth	Does not include any time resting in a parked CMV; In a moving CMV, does not include up to 2 hours in passenger seat immediately before or after 8 consecutive hours in sleeper berth
Oilfield exemption	"Waiting time" for certain drivers at oilfields (which is off duty but does not extend 14-hour duty period) must be recorded and available to the FMCSA, but no method or details are specified for recordkeeping	"Waiting time" for certain drivers at oilfields must be shown on record of duty status or electronic equivalent as off duty and identified by annotations in "remarks" or a separate line added to "grid"
*Provision is not applicable to non-CDL drivers operating within 150 air miles of work-reporting location.		

The NTSB acknowledges the challenges associated with establishing HOS regulations that promote safety and driver health while still providing drivers and operators sufficient flexibility to make scheduling decisions and carry out operations in a competitive manner. Although many drivers do not have schedules that extend to the regulatory limits, as the NPRM notes, some carriers have elected to incorporate maximum on-duty periods into their supply chain planning.⁸ This fact shows that some carriers will routinely schedule drivers to the regulatory limits. Because some carriers will inevitably incorporate the minimum rest periods and maximum duty periods into their standard operating practices, in the absence of scientific data, the NTSB encourages the FMCSA to select conservative thresholds to protect the safety and health of drivers, as well as the safety of the traveling public. The NTSB commends the FMCSA for acknowledging in this NPRM that there are insufficient scientific data to support a specific maximum driving time and for particularly requesting data from stakeholders to address this issue.⁹ The NTSB has continually and consistently recommended scientifically based HOS regulations. In the absence of relevant scientific data, a conservative maximum driving period is warranted. For these reasons, the NTSB supports reducing the 11-hour maximum driving period within the driving window to a 10-hour maximum, unless or until relevant scientific data justify a departure from this limit.

The NTSB has significant reservations about several of the other proposed rule changes. Although allowing the driving window to be extended to 16 hours up to 2 days per week may not lead to an increase in duty or driving hours, it is likely to lead to a forward schedule rotation and may, therefore, adversely affect drivers' circadian rhythms and sleep quality. Further, the NTSB is strongly opposed to special provisions providing exemptions to certain HOS requirements, such as those the proposed rule applies to passenger-carrying CMVs, oilfield operations, and various other groups. Such exemptions are likely to lead to increased risk for the exempted population and the driving public.

NTSB Fatigue Recommendations

As stated above, the NTSB supports those provisions of the proposed HOS rule that are likely to reduce driver fatigue. Nevertheless, the NTSB notes that, although driver scheduling is a foundational factor in reducing driver fatigue, an improved HOS rule alone cannot solve the problem of fatigue-related crashes. The NTSB believes several additional issues must be addressed concerning driver fatigue and safety. In recent years, the NTSB has made recommendations to the FMCSA concerning additional actions that can reduce the likelihood drivers will have fatigue-related crashes. Such actions include the following:

⁸ The practice of intentionally scheduling trips that would force drivers to meet or exceed HOS regulations was documented by the NTSB in its 2009 report on the Mexican Hat, Utah, motorcoach accident. See *Motorcoach Run-Off-The-Road and Rollover, U.S. Route 163, Mexican Hat, Utah, January 6, 2008*, Highway Accident Report NTSB/HAR-09/01 (Washington, DC: National Transportation Safety Board, 2009).

⁹ It should be noted that the original 2003 rule extended the maximum driving period to 11 hours without sufficient scientific data to support this change.

- Requiring the use of EOBRs for monitoring and assessing HOS compliance;
- Reducing the incidence of drivers with undetected, or untreated, OSA;
- Developing and employing in-vehicle technologies to reduce the occurrence of fatigue-related accidents;
- Providing education about fatigue and fatigue countermeasures; and
- Requiring motor carriers to adopt fatigue management programs.

Because we believe these actions are vital in addressing the risks posed by driver fatigue, we would like to highlight the relevant open NTSB recommendations to the FMCSA in these areas.

Electronic On-Board Recorders. EOBRs have the potential to efficiently and accurately collect and verify HOS information for all drivers, establish the proper incentives and a level playing field for compliance with HOS requirements, and, ultimately, make our highways safer. For more than 30 years, the NTSB has advocated the use of in-vehicle recording devices to improve highway safety.¹⁰ The first NTSB recommendation urging mandatory use of on-board recorders resulted from our 1990 safety study on *Fatigue, Alcohol, Other Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes*,¹¹ which concluded that on-board recording devices could provide a tamper-proof mechanism to enforce HOS regulations. More recently, as a result of the NTSB investigation of a 2004 multiple-vehicle accident near Chelsea, Michigan,¹² which resulted in one fatality, the NTSB issued Safety Recommendations H-07-41 and -42 to the FMCSA on December 17, 2007. The recommendations call on the FMCSA to take the following actions:

Require all interstate commercial vehicle carriers to use electronic on-board recorders that collect and maintain data concerning driver hours of service in a valid, accurate, and secure manner under all circumstances, including accident conditions, to enable the carriers and their regulators to monitor and assess hours-of-service compliance. (H-07-41)

As an interim measure and until industrywide use of electronic on-board recorders is mandated, as recommended in Safety Recommendation H-07-41, prevent log tampering and submission of false paper logs by requiring motor carriers to create and maintain audit control systems that include, at a minimum, the retention of all original and corrected paper logs and the use of bound and sequentially numbered logs. (H-07-42)

¹⁰ NTSB Safety Recommendation H-77-32, issued in 1977, asked the FHWA to “Conduct scientifically controlled studies to determine the effects and merits of the use of tachographs on commercial vehicles in reducing accidents.”

¹¹ *Fatigue, Alcohol, Other Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes (Volume 1)*, Safety Study NTSB/SS-90/01 (Washington, DC: National Transportation Safety Board, 1990).

¹² *Rear-End Chain Reaction Collision, Interstate 94 East, Near Chelsea, Michigan, July 16, 2004*, Highway Accident Brief NTSB/HAB-07/01 (Washington, DC: National Transportation Safety Board, 2007).

In January 2007, the FMCSA published an NPRM proposing to require motor carriers with a “demonstrated history of serious noncompliance with hours-of-service rules” to be subject to mandatory installation of EOBRs meeting proposed standards of accuracy, validity, and security.¹³ In response, the NTSB asserted that, because of deficiencies in the compliance review program, the FMCSA did not have the resources or processes necessary to identify all carriers and drivers that are pattern violators of HOS regulations. The NTSB reiterated its long-held position that the only way by which EOBRs can effectively stem HOS violations is to mandate their installation and use by all operators subject to HOS regulations.

On April 5, 2010, the FMCSA issued a final rule (75 FR 17209) that required EOBRs only for those motor carriers found during compliance reviews to have a 10 percent (or higher) violation rate for HOS regulations. In the final rule, the FMCSA acknowledged that many responses to the 2007 NPRM stated the limited scope of the rule would keep it from making a meaningful difference in highway safety. Consequently, the FMCSA committed to exploring a broader EOBR mandate in a new rulemaking process.

Safety Recommendations H-07-41 and -42 are currently classified “Open—Unacceptable Response” because the FMCSA has not yet mandated the use of EOBRs by all motor carriers. Under the framework we envision, HOS regulations will be refined and, of necessity, more detailed; there will continue to be temptations for companies and drivers to evade the rules to gain economic advantage over their competitors, or they may inadvertently violate the rules due to the complexity of the regulatory scheme; and, accordingly, enforcement will remain a challenge for state and federal officials. EOBRs can provide readily accessible, objective, and convincing information to maintain the integrity of the new HOS rule. The NTSB is aware that the FMCSA issued an NPRM concerning EOBRs on February 1, 2011. The NTSB is currently reviewing the NPRM and anticipates providing comments to the FMCSA.

Obstructive Sleep Apnea. OSA is a condition in which an individual’s airway becomes obstructed while sleeping, typically resulting in hypoxia at night, interruptions in breathing lasting several seconds at a time, loud snoring, and nonrestful sleep. Individuals with the disorder are frequently unaware of the condition and may have extreme daytime sleepiness. OSA is associated with significant cognitive and psychomotor deficits, which are at least partially reversible with appropriate treatment.¹⁴ Such deficits are particularly problematic during commercial highway operations where immediate and appropriate responses to external stimuli are often essential to safety. Accident rates have been shown to be considerably higher in drivers with OSA than in those without the disorder, with one case-control study demonstrating a more

¹³ Federal Motor Carrier Safety Administration, NPRM “Electronic On-Board Recorders for Hours-of-Service Compliance,” 72(11) FR 2340, January 18, 2007 (Washington, DC: National Archives and Records Administration, 2007).

¹⁴ L. Ferini-Strambi and others, “Cognitive Dysfunction in Patients with Obstructive Sleep Apnea (OSA): Partial Reversibility after Continuous Positive Airway Pressure (CPAP),” *Brain Research Bulletin*, vol. 61, no. 1 (2003), pp. 87–92.

than six-fold higher risk of traffic accidents in drivers with OSA, after controlling for other possible confounding factors.¹⁵

On October 20, 2009, the NTSB recommended that the FMCSA do the following:

Implement a program to identify commercial drivers at high risk for obstructive sleep apnea and require that those drivers provide evidence through the medical certification process of having been appropriately evaluated and, if treatment is needed, effectively treated for that disorder before being granted unrestricted medical certification. (H-09-15)

Develop and disseminate guidance for commercial drivers, employers, and physicians regarding the identification and treatment of individuals at high risk of obstructive sleep apnea (OSA), emphasizing that drivers who have OSA that is effectively treated are routinely approved for continued medical certification. (H-09-16)

In a letter dated February 1, 2010, the FMCSA noted it was in the process of developing medical examiner, employer, and driver guidance on sleep disorders, including OSA. The letter also described several other actions the agency had taken or was planning to take, including sponsoring a National Sleep Apnea and Trucking Conference, developing a chapter in its on-line medical examiner handbook to include guidance on sleep disorders, providing a revised medical examination report form to include items specific to the assessment of sleep disorders, developing a best practices guide on medical certification of drivers with OSA, and possibly conducting rulemaking to strengthen the pulmonary/respiratory requirements for driver medical qualification to include sleep disorders. Pending completion of the described efforts and implementation of the recommended program, guidance, and requirement, the NTSB classified Safety Recommendations H-09-15 and -16 “Open—Acceptable Response” on July 20, 2010.

