THE IMPACTS OF THE DEPARTMENT OF TRANSPORTATION'S COMMERCIAL DRIVER HOURS-OF-SERVICE REGULATIONS

(113–25)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JUNE 18, 2013

Printed for the use of the
Committee on Transportation and Infrastructure

Available online at: http://www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=transportation

U.S. GOVERNMENT PRINTING OFFICE

81–507 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

BILL SHUSTER, Pennsylvania, *Chairman*

DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee, *Vice Chair*
JOHN L. MICA, Florida
FRANK A. LOBIONDO, New Jersey
GARY G. MILLER, California
SAM GRAVES, Missouri
SHELLEY MOORE CAPITO, West Virginia
CANDICE S. MILLER, Michigan
DUNCAN HUNTER, California
ERIC A. "RICK" CRAWFORD, Arkansas
LOU BARLETTA, Pennsylvania
BLAKE FARENTHOLD, Texas
LARRY BUCSHON, Indiana
BOB GIBBS, Ohio
PATRICK MEEHAN, Pennsylvania
RICHARD L. HANNA, New York
DANIEL WEBSTER, Florida
STEVE SOUTHERLAND, II, Florida
JEFF DENHAM, California
REID J. RIBBLE, Wisconsin
THOMAS MASSIE, Kentucky
STEVE DAINES, Montana
TOM RICE, South Carolina
MARKWAYNE MULLIN, Oklahoma
ROGER WILLIAMS, Texas
TREY RADEL, Florida
MARK MEADOWS, North Carolina
SCOTT PERRY, Pennsylvania
RODNEY DAVIS, Illinois
MARK SANFORD, South Carolina

NICK J. RAHALL, II, West Virginia
PETER A. DEFAZIO, Oregon
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
EDDIE BERNICE JOHNSON, Texas
ELIJAH E. CUMMINGS, Maryland
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
TIMOTHY J. WALZ, Minnesota
STEVE COHEN, Tennessee
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland
JOHN GARAMENDI, California
ANDRÉ CARSON, Indiana
JANICE HAHN, California
RICHARD M. NOLAN, Minnesota
ANN KIRKPATRICK, Arizona
DINA TITUS, Nevada
SEAN PATRICK MALONEY, New York
ELIZABETH H. ESTY, Connecticut
LOIS FRANKEL, Florida
CHERI BUSTOS, Illinois

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

THOMAS E. PETRI, Wisconsin, *Chairman*

DON YOUNG, Alaska
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
JOHN L. MICA, Florida
FRANK A. LOBIONDO, New Jersey
GARY G. MILLER, California
SAM GRAVES, Missouri
SHELLEY MOORE CAPITO, West Virginia
DUNCAN HUNTER, California
ERIC A. "RICK" CRAWFORD, Arkansas
LOU BARLETTA, Pennsylvania
BLAKE FARENTHOLD, Texas
LARRY BUCSHON, Indiana
BOB GIBBS, Ohio
RICHARD L. HANNA, New York
STEVE SOUTHERLAND, II, Florida
REID J. RIBBLE, Wisconsin, *Vice Chair*
STEVE DAINES, Montana
TOM RICE, South Carolina
MARKWAYNE MULLIN, Oklahoma
ROGER WILLIAMS, Texas
SCOTT PERRY, Pennsylvania
RODNEY DAVIS, Illinois
BILL SHUSTER, Pennsylvania *(Ex Officio)*
PETER A. DEFAZIO, Oregon
JERROLD NADLER, New York
EDDIE BERNICE JOHNSON, Texas
MICHAEL E. CAPUANO, Massachusetts
MICHAEL H. MICHAUD, Maine
GRACE F. NAPOLITANO, California
TIMOTHY J. WALZ, Minnesota
STEVE COHEN, Tennessee
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland
ANDRÉ CARSON, Indiana
JANICE HAHN, California
RICHARD M. NOLAN, Minnesota
ANN KIRKPATRICK, Arizona
DINA TITUS, Nevada
SEAN PATRICK MALONEY, New York
ELIZABETH H. ESTY, Connecticut
LOIS FRANKEL, Florida
CHERI BUSTOS, Illinois
NICK J. RAHALL, II, West Virginia
(Ex Officio)

CONTENTS

Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

June 18, 2013

Christopher P. Bertram, Staff Director

James H. Zoia, Democrat Staff Director

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Highways and Transit
FROM: Staff, Subcommittee on Highways and Transit
RE: Subcommittee Hearing on "The Impacts of DOT's Commercial Driver Hours of Service Regulations"

PURPOSE

The Subcommittee on Highways and Transit will meet on Tuesday, June 18, 2013, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to the Department of Transportation's hours of service regulations for commercial drivers. At this hearing, the Subcommittee will hear from the Federal Motor Carrier Safety Administration (FMCSA), the American Trucking Associations (ATA), the Owner-Operator Independent Drivers Association (OOIDA), the Commercial Vehicle Safety Alliance, the National Ready Mixed Concrete Association, and Advocates for Highway and Auto Safety on the impacts of the commercial driver hours of service regulations.

BACKGROUND

History of Commercial Driver Hours of Service Regulations

The authority to regulate commercial driver hours of service first originated under the Motor Carrier Act of 1935 (P.L. 74-255), codified in section 31502 of title 49, United States Code. The Act authorized the Interstate Commerce Commission (ICC) to establish qualifications and maximum hours of service for drivers working for private and for-hire interstate property carriers and for-hire interstate passenger carriers. The ICC promulgated its regulations through a rulemaking on December 29, 1937. Under the regulations, motor carriers could not permit or require drivers to be on-duty for more than 15 out of 24 hours. Within the 15-hour on-duty period, the regulations set a 12-hour maximum daily work period for drivers. The regulations also set a weekly on-duty limit of 60 hours in any 7 consecutive days or 70 hours in 8 consecutive days.

Shortly after the regulations were promulgated, industry stakeholders requested and were granted a stay by the ICC. After oral arguments were heard, the ICC revised the regulations. The ICC decided to change the 12-hour maximum daily work period to a 10-hour driving limit in a 24-hour period. Motor carriers were required to give drivers 8, rather than 9, consecutive hours off-duty each day. The daily on-duty limit was rescinded, which allowed drivers to be kept on-duty for a maximum of 16 hours out of a 24-hour period. The 60- and 70-hour limits remained unchanged. These revised regulations would remain virtually unchanged until 1962.

The next major revision to the hours of service regulations occurred in 1962. The ICC retained the 8-hour off-duty requirement and the 10-hour driving limit, but dropped the applicable 24-hour period requirement. This change allowed drivers who came on-duty and started driving at 12:01 a.m. through 10:00 a.m., followed by 8 hours off-duty, to continue driving from 6:00 p.m. until midnight.

In 1995, Congress directed the Department of Transportation to conduct a rulemaking "dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety" (Section 408 of the ICC Termination Act of 1995 (P.L. 104-88)). FMCSA proposed comprehensive revisions to the hours of service regulations in a Notice of Proposed Rulemaking (NPRM) in 2000. FMCSA collected relevant studies and completed the *Commercial Motor Vehicle Driver Fatigue and Alertness Study*, as well as holding eight nationwide public hearings, before promulgating a final rule on April 28, 2003.

The 2003 rule revised the regulations for property-carrying operations by extending driving time from 10 to 11 hours, but limited the driving window to 14 consecutive hours after coming on-duty. The daily rest period was extended from 8 to 10 hours. These new rules re-established a fixed 24-hour period for drivers, with 14 hours maximum on-duty, followed by 10 hours required off-duty. Prior to the 2003 changes, drivers were able to switch to off-duty time while waiting, such as while being delayed or refueling, and subtract that time from their on-duty totals for the day. Under the 2003 rule, the 60- and 70-hour weekly limits were effectively increased because the rule allowed drivers to restart their weekly hour calculation after they took an off-duty break of at least 34 consecutive hours. Therefore, a driver who maximized the use of the restart provision could work over 80 hours a week.

On June 12, 2003, the final rule was petitioned for review by safety advocates with the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). On June 16, 2004, the D.C. Circuit vacated the rule on the grounds that FMCSA did not consider the impacts of the rule on the health of drivers. Congress directed that the 2003 rule would remain in effect until FMCSA issued a new final rule addressing the issues raised by the Court. On August 25, 2005, FMCSA published a new final rule that left the vacated rule largely intact, by retaining the 11 hours of driving time, 14-hour driving window, 10 hours off-duty, and the 34-hour restart. The new final rule made some revisions to the sleeper-berth provision, to require at least 8, but less than 10, consecutive hours in the sleeper-berth. Drivers using the sleeper-berth provision had to take an additional 2 hours either off-duty or in the sleeper-berth, which is included in the calculation of the 14-hour driving window. The rule also provided an exception for drivers who operate within 150 air-miles of their work location and who drive commercial motor vehicles (CMVs) that don't require a commercial driver's license to operate.

Safety advocates and labor again challenged the daily driving limit and restart provisions in 2005. Separately, the sleeper berth provisions in the rule were unsuccessfully challenged by OOIDA. The D.C. Circuit concluded that FMCSA did not satisfy the Administrative Procedures Act which requires the agency to explain its reasoning and provide an opportunity for notice and comment on portions of the regulatory evaluation. The Court vacated the 11-hour driving time and the 34-hour restart provisions.

In response, ATA petitioned the court and secured a 90-day stay of the rule while FMCSA responded to the court decision. On December 17, 2007, FMCSA published an interim final rule (IFR) while the agency responded to the issues identified by the Court. The IFR retained the 11 hours of driving time and the 34-hour restart provisions. On November 19, 2008, FMCSA published a Final Rule which continued the 2005 rule without changes, including the provisions twice vacated by the court.

On December 18, 2008, safety groups petitioned FMCSA to reconsider the research and crash data justifying the 11-hour driving rule and the 34-hour restart provision. FMCSA denied the petition. On March 9, 2009, these same groups filed a petition for review of the 2008 rule in the D.C. Circuit. In October 2009, FMCSA and the petitioners reached a settlement agreement. FMCSA agreed to publish a final rule by July 26, 2011 under this agreement. On December 29, 2010, FMCSA issued a NPRM seeking comments on the agency's proposed changes to the hours of service rules.

