



**U.S. Department
of Transportation**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

Chief Counsel

**Federal Motor Carrier
Safety Administration**

February 22, 2013

The Honorable Bill Graves
President and Chief Executive Officer
American Trucking Associations
950 N. Glebe Road
Suite 210
Arlington, VA 22203-4181

RE: Hours of Service of Drivers, Docket No. FMCSA-2004-19608

Dear Mr. Graves:

This letter responds to your letter of January 25 to Administrator Ferro requesting that the Federal Motor Carrier Safety Administration (FMCSA) delay the July 1, 2013 compliance date of its Final Rule on Hours of Service of Drivers (HOS) (76 Fed. Reg. 81134 (Dec. 27, 2011)) pending resolution of the petitions for review currently under consideration in the United States Court of Appeals for the District of Columbia Circuit. Specifically, you ask that FMCSA delay the compliance date of the final rule until three months after the D.C. Circuit issues its decision. Basically, your request to delay the compliance date of the rule is really a request for a stay pending a decision by the Court, plus an additional three months of non-compliance. The FMCSA has evaluated the issues raised in your letter and, for the reasons set forth in this response, has determined that staying the compliance date of the rule is not warranted. As a result, ATA's request is denied.

The Agency does not believe that you have demonstrated good cause to delay the compliance date of the rule. *See* 5 U.S.C. § 553(b)(B). Mere uncertainty over the possible outcome of the litigation, which you recognize is a matter over which the parties differ, does not create a likelihood that the industry or the enforcement community will suffer harm due to wasted training resources or confusion. Moreover, the Agency is unwilling to sacrifice what may be several months of public safety benefits from the timely implementation of the rule.

Further, the Agency does not believe that a stay is warranted under the four criteria that are customarily applied by a court to determine whether a judicial stay pending appeal should be granted: (1) the likelihood of prevailing on the merits of litigation; (2) the prospect of irreparable harm to the party seeking the stay if it is not granted; (3) the potential harm to other parties if a stay is issued; and (4) the public interest. *See CSX Transp., Inc. v. Williams*, 406 F.3d 667, 670 (D.C. Cir. 2005); *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.* 559 F.2d 841, 842

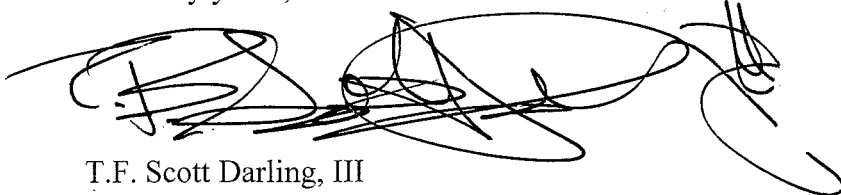
n. 1 (D.C. Cir. 1977). Each of the four prongs must be satisfied to obtain a stay. *See Davis v. Pension Benefits Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009). Your letter makes no attempt to demonstrate that ATA can satisfy any of these four requirements necessary to obtain a stay.

So, for example, your letter fails to discuss any party's likelihood of success on the merits, a key requirement for obtaining a stay. Moreover, you admit that there is genuine uncertainty as to the outcome of the pending litigation. Therefore, we will not address the merits of the arguments before the court here. Further, you argue that a delay in the compliance date will have "no measurable impact on safety." Given that the final rule is intended to improve public safety, however, a bare assertion to the contrary fails to satisfy the public interest prong of the analysis.

The statements in your letter regarding the timing of HOS training appear to argue, without so stating, that ATA members will suffer irreparable harm and that third parties (i.e., State enforcement officials) will suffer harm if the July 1, 2013 compliance date stands and the rule is subsequently altered by the court's decision. You imply that any training resources deployed before the current compliance date may cause confusion or constitute an economic loss. Economic loss generally does not constitute irreparable harm, however, and the speculative and undefined training costs you describe do not weigh in favor of a stay. *See Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985).

You have advanced no other reasons that I have found to be sufficient to support your request to delay compliance with the HOS rule. Therefore, for the foregoing reasons, FMCSA declines your request to stay the compliance date of the Final Rule on Hours of Service of Drivers.

Sincerely yours,



T.F. Scott Darling, III