In-Vehicle Technologies. In-vehicle fatigue-related technologies are designed to monitor driver behaviors, such as eyelid closure or head position, or vehicle actions, such as steering wheel input or lane drift. In its report on a 2005 accident in Osseo, Wisconsin,¹⁶ which involved the rollover of a truck-tractor semitrailer combination unit and a motorcoach’s collision with the truck wreckage, and which resulted in five fatalities, the NTSB found that technologies to detect fatigue might have prevented or mitigated the severity of the fatigue-related rollover, had the truck been so equipped. Because technologies to detect fatigue could make fatigued drivers more aware of their condition, the NTSB recommended that the FMCSA do the following:

¹⁵ J. Teran-Santos, A. Jimenez-Gomez, and J. Cordero-Guevara, “The Association Between Sleep Apnea and the Risk of Traffic Accidents,” Cooperative Group Burgos-Santander, *New England Journal of Medicine*, vol. 340, no. 11 (1999), pp. 847–851.

¹⁶ *Truck-Tractor Semitrailer Rollover and Motorcoach Collision With Overtaken Truck, Interstate Highway 94, Near Osseo, Wisconsin, October 16, 2005*, Highway Accident Report NTSB/HAR-08/02 (Washington, DC: National Transportation Safety Board, 2008).

Develop and implement a plan to deploy technologies in commercial vehicles to reduce the occurrence of fatigue-related accidents. (H-08-13)

On May 11, 2009, the FMCSA responded to this recommendation and indicated that the development of an advanced drowsy driver warning system was underway, and the program would move into principal research and prototype development in 2009. The FMCSA projected this phase would last 2 years, after which a commercialization decision would be made. However, the FMCSA also stated it was unaware of any available technology that commercial drivers could use for both day and night driving. The NTSB responded that although no products were available commercially that could be used effectively both day and night, the agency's recently published review¹⁷ of activities underway to develop unobtrusive, in-vehicle, real-time, drowsy driver detection and alertness systems discussed at least five separate systems capable of functioning under a variety of conditions.¹⁸ Therefore, on October 2, 2009, the NTSB classified Safety Recommendation H-08-13 "Open—Unacceptable Response." The NTSB subsequently reiterated Safety Recommendation H-08-13 in its report on a 2009 truck-tractor semitrailer rear-end collision into passenger vehicles that took place in Miami, Oklahoma,¹⁹ and resulted in 10 fatalities. The NTSB continues to believe in-vehicle technologies can reduce the incidence and seriousness of fatigue-related accidents and urges the FMCSA to move forward with a plan to deploy such technologies in commercial vehicles.

Fatigue Education and Information. The provision by the FMCSA of new and updated information on sleep, fatigue, and alertness, based on contemporary scientific research, is essential to ensuring commercial drivers have the necessary guidance to enable them to be well rested and remain alert when operating their vehicles. Since the 1980s, the NTSB has called on the U.S. Department of Transportation (DOT) and its modal agencies to develop and disseminate educational materials for transportation industry personnel concerning fatigue risks and countermeasures.²⁰ In the mid-1990s, the FHWA Office of Motor Carriers coordinated with several other agencies to produce materials and sponsor meetings to educate drivers and others about fatigue.

¹⁷ L. Barr, S. Popkin, and H. Howarth, *An Evaluation of Emerging Driver Fatigue Detection Measures and Technologies: Final Report*, FMCSA-RRR-09-005 (Washington, DC: U.S. Department of Transportation, Federal Motor Carrier Safety Administration, June 2009).

¹⁸ These five systems are all illumination conditions (from full sunlight to complete darkness), eyeglasses, contact lenses, most sunglasses, and variable subject distances.

¹⁹ *Truck-Tractor Semitrailer Rear-End Collision into Passenger Vehicles on Interstate 44 Near Miami, Oklahoma, June 26, 2009*, Highway Accident Report NTSB/HAR-10/02 (Washington, DC: National Transportation Safety Board, 2010).

²⁰ For example, the NTSB issued Safety Recommendation I-89-2 to the DOT, asking it to "Develop and disseminate educational material for transportation industry personnel and management regarding shift work; work and rest schedules; and proper regimens of health, diet, and rest." In 1995, the NTSB issued Safety Recommendation H-95-5 to the FHWA, calling for it to, in cooperation with several other organizations, "Develop and disseminate, in consultation with the U.S. Department of Transportation Human Factors Coordinating Committee, a training and education module to inform truck drivers of the hazards of driving while fatigued. It should include information about the need for an adequate amount of quality sleep, strategies for avoiding sleep loss such as strategic napping, consideration of the behavioral and physiological consequences of sleepiness, and an awareness that sleep can occur suddenly and without warning to all drivers regardless of their age or experience."

During its investigation of the 2009 Miami, Oklahoma, accident, the NTSB reviewed some of the existing FMCSA fatigue-related training materials. The NTSB determined that, although the fatigue training materials available to truck drivers provided some valuable guidelines, some of the information was outdated, and the available guidance video concerning fatigue did not include vital information pertaining to current HOS regulations and risk factors for OSA. Because updating the information provided to truck drivers about fatigue and fatigue countermeasures, HOS, and OSA could help reduce accidents, the NTSB issued Safety Recommendation H-10-8, which asks the FMCSA to do the following:

Create educational materials that provide current information on fatigue and fatigue countermeasures and make the materials available in different formats, including updating and redistributing your truck-driver-focused driver fatigue video; make the video available electronically for quicker dissemination; and implement a plan to regularly update the educational materials and the video with the latest scientific information and to regularly redistribute them. (H-10-8)

The NTSB is awaiting a response to this recommendation.

Fatigue Management Programs. Although employee education about fatigue is extremely valuable, it alone is insufficient to constitute an adequate fatigue management program, which should involve all aspects of a carrier's operation. A fatigue management program is a system designed to take a comprehensive, tailored approach to the issue of fatigue within an industry or a workplace and address it in an operational environment. Typically, a fatigue management program incorporates individual program-focused efforts to help manage fatigue. For example, it might include policies and practices addressing scheduling and attendance; employee education, medical screening, and treatment; personal responsibility during nonwork periods; task/workload issues; rest environments; and commuting and/or napping. There should also be an overall organizational strategy for implementing, supervising, and evaluating the plan. Many motor carriers have developed and put into action their own fatigue management programs, although the extent and nature of the plans vary widely.

On February 2, 2009, the NTSB issued Safety Recommendation H-08-14 as a result of the Osseo, Wisconsin, accident investigation, and on October 21, 2010, the NTSB issued Safety Recommendation H-10-9 as a result of the Miami, Oklahoma, accident investigation. The recommendations asked the FMCSA to take the following actions:

Develop and use a methodology that will continually assess the effectiveness of the fatigue management plans implemented by motor carriers, including their ability to improve sleep and alertness, mitigate performance errors, and prevent incidents and accidents. (H-08-14)

Require all motor carriers to adopt a fatigue management program based on the North American Fatigue Management Program guidelines for the management of fatigue in a motor carrier operating environment. (H-10-9)

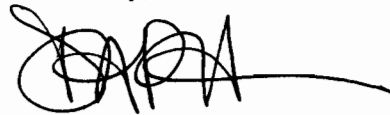
The NTSB is aware that, since 1999, the FMCSA has been involved in the North American Fatigue Management Program (NAFMP) initiative, which is a four-phase cooperative program including participants from the U.S. and Canadian transportation industries, as well as government organizations. In the first phase, researchers identified fatigue management plan requirements targeted toward drivers, dispatchers, and company managers. In phase 2, educational, training, and assessment materials were designed for a field test. In phase 3, researchers conducted a field operational test that included an evaluation of the effectiveness of the NAFMP compared to current industry practices. The FMCSA has informed the NTSB it is reviewing the report on the field test to determine whether to continue to the final phase of the project, which would include developing a deployment strategy for the NAFMP. The NTSB has encouraged the FMCSA to move forward with the completion and deployment of the final phase and has urged the agency to include in the program a methodology to continually assess the effectiveness of the plans implemented by motor carriers. Based on this information, on October 2, 2009, the NTSB classified Safety Recommendation H-08-14 “Open—Acceptable Response.” Safety Recommendation H-10-9 is currently classified “Open—Await Response.”

Summary

In developing the proposed rule, the FMCSA has considered current scientific findings concerning fatigue, and many of its provisions affecting driver scheduling and associated factors have the potential to reduce driver fatigue and fatigue-related CMV accidents. However, the NTSB remains concerned that the FMCSA is not aggressively pursuing other fatigue reduction and mitigation opportunities concerning EOBRs, OSA, in-vehicle technologies, fatigue education, and fatigue management programs.

The NTSB appreciates the opportunity to comment on this NPRM addressing the revision of HOS regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'DAH', with a long horizontal line extending to the right.

Deborah A.P. Hersman
Chairman

Good afternoon, my name is Kenny Jordan and I am the executive director of the Association of Energy Service Companies based in Houston, Texas. Our trade association represents oil and gas service companies throughout the U.S. We have approximately 700 members and 19 chapters throughout the U.S. Our member companies are involved in all phases of oil and gas service work, including such things as transport of fluids from a production facility to a salt water disposal facility, driving of well servicing rigs to oil and gas lease locations, wireline operations, etc. All of these operations and many other operations require the use of CDL drivers throughout our industry. Our member companies have literally thousands of drivers they employ.