After reviewing comments submitted for the record to the NPRM, FMCSA issued a final rule on December 27, 2011. The rule promulgated the following regulations for property-carrying CMVs:

- the daily driving limit remains at 11 hours,
- the maximum "driving window" remains at 14 consecutive hours after coming on-duty,
- drivers are permitted to drive only if they have had a break of at least 30 minutes sometime within the previous 8 hours,
- the 34-hour restart provision can be used once every 168 hours (7 days) and must include two periods of rest between 1:00 a.m. and 5:00 a.m., and;
- the weekly driving limit remains at 60- and 70-hours.

Several provisions of the final rule went into effect on February 27, 2012. Drivers subject to the final hours of service rule must be in compliance with the restart and rest break provisions by July 1, 2013.

Safety advocates once again challenged the additional hour of driving allowed in the rule. Separately, the trucking industry petitioned the D.C. Circuit to review several provisions of the final rule. The Court heard oral arguments on March 15, 2013.

WITNESS LIST

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration

Mr. Steve Williams
Chairman and CEO
Maverick USA, Inc.
On behalf of the American Trucking Associations

Mr. Mark Savage
President
Commercial Vehicle Safety Alliance

Mr. Edward Stocklin
President
Stocklin Trucking, LLC
On behalf of the Owner-Operator Independent Drivers Association

Ms. Joan Claybrook
Consumer Co-Chair
Advocates for Highway and Auto Safety

Mr. Jeffrey Dean Hinkle
Transportation Manager
Chandler Concrete Company, Inc.
On behalf of the National Ready Mixed Concrete Association

THE IMPACTS OF THE DEPARTMENT OF TRANSPORTATION'S COMMERCIAL DRIVER HOURS-OF-SERVICE REGULATIONS

TUESDAY, JUNE 18, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:00 a.m. in Room 2167, Rayburn House Office Building, Hon. Thomas E. Petri (Chairman of the subcommittee) presiding.

Mr. PETRI. The subcommittee will come to order. Today's hearing will focus on the U.S. Department of Transportation's commercial driver hours-of-service regulations.

July 1st, property-carrying commercial drivers will be required to meet new hours-of-service regulations that will have significant impacts on a large segment of the trucking industry. Truck drivers will be required to take a 30-minute rest break every 8 hours, and will be able to restart their hours-of-service clock only once a week, by not driving for a 34-hour stretch that includes two 1:00 to 5:00 periods.

The FMCSA promulgated these new regulations in December of 2011 with the intent to promote safety and to protect the health of drivers. By allowing drivers ample opportunity to get the proper amount of rest, the regulations are intended to help reduce crashes by reducing driver fatigue. Finding the right balance between providing drivers the opportunity to rest and the flexibility to account for unanticipated delays during the workday has been a challenge.

Since Congress directed the Department of Transportation to issue a rulemaking on commercial driver hours of service in 1995, the regulations have been in constant litigation which has led to confusion among the trucking industry and the enforcement community. Every stakeholder that is impacted by hours-of-service regulation has passionate beliefs on the correct way to implement them, and it is no wonder that litigation has persisted.

The regulations that take effect on July 1st are currently being deliberated by the U.S. Court of Appeals for the District of Columbia Circuit.

The real-world implications of these new regulations are difficult to predict because of the diverse nature of the trucking industry. And I am receptive to the concerns of many of my constituents who argue that a one-size-fits-all approach won't provide the flexibility some companies need to take the appropriate rest breaks. For ex-

ample, I have been asked, if a driver is resting in a chair while waiting for a load to be unloaded or for some other reason and is technically on duty but undisturbed for 30 minutes, why can't such a break be counted toward the 30-minute break requirement?

Some specific trucking operations, such as oil field equipment operators, have a special exemption from some provisions of the hours-of-service regulations; why not others with similar operating characteristics?

We most frequently hear concern where driving is just one small part of the overall job responsibilities, and not the long-haul drivers who are away from home for several days at a time. For instance, I have heard from hundreds of drivers in my State of Wisconsin who transport materials and equipment for highway construction who drive only 2 or 3 hours during a workday, but seemingly will be very much affected. Not only will the drivers themselves be impacted, but how our highway projects are completed will be affected as well. We will hear more about these specific concerns from one of our witnesses today.

I hope today's discussion will focus attention on these issues, and potentially lead to proposals that allow drivers to efficiently complete their jobs without compromising safety. And I am sure that safety is the primary goal of all of today's witnesses. Effective commercial driver hours-of-service regulation will help reduce fatigue-related truck crashes and save lives on our Nation's highways. I hope today's hearing will provide our committee members with insight into this important national safety issue.

I look forward to hearing from our witnesses, and recognize my colleague, Mr. DeFazio, for any opening statement he might wish to make.

Mr. DEFAZIO. Thank you, Mr. Chairman. Mr. Chairman, I think the common ground here is—and I don't think anyone will disagree—that we want to prevent fatigue-related accidents, you know. But getting to that point using the best data available, the best science available, seems quite difficult and tortuous.

As I was walking in, I walked by some staff and I said, "If any of you can explain to me the new hours-of-service rule in 30 seconds or less, I will give you a gold star," and they just kind of laughed, because I have struggled with the restart and the—anyway, it just goes on and on. I understand what FMCSA is trying to do there, in terms of both protecting safety and providing flexibility. It is a very, very difficult kind of combination.

I would observe, as I have previously, that one of the most neglected and disturbing causes of people driving over hours of service, is basically you have a lot of people who are paid by the load, and not by the hour in this industry. And they are in external diseconomy to the people who actually provide for, you know, the warehousing and other things of goods, i.e., it doesn't cost them anything if you have to sit there 8 hours, and they don't care. We used to have rules regarding detention time; we don't. I think we should go back to having rules regarding detention time. It would give us a much more efficient system, overall. It would give us a safer system overall, and it would be a lot fewer people tempted to or forced to drive over their allowable hours of service, if we could

have just-in-time delivery, or close to it, at the warehouses and other places.

So, I am hopeful that we will broadly address these issues today, try and find a place that makes sense. Because, I mean, right now, I mean, we have got one side, the safety advocates, suing because a rule they believe is overly permissive. We have the industry suing because they believe the rule is overly restrictive. The courts have ruled twice in favor of the safety advocates. Who knows what they will rule this time? And FMCSA is going ahead with implementation before the judgment of the court, which I thought—you know, I have got to disagree with some folks, I thought it would have been prudent to wait and see.

But that is where we are today. That is what people have to address on this panel. And I really look forward to some of you sorting this all out for me.

Thank you, Mr. Chairman.

Mr. PETRI. Thank you. And I would like to welcome our panel and thank you for the prepared statements that you have submitted, invite you to—oh, yes, excuse me. Mr. Shuster.

[Laughter.]

Mr. SHUSTER. Thank you, Mr. Petri. I thank you for holding this hearing today, and thank our witnesses for being here today. The new hours-of-service regulations that go into effect July 1st are something that we, as the committee, need to fully understand, how they are going to be implemented, because it has significant impact on the trucking companies in this country.

As Mr. Petri mentioned, I think this is a one-size-fits-all approach to safety. And while safety is paramount to all of us, whether we are here in Congress, or whether we are owners of trucking companies—I know Mr. Stocklin here and Mr. Williams, who run trucking concerns—if they are good business people, safety should come first, and it does come first.

So, again, we need to focus on that. But also, make sure that when we are implementing new rules and regulations, we let the science drive it, not a knee-jerk reaction to something that happened, you know, last year or two years—but when I look at the statistics since 2005, the numbers have been steadily declining on fatalities and accidents. So that is something we ought to make sure we put into the equation.

It was mentioned there are some exemptions for some of these operations, whether it is emergency services and disaster or oil field and others out there. But again, this committee needs to make sure that we fully understand how we are going forward.

There are new technologies out there, also. I was at Mack Trucks in Hagerstown, Maryland, and they let me drive a truck which was not on the highway—so for all those concerned about safety, know that I was not in the flow of traffic—but it was an automatic transmission, which they, the folks at Mack told me, it causes less fatigue on drivers. They don't have to fight the clutch and the stick.

So, I hope that is something we are looking at. And they say they are selling more and more of these because they—to attract a different kind of driver. It is less intimidating to some folks that otherwise wouldn't drive a truck. And so, again, I hope we are looking

at those new technologies and taking that into the equation because, as I said, there is less fatigue to a driver.

And of course, another great concern of mine, whether it is on this committee or any committee in Congress, is the growth of the fourth branch of Government, and that is the Federal bureaucracies taking more—gaining more and more power, with Congress having little to say in these matters. So our oversight is going to be critical to make sure that we, as the elected branch of Government, make sure that we don't allow the bureaucracies to overregulate and do things that are going to cause great harm to this economy.

A statistic I saw in 2007, the—while the Congress passed 138 laws, the Federal agencies put forth over 2,900 new rules and 61 significant regulations without Congress or without many stakeholders having much to say about it. So, again, this is a great concern of mine. You know, we are going to have aggressive oversight to make sure that these rules don't overstep their bounds, that they certainly want to make sure that they provide safety to the traveling public and on our highways. But again, it should be based on the science and not based on an emotional play here.

So, again, I thank the chairman for holding this hearing, and yield back.

Mr. PETRI. Thank you. Our panel of witnesses consists of Administrator Anne Ferro, who is the Federal Motor Carrier Safety Administration representative; Mr. Steve Williams, the chairman and CEO of Maverick USA, Inc., on behalf of the American Trucking Associations; Major Mark Savage, president, Commercial Vehicle Safety Alliance; Mr. Edward Stocklin, president, Stocklin Trucking, on behalf of the Owner-Operator Independent Drivers Association; and Ms. Joan Claybrook, consumer cochair, Advocates for Highway and Auto Safety, Former Administrator, National Highway Traffic Safety Administration.

Welcome to all of you, and Mr. Jeffrey Dean Hinkle, who is transportation manager, Chandler Concrete Company, Inc., on behalf of the National Ready Mixed Concrete Association. Excuse me. And again, by unanimous consent, your full statements will be made a part of this record.