Typically in oilfield operations, drivers are staying within a 100 air-mile radius, and the amount of driving time between stops is minimal. Currently a short-haul operation exception is still allowed if the driver stays within a 100 air-mile radius, returns to the work reporting location within 12 hours and time records are kept at the place of business that shows what time the driver reported for work and what time he was released from work. The driver also must be "off duty" for at least 10 hours before returning to work. There are vast differences between the oilfield CDL drivers and the over-the-road long-haul truck drivers.

The oil and gas service workers of America are responsible for keeping oil and gas flowing in this country and are vital to our national security. It is our opinion that the current hours of service that are in place, along with the present "oilfield exemption" have served the industry and public interest in the past and will do so going forward into the future. FMCSAFR §395.1(d)(1) and (2) which states: Oilfield operations: (1) In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. (d)(2) In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site; provided, that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. Such records shall be made available upon request of the Federal Motor Carrier Safety Administration.

We are always conscious of public safety and strive to make every effort to keep the public safe by monitoring and training drivers to the hazards associated with their jobs. The current regulations that pertain to the oilfield exemptions need to be protected and maintained. The "off duty at well site" provision is important to effective operations and to maintaining America's vast system of access to oil and natural gas. The ability to reset hours of service to zero with the 24 hour reset (oilfield exempt only) is an important aspect of the current regulations. Well servicing commercial vehicles are among the best maintained and most safely driven vehicles on the road.

The real issue is not the off duty requirement of the hours of service regulations — it is the enforcement of the existing rules that is the issue. The implementation of the new CSA 2010 enforcement program will be a big step in the enforcement process. Continuity and common sense also dictate that we not change (again) the overly complicated system of hours of service. The current system works. The current detractors attack the system based on alleged flaws in the studies used to back up the current law.

Our Association along with other industry experts are participating with the National Occupational Research Agenda (NORA) and the National Institute for Occupational Safety and Health (NIOSH) Oil and Gas Extraction Sub Council, is working on a project with a primary goal of reduction of occupational motor vehicle fatalities in the oil and gas extraction industry by 30 percent by the year 2020.

There are numerous action items the work group is addressing, including:

- (1) Analysis of data to identify incident patterns attributable to various demographic, environmental and fatigue factors;
- (2) Research best practices in our industry and others to gain knowledge of current topics and approaches to training or communications campaigns related to occupational motor vehicle incidents;
- (3) Develop recommended interventions specific to identified workforce sub-groups based on needs assessments, industry best practices, and preferred method of obtaining training;
- (4) Collection of detailed information from oil and gas extraction companies describing the elements of their motor vehicle safety programs;
- (5) Identifying best practices in motor vehicle safety by analyzing the information collected from the oil and gas industry;
- (6) Promote the adoption of motor vehicle safety best practices by developing a model motor vehicle safety program;
- (7) Disseminate information on best driving practices through various medias;
- (8) Conduct research to describe the cost benefit to companies of adopting the best practices in motor vehicle safety;
- (9) Adoption of appropriate pre-job requirements to reduce fatalities in industry;
- (10) Partner with various agencies to evaluate and recommend modifications to current fitness for duty and pre-job requirement standards that may reduce occupational motor vehicle fatalities;
- (11) Identify barriers to implementing recommended pre-job requirements;
- (12) Identify barriers to implementing the above requirements;
- (13) Identify and analyze available surveillance data in order to evaluate the compliance with existing fitness for duty standards and their impact on work related motor vehicle fatalities;
- (14) Develop and use surveillance to identify practices, technologies, and engineering controls that can reduce occupational motor vehicle injuries and fatalities;
- (15) Develop, create, implement, disseminate and then evaluate the effectiveness of training materials to reduce occupational motor vehicle fatalities;
- (16) Develop and implement pre-vocational safety training in order to reduce occupational motor vehicle accidents;

(17) Develop, evaluate, and implement training and training accessibility improvement models for workers that address safety, with focus on occupational motor vehicle fatalities;

(18) Identify and utilize surveillance data, then disseminate the findings to industry, to track the impact on occupational motor vehicle.

In concluding, hours of service are working for the public safety and also for our driver's safety. We do not want to see a change in those hours of service that would have an adverse impact on the ability of our drivers to do their jobs. If there is any change to the hours of service, it is imperative that the "oilfield exemption" is maintained. We are actively working with regulatory agencies now to identify issues associated with driver and public safety.

Thank you for the opportunity to present information to the group.

Garr Farrell - Comments

Document ID: FMCSA-2004-19608-4664 Document Type: Public Submission
This is comment on [Proposed Rule](#): Hours of Service of Drivers, Proposed Rule, 75 FR 82170, December 29, 2010

Docket ID:
FMCSA-2004-19608
RIN:2126-AB14

Topics: No Topics associated with this document
View Document:

Show Details

Document Subtype:	Comment(s)
Status:	Posted
Received Date:	January 09 2011, at 12:00 AM Eastern Standard Time
Date Posted:	January 14 2011, at 12:00 AM Eastern Standard Time
Comment Start Date:	December 29 2010, at 12:00 AM Eastern Standard Time
Comment Due Date:	March 04 2011, at 11:59 PM Eastern Standard Time
Tracking Number:	80bc7a9d
Page Count:	1
First Name:	Garr
Last Name:	Farrell
City:	Ore City
State or Province:	Texas

Comment:

The Oilfield exemption is being abused by the Oilfield Industry Service Companies, and needs to be changed. Companies are telling Driver's of Day Cab Trucks that they have to wait on site for extended periods of time. I spent 36 hours in a Day Cab waiting to unload a Bulk Tanker of Frac Sand, before I resigned. No driver should be expected to wait more than 14 hours without an opportunity to lie down and rest. Not sitting up in a Day Cab for 36 hours, and then expected to operate their equipment. It's UNSAFE. The language of the rule is not specific enough. Companies only refer to the section that states that the 14 hour clock is extended indefinitely while waiting on the Oilfield site. They do not continue on to the section about the sleeper berth requirements. The regulation should be rewritten so that it is plainly stated that in order to extend the 14 hour clock, access to sleeping quarters, or a sleeper berth is required on site. Otherwise, the abuses I have seen will continue to happen. Oilfield Crews only work 12 hours and go home, or to a Motel. It is UNSAFE to expect Truck Driver's to work longer than that. Why else would the FMCSA be proposing to REDUCE the driving hours to 10 from 11, and the on duty hours to 13 from 14? Just because you are on an Oilfield site does not make you any less vulnerable to the effects of FATIGUE! Changing the language of the regulation to be more specific would eliminate the argument of the Oilfield Service Providers, and prevent them from pressuring Driver's into violating the hours of service rules to keep their jobs.

DEPARTMENT OF
TRANSPORTATION
DOCKET OPERATIONS

Mr. Kenneth Aker
Operations Manager
Elite Transportation, Inc.
PO Box 482
Sturgis, SD 57785

2011 FEB 15 A 9:05

Ms. Anne Ferro
Administrator
Federal Highway Safety Administration
RE: Hours of Service of Drivers Docket # FMCS-2004-19608

Dear Ms. Ferro,

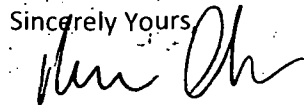
I am asking that you reconsider changing the present hours of service regulations. After studying the proposed changes I believe the general public, drivers, trucking industry, and shippers are best served by leaving the present regulation in place.

We are a small long distance trucking concern that necessitates our drivers being on the road for an average of 16 days. I have several things that trouble me about changing the present rule. My job requires that I prioritize as follows; first the safety of all of the motoring public including our drivers; second our driver's health and well being, third production of revenue, fourth timely service to our customer and fifth promoting good morale while maintaining a positive image in an industry whose image has suffered in the past. The things that I am most concerned about if the rule changes are; first when our drivers are away from home they are at their job trying to make a living but having more time off than they need to get proper rest, exercise, and maintain personal hygiene does not do them any good because they are not home and in my opinion this would only exacerbate problems relating to alcohol, gambling, infidelity ect. I believe we need to let these men work as many hours as they can, while maintaining sufficient rest so they can afford to take off more time when we are able to get them home. Second I believe changing the present rules will cause a safety issue, and that is the way the present rule on the hours of restart are, the driver is able to choose when he starts his period of restart so as to facilitate the time he wants to resume work. What this allows him to do is position himself in a location that he can leave and negotiate through a large city at a time late at night or early in the morning to avoid rush hour traffic. If he is required to take two periods between midnight and six am this might not be possible.

Third this will adversely affect the driver's income, the trucking company's revenue, the shipper's freight cost and consumer prices in a time when our economy is fragile. Fourth I believe it will cause unnecessary confusion in driver compliance. Fifth it will require more drivers to do the same amount of work in a time we are having difficulty recruiting enough drivers. There are many people looking for a job but not many properly trained, well experienced truck drivers, that can do what we need them to do. We serve the oilfield and mining industry primarily and drivers need much more experience doing what we do than they need in some other parts of the trucking industry so this may not be as big of a problem for some companies.

I would like to thank you for your time and ask that you give these points I have mentioned here your careful consideration as you move through the process of making your final decision.

Sincerely Yours,



Kenneth Aker

(FDMS) Docket ID FMCSA-2004-19608

January 13, 2010

Federal Motor Carrier Safety Administration (FMCSA)
Docket Management System
U.S. Department of Transportation
West Building, 1200 New Jersey Avenue, Ground Floor, Room W1-140
Washington, DC 20590-0001

Dear FMCSA:

Baker Petrolite Corporation (BPC) submits the following comments regarding (FDMS) Docket ID FMCSA-2004-19608. We request FMCSA consider modifying Hours of Service (HOS) rules pertaining to Oilfield Operations and the Short-Haul Operations - 100 air nautical mile exemption. Additional comments follow.

Specifically, we address 49 CFR Part 395.1(d)(2), Oilfield Operations, which states, “In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, **on duty time** shall not include **waiting time** at the natural gas or oil well site; provided, that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier.”

1. BPC requests FMSCA define the term “**waiting at well site**” in part 395.2. There is great confusion on how waiting at well sites extends the 14 hour on duty time requirement. Is waiting, sitting in the vehicle with the engine turned off? Are drivers required to wait in a temporary or permanent structure? Is waiting time accounted for as off duty time?

Part 395.1 Interpretation Question # 8 states, “What kind of oilfield equipment may drivers operate to take advantage of the special rule in 395.1(d)(2)?”

Guidance: “The special rule in 395.1(d)(2) applies only to drivers transporting the equipment identified by the former Interstate Commerce Commission in a **1962** report to accompany the oilfield rule. The report indicated the specialized equipment normally consists of heavy machinery **permanently mounted** on commercial motor vehicles, designed to fill a specific need.”

2. BPC requests FMCSA re-visit the 1962 rule to account for **non-permanent** equipment mounted on motor vehicles used to service oil well and natural gas sites. Improved

business practices since 1962 have led this industry to use DOT special permits to effectively conduct oilfield service operations. DOT SP 11646 and DOT SP 12412 are two examples. DOT SP 11646 allows for the discharge of certain hazardous materials from DOT specification drums without unloading the drums from the transport vehicle.

Likewise, DOT SP 12412 allows for the discharge of certain hazardous materials from UN specification intermediate bulk containers (IBC) and DOT specification 57 portable tanks without removal from the transport vehicle. Both permits are needed for exemption from 49 CFR Part 177.834(h), which states, "...discharge of contents of any container, other than a cargo tank or IM portable tank, must not be made prior to removal from the motor vehicle."

These types of motor vehicles are known industry-wide as "Oilfield Service Delivery Trucks". The delivery trucks service oil wells and oil rigs by discharging certain hazardous materials into stationary portable tanks at the well or rig site. These discharge operations are always conducted off road on private leases. Prior to transportation on public roads, all opened containers are properly closed and meet torque requirements according to manufacturer's specifications.

Additionally, BPC uses oilfield service vehicles known as "Treater Trucks", "Frac Trucks", and "Foamer Trucks" to service oil and natural gas well and rig sites throughout the United States. Treater Trucks are manufactured under DOT SP 8627 and DOT SP 13027.

3. BPC requests that FMCSA work with the Pipeline and Hazardous Materials Safety Administration (PHMSA) to incorporate the above stated vehicles into the Part 395 HOS regulations as oilfield service equipment and eliminate the requirement to request DOT special permits indefinitely.

4. BPC requests FMCSA review HOS rule 395.1(e)(ii) Short-Haul Operations, to consider changing the phrase, "and is released from work within 12 consecutive hours" to 14 consecutive hours. The two additional hours would give drivers more time to perform pre and post trip maintenance inspections, while completing their assigned daily duties.

5. Comments on rest and on duty time:

- BPC favors rest periods based on hours of consistent driving. For example, we recommend drivers rest for 15 minutes after three continuous hours of driving. Drivers who make frequent stops (local deliveries) should take a 30 minute lunch break and two 15 minutes breaks during the maximum (14 consecutive hours) on duty time period.
- However, this should not apply to oilfield service operations. Oilfield service drivers spend up to an hour at well sites performing treatment operations. While monitoring the treatment operation, drivers take plenty of breaks during this period before operating the vehicle. Furthermore, these drivers typically work off road during the on duty period, which reduce the potential for having traffic

accidents on public roads. Drivers must travel on public roads from their base station to leases and between leases. However, hazmat carried by these vehicles are always transferred or discharged off road on private customer leases.

- Flexibility should be incorporated into the regulations to account for a variety of work schedules.
- BPC does not recommend any changes to the current maximum hour per day or week. We have no comment on driving at night.

6. Comments on Restart to the 60 and 70 hour rule:

- The 34 hour restart is adequate. We are not in favor of a mandatory two overnight off duty periods as a component of a restart period. This would significantly hamper on time delivery and coordination for drop off and pick-ups for over the road drivers. Our drivers typically have two days off prior to restart.

7. No comment on sleeper berth use

8. Comments on loading and unloading time:

- The 14 hour on duty time rule should be extending by the amount of waiting to load or unload. This provision should be similar to the waiting period exception for oilfield service operations. Shippers and receiver have increased the amount of time drivers spend waiting to load or unload, especially at sea port facilities and stock yards. Drivers get plenty of rest during these waiting periods, which contributes to alertness and accident prevention.

We hope that our comments have shed some light on current oilfield well treatment operations. BPC values the purpose of the HOS rules to reduce major accidents and promote driver wellness and alertness. Our oilfield drivers do not operate as common carriers or multi-state over the road drivers. They typically work Monday through Friday with weekends off. This contributes to well being, rest, and safety of the American public. We look forward to the proactive creation of HOS rules.

Sincerely,

Aubrey R. Campbell
Senior Transportation Specialist
Baker Petrolite Corporation
281-276-5760



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

February 22, 2011

Federal Motor Carrier Safety Administration
Documents Management Facility, (M-30) U
U.S. Department of Transportation
West Building Ground Floor, Room RoomW12-140
1200 New Jersey Ave. SE
Washington D.C. 20590-0001

Re: Docket Number FMCSA-2004-19608

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments regarding the Federal Motor Carrier Safety Administration's Notice of Proposed Rulemaking on Hours of Service (HOS) for commercial drivers. Although the docket did not direct any specific questions to the law enforcement community, we are offering our comments to provide additional input as the Agency deliberates on this extremely important issue for highway safety.

The Commercial Vehicle Safety Alliance (Established in 1981) works to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus safety enforcement agencies together with industry representatives in the United States, Canada, and Mexico. Every state in the U.S., all Canadian provinces, the country of Mexico, and all U.S. Territories are CVSA Members. In addition, CVSA has several hundred Associate Members committed to helping the Alliance achieve its goals; uniformity, compatibility and reciprocity of commercial vehicle inspections and enforcement activities throughout North America by individuals dedicated to highway safety and security.

Guiding Principles

First, and foremost, the underlying principle to the NPRM on Hours of Service of Drivers must be uniformity and ease with which to enforce the Hours of Service regulations. Below please find what CVSA feels should be guiding principles for the new rules.

- 1) Uniformity, this is important for several fundamental reasons:
 - a. It makes training and education efforts, as well as compliance and enforcement activities more simple and effective;
 - b. It provides a better means with which to measure impacts on safety and enforcement programs;

- c. It provides a better means with which to share and implement best practices among the various enforcement jurisdictions; and
 - d. It facilitates reciprocity and fair treatment to industry across jurisdictional boundaries.
- 2) Be simple, complexity affects uniformity in a number of ways;
 - a. It creates difficulty and variation in application and interpretation.
 - b. It creates challenges to harmonization with state, provincial, and local laws.
 - c. It creates frustration, which leads to misunderstanding.
 - d. It creates difficulty in the development of training and educational tools.
 - e. It creates an environment of subjectivity rather than objectivity.
 - 3) Be enforceable roadside, and provide inspectors with the proper tools to do so.
 - 4) Be science-based and data-driven on factors relating to driver fatigue, health, workload, safety performance and crash reduction.

Any changes to existing rules and regulations can affect the uniformity of how such rules will be understood and enforced. The major consensus from our state & jurisdictional enforcement partners, regarding these proposed rules, is that they are confusing and not easily understood. In addition, the proposed rules, in our view, will be more difficult to enforce roadside than the rules in place today. CVSA believes the prudent course of action at this point would be to retain the current HOS rules that are currently in effect.

Seven Proposed Changes to the Rules

Change Number 1: The first proposed change, to 49 CFR §395.2, deals with the definition of on-duty time. Under current HOS regulations, on-duty time includes “(4) all time, other than driving time, in or upon any commercial motor vehicle except time resting in a sleeper berth.” The proposed change “(4) All time in or upon a commercial motor vehicle, other than: (i) Time spent resting in or upon a parked vehicle;” (with this change to the definition, a driver could operate a day cab, or other smaller type vehicles and obtain their 10 hours of required rest, while seated anywhere on, or in, the parked vehicle. In the above example a driver would not obtain any restorative rest at all.) “(ii) Time spent resting in a sleeper berth; or (iii) Up to 2 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth.” The new (4)(iii) would appear to be applicable only to team driver operations, although not specified in the proposed regulation.

Uniformity, complexity and enforceability: After years of enforcing the current HOS driving rules using the current definition of on-duty time, which contain few if any exceptions, inspection personnel will now be tasked with determining if, and when, each activity of resting in a parked vehicle, or the additional 2 hours riding in a passenger seat, took place. Although this change in definition is not too complex, it will require a total shift in enforcement efforts. Enforceability will be the most difficult portion of this

change. With no current regulation regarding supporting documents, for drivers to maintain, on the vehicle, there is no feasible method available for inspectors to check the validity of record of duty status entries. This proposed change could also open the door to more falsification of drivers Records of Duty Status (RODS). Fueling, loading, unloading, and other forms of on-duty time will now be listed on the RODS, as resting in, or upon, a parked vehicle.

We reemphasize that this change will be difficult to enforce and will create frustration on the part of roadside inspectors.