We would invite you to summarize them in approximately 5 minutes. And to help you do that, the green light turns yellow a minute before the 5 minutes are up.

And we will begin with Administrator Ferro.

TESTIMONY OF HON. ANNE S. FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION; STEVE WILLIAMS, CHAIRMAN AND CEO, MAVERICK USA, INC., ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS; MAJOR MARK SAVAGE, PRESIDENT, COMMERCIAL VEHICLE SAFETY ALLIANCE; EDWARD STOCKLIN, PRESIDENT, STOCKLIN TRUCKING, LLC, ON BEHALF OF THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION; JOAN CLAYBROOK, CONSUMER COCHAIR, ADVOCATES FOR HIGHWAY AND AUTO SAFETY, FORMER ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; AND JEFFREY DEAN HINKLE, TRANSPORTATION MANAGER, CHANDLER CONCRETE COMPANY, INC., ON BEHALF OF THE NATIONAL READY MIXED CONCRETE ASSOCIATION

Ms. FERRO. Chairman Petri, Ranking Member DeFazio, Chairman Shuster, members of the subcommittee, thank you for inviting me today to discuss how changes to the new hours-of-service rule will improve safety on our roadways and ultimately save lives.

The top priority of the Federal Motor Carrier Safety Administration is safety. The number of people killed each year, as the chairman indicated, and those killed in large truck crashes has, in fact, fallen significantly—in fact, almost 30 percent—between 2000 and 2011, from 5,282 to nearly 4,000. This number is still unacceptably high. And it shows there is still work to do. Every life is precious. One life lost is one too many.

In 1995 Congress agreed. They directed this agency to revise the current hours-of-service rule to reduce truck-related crashes and fatalities. A leading factor in truck crashes is fatigued drivers. And under the hours-of-service rule, drivers operating large trucks can work extremely demanding schedules, including working up to 80 hours per week and 14 hours per day. These extreme schedules increase the risk of fatigue-related crashes, and they do lead to long-term health problems for drivers.

The hours-of-service rule that will be fully implemented on July 1 makes reasonable and commonsense changes to reduce the number of fatigue-related crashes, the risk of chronic fatigue. These changes include limiting the maximum allowable workweek from 82 hours to 70; restricting the use of the 34-hour restart to once in a week or once in 168 hours; and requiring a very reasonable 30-minute break at some point during the first 8 hours of a driver's shift.

Most of the industry's truck-driving workforce—in fact, 85 percent—will see little to no change in their work schedules. However, those drivers working the most extreme schedules, that schedule that can go up to 80 hours in a 7-day period, are the ones that will, in fact, certainly feel an impact by the changes in this rule.

FMCSA developed this rule through an unprecedented level of transparency, by engaging all sectors, including business, the safety community, advocates, drivers, business owners, shippers. We included recommendations from our Motor Carrier Safety Advisory Committee, which is a working group cross-representative of industries, law enforcement, labor, and again, safety. We also included input from thousands of stakeholders, drawn not just from com-

ments submitted during the comment period, but from five listening sessions, an unprecedented number of listening sessions for any of our agencies, held across the country.

And finally, we incorporated years of peer-reviewed safety studies and research into crafting this complete rule. This high level of public engagement does contribute to a very balanced rule, a rule that provides a net gain in public safety and driver health, including savings of $280 million from fewer crashes and $470 million from improved driver health. Most importantly, the rule will result in important safety benefits for the American public, including saving and preventing an estimated 1,400 crashes, 560 injuries, and saving almost 19 lives.

Our work did not end when this rule was published 15 months ago; we are working with industry and law enforcement to implement these changes. On FMCSA's Web site, you can find resources such as training materials, a guide to the new hours-of-service rule, very clear and robust examples of hours-of-service logbooks under the new rule. And, because of our efforts, the earlier changes that took effect in the rule—by the way, changes did take effect within a month of this rule being finalized almost 15 months ago—those changes went very smoothly, and we are confident that the changes we are talking about today will also go very smoothly.

Overall, this is a very important tool to advance our fundamental safety mission and our solemn responsibility to protect the public and save lives. After all, our citizens deserve no less.

Mr. Chairman, members of the committee, I will be pleased to answer questions as the hearing progresses. Thank you.

Mr. PETRI. Thank you.

Mr. Williams?

Mr. WILLIAMS. Chairman Petri, Ranking Member DeFazio, subcommittee members, thank you for this opportunity. As a safety leader, I am here today to express ATA's concern about the changes to the hours-of-service rules, and describe how these rules will impact my company, safety, and the economy.

Since 2003, when the framework for the current rules was published, truck-involved fatalities have dropped by 25 percent. And also, a more recent analysis found a 31-percent drop in preventable collisions before 2004 and 2009, which begs the question why was the change to the hours-of-service rule truly necessary.

Well, one thing is clear. FMCSA's motivation to change these rules was not based on evidence of a real problem. FMCSA did not undertake its own effectiveness analysis of the 2003 changes to the rules, even though they represented the first substantial changes in over 60 years. FMCSA's purpose and need for regulatory action did not cite any research or data analysis showing a problem. And I can confidently tell you that the industry will lose operating flexibility and productivity, which will raise cost. And the rules will increase driver stress and frustration without the corresponding net benefits.

Initial data gathered by ATA reflects the likely average productivity loss will range between 2 and 3 percent. This estimate is consistent with a recent Wells Fargo security analysis finding a likely productivity loss of 1.5 and 4 percent. This translates into $500 million to $1.4 billion annually lost in productivity. My own com-

pany's analysis of recent electronic logging data found that 30 percent of our drivers would be in violation of the next rest break requirement because their breaks were not 30 minutes consecutively long. Thirty-six—excuse me—forty-six percent of our drivers did not meet the two consecutive 1:00-to-5:00 a.m. rest periods. These findings will cause Maverick to make operational changes that will affect my drivers and my business.

And these changes are not warranted based on Maverick's safety performance, nor that of the industry. It is also important to note that Maverick's drivers currently use the restart not because they have exhausted their maximum weekly hours, but to ensure that they have met a full—that they have a full set of weekly hours available to them the next week—for future work schedules that can be unpredictable in the irregular route trucking.

This type of use is common and was completely discounted by FMCSA. The agency erroneously claimed that only night-time drivers who work extreme hours would be affected, when in fact most drivers who use the restart do so in order to have the flexibility to manage future schedules.

Maverick has trained its drivers and operation personnel and has spent conservatively more than $57,000 doing so. But our costs are going to be less than others, relatively, because of the technology that we employ. FMCSA estimated that training, reprogramming, and transition costs would total at least $320 million. Because FMCSA declined your request for a short delay, the industry will spend this considerable amount of money, though the rule may be altered in court.

It is difficult, bordering on impossible, to accept FMCSA's suggestion that offsetting benefits will result. Yesterday, ATRI published a new analysis entitled, "Assessing the Impacts of the 34-Hour Restart Provisions." This is the only analysis of its kind. ATRI used representative industry data and a far greater data set used by FMCSA to test the validity of the agency's cost benefit findings. ATRI replicated FMCSA restart analysis using the agency's own methodology. And its findings contradict those of FMCSA. FMCSA's claim that 15 percent of drivers work more than 70 hours a week is grossly overstated, likely because their data was gathered from compliance reviews and safety audits. But carriers are typically chosen for compliance reviews based upon poor safety performance histories.

ATRI also discovered FMCSA's analysis did not capture many other costs. By following FMCSA's methodology using representative data, including a small amount of weekly time lost—15 minutes week, for example, from impacts ignored by FMCSA—ATRI found a strikingly different outcome. Instead of an annual net benefit of $133 million, in fact ATRI found a net cost of $198 million—$189 million, for a difference of $322 million. ATRI's findings call into question the credibility of FMCSA's analysis. Congress could help, but time is growing short.

Congress could direct FMCSA to postpone the effective date of the new rules until the MAP–21-directed restart field study is completed, and the results are reported to Congress. Maverick is actually participating in that study, as one of three carriers. And Congress should require FMCSA to postpone any rule changes until it

implements the mandate for electronic logging devices. There are good reasons to have this mandate in place first, and I would like to elaborate on those in Q&A, if possible.

Finally, I want to thank the chairman and ranking member of both the subcommittee and full committee for asking the Secretary to consider staying the new rule until 90 days after the court rules in the pending litigation. Though denied, your request meant a great deal to those of us in the industry.

Thank you, and I would be happy to answer any questions at the appropriate time.

Mr. PETRI. Thank you.

Major Savage?

Mr. SAVAGE. Good morning. Mr. Chairman, Ranking Member, members of the subcommittee, thank you for holding this important hearing, and for inviting the Commercial Vehicle Safety Alliance to testify. My name is Mark Savage, and I am a major with the Colorado State Patrol, and the president of the Commercial Vehicle Safety Alliance. The Alliance represents State, provincial, and Federal commercial vehicle safety officials responsible for the enforcement of commercial motor vehicle safety laws in the United States, Canada, and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing safety and enforcement agencies together with industry representatives to solve problems and save lives.

In Colorado, I am responsible for the commercial vehicle safety and enforcement program for my State. The troopers and officers who work for me will be enforcing these new regulations, starting on July 1st.

Regardless of our opinion on any given regulation, CVSA members will enforce the rules set forth by Congress and the Federal Motor Carrier Safety Administration. We appreciate FMCSA's effort on the development of this rule to balance safety and commerce.

The hours-of-service regulations are a critical component of commercial vehicle safety. There are four key principles that should guide the crafting of any regulation and its impact on safety: uniformity, clarity, enforceability, and science-based and data-driven. While CVSA is not equipped to comment on the science behind the rules, we are hopeful that as we gain experience with these rules we will see an increase in safety and compliance.

We view the new rules as fairly straightforward. However, we do believe the 34-hour restart provision, the 30-minute rest break requirement, and the new definition of "on-duty time" provide greater opportunity for concealment and misrepresentation of hours of service by drivers and carriers who are so inclined. These changes have the effect of shortening the driver's workday and workweek, which may create more incentive for some to falsify.