CVSA supports a mandate for Electronic On Board Recorders (EOBRs) for HOS compliance for all commercial vehicle drivers. We know FMCSA published a Final Rule on EOBRs on April 5, 2010. In addition a NPRM on EOBRs and Supporting Documents was released on January 31, 2011. We strongly suggest that consideration be given to an across the board mandate for all motor carriers. While we do not support the change in the definition of On-Duty time, in the NPRM, we believe EOBRs will help compliance, and enforcement, efforts if this provision were to be enacted as proposed. In addition, we urge FMCSA to initiate a rulemaking to require specified supporting documents, not mentioned in current regulations, or in the January 31, 2011 NPRM, to be maintained on a CMV, with access available to roadside enforcement personnel. This, at least, would provide a means whereby duty status entries could be verified or refuted.

Science-based and data-driven: From our review of the Docket, there does not appear to be enough data available to justify, or substantiate, this proposed regulatory change. The only real data available is the fact that CMV crash rates have been declining significantly over the time the current HOS rules have been in effect. More studies and data collection need to take place prior to such a drastic change to the current rules.

Change Number 2: A second NPRM rule change is actually a new addition to an old rule **§395.1(d)(2)**. This proposed change clarifies how “in the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site. Such waiting time shall be recorded as ‘off duty’ time for purposes of 395.8, 395.15 and 395.16. Remarks, or annotations, indicating the specific off-duty periods that are waiting time, or on a separate ‘waiting time’ line, are required on the record of duty status to show that off-duty time is also waiting time. The waiting time shall not be included in calculation of the 14- or 16-hour duty period in 395.3(a)(2).”

Uniformity, complexity and enforceability: This change should improve uniformity concerns by including a remark or separate “waiting time” line. This would allow enforcement personnel to properly identify when actual waiting time is being used at a natural gas or oil well site. The rule does not appear to be complex. Enforceability will still be difficult as no current definition outlining what would be considered commercial

motor vehicles which are specially constructed to service oil wells currently exists. A new definition should be added to 395.2 clarifying what specific equipment qualifies for this exception.

Change Number 3: A third proposed change is to **§395.3(2)(i), (ii) & (iii)**. This provision establishes a “Driving window.” In general, (i) – a driver may drive only during a driving window of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. (ii) Exception – A driver may drive during a driving window of 16 consecutive hours after coming on duty following 10 consecutive hours off duty on no more than 2 days out of the previous 168 consecutive hours. The driver may not drive after the end of the driving window without first taking 10 consecutive hours off duty.

Uniformity, complexity and enforcement: The FMCSA’s desire to create a driving window for property-carrying drivers of CMVs, in theory, should help with uniformity and enforcement issues. Enforcement officials should easily be able to determine if a driver has had 10 consecutive hours off duty, prior to the beginning of his/her driving window. However the ability to verify current compliance or non-compliance with this provision would not be a simple process. Complexity comes into play with the newly created (iii) Exception to allow a driver to drive during a driving window of 16 consecutive hours on no more than 2 days out of the previous 168 consecutive hours (7 days). The driver may not drive after the driving window without first taking 10 consecutive hours off duty. Anytime there are exceptions outlined in regulation the difficulty of uniform enforcement practices is greatly multiplied. Training can be developed, and implemented, regarding all of the proposed changes to the current regulations; however, we have a concern that the probability would increase in the number of drivers falsifying their RODS. The falsifications would occur as drivers try to create more on-duty hours within the 14 and 16 consecutive hour driving window. Drivers could claim inspection, servicing (fuel, etc.) and many other forms of on duty time as off-duty, to create a larger window for driving time. Again, with no supporting document requirements for drivers, it would be difficult, at best, to determine actual regulatory compliance or non-compliance during roadside enforcement. All such falsification attempts would lead to a driver being on duty and driving beyond the proposed 13-hour driving window. Again CVSA supports a mandate for EOBRs for all motor carriers and a new rule that would outline the need for supporting documents to be present and available for inspection during roadside inspections.

Science-based and data-driven: This particular portion of the NPRM does not indicate any current science-based and data-driven support for the change. FMCSA does not provide any basis for the rule change and there is currently no existing data to back up this new portion of the rule. CVSA suggests that more studies be conducted and data gathered before such a drastic change to the current 14 hour driving rule be considered.

The current 14-hour driving rule found in §395.3(a)(2) does not differentiate between off-duty and on-duty times, the only exception involves excluding 8 but less than 10 consecutive hours spent in a sleeper berth for the calculation of the existing 14-hour driving period. It currently provides a simple method to determine compliance or non-compliance. This has proven very valuable in reducing the number of hours driven within a specific time period, in this case a 14 hour driving window. A roadside enforcement officer currently is not required to determine if time taken is on duty, or off duty, time during the 14-hour period. Under the current rule nothing would extend the 14-hour driving period other than 8, but less than 10, consecutive hours in the sleeper berth. The current 14-hour rule is simple to understand and easily enforceable on the roadside.

Change Number 4: A fourth NPRM rule change §395.3(3) “Driving time and rest breaks. A driver may drive a total of 10/11 hours during the on-duty period specified in paragraph (a)(4) of this section, but driving time is permitted only if 7 hours or less have passed since the driver’s last off-duty or sleeper-berth period of at least 30 minutes.”

Uniformity, complexity and enforcement: This provision would not appear complex the issues come with the uniformity, and enforceability, of the rule. This change would once again result in more falsifications of the records of duty status of drivers. Drivers would simply indicate taking 30-minutes off, either before reaching their 7th hour of driving, or right at the point where they have reached that 7th hour of driving. The driver would show a 30-minute break, which would most likely be fueling, inspection, or loading and unloading times, to meet the requirement of the proposed rule. This would allow problem drivers, and motor carriers, one more opportunity to falsify their RODS in an attempt to disguise, or conceal, on-duty hours. Enforcing this proposed rule would be almost impossible without supporting documents to either verify, or refute, such entries.

Science-based & data-driven: There appear to be no studies, or data, available in the Docket that would indicate that limiting the consecutive hours of driving, without taking a minimum of 30 minutes off, will improve a drivers overall CMV operational capabilities or increase safety. This change will serve to try and “force” drivers to take a break when they may or may not need to do so. Also, it may create a safety issue as drivers may be in a location, when they come across their 7th hour, not conducive to taking a break (i.e. no truck stop, rest area or services available). CVSA suggests further studies be conducted to determine the validity of this proposed change to the current regulations and whether it will encourage breaks and increase safety.

Change Number 5: A fifth NPRM rule change involves creating a new section, §395.3(4) “On-duty period. A driver may be on duty no more than 13 hours during the 14-hour or 16-hour driving window. “

Uniformity, complexity and enforcement issues – This portion of the NPRM seems very confusing and much too complex. It appears that FMCSA is seeking to limit the on-duty time to no more than 13 hours in any 14-hour or 16-hour driving window.

This rule is confusing as it would appear that the FMCSA is attempting to control the length of on-duty time for drivers. Never before has the FMCSA endeavored to limit on-duty time for drivers. In fact FMCSA has only been interested in preventing a driver from operating a CMV at a point after meeting a maximum on-duty, or driving, time. CVSA can see an issue with uniformly enforcing this proposed rule change. Enforcement personnel may endeavor to list violations of this rule when a driver has met the limit, and continues to remain on-duty. However, he/she never drives before achieving a 10-consecutive hour rest period. Other enforcement personnel would only list a violation if the driver continues to drive after reaching the 13-hour on duty driving window. Without further clarification the motor carrier industry could be faced with a number of recorded violations that may, in fact, not be violations at all. The other difficulty with enforcing this rule roadside will be to verify whether a driver has violated this provision, particularly without the aid of supporting documents.

Science-based and data-driven: There appears to be a lack of scientific studies, or collected data, to indicate that the movement from a 14-hour work day rule to a 14-hour driving window, with a 13 hour on-duty limit, will improve the overall performance of a driver of a CMV. Realistically, it is our belief that there are very few drivers that use the current 14 hour work day and 11 hour driving limit to its full extent on a consistent basis. However, the current rule provides much more flexibility for drivers to allow for them to effectively manage unexpected or unplanned events. We believe if these proposed changes, are allowed to occur more opportunities would be provided for problem drivers and carriers to disguise hours of on-duty time in an attempt to extend the proposed limitations on driving and on duty not driving times. The other concern we have with this proposed change is the fact that with the introduction of the 16 hour driving window it has the possibility of taking drivers away from a 24 hour clock which we do not believe will result in a positive impact on safety. Prior to such a major change to an existing regulation it is suggested that further studies and data be collected to determine if in fact the proposed rule will have the desired effect.

Change Number 6: A sixth NPRM rule change involves §395.3(c)(1)(2) “Any period of 7-consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two consecutive periods from midnight to 6 a. m. or any period of 8-consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two consecutive periods from midnight to 6 a.m.” 395.3(d) “A driver may not take an off-duty period allowed by paragraph (c) of this section to restart the calculation of 60 hours in 7-consecutive days, or 70-hours in 8-consecutive days, until 168 or more hours have passed since the beginning of the last such off-duty period. When a driver takes more than one off-duty period of 34 or more

consecutive hours within a period of 168 consecutive hours, he or she must indicate in the remarks section of the RODS which such off-duty period is being used to restart the calculation of the 60 hours in 7 consecutive days, or 70 hours in 8 consecutive days.”

Uniformity, complexity and enforcement: The FMCSA’s desire to create a one size fits all 34-hour restart to the 60 & 70 hour rules would, on the outside, appear to be a great idea. Unfortunately, by requiring that the proposed 34-hour restart contain two periods of rest from midnight to 6 A. M. reduces the flexibility of the rule. Many motor carrier operations include driving during the midnight to 6 A. M. hours to ensure early morning deliveries to meet customer needs. Those carriers, working these types of shifts, will be adversely affected in addition to adding more CMVs, to an already burdened highway system, at peak morning commute drive times. The current rules allow motor carriers to meet their individual customer needs while they continue to operate their CMVs during off-peak driving times.

Requiring all drivers to meet the additional two periods from Midnight to 6:00 A.M. off-duty will disrupt regular weekly rest cycles which most likely will lead to a greater rate of driver performance issues. CVSA feels that this proposed requirement will not only negatively affect driver performance, but will ultimately lead to more falsification of the drivers RODS. Drivers will indicate the two required break segments have occurred, when in all reality they will begin their driving prior to 6 A. M. to meet early morning customer delivery windows. The lack of supporting document requirements will hinder the roadside inspector from determining whether the driver is compliant, or non-compliant, with the regulation. Although the proposed rule is not complex enforcement will be hindered and uniformity of enforcement could suffer.

Science-based and data-driven: The limited number of studies regarding this proposed rule change makes it difficult at best to determine whether driver health benefits will be enhanced or downgraded. While we are not scientists, we question whether the Washington State University Study contained in the Docket is of enough robustness and realistic enough to real world operations to justify this proposed change. There is virtually no current data available to indicate this proposed regulatory change will have a positive effect. CVSA would suggest if a period of time is required to initiate a restart for the current 60 or 70 hour rule that it be a 48 consecutive hour period of time. This would allow the motor carrier the opportunity to determine which 48-hour period of time would best suit their individual needs.

CVSA believes that the proposed requirement that drivers “indicate in the Remarks section of the record of duty status which such off-duty period is being used to restart the calculation of the 60 hours in any 7-consecutive days, or 70-hours in 8 consecutive days,” would be a great tool in determining when a driver has used the restart provision of the rule. As long as it could be verified roadside, it would clearly benefit both uniformity and ease of regulatory enforcement.

Change Number 7: The 7th provision of the NPRM for Hours of Service of Drivers deals with a change from the current 11-hour driving rule to the FMCSAs preferred option of a 10-hour driving rule. This is outlined in the preamble to the NPRM rulemaking found in Section VI. Discussion of Proposed Rule A. *Driving Time*.

Uniformity, complexity and enforceability: This change, not complex at all, could be very easily and uniformly enforced. The change would require very little extra training from the current rule.

Science-based & data-driven: CVSA believes there is currently insufficient data to support such a change. Allowing drivers to drive 11-hours has allowed the motor carrier industry the opportunity to meet their customer's needs with no apparent negative effect on driver performance standards. It is felt that more specific studies be completed on groups of drivers operating under an 11-hour driving rule as opposed to a comparison group of drivers operating under a 10-hour driving limit. Data should be gathered, and compared, to verify negative driver effects from either practice. A large test group should be used, operating under all types of schedules, daytime, swing and graveyard. The last several years worth of experience with HOS has coincided with a dramatic reduction in commercial vehicle crashes and fatalities. While it is difficult to pinpoint how much is attributed to the current HOS rules, we do not believe FMCSA has introduced compelling evidence to justify the change to 10 hours of driving time.

Training Costs Enforcement Personnel

In reviewing the 'Hours of Service (HOS) Proposed Rule Regulatory Impact Analysis,' (RIA), it became quite clear that FMCSA failed to take into account the training needs and costs for roadside enforcement personnel. There are approximately 14,000 CVSA certified inspectors, all of whom would require training. CVSA estimates a minimum of 8 and a maximum of 12-hours of training will be required to educate roadside enforcement personnel successfully. Using FMCSA cost estimate for training CMV drivers of \$23.96 an hour, a low estimate for roadside inspectors, and an 8-hour training period would require a minimum of \$191.68 per person for 8-hours. The cost for a 12-hour training period \$287.52.. Neither cost estimate for enforcement training includes travel, lodging or per-diem that may be required. All costs estimated would have to be absorbed by the individual agency providing the training.

Cost estimates for an 8-hour training session of 14,000 inspectors's \$2,682,680.00 not including travel, lodging and per-diem costs. Cost estimates for a 12-hour training session of 14,000 inspectors's \$4,924,020.00 not including travel, lodging and per-diem costs. These training cost estimates are applicable only if Option #2 or #4, as outlined in the Executive Summary of the '(HOS) Proposed Rule Regulatory Impact Analysis,' is put into place.

State and local agencies are currently struggling to meet their enforcement needs in this difficult economy. Additional training costs, without a funding source, will place an additional burden on resources that are already stretched to the limit. CVSA suggests that the proper science-based studies and associated data analysis be conducted before current regulations are changed. Cost estimates, included in the analysis do not address additional enforcement personnel training regarding the NPRM for EOBRs as outlined in the January 2011 release. There is no mention of funding for enforcement personnel training included in the EOBRs NPRM.

Summary

CVSA questions whether there is yet enough data to indicate that these proposed changes to the existing HOS regulations will in fact improve the overall safety of CMV drivers and the traveling public. This fact is pointed out by FMCSA in the preamble of the NPRM Section V. A. *Safety-Fatigue* "The crash rates for CMVs have been declining since 1979; the rates went up slightly in 2004 and 2005 before declining again. Neither the slight increase after the adoption of the existing rule nor the decline thereafter can be definitely associated with the HOS rule." We, at CVSA, are definitely not scientists or statisticians, but in order to make changes to the current HOS rules, we believe there must be substantial data provided to effect such changes.

The data used to formulate the new NPRM seems rather limited, and in several instances found in the preamble, FMCSA seeks other safety data and studies. Specifically such requests are found in Section VI. Discussions of proposed rule "FMCSA seeks information regarding the impact of eliminating the 11th hour of driving on logistics, location centers, just in time inventories, competitiveness with global markets and delivery of perishable goods." Also in D. *Restart & Weekly Limits*, of Section VI, FMCSA refers to "a recent study conducted by Washington State University to determine the effectiveness of the 34-hour restart provision in restoring driver performance. " Only twelve, relatively healthy drivers, participated in the study which focused on a 58 hour-restart period rather than a 34 hour-restart period.. Although the study would seem to indicate driver performance improvement, it is too limited in scope and number of drivers utilized. It was also performed in a controlled environment and not in a real world setting, where actual driving and rest periods would be used. "The study did indicate that a two-night recovery period was effective at maintaining driver performance." Due to the focus and size of this test group and the fact that the study was conducted in a laboratory setting, it would seem to indicate the need for more such studies which when conducted should utilize a more realistic, actual driver type environment.

More studies and research data are required to determine if such a drastic change to current Hours of Service of Drivers are warranted. CVSA would support regulatory

changes that result from further conducted studies. These studies should include a larger and broader spectrum of CMV drivers using real world situations, actual driving and rest cycles. Further studies, if conducted correctly could provide the necessary data to back up future proposed HOS regulations.

Several of the proposed changes will create more difficulty for roadside inspectors and law enforcement officers to verify compliance. The proposed rule will, in our view, exacerbate the falsification of RODS. With no existing, or proposed, requirement for specific HOS supporting documents to be retained on the CMV, roadside enforcement will be made even more difficult.

As previously indicated, we believe the prudent course of action at this point would be to retain the current rules, as found in the (HOS) Proposed Rule Regulatory Impact Analysis 'Executive Summary,' dated December 20, 2010, and defined as Option #1. In addition mandate the use of EOBRs. This mandate would likely result in increased compliance with the existing rules. The mandate would also offer additional time to conduct more research and study into FMCSA's proposed changes. At some point, in the near future, FMCSA would then have a more robust data set to draw from. The new data set would enable more informed decisions on whether changes to the HOS rules would be necessary or warranted.

We appreciate the opportunity to offer our views on this critically important rulemaking for highway safety.

Respectfully,

A handwritten signature in black ink that reads "Stephen A. Keppler". The signature is written in a cursive, slightly slanted style.

Stephen A. Keppler
Executive Director

Document Details

[Submit a Comment](#)

Ded Hed Ed - Comments

Document ID: FMCSA-2004-19608-4098 Document Type: Public Submission

This is comment on [Rule](#): Hours of Service of Drivers

Docket ID:

FMCSA-2004-19608

RIN:2126-AB14

Topics: No Topics associated with this document

View Document: 

Show Details

Document Subtype:	Comment(s)
Status:	Posted
Received Date:	December 29 2010, at 12:00 AM Eastern Standard Time
Date Posted:	December 29 2010, at 12:00 AM Eastern Standard Time
Comment Start Date:	November 19 2008, at 12:00 AM Eastern Standard Time
Tracking Number:	80bc0efb
Page Count:	1
First Name:	Ded
Middle Name:	Hed
Last Name:	Ed
Country:	United States
State or Province:	OK

Comment:

Keeping 11 hrs driving is ok by me. I don't drive 11 anyway. Usually 8-10. It's harder after ya get older. Makes an old man out of a young man, quick, too. I like the idea of the '16 hrs days/extension/twice a week. With the 'sleeper berth' time, it is great idea. MUST be 'sleeper berth' about most of the 3 hrs tho. Item 4: I like the idea of a 30 min. mandatory break before 7 hrs. OnDuty/Driving hits. THIS and this alone might be the best idea for Safety, of all the proposed Rules, imvho. It might help some of these knuckleheads get out of their truck and walk around, thus preventing diabetes, too. Item 5: Restart. Without a doubt, keep it at 34 hrs for the 70 hr. Restart. Don't, I plead, DON'T do a 48 hr. restart!! It would be better to just go back to the old HOS rules before 2004, of

picking up hours from 8 days ago, rather than the 48 hr restart. Just eliminate both options if you go to 48 :) Item 6: Off Duty for 'being in cab' idea. Sure. Agreed. Item 7: Oilfield exemption: I don't see how safe it is to let oil tanker drivers be 'ok' to drive after being on the job for 16Hrs plus,, To hell with that. Give those guys a BREAK time... MAKE them take time off! They are hauling explosive oil, for cristsakes. Max. of 10 hrs driving in a 12 hr day. To hell w/ overtime. Oil companies are making SLAVES out of their drivers, and they are unsafe when they come off the oil lease onto the highways, after being on duty for so long. How in hell does FMCS people allow this? Totally, totally in the pockets of Big Oil. Grow some BALLS, politicians. Use some Common Sense. Oil field work is work. Needs rest, too, for safety. Mandatory Break time of 1 hr. per 11 hr driving shift. I like it. I like the idea of at least 30 min if one drives 7 hrs, and at least 1 hr if one drives 11 hrs. Hey, that is my method NOW. One hour MANDATORY minimum in the day tho, will prevent MANY accidents! This is why drivers fall asleep; they need a nap. thx