Furthermore, the new rules will require more time and effort from enforcement to identify inconsistencies and concealed hours. The new rules will be more difficult to enforce roadside, because the rules expand, rather than reduce, opportunities for concealing hours. In my written testimony I have provided several examples to demonstrate why enforcement will have challenges with the new rules.

The implementation of electronic logging devices will help to alleviate some of the concerns regarding the enforceability of the new rules. While it is true that a persistent driver might find a way to trick or beat the device, the provisions in MAP–21 call for more stringent certification and tamper-resistant requirements, which will make cheating the devices more difficult.

CVSA continues to support the requirement for electronic logging devices for hours-of-service compliance for all commercial vehicles. The devices will help improve the enforceability of the rules. However, electronic logging devices will not address all the enforcement gaps. Drivers should also be required to maintain supporting documents in the vehicle, so the documents can be reviewed by roadside enforcement and compared with the information being recorded in the record of duty status or the electronic logging device.

With no current regulation regarding maintaining supporting documents in the vehicle, the ability for inspectors to check the validity of records of duty status roadside is compromised. It is true that some of these violations can be detected during the compliance review. However, the roadside inspection program is designed to be proactive to help identify unsafe vehicles and drivers and get them off the road before there is a crash. If an inspector cannot detect an hours-of-service violation roadside, a driver who has exceeded his or her hours could be allowed to continue driving.

Further complicating the matter is the priority for conducting compliance reviews is set, in large part, by results from previous roadside inspections. If violations are not discovered roadside, then that motor carrier might not be flagged for a review.

In summary, while CVSA will enforce the rules to the best of our ability, we believe the pending hours-of-service changes will continue to make enforcement more difficult, especially for those drivers and carriers who choose not to comply. While the hours-of-service regulations are designed to help the driver to obtain quality rest, each of the three new rules can be disguised or falsified. The rules have shortened the work period for some drivers, thus increasing the temptation to falsify the records of duty status.

While we will not know for some time what impacts this ultimately will have on safety, we do know that without additional tools, such as electronic logging devices and supporting document requirements, roadside enforcement's job will continue to be challenging. And those who seek to break the rules will have more opportunities to do so.

Each year there are approximately 3.5 million roadside inspections conducted in the United States. The roadside inspection programs identifies high-risk operators and removes them from the road before a crash occurs. If we do not have regulations designed properly or provide roadside enforcement with the appropriate tools to be effective at their work, the anticipated safety impacts will not be realized to their full potential.

Last, but not least, research by FMCSA has determined that in 2009 there were 573 lives saved from roadside enforcement activities conducted through the Motor Carrier Safety Assistance Program, which equates to about $3.4 billion in safety benefits. In 2009, these grants to the States totaled $162 million, equating to

a 21 to 1 benefit-to-cost ratio. Clearly, the roadside enforcement program provides a remarkable return on our investment.

Thank you, Mr. Chairman, for the opportunity to be here today, and I will be happy to answer questions at the appropriate time.

Mr. PETRI. Thank you for your testimony.

Mr. Stocklin?

Mr. STOCKLIN. Good morning. My name is Ed Stocklin. I am from Wauna, Washington. I have been a professional truck driver for 35 years. I have driven more than 2 million miles and have hauled almost every imaginable kind of freight. Today my wife, Michelle, and I own and operate Stocklin Trucking, where I haul overdimensional loads. I am also a member of Owner-Operator Independent Drivers Association, OOIDA, which represents the small business truckers that are the majority of the U.S. trucking industry, with more than 90 percent of all carriers owning 20 or less trucks. Half of the trucking companies one-truck operations, like mine.

Thank you for the opportunity to provide truckers' perspective on hours-of-service rules, and how upcoming changes will impact our ability to drive safely, efficiently, and profitably. The changes that start on July 1 continue to trend the reducing flexibility afforded to truckers. This makes it harder for us to meet many demands of customers, regulators, and on-the-road environment.

To fully understand our perspective, it is important to recognize that the majority of truckers are compensated on a per-mile basis. Simply put, if wheels aren't turning, you aren't earning. Further, we can begin our 14-hour on-duty period—that clock keeps running unless we take 8 hours of off and then in the sleeper berth. While it may be easy for you to wait out traffic, bad weather, or an accident because of an unstoppable 14-hour clock, the trucker does not have that luxury.

Our situation is made even more complex by our operational changes. For example, if planning a morning departure doesn't happen until the evening because the warehouse waited all day to load our truck. Our customer only takes night-time deliveries. All of these challenges impact our ability to operate safely, efficiently, and profitably.

Most—excuse me. Most of our—flexibility does not mean—allows—does not mean allows truckers to drive when tired. It means to give us the ability to rest when we need, and to drive when we are rested. Nothing should come in the way of me stopping to take a rest break. Yet truckers are commonly placed between inflexibility and customers, regulatory demands, and demands that will only become more inflexible starting July 1.

I generally haul from west coast to east coast and back. My oversized loads often prevent me from driving outside of daylight hours. Further, I also play an active role in loading and unloading my truck. This often exhausts my time available for me, under the seven-day duty cycle, before I am able to complete my cross-country trip. Under the current rules, I am able to restart that cycle whenever I need, by taking 34-hour break. This ensures I am well rested, with enough time for my trip back cross-country. However, under the changes that start July 1, it would limited—I will be limited to taking one 34-hour restart every 7 days. This means I will

no longer be able to restart when I need to, and a restart may become an extended off-duty layover.

Additionally, the 1:00 to 5:00 a.m. period are based upon my home time zone. When I am taking an east coast restart, I will need to be off between 4:00 and 8:00 a.m., reducing my already limited daylight driving time. Needless to say, this completely changes everything, even truckers.

Even—as these additional restrictions further reduce a trucker's flexibility, the demands we face have only increased. Well, not only all demands are under DOT controls, all changes that start next month will make it more difficult for truckers to balance them and to operate safe and efficient and profitable business. While Administrator Ferro deserves credit for efforts to examine the demands faced by truckers in more detail, they are not reflected in changes going into effect next month.

OOIDA supports rules that are flexible, allowing and encouraging truckers to rest when tired, and to work when rested. This will provide an important tool for balance—to balance the day-to-day demands, and would be—best improve highway safety.

Thank you for your opportunity to testify in holding this hearing today. Questions, if you like to, any time. Thank you.

Mr. PETRI. Thank you, Mr. Stocklin.

Ms. Joan Claybrook.

Ms. CLAYBROOK. Thank you, Mr. Chairman, Mr. Chairman Petri, Ranking Member DeFazio, and Chairman Shuster, and members of the committee. I appreciate this opportunity to testify today on the commercial driver hours-of-service regulation last issued in December 2011, and currently in litigation. I am Joan Claybrook, Former Administrator of the National Highway Traffic Safety Administration, and the consumer cochair of Advocates for Highway and Auto Safety, a unique insurance company and consumer coalition dedicated to improving traffic safety.

Truck crashes are serious and they are deadly. On average, over the past decade, from 2002 to 2011, large truck crashes each year claimed 4,000 lives and injured nearly 100,000 people. Despite declines during the recession, fatalities and injuries have increased every year since 2009. This is the equivalent of a major airline crash every other week all year long. Large truck driving is one of the most dangerous U.S. occupations, killing 547 drivers in 2011. The annual cost to society of large truck crashes is over $83 billion a year.

But the public pays the biggest cost in personal loss and tragedy. In the audience today representing thousands of families whose family members have been killed and injured by tired truckers are Jane Mathis of St. Augustine, Florida, who lost her son and daughter-in-law returning from their honeymoon, when a driver virtually ran over their car in slow traffic; Daphne and Steve Izer of Lisbon, Maine, who lost their son and three friends when their vehicle, while stopped in a break-down lane, was struck by a driver who had fallen asleep; and Larry Liberatore, whose son was killed when a truck driver fell asleep behind the wheel, crossed three lanes of traffic, and plowed over the car his son was in on the shoulder of the highway.

The problem of tired truckers is not new. Almost 20 years ago, the 1995 National Truck and Bus Safety Summit organized by DOT with experts and stakeholders, identified driver fatigue as the number one safety issue in the trucking industry. In response, Congress immediately enacted Section 408 of the Interstate Commerce Termination Act, requiring DOT to adopt necessary "countermeasures for reducing fatigue-related instances and increasing driver alertness."

Unlike strict rules and enforcement with fatigue in commercial air transportation, the Government has done little to improve trucker fatigue. In 1937, truck drivers were exempt from the Fair Labor Standards Act, meaning that companies cannot be required to pay overtime. As a result, drivers are paid by the mile, not the hour, like other employees in America, encouraging drivers to drive as far and as fast as they can.

But despite almost continuous rulemaking and litigation since the late 1990s after passage of this legislative mandate, the rules governing truck drivers got worse, not better. In 2003, the Department of Transportation increased the 10-hour limit on continuous driving to 11 hours, and that is 3 hours more than Americans are required to work in far less arduous jobs. And it allowed a recalculation of the limit on weekly hours of driving by instituting a 34-hour restart, essentially short-cutting the end of the workweek rest and recovery period for drivers who drove up to their maximum weekly hours before the end of the week.

The restart allows drivers to take only 34 hours—or you might say a shortened weekend—and then recalculate driving hours with a fresh start, cramming 17 hours more driving into the week. This maneuver allows drivers to significantly expand their driving hours beyond the prior hard limit of 60 hours for a weekly driving cap, or 70 hours for a driver in an 8-day schedule.

Truck crash victims, citizen groups, the Teamsters, and others sued DOT and won two rulings from the Federal Court of Appeals overruling DOT in 2004 and in 2007. The subsequent 2011 final hours-of-service rule, which is about to take effect on July 1, 2003, failed to cut back the continuous hours of driving to 10 hours, which had been in place, by the way, for 70 years, and only minimally considered the restart issues.

Even the Federal Motor Carrier Safety Administration estimates that about 13 percent of fatal truck crashes involve driver fatigue, which we think is an underestimate. The agency made only modest adjustments to the hours-of-service rule, which you have heard described.