David Scott McQueen - Comments

Document ID: FMCSA-2004-19608-22399

**Document
Type:** Public
Submission

This is comment on [Other](#): Transcript of Feb. 17, 2011 Hours-of-Service of Drivers Listening Session, Arlington, VA (Washington, DC)

RIN: 2126-AB14

Docket ID:
FMCSA-2004-19608

Topics: *No Topics associated with this document*

View Document:  

[More](#)

Comment:

As a private carrier, Welltec employees' primary function is to service oil/gas wells, not drive. Although many employees do operate commercial motor vehicles, the CMVs are below 26,001 pounds GCWR/GCW and thus do not require an operator to have a CDL. The employees may only drive for a few hours per day, but may work at the well site for many more hours. To require them to go off-duty after 13 hours will require Welltec to substantially increase the size of their work force and require employees to remain at a well site OFF DUTY for 10 hours. If only one crew was at the job site, they would have to stop working after 13 hours, a situation that would anger (at a minimum)the customer. That is unacceptable professionally, operationally and financially.

Sandy Long - Comments

Document ID: FMCSA-2004-19608-8633

Document Type: Public Submission

This is comment on [Proposed Rule](#): Hours of Service of Drivers, Proposed Rule, 75 FR 82170, December 29, 2010

RIN: 2126-AB14

Docket ID:

FMCSA-2004-19608

Topics: *No Topics associated with this document*



View Document:



More

Comment:

Seventh, the oilfield operations exception would be revised to clarify the language on waiting time and to state that waiting time would not be included in the calculation of the driving window. My comment to the above: There is no difference between oilfield operations and over the road or local driving. All drivers drive in the same traffic, on the same roads and deal with the same stressors. If you can do this for the oilfield workers, why not make it across the board and stop the clock for waiting time for all drivers. That way we could sleep while waiting and start driving when refreshed from our naps and our loads are loaded.

Kurt Elwin Gepner - Comments

Document ID: FMCSA-2004-19608-6068

Document Type: Public
Submission

This is comment on [Proposed Rule](#): Hours of Service of Drivers,
Proposed Rule, 75 FR 82170, December 29, 2010

RIN: 2126-AB14

Docket ID:

FMCSA-2004-19608

Topics: *No Topics associated with this document*



View Document:

More

Comment:

Regarding Proposition #7 (Oilfield exemption) Why is waiting on a customer in an Oilfield Specific vehicle different than waiting on a customer in any other CMV? Is an Oilfield CMV equipped with some futuristic device that warps time, or is it just so comfortable that it seems like no time is passing? Waiting is waiting. My suggestion: Either expand the exemption to include all waiting for all CMV or eliminate it all together.

Anonymous - Comments

Document ID: FMCSA-2004-19608-6549 **Document Type:** Public Submission

This is comment on [Rule](#): Hours of Service

Docket ID:

RIN: 2126-AB14

FMCSA-2004-19608

Topics: *No Topics associated with this document*



View Document:

More

Comment:

I have been a truck driver for 39 years, I started on gasoline tankers, and propane tankers and on to log trucks , but I have spent most of my time in the LTL freight industry split between pickup and delivery work ,and as a road driver. Fifth, Sixth,& Seventh issues..34 hour restart,definition of"on duty" and oil field exceptions.. The trucking industry currently has a on duty limit of 70 hour in 8 days... 70 hours a week isn't that enough??? pay drivers double time for the 6,7,8, tour in any seven days..and no 34 hour restart would ever be needed. "ON DUTY" time should be when I am held responsible for some thing. Drivers in oil field operations should have the same rules as the rest of us. The current rules have created a situation where I am not as safe as I would like.. and I know that other driver are having the same issues.. Changes are needed and you-all need to stop listening to the company's It is so bad now I try to not drive on two lane roads,because I don't want to meet a truck going the other way... I want the road safer..for me and my family..what about yours????

From: K.S.Anderson

Date: 2-12-2011

Re: Hours of Service of Drivers
Docket # FMCSA-2004-19608

DEPARTMENT OF
TRANSPORTATION
TICKET OPERATIONS

2011 FEB 24 A 9 24

Dear Administrator Ferro:

I am writing to express my concerns over the Federal Motor Carrier Safety Administration's proposed rule on hours of service for truck drivers. Here are my concerns:

The proposed rule changes would unnecessarily complicate the current system, causing more effort, expense and inefficiencies industry wide.

Although there is no perfect solution to regulate hours of service, the current rules have been working fine in most situations. The industry has adapted. Safety has been good.

If any rules are to be changed, why not make them more simple, easy to understand and and comply with.

Why not allow drivers flexibility to conduct their own business according to their many scenarios and individual needs? The current rules are restrictive enough. Why complicate them? Keep it simple.

On flexibility...would it be more profitable and safe, for our nations traffic to be spread throughout the 24 hour day, rather than funnelling into extreme congestion within restrictive time frames?

As for the proposed rules in particular...

* 11 hours maximum driving has worked alright. So why decrease it?

* We currently have the 14 hour driving window. 16 hours would be more advantageous. Let's choose only one and scrap the other. (We're still taking a 10 hour break afterward!)

* To make additional on/off duty rules is not necessary.

* To complicate and extend the 34 hour restart, would hamper and impede profit and productivity industry wide. I don't think it would affect safety one way or the other.

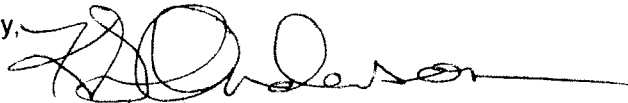
* 2 hours as off duty in a parked CMV makes sense.

* The oilfield exemption should not be. The same rules should apply to everyone.

I urge you to scrap this proposal and retain the current hours of service rules which have been effective in striking the crucial balance between safety and productivity.

Thank you for the opportunity to offer my personal views on this matter.

Sincerely,



KSAnderson
209 Lakewood Terrace
Marshall, WI, 53559

Document Details

[Submit a Comment](#)

Anonymous - Comments

Document ID: FMCSA-2004-19608-16019 Document Type: Public Submission
This is comment on [Proposed Rule](#): Hours of Service of Drivers, Proposed Rule, 75 FR 82170, December 29, 2010

Docket ID:

FMCSA-2004-19608

RIN:2126-AB14

Topics: No Topics associated with this document



View Document:

[Show Details](#)

Document Subtype:	Comment(s)
Status:	Posted
Received Date:	February 28 2011, at 12:00 AM Eastern Standard Time
Date Posted:	March 04 2011, at 12:00 AM Eastern Standard Time
Comment Start Date:	December 29 2010, at 12:00 AM Eastern Standard Time
Comment Due Date:	March 04 2011, at 11:59 PM Eastern Standard Time
Tracking Number:	80bfb304
Page Count:	1

Comment:

THE PROPOSED RULES ARE TOO COMPLICATED AND DON'T "PROMOTE SAFETY AND PROTECT DRIVER'S HEALTH" AS THE SUMMARY STATES. THEY WILL ONLY BENEFIT BIG BUSINESS & THE FMCSA. IT LOOKS LIKE THE GOVERNMENT IS ONCE AGAIN GETTING PAID OFF BY THE OIL COMPANIES BY PROVIDING AN OILFIELD EXEMPTION IN THE NEW RULES.

Darrel Bernard - Comments

Document ID: FMCSA-2004-19608-10158

Document Type: Public
Submission

This is comment on [Proposed Rule](#): Hours of Service of Drivers,
Proposed Rule, 75 FR 82170, December 29, 2010

RIN: 2126-AB14

Docket ID:

FMCSA-2004-19608

1. The limit on drivers to either 10 or 11 hours of driving time following a period of at least 10 consecutive hours off duty; on the basis of all relevant considerations, FMCSA currently favors a 10-hour limit, but its ultimate decision will include a careful consideration of comments and any additional data received.

Whether a trucker operates 10 or 11 hours is actually irrelevant when speaking in terms of safety. Even the FMCSA's own studies show the most dangerous time period for truckers is the first hour of driving retuning to duty after a sleep break. I think a better rule which would reduce this danger would be a requirement that a trucker be up and On-duty/Not-Driving for one hour prior to getting behind the wheel. This would greatly reduce the number of drivers who jump directly from the sleeper berth into the driver's seat before they are fully awake and aware of what they are doing.

2. Would limit the standard "driving window" to 14 hours, while allowing that number to be extended to 16 hours twice a week.

This needs to be left at 14 hours. Having the option to do one or two sixteen hour on duty segments per week would be confusing and lead to many more HOS logbook violations. Keep it simple and make the math easy for both the trucker and those having to audit their logs.

Another portion of this 14 hour work window needed to provide more safety and improve the health of a trucker is make it possible for the trucker to turn off his 14 hour clock for up to 4 hours as long as it was spent either in the Sleeper Berth or Off Duty. This rest period during his/her 14-hour day could be used during inclement weather, a traffic back-up or accident, to avoid driving through a metropolitan area during rush hours, or when fatigue sets in, giving the trucker an out that doesn't impact his schedule. This would greatly reduce both stress and interaction in close quarters with the motoring public, along with helping to reduce congestion. The 4 hours could be broken up into no less than 30 minute breaks. The 14-hour work window would be extended only by the actual time of the total of all breaks.

Example: A trucker begins his day at 8 am; takes his hour start-up and PTI period (1 hour On-Duty/Not-Driving)

Begins driving at 9 am and drives to 1:30pm. A traffic tie-up occurs so he pulls into a rest area until 2:00. (1 hour On-Duty/Not-Driving and 4.5 hours On-Duty-Driving. Total On-Duty 5.5 hours) (.30 minutes break, Off-Duty)

Traffic begins rolling at 2:00 pm so he's driving again. At 4:00 pm he pulls into a truck stop and waits for rush hour to end at 7:00pm. (2 hours additional driving, On-Duty-Driving 6.5. Total On-Duty 7.5 hours and 3 hours additional Off-Duty for 3.5 Total Off-Duty breaks).

At 7:00 pm starts driving again until 8:00 pm; pulls into his unload point which takes until 10:00 pm to unload him. (1-hour additional driving and 2 hours On-Duty-Not-Driving; 7.5 Total On-Duty Driving; 10.5 hours Total On-Duty and 3.5 hours Off Duty breaks.)

He departs the unload point at 10:00 pm; drives until 1:30 am to a truck stop where he begins his 10-hour rest break. (3.5 hours additional On-Duty-Driving , 11 hours Total On-Duty Driving. 14 hours Total On-Duty and 3.5 hours of break) This means he can't start his next day until 11:30 am or 10 hours after he arrived at the truck stop.

In this example, the driver was able to reduce his stress level by being parked in a safe location while either rush hour traffic dissipated or while waiting for traffic tie-ups to clear. Less stress equates to less fatigue, and by making it possible for his truck to be off the road during rush hour, this also made it that much safer for everyone by helping to reduce traffic during a peak time.

By extending the day by 3.5 hours, it permitted the trucker to make his delivery and have time to drive to a truck stop allowing him to vacate a receiver's property. But under both the current rule and the proposed rule, he would have needed to take his 10-hour break in the receiver's yard. In most situations, the receiver would have told the trucker to leave the receiver's property and he would have been forced to be in violation of the 14-hour rule, even though he had 3.5 more hours to drive.

One stipulation would be that the up to 4 hours Off Duty would NOT reduce his 10-hour rest break. At the end of the 14-hour day of Total On-Duty time or at the completion of his 10 or 11 hours driving within this window, the trucker is required to take a full 10-hour rest period Off-Duty.

3. Actual duty time within the driving window would be limited to 13 hours.

This proposed rule has only a single purpose that I can see, and that's to accommodate the 4th proposed rule of requiring two thirty-minute breaks during a 14-hour day. The idea of forcing truckers to take specific "naps" during their workday will create a far more dangerous situation for them. Trucking in itself is a very unpredictable activity because of all the things out of the control of the trucker: traffic, weather, and the actions of others as they share the road. A trucker needs the flexibility to make decisions based on these unpredictable's for his health, safety and the safety of others on the road.

Mandating specific breaks for specific periods will reduce this needed flexibility, creating a less safe environment for all who share the highway.

The better solution is for the trucker taking up to 4 hours of breaks during his 14-hour work period which would extend his 14 hours by an equal amount of time if necessary. But at the same time, it wouldn't reduce his required 10-hour rest break at the completion of his work day, thus providing the needed flexibility to operate safely. [

4. Drivers would be permitted to drive only if 7 hours or less have passed since their last off-duty or sleeper-berth period of at least 30 minutes.

As stated above, concerning Proposal Number 3, taking away break time flexibility would in fact increase the dangers faced by a trucker. I recommend this extra hour be required at the beginning of the day to reduce the documented incidence of first-hour accidents. We don't need to treat truckers as if they were pre-schoolers with mandated nap times. Truckers need flexibility to choose when they take a break from the circumstances and situations which they come across while driving. These situations range from feeling fatigued because of something he ate, to a traffic slow-down to avoiding bumper-to-bumper congestion periods in large metropolitan areas.

5. Fifth, the 34-hour restart would be retained, subject to certain limits: The restart would have to include two periods between midnight and 6 a.m. and could be started no sooner than 168 hours (7 days) after the beginning of the previously designated restart.

I am a fan of the 34 hour restart. But if you must change it consider this.

The solution: either leave the 34-hour restart as it is currently, or if the FMCSA sees the necessity to extend the time, lengthen it to 36 or 42 hours across the board without a mandate 2 periods between midnight and 6am.

6. Sixth, the definition of "on duty" would be revised to allow some time spent in or on the CMV to be logged as off-duty. On Duty does not include any time resting in a parked CMV. In moving CMV, does not include up to 2 hrs. in passenger seat immediately before or after 8 consecutive hrs. in sleeper-berth.

From the initial look at this particular proposed rule change, the only problem I see is, what difference does it make whether one is in the passenger seat or the driver's seat taking a 2-hour break? As an example, in one of my trucks I had swivel driver and passenger seats. Technically speaking, if I sat in the driver's seat with it facing the back of the cab watching TV, I should have logged the time on-duty. This proposed change doesn't eliminate that discrepancy. My recommendation is keep it simple. Why make it complicated? Also, many single driver truck operations use the right seat for storing items which might be needed at a moment's notice (rather than having to search for something after it's been swallowed by the sleeper), thus making the right seat unavailable.

7. Seventh, the oilfield operations exception would be revised to clarify the language on waiting time and to state that waiting time would not be included in the calculation of the driving window.

*My response to this is, if one segment of the industry can turn off and on the 14-hour (13-hour) clock, **all** segments should be able to do the same.*

February 8, 2011

Docket Management Facility (M-30)
U. S. Department of Transportation
West Building Ground Floor
Room W12-140,
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

Re: Docket Number FMCSA-2004-19608

2011 FEB 15 A 9:27
DEPARTMENT OF
TRANSPORTATION
DOCKET OPERATIONS

Dear Sir:

My name is Harry Clark and I am the Corporate Traffic Manager for O'Neal Steel, Inc. We are a private carrier with thirty (30) shipping and receiving locations across the country. We operate two hundred (200) power units and three hundred and thirty (330) flatbed trailers. We have subsidiary companies with 50 locations across the globe with smaller fleets to support them. Our entire organization takes exception to the hours of service regulations proposed by the Federal Motor Carrier Safety Administration. The proposal addresses basically seven (7) changes to the current regulations. I will comment on the changes one at a time.

1. Hours of driving: While favoring a 10-hour driving period, the FMCSA has shown some restraint until additional comments or data is received. Eleven (11) driving hours is an excellent rule and should remain intact. Our drivers are out and back the same day mostly during daylight hours. Eleven driving hours allow us to reach our regional customer base. Reducing the driving hours to ten will require us to add more tractors and trailers to our highways. This will negatively impact safety, the quality of the air that we breathe, the quality of the highways in which we travel and will significantly increase our cost which will be inflationary. This change will have a significant impact on our fleet and on the carriers that we use to ship to our more distant customers.
2. Driving window: This proposal states that it is not changing the current driving window of fourteen (14) hours. But, it is. You will see that in item 4. It does allow all drivers to extend the driving window to 16 hours (subject to rest breaks discussed below) twice in any seven calendar days. This 16 hour exemption applies to all drivers including those who return to their normal work reporting locations daily as we do. This change should not have a positive or negative impact on our delivery operation.
3. On-duty time within the window : The FMCSA intends to promote breaks during the fourteen hour driving window which will allow only thirteen (13) hours of on duty time. If a driver exercises the option to use the 16 hour window, under this provision he will be required to take a 3-hour rest break. This is not a significant change and should not have a positive or negative impact on our delivery operation.

4. Driving period: Drivers would be required to take a rest break of at least 30 minutes within 7 hours of first coming on duty. This rule should not have a significant impact on our drivers who make multi-stop deliveries. However, it will have a significant impact if the hours of driving are reduced to 10 hours from 11.
5. 34-hour restart: The FMCSA did not kill the 34-hour restart but it was damaged. It requires that any 34-hour restart must include two (2) periods between midnight and 6:00 a.m. For the most part, this rule should not have a major impact on our delivery fleet. Ninety-five% of our drivers end their driving period Friday afternoon and their restart is a.m. on Monday. However, the for-hire carriers that handle our distant truckload business will lose a transportation day if they fail to arrive home by midnight on Friday night. For example, under the old rule they could depart Sunday morning. This new restart will not begin until 6:00 a.m. on Monday. This transit delay will cause a major disruption in servicing customers that must receive inventory on Mondays and will economically impact businesses. I anticipate this rule to be inflationary. A driver who arrives home at 1:00 a.m. on Saturday morning will be required to be off duty for 53 hours before resuming work at 6:00 a.m. Monday morning. This is an over kill.
6. "On duty" redefined : Under the proposed rule, the time spent in a non-moving commercial motor vehicle may be logged as "off duty". This provision could be helpful to carriers that are delayed at the point of loading or unloading.
7. Oilfield exemption: Under the proposed rule, waiting time at an oil well or natural gas site would not count toward calculation of the 14 (or 16) hour window. This is similar to item 6 for the benefit of carriers hauling oil field products in bulk.

In summary, driving hours should remain at 11 and the 34-hour restart should not include 2 periods between midnight and 6:00 a.m. If mandated rest breaks tend to make our roads safer, they should be implemented. My preference is to maintain our current hours of service rules and require all carriers to begin using electronic DOT logs.

Sincerely,

A handwritten signature in black ink that reads "Harry Clark". The signature is written in a cursive, flowing style.

Harry Clark