I believe that we can do better, and I think we know what it takes. These limited safety benefits of the current rule, compared to the size of the problem, are why other improvements are essential to protect drivers' health and protect the driving public. Studies have found that since the current HOS rule was issued, large numbers of drivers admit to being deeply fatigued behind the wheel. Nearly 48 percent of drivers admitted that they had fallen asleep while they were driving. Other historical research shows that the crash risk for drivers increases exponentially after 8 hours of driving, and is at higher levels with more driving. And you know

that if a driver nods off for even a second in those 11 hours of driving, it could result in a deadly crash.

Cumulative sleep deprivation can only be overcome through extended periods of off-duty time for rest and recovery. And for all these reasons, we felt compelled to sue once again. We have several appendices in our testimony which I hope are helpful to the committee, including excerpts from court decisions and a chronology—history of the rulemaking.

Thank you so much, Mr. Chairman. I appreciate it.

Mr. PETRI. Thank you.

And last, but certainly not least, Mr. Hinkle.

Mr. HINKLE. Chairman Petri, Ranking Member DeFazio, and members of the committee, thank you for the opportunity to share the ready mixed concrete industry's concerns with the upcoming changes to the Federal hours-of-service regulations. My name is Jeff Hinkle, I am the transportation manager for Chandler Concrete Company, a family-owned-and-operated ready mixed concrete company based in Burlington, North Carolina.

Chandler Concrete Company was founded in 1946, and currently employs 380 people. We operate 40 ready mixed concrete plants, 256 commercial motor vehicles, deliver 655,000 yards of concrete annually, and have operations in North Carolina, Virginia, and Tennessee. Today I am also testifying on behalf of the National Ready Mixed Concrete Association, of which I am the current vice chairman of the operations, environment, and safety committee.

The current hours-of-service regulations our Nation's commercial motor vehicles are operating under are not perfect. However, they are manageable and much more flexible for operations of the ready mixed concrete industry than the new and pending hours-of-service rule changes. As with most small businesses, operating a ready mixed concrete company means there are finite amounts of resources for everything, whether it is ordering inventory, hiring employees, dealing with an array of mandates, or, in the case of hours of service, making sure our drivers are compliant with an already complicated and burdensome safety measure, while trying to deliver a perishable product as soon as possible. Adding another layer of regulation to this only hinders the ability to run a successful business.

Here is why the hours-of-service changes do not work for Chandler Concrete Company and the ready mixed concrete industry. The mandatory break of 30 minutes every 8 consecutive hours is, by far, the most overburdensome and difficult for the ready mixed concrete industry. Ready mixed concrete drivers typically spend far less than 50 percent of their own duty time actually driving. The other 50 to 75 percent is spent at the plant, waiting to be dispatched, at the job site, waiting for the contractor to receive the concrete, unloading concrete, and performing other administrative duties.

Companies need to have the flexibility to give breaks as the schedule dictates throughout the day. For example, a concrete delivery often takes more than 2½ hours to complete. Concrete is a perishable product, needed on a just-in-time basis. Once a delivery is started, it must be completed, or the concrete may harden in the

truck, causing thousands of dollars worth of damage, and potentially violating a delivery contract.

Every day is different in the construction field. Thus, companies need the flexibility to deliver concrete when a customer needs it. Drivers also have a flexible start time, where one day they start at 7:00 a.m. and the next at 12:00 p.m.

Ready mixed concrete deliveries do not happen on a regular 9:00-to-5:00 schedule, nor do concrete customers always plan deliveries. Often, customers order concrete on an as-soon-as-possible basis. As well, by requiring this 30-minute break, which more often than not will be required to be taken as off-duty, nonpaid time, this break ultimately keeps drivers away from their families longer, and with no additional pay. Due to all of these factors, compliance with a 30-minute break unfairly affects the effectiveness of delivering ready mixed concrete, and the practices of the ready mixed concrete business without improving safety.

The ready mixed concrete industry has estimated industrywide compliance with the hours-of-service rule change to cost roughly $268 million in the first year alone. This cost, in part, includes driver training, new technology, administrative expenses, customer complaints, additional fuel, hiring of more drivers, and buying more equipment.

In conclusion, the easiest and clearest solution to the problems outlined above is to reinstate the pre-December 2011 hours-of-service regulations. We should be smart enough to recognize unique industries and how these types of regulations unnecessarily adversely affect them.

Again, thank you for the opportunity to comment on how the hours-of-service rules changes will affect Chandler Concrete Company and the ready mixed concrete industry. I am happy to answer any questions the committee may have.

Mr. PETRI. Thank you. And thank you all for your testimony. The testimony of the last witness on the difficulty for the concrete industry—and I suspect asphalt as well—is reminiscent of previous hearings, where we had people testifying on previous hours-of-service rules who were working for utilities, for example, driving to and doing work. If you have a storm and wires are down, are they supposed to stop and let people stay in the dark, or should there be exceptions, some flexibility?

For the agricultural industry, during harvest times and other times a year, it is very important that they not just stop and let crops rot or fail or whatever. The same thing, evidently, is true in the petroleum industry, where some exceptions have been granted. And I am a little surprised that in the rulemaking process, I don't know if you failed to comment on it, or if they just ignored the concerns that you——

Mr. HINKLE. The National Ready Mixed Concrete Association did submit comments on the ruling.

Mr. PETRI. I would like to ask Mr. Savage if—you alluded to the possible increase in enforcement difficulties with the new rules and said your written testimony provides some concrete examples. If you could expand on that for a minute or two, it would be much appreciated.

Mr. SAVAGE. Thank you, Mr. Chair. Absolutely. My written testimony provides several examples, I believe three. I will briefly discuss one, and it is specifically related to the fact that we don't have the ability to check supporting documents.

For example, the new rules allow or require a driver to take 30 minutes off before they reach 8 hours of driving. And currently, there is no requirement to maintain supporting documents. So a driver, conceivably, if they were inclined to falsify their log, could go into a truck stop and fuel their truck. During that time that they were fueling their truck and checking their load, load securement and checking the truck, that actually, at that time, is supposed to be counted as on duty, not driving. The driver could conceivably log that time as being their off-duty time. And without us having the receipt for the fuel, we may not be able to determine whether or not that driver was actually resting during that 30-minute break.

Mr. PETRI. Thank you. Ms. Ferro, if you would care to respond to any of the other panel members' testimony.

Ms. FERRO. Thank you, Mr. Chairman. Thank you for that opportunity. Two quick things I want to follow up on.

Mr. Chairman, you rightly asked about special exceptions for certain industry categories, understanding that oil fields have certain special exceptions from hours of service, agriculture has certain special exceptions from hours of service, as does the concrete industry. The concrete industry—and that was not changed under this rule that takes effect July 1—has the opportunity for a 24-hour restart at any point in time when they are operating on a job site. And of, course, utilities also have a special exception for responding to emergencies.

So I want to be sure that that is clear. It is a 24-hour within operations within a 50-mile radius, and it is something that Congress put in place some time ago.

Mr. PETRI. I think what they have indicated to me is that the half-hour break is a real problem because the concrete could set, or it could interfere with the process. They are dealing with a natural substance that is not going to rest for half-an-hour, it is going to keep on congealing, or whatever. And the same thing with hot asphalt and so on. Could you comment on that, or how that can be managed more effectively?

Ms. FERRO. Absolutely, Mr. Chairman. I appreciate this opportunity to comment, because the 30-minute break is a very reasonable expectation. It is a 30-minute break within a 14-hour workday. In fact, if you work an 8-hour day in this industry you wouldn't even be required to take the 30-minute break, because it only starts if you are going to drive after that eighth hour.

With regard to areas of confusion—and so, again, this is a great opportunity to clarify—the 30-minute break can be taken by the driver at any point in time during that 14 hours, providing it happens before any driving occurs after the eighth hour of work. So, in many cases, a driver might take—to maximize the use of that 30-minute break and just only have to use it once within a 14-hour day, they would optimally take it some time between the fourth and eighth hour of working.

In the case of the concrete industry, they might choose when that driver is on a loop back to the plant to pick up more product to say, "All right, go off duty, you know, hop in your cab"—and this was a different change we made in the hours—"and take a 30-minute break, you are off duty, you are not responsible for the load, we are not going to reload you until you have had that 30-minute break."

So there are certainly—this idea of having flexibility, that 30-minute break is accessible throughout that day. But again, it is optimized if the driver takes it some time between the fourth and eighth hour. And——

Mr. PETRI. Mr. Hinkle, would you care to respond?

Mr. HINKLE. Yes, sir. To optimize our workdays in the summertime, you know, a 14-hour day is a normal day. Drivers get 10-, 15-, 20-minute breaks throughout the day probably every couple of hours.

So, you know, our biggest reason is to sit them down and take them off the clock for 30 minutes is going to be tough for us to deal with. When they go through the day, they don't deal with the fatigue than an over-the-road driver—you know, maybe driving 6, 8, 9 hours at a time. You know, they are constantly getting short breaks throughout the day. Maybe not 30 minutes, but you know, 15, 20 minutes, and such. So they don't reach the fatigue level that a driver driving a long distance would reach.

Mr. PETRI. Thank you. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Since this is a subset of a very complicated issue, I am almost grasping it.

So, in the aggregate case, it seems to me there are two things that might apply and might be within the capabilities of the Administration. There is the exemption for the time a driver spends resting in a parked commercial motor vehicle—may be considered off-duty time. If—a lot of these guys are—and/or women—are sitting in line, just with the truck rotating so the concrete won't set up. And every once in a while they might have to move. I mean I wonder if that would solve the problem, if there was an exemption for you are not actively doing anything with the truck, but it is just rotating because you don't want your concrete to set up.

Mr. HINKLE. Well, that is why we have got to clarify the definition of on-duty and off-duty time.

Mr. DEFAZIO. Right.

Mr. HINKLE. Because——

Mr. DEFAZIO. But that could help, because, I mean, they really are in line here, right?

Mr. HINKLE. Yes, sir. That could help. If they are waiting you know, 30 minutes. But then again, we don't know how long we are going to be waiting——

Mr. DEFAZIO. Right. But that could take care of some of it.

Mr. HINKLE. Right.

Mr. DEFAZIO. But the other issue would be—and perhaps Ms. Ferro can address this—I was kind of wondering about the 8 hours and 14 hours, and I was thinking, wow, these guys—I mean, you know, how are they taking care of bodily functions? And as he is pointing out, they are getting short breaks during those 8 hours or 14 hours.

Mr. HINKLE. Right.

Mr. DEFAZIO. What if those were—if they could aggregate those? If these guys are, you know, they drive there, they get there with a truck, they know it is going to sit for a minute, they get a 15-minute break back in the truck. I mean what if you could aggregate those, as opposing to, say, in a lump sum? What does the research say about—because they all say—you know, the stuff I read says really short naps can refresh a person. Like just nod off, you know, and come back—except if you are at the wheel, obviously.

So, what about allowing aggregation of these shorter breaks that people take, particularly in this industry, which is short-haul driving?

Ms. FERRO. So back to Chairman Shuster's expectation that any kind of a rule for any agency is research-based, scientifically identified, defined, developed, when it comes to breaks and the opportunity and the—all findings, whether it is in a standard manufacturing plant or in a heavy-duty vehicle operation, a 30-minute break where the individual is completely off duty from operations, does in fact contribute to a much lower crash risk in that subsequent hour. That is what the research says. It is very clear. A semi-off-duty break, a little bit of—less of an improvement in reducing crash risk.

The concept here is there is a clear safety benefit. I am sure Mr. Hinkle also wants safety on the worksite, given the kind of heavy equipment his operators are running. So that optimum break is one 30-minute break. It improves that driver's clarity, that operator's ability to respond quickly, if there is an issue.

One opportunity to consolidate a break is to take two of those 15 minutes he referenced and allow the driver to grab it when they are going back to the plant, when they are back to the plant, before they reload. Another is to take the off-duty issue described and ask another driver, "Hey, watch my truck while it is turning. I am going to be here for another 2 hours. Can you take 15 minutes while I take 15 and we will split that time and watch each other's rigs?" I suspect that also goes on at worksites.

But at the core of this is the concept of improving the ability of that operator to be as safe and alert as possible in a very challenging work environment, understanding that everybody still needs the flexibility to get the job done. That concrete is very important to get poured.

Mr. DEFAZIO. OK. Well, I am—if the research is that definitive, I am just not sure. I mean you are saying there is some improvement with aggregated, shorter breaks, you are just saying you don't capture the full benefits. I mean did the research drill down to the level of short-haul driving versus long-haul driving, in terms of those sorts of breaks?

Ms. FERRO. I will have to go back and check, and I will respond to——

Mr. DEFAZIO. Because, I mean, short-haul driving, to me, is very different——

Ms. FERRO. Well——

Mr. DEFAZIO [continuing]. Attention span.

Ms. FERRO. If I could respond real quickly, the research generally is not unique to operating a heavy-duty vehicle. It is any sort of heavy equipment operation. The research with regard to workplace

safety reinforces, under any kind of OSHA standard or OSHA research, NIOSH research, that, in fact, an operator that takes a 30-minute break off duty has the optimum opportunity to reduce any sort of accident risk within that first hour when they come back on duty.

We do it all the time. The difference is that we are not operating heavy equipment. And the risks of us bumping into somebody aren't as severe as somebody who is using heavy equipment——

Mr. DEFAZIO. If I could—just one other quick thing, Mr. Chairman.

Ms. FERRO. Yes.

Mr. DEFAZIO. You know, again, I have been trying to puzzle through the restart. And Helena, who I didn't talk to when I said no one could get an award for explaining this fully, has done a very spiffy little chart here. And what she—her conclusion here is that, with the 34-hour restart, you could still get to over 80 hours in a week.

And then that—what would happen would be your restart would move a couple of days every week, and it would back up through the week. But you still could be consistently driving more than 80 hours in a week. So I am not even sure that this extraordinarily difficult to explain concept is accomplishing your stated goal, which is to prevent anybody or everybody from driving more than 80 hours in a week in consecutive weeks.

Ms. FERRO. Well, if I might clarify now, Helena is right. She gets to this stuff very quickly and very accurately. You can, in fact, under the new rule, run 80 hours, take the restart. Your next run will be limited to about 57 to 60 hours, and then you will have to take a longer break before you can run back at 80.

Again, the whole concept behind this rule is pretty straightforward. The vast majority of the industry operates very well and within any kind of reasonable expectation of driver fatigue and driver wellness within this current construct. It is that opportunity to stretch the margins under the current rule by using that restart to move the week in that creates the risk that a driver would run 80 hours, 34-hour break, 80 hours, 34-hour break, 80 hours, week after week after week. And that creates the condition of cumulative fatigue, chronic fatigue, which not only makes that driver a real risk behind the wheel, it also impacts that driver's health in the long term.

What this rule does, it limits the use to one time, let's say, within a 2-week period. You can use it—80 hours you are on, you take the 34-hour restart, now your next week you are stuck at 57 hours to 60 hours. You have a longer break, and then you might resume again with a restart at the end of that longer break.

So, it reduces the risk that that 80 hours is run week after week after week. We worked very hard to ensure that there was some flexibility still in this rule, recognizing the demands of the trucking industry.

Mr. PETRI. Thank you. Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. Ms. Ferro, in MAP–21 we put in the law that FMCSA shall conduct real-world field studies. And I know that Washington State University, who conducted the lab experiment, recommended that the next positive—or

strongly recommended, I should say, that the next appropriate steps should be to conduct a field study. And I know the industry has recommended you put these off until we do a real-world study. So why have you decided not to postpone and perform this real-world study that it seems everybody think is a good idea?

Ms. FERRO. We are doing a real-world study. We launched it as soon as Congress incorporated this into MAP–21 and MAP–21 was enacted. We began the work, both to scope out and define and award a contract to carry out the field study. In fact, we actually used—had the first driver start under the field study conditions in January this year.

Mr. SHUSTER. But it is not going to be concluded by July 1st, and you are going to move forward with these regulations——

Ms. FERRO. That is right. Right.

Mr. SHUSTER [continuing]. Without any real-world data.

Ms. FERRO. Look. The——

Mr. SHUSTER. What will you do if it comes back and it says something different? You will change the rules? I think it would be better off for all of us if we temporarily postponed and let the real-world study go forward.

Ms. FERRO. I appreciate that perspective. Flash back 10 years ago. The 34-hour restart that the industry prizes so much today was developed through a lab study with fewer subjects and not field study. But it was identified as an improvement in efficiency, operations, and, in fact, rest for drivers. So the model is not unique.

Mr. SHUSTER. Mr. Williams, do you share that view?

Mr. WILLIAMS. I would prefer to have the facts——

Mr. SHUSTER. Absolutely.

Mr. WILLIAMS [continuing]. In front of us before we make the changes. Even though we have already spent the money, you know, the impact of it is going to be significant.

Mr. SHUSTER. Right. And it is true, let's have the real-world facts.

The other question I have is while we are looking at this—and certainly safety is, as I said, is paramount—but my numbers that I have say about 75 percent of the accidents that occur out there with trucks are not caused by the truck driver, it is by the passenger car that cuts them off. And these things are are not going to look at that at all, and in fact, the CSA scores that impact the industry greatly, they do not differentiate between an accident where the driver was not at fault, somebody cut him off and that is what caused the accident.

It seems to me that fundamental in our justice system, that ought to be taken into consideration.

I am a truck driver. I am well rested. I am unlucky because I get a passenger car every so often cuts me off.

How is that fair in the CSA scores to not differentiate between who is at fault?

Ms. FERRO. We refer to this particular issue, Mr. Chairman, as "crash weighting." I think the industry for a long time has called it "crash preventability." We recognized that in the analysis that we used through the CSA program to prioritize the carriers that are putting the highest risk to the public, we used all crashes.

The neutralizing effect is every carrier is treated the same, it is all their crashes. No one gets a break.

Mr. SHUSTER. That puts luck involved in it. Mr. Williams' firm may have had some unlucky drivers, people driving passenger cars pulling out in front of them and causing accidents. That does not seem to me to be a fair way to go about this. It is not a scientific way.

If a truck driver is safe, he is safe. If a truck driver has five accidents and zero are his fault, they are not his fault. I do not think it is a fair way for us to proceed.

Ms. FERRO. The important last sentence I talked to is we are studying the issue. We expect a report to be completed this summer to both examine how the agency can best gather information on preventability and nonpreventability, or really that driver's contribution to the crash and weight it accordingly, for all crashes, about 100,000 crashes, or just on the 4,000 annual fatal crashes. That analysis will be available for everybody——

Mr. SHUSTER. If it is not my fault, it is not fair. If it is not my fault, I should not be held accountable. I should not have to jeopardize my living, I should not be jeopardizing my company's well being, if I am not at fault.

That is something we have to look at very, very seriously. It is a problem. I hear from trucking companies all the time.

I would like to ask Mr. Williams and Mr. Hinkle, if you have an accident in your business, what kind of economic impact is that on you? Whether it is your fault or not your fault. How significant is that?

Mr. WILLIAMS. It is something we obviously have to manage. We spend millions of dollars trying to prevent accidents. Obviously, there is some recent research that has come out that the industry may be underinsured based on statutory limits, minimums we are required to carry. Suffice it to say every event has the potential to be—aside from bodily harm, the property damage alone is probably significant.

Mr. SHUSTER. Mr. Hinkle?

Mr. HINKLE. We take it very serious. We spend a lot of money in training. Any time we have an accident, we do a very thorough investigation. If somebody needs to be retrained, obviously there is a cost, loss of equipment or personal injury, anything like that.

When you refer to a CSA crash score, I have to agree with you 100 percent. We have had several of those instances where our score has gone up, we may have had three incidents in 6 months and zero were any fault whatsoever of our drivers. We get the letter in the mail saying your score is too high. What do you do?

Mr. SHUSTER. All right. Thank you very much. I appreciate the input of our witnesses.

Mr. PETRI. Ms. Hahn?

Ms. HAHN. Thank you, Mr. Chairman. I really appreciate us having this hearing. I think for all of us this hearing is providing an opportunity to figure out how safety, of course, is a priority and as we balance that with the truck drivers, the independent owner-operators, and business people across this country.

May I first offer my deepest sympathy to the families that are here today for loss of your loved ones. Tragic stories, which we do

not like to hear those stories. I think everybody here will agree that we want to get to the point where we have less fatigue in our drivers.

I represent the Port of Los Angeles. I think Ranking Member DeFazio talked about drivers getting paid by the load, not by the hour. I was told by many of my drivers in the area that sometimes one drop off of a load was sometimes 13 hours because of traffic conditions, because of the ports only operating certain hours.

When I was on the City Council, I pushed to move more off peak hours at our ports because I thought that made better sense for our truck drivers. By the way, they do not like to be on the road with the rest of us drivers either. They do not think we know how to drive. A lot of the accidents, I think, with our big rigs are caused by incompetent commuters on the road who do not understand what it takes to brake one of those trucks.

While certainly these rules are meant to create less fatigue on our drivers, as we have heard, many of them are going to be unenforceable. We cannot mandate folks get 8 hours of sleep at night. We think there would be a lot of people who would wish that was true in their own lives.

What I was going to ask the drivers, particularly those who represent drivers and the drivers, this is the Transportation and Infrastructure Committee. We are really looking at the infrastructure in this country.

Many of us are on a freight panel. We are going to make recommendations for national freight policy in this country.

What besides rest, taking time off, getting more hours away from driving, could we look at in terms of our infrastructure, in terms of more off peak opportunities at our ports across this country?

What else could we do in Congress that might relieve the stress of drivers, might create a better infrastructure that causes less fatigue?

Is there something we could look at besides just regulating your time away from your trucks, your time resting, your time sleeping, that would actually make for a better driving environment, which we know ultimately would lead to less stress and fatigue?

Any ideas? I would like to hear from Mr. Williams, Mr. Stocklin, and Mr. Hinkle.

Mr. WILLIAMS. First, I think we are all in agreement that we want to reduce fatalities. We want to reduce bodily injury. We are all on the same page. It is just a question of how we can get there.

I think the context of your question is really, really important because we also need to understand that over the next 20 years, the economy will double in size. However successful you are in our infrastructure investment, it is going to pale in comparison to the challenges the infrastructure system is going to have.

We are already 20 years behind, so we have a lot of catching up to do. The reason that is important is because congestion really creates a awful lot of challenges not only for safety but for the environment as well, not to mention the economy.

Infrastructure, yes. More lane miles of highways is certainly important. Fatigue is only one of the components of a good safety management system.

On our fleets, we have about 1,500 trucks, they all have collision avoidance systems, lane departure alert systems, roll stability control, disc brakes. The list goes on and on, all the technology. We use electronic onboard recorders.

You asked what could be done. We need to make sure that we get the mandate implemented on electronic onboard recorders, or the rest of this is really kind of irrelevant, not to be disrespectful. Regardless of the rule that we have in place, if it is not enforced, and the CVSA does not have the ability to leverage the resources they do have to ensure a higher degree of compliance, we do not have much hope of any progress.

The foundation from which all improvements can be made are the electronic onboard recorders. They are what rationalized me spending tens of millions of dollars a year to continue to want to grow my business.

Without that confidence that there is some reason brought into the equation, it is really not prudent for me to continue to invest in all the safety technologies that we have already invested in.

I really truly believe the EOBR mandate, which we want to compliment you all on the leadership role you have taken on making sure that became a reality, but we need to make sure that is implemented as soon as it possibly can be. I think that should be paramount over everything else.

If I may also add as a part of that, like hair follicle testing, we need to be allowed to use that. It improves safety. The drug and alcohol clearinghouse, there are so many commonsense things that are laying before us that we need to get implemented, we need your help to get all those things done.

Mr. PETRI. Thank you. Thank you, Ms. Hahn. Mr. Crawford?

Mr. CRAWFORD. Thank you, Mr. Chairman. I appreciate you holding this hearing. I want to thank the witnesses for being here and particularly my fellow Arkansan, Mr. Williams. I appreciate the work you do, 33 years in the business. You have grown Maverick Transportation and you and your staff have done a fantastic job, and you are an industry leader in safety.

You alluded to this in your comments just now. I want you to elaborate on why you believe the EOBRs are so critical to the enforcement of the hours-of-service rule and collection of data.

Mr. WILLIAMS. In the spirit of what we are trying to do here, manage with facts, as Ms. Claybrook said before the hearing, we are all trying to get to the bottom, what are the real facts of the situation.

In fact, EOBRs—we manage literally 1,500 trucks by the minute. We know how long it takes them to load, how long it takes them to unload. We know when we are waiting, we know where we are waiting. We know actual transit times.

That is one of those facts, much like my concern over the 34-hour restart, for example. I can factually say my concern over us focusing on the elimination of the 34-hour restart when in fact the concern is to mitigate the people that drive bumping up against the 70 hours, and year to date, my fleet, which are considered pretty good runners, 37.18 hours of driving per week and 49.43 hours per week on driving. They are not getting anywhere close to 70.

In my case, where I use the 34-hour restart for a different purpose, again, to get flexibility on a schedule, the average length of haul for our fleet, 650 miles, we are considered a long-haul, irregular route carrier. We are a steel hauler. We are a flat-bed carrier. I use that to illustrate—we have the facts to the hundredth of a minute.

EOBRs give you the correct data so you can manage it from an operational standpoint, from a safety management standpoint, from a pricing standpoint, how you utilize the equipment.

The part that makes it obviously the most important is it gives law enforcement the ability to quickly with technology aggregate data with the help—which I am a tremendous advocate for CSA—a combination of those tools that we in fact can focus the resources on those carriers and drivers who have habitual driver hours-of-service problems, from a fatigue management standpoint.

Yes, the system can be beat. These guys have a lot of time on their hands. This is interesting. These guys and gals are trying to find ways of creating flexibility for themselves so they can work harder. They are not trying to go out and hurt people.

We have to constrain them in many cases with these regulations and that is understood, but they have to be right sized, if you will.

EOBRs, again, are the tool—again, I do not really believe there is much hope for any real progress unless we can get an EOBR mandate in short order. It is the foundation that will ensure people will do the right thing.

So many people think that running a truck line is an entitlement. It is not. It is a privilege. We need to look at it that way.

Mr. CRAWFORD. Thank you, Mr. Williams. I am going to direct my attention now to Administrator Ferro. You have heard what Mr. Williams has to say about it. You know the data on it. You know we authorized EOBRs in MAP–21. I do not think you are going to hit your October 1 deadline for the rulemaking.

Do you want to elaborate on that, kind of let us know where you are at with respect to the timeline for implementation?

Ms. FERRO. Yes. Let me just reinforce, the electronic logging device rule, ELD, is a very important rule. Frankly, we cannot get it done fast enough. I felt very strongly about this and for a very long time.

You may be familiar with the court history on it, and we need to be sure not only do we get every piece right, it has to be completely defensible, and we also incorporate the elements of MAP–21.

The Supplemental Notice of Proposed Rulemaking, because we are building on an NPRM we had issued in 2011, will be on the street in the fall of this year. You are absolutely right, it will not be the final rule. It will be the Notice of Proposed Rulemaking.

It will incorporate four very important pieces. One of which is the broad mandate across the industry that uses it as record of duty status to monitor hours of service to ultimately improve compliance.

The second component, very important, and you heard Major Savage speak to it, is the supporting documents piece, ensuring there is clarity and efficiency in the supporting document retention requirements and accessibility requirements.

If you are using technology, you should not have to keep as many papers, but certainly law enforcement ultimately needs to be able to use the tool.

There is a component of the electronic logging rule that must prohibit the use of that technology to harass drivers. That is the third major component in that rule.

The fourth major component, sort of underlining all of it, is the technical specifications, the broad open technology reflects kind of all the advances that have been made so that it is affordable, it is accurate, it is hamper proof—tamper proof—pardon me.

Those are the four components. Again, I could not agree with you more, we need to get it out there.

Mr. CRAWFORD. Thank you. I yield back.

Mr. PETRI. Thank you. Mr. Walz?

Mr. WALZ. Thank you, Mr. Chairman and the ranking member for holding this. Thank all of you for being here. I for one am grateful that all of you are a part of this. I know my family is out on the highway, our economic well being is dependent on that, and trying to strike that proper balance.

We do not often times get an issue that I do believe the core issue here is safety and then making sure people have the ability to be profitable in moving products. We have to be able to strike that balance.

As I am listening, I do not think there is a lot of space between there. There are a couple of things. I think Mr. Crawford started to hit on this, and I am trying to get at, how do we focus on the bad actors without doing damage in a blanket report?

I think, Mr. Williams, you were kind of getting at that. I have to tell you the one thing I find, and maybe it is just the nature of this business, but when I go to visit my small carriers, safety is the air they breath. I get that impression when I go in there that is the air they breath.

When I talk to my State patrol, it is about safety, moving commerce, and understanding it.

We are really similar in this. Who are the bad actors in this? How are these folks getting around it or how does that happen? Is the margin so tight that it just creates a situation?

Mr. Williams, I think you hit on something really interesting, that it might not be bad intent a lot of times, it is just folks that are just really trying to work hard, and it is one of those jobs.

I know this military-wise, forcing people to sleep in the military was really, really hard, because they are driven, they want to get the job done, but if they do not sleep, they degraded our capacity.

Mr. Williams, I am looking to you and Mr. Stocklin first. What do you think? How do we weed out those bad actors without putting you in a bind for doing the right thing?

Mr. WILLIAMS. Well, again, going back to the context of the challenges going to get much greater, I am really glad we are doing the things that we are. Again, I believe CSA is doing the right thing. It is identifying who those bad actors are.

We are eliminating—once identified in the past, a bad driver, for example, could leave a bad carrier that has been characterized as such and show up at another carrier and taint his record. We are closing all these little loopholes, if you will.

The Administrator has done a really good job of trying to accelerate that process. There is an awful lot of people in the shipping community—I have customers that think she and her Administration has been making idle threats, that their world is going to change, that in fact, there are no teeth in this, and I am waiting for—there is evidence there are actions being taken against bad carriers and bad operators. It goes on. It just has not been maybe as visible as I would like to see it.

I am a firm believer it needs to be tough to get into this industry and it needs to be tough to stay in this industry, and those of us that are here can afford to invest in the solutions from driver pay, driver benefits, proper work schedules and all such to make the job a better job.

It is an economic issue, yes, but again, we cannot get there without the help of the regulators, with leveraging the technology. Again, embracing CSA.

I think the framework is there and the clock is running. I just wish we could get there a little quicker.

Mr. WALZ. Major Savage, if I could ask you on this, your folks see this, and I was pleased to hear the Chairman of the full committee talk about science a lot on this, you mentioned there are folks trying to game the system or whatever.

I do not know how to frame this other than are there carriers that just have that air they breath culture of safety and are there others just trying to get around it? You are just identifying the bad actors as you stop them, no matter where they came from.

What is your take on this?

Mr. SAVAGE. Mr. Congressman, that is an excellent question. I am very glad you asked it. In our business, our goal is to remove the unsafe drivers and carriers from the road. That is my ultimate goal.

I have been on the scene of terrible crashes and I do not want to continue to go on those scenes. I want to remove those drivers from the road, whether they be in cars or trucks, it is irrelevant to me. I want to make the road safer. That is our goal.

One way to do that and probably the most effective way to do that, given the data that we have, make sure that data is the highest quality possible, it is accurate, it is uniform, and then use that data to prioritize and identify those carriers that should not be on our roads, and target those carriers and remove them from our roads.

If we use the data, we are data driven to begin with, if we use the performance data to identify those carriers and spend the majority of time focusing on those folks, removing them from the highways, those carriers, like you say, who are compliant, and a great majority of them are, those carriers that are compliant, allow them to continue to operate as they should.

Mr. WALZ. When we come back around I want to get at this issue, Mr. Chairman, I think that is exactly what Mr. Williams and Mr. Stocklin—the issue I have is the ability for them to be able to know who that bad actor is before they get them.

At times, I do feel like they are forced to almost take this person. There is a shortage. This is a tough business. It turns over. If you end up getting someone where you do not have a background they

have been convicted of this or whatever, that does seem inherently unfair and wrong, and they do not have the resources to weed them all out at this point.

Mr. PETRI. Thank you, Mr. Walz. Mr. Rice?

Mr. RICE. Thank you, Mr. Chairman, and thank you to the witnesses for being here today. It is certainly an educational experience for me.

Mr. Stocklin, I want to hear from you. I want to hear about what you think about these onboard recorders, how much do they cost, how effective are they, do you think they are something that is really going to bring down the accidents? I want to hear your opinion, sir.

Mr. STOCKLIN. I do not really know anything about the onboard recorders. Probably if they force me to do it, I will just quit. They may work in large companies because they can keep track, where you get these bad guys on there that cause you nothing but problems.

I am kind of looking at it from a different perspective because I am one truck, one guy. I only have to worry about me. I have a good safety record and my whole goal is to be safe while I am driving all the time.

I do overdimensional, overheights, overwidths, all the time. That is what I do.

I have trained quite a few guys and watched them leave. Just trying to make the money, running too cheap, because it is all about the money, they do not take care of their trucks because they do not have any money because they are running too cheap.

In other words, you have to make enough money to maintain your truck, make your house payment, and all those things you need to do. I am looking at this as an one truck guy. It is hard to do. It is not easy. I have been doing it for years. It is all about the money with trucks going down the road. Some guys, you know, run for $1.50 a mile, think they are making money and they are not.

Mr. RICE. You acknowledge there are bad actors out there.

Mr. STOCKLIN. Absolutely.

Mr. RICE. People who will falsify writing down records?

Mr. STOCKLIN. Yes. Just a few weeks ago——

Mr. RICE. How do you attack that if you do not have these onboard recorders?

Mr. STOCKLIN. I do not know. For me, I do not run illegal anyhow. I guess for those guys, that is what you need, and maybe you should look at their safety record so far, maybe you should put that recorder in their truck, just like you do when guys get DUIs, they have to blow in the little thing. You see my point.

Let the good guys, the guys that do a good job take care of that. I do not know what the cost is. It could be $4,000. I do not know.

It is all about how much more it costs you to run, just like this 34-hour restart, I run from coast to coast, I may go to the Midwest, from the time I load to get to the Midwest, and I have curfews, I have daylight hours, all this, it may take me five and half days, total days, to do that in one direction.

Then I sit there and I have to wait that 168 hours out before I can do my restart which I am sitting there for nothing. It is actu-

ally more tiring to sit there for extra days, you are not accomplishing anything.

Mr. RICE. If you could change one aspect of this new rule, what would it be?

Mr. STOCKLIN. I would leave the 34-hour restart exactly the way it is. I never run over my hours. I have plenty of rest. A lot of it is the time of the week or when you haul the freight. I try to haul freight in the right time of the week where I am not in the traffic. I try to stay out of traffic as much as I can.

Mr. RICE. If this 34 hour rule stayed the way it is, you would be happy with it?

Mr. STOCKLIN. Yes, absolutely.

Mr. RICE. I am running out of time. Mr. Hinkle, average drive time for your drivers from point A to point B, what is your average drive time?

Mr. HINKLE. Probably 15 to 20 minutes to 30 minutes, somewhere in that range.

Mr. RICE. If they are driving 30-minute increments, they are waiting 15 to 20 minutes or up to an hour or more; right?

Mr. HINKLE. Could be. In our operations, driving time never really comes into play. It is the on-duty time. In a common 14-hour day, 5 hours——

Mr. RICE. You think a 30-hour mandatory break would decrease driving fatigue if they are only driving 15 to 20 minutes?

Mr. HINKLE. That is our whole thing, having to mandate they take a 30-minute break, that is not going to increase their——

Mr. RICE. One-size-fits-all requirements do not really work?

Mr. HINKLE. Absolutely not.

Mr. RICE. Thank you, sir.

Mr. PETRI. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I am sorry I have been in and out. I may be asking questions that have already been addressed.

I am wondering why the release of the U.S. Court of Appeals continues to be defied when it comes to revising the hours-of-service ruling. Anybody?

Ms. CLAYBROOK. The first court decision was made in 2004. After the court ruled they made one minor change, and the Federal Motor Carrier Safety Administration just reissued the rule, because that is what they wanted.

I do not know if they thought they were going to be sued again. I was very much involved in that litigation. We decided to sue again because they had essentially ignored the Federal Court of Appeals. The court of appeals then ruled again in 2007. FMCSA did the same thing yet again.

Mrs. NAPOLITANO. Twice?

Ms. CLAYBROOK. Twice. When the new Administration came in in 2008/2009, it asked if we would hold off on the new litigation until they could develop a new rule. We agreed to do that. They developed a new rule which we considered to be a de minimis improvement in safety.

We sued again. That is the case that is now pending. It was argued in March 2013.

Mrs. NAPOLITANO. Is there any scientific data there to support that an increase to 11 hours actually improves safety for a truck driver and any studies that verify driver performance increases after 10 hours of driving?

Ms. CLAYBROOK. No, just the opposite. The scientific evidence shows that after 8 hours of driving—which is what other full-time employees in America work—truck driver performance degrades. By the 10th and 11th hour, it is really bad.

Really, I know the industry will go crazy when I say this but what should happen is drivers should be paid by the hour, and they should be paid overtime when they work overtime and over 8 hours a day.

The 10-hour rule which was in effect for 70 years was something we thought ought to be reduced, and instead, it was increased.

Mrs. NAPOLITANO. Thank you. The Highway Patrol in California has given me some information. They are telling me there are many unemployed, but why cannot the trucking industry hire and retain drivers. They say it is 20,000 to 25,000 short.

You are right, maybe paying them hourly might change the ability for them to be a little safer.

Ms. CLAYBROOK. I think the life of a truck driver who works 14 hours a day when everyone else in America works 8, that is a pretty miserable existence. A lot of drivers quit the business because it is a really, really tough job. That is one of the reasons they have a shortage.

If you look at what they are paid in relationship to the amount of time they work, it is a pretty low pay. They get better jobs.

Mrs. NAPOLITANO. I am being informed the median is almost $38,000. If they work 70 hours, it works out to $11.15 an hour.

Ms. CLAYBROOK. That is right. It is a very small amount of pay. It is above minimum wage but not a whole lot.

Mrs. NAPOLITANO. The other area that concerns me is the health risks and life expectancy associated with trucking. I have known several of them and it is the nature of the job, whether it is diesel exhaust, body vibration, excessive noise, the constant shift changes, the roadway dangers.

They are reduced to 61 years, 60 years, less than average, and the high risk would be in personal injury, high blood pressure, heart attacks, diabetes, obesity, cancer, liver, kidney, bowel and bladder issues, sleep abnormalities and hearing loss.

Is that worth it?

Ms. CLAYBROOK. A lot of drivers do not think it is. In addition, as I mentioned in my testimony, it is one of the more dangerous occupations in America; the likelihood of being killed is higher than in many, many other occupations, in addition to all those other health risks.

Mrs. NAPOLITANO. Thank you. Does anyone care to respond?

Mr. STOCKLIN. You are asking about health issues?

Mrs. NAPOLITANO. Yes.

Mr. STOCKLIN. Number one, in the truck stops, they do not have any good food.

[Laughter.]

Mr. STOCKLIN. Number one. That is a fact. These guys sit in there for 2 to 4 days waiting to get reloaded, like it would be with

a restart, more time sitting in a truck stop. All they have is junk. They are way overweight.

I am 65 years old. I have been doing this for years. It is the industry. It is the truck stops. It is the whole thing. It does pay those guys cheap. It is cheap pay to them. That is why you have a hard time getting them.

Mrs. NAPOLITANO. Thank you. Thank you, Mr. Chair. I have other questions for the record.

Mr. WILLIAMS. Mr. Chairman? Can I respond to that very briefly?

Mr. PETRI. Very briefly.

Mr. WILLIAMS. I think there is some research, data from trucks involved in fatal accidents, a study done in 2007, where in fact the 11th-hour driving was in fact the safest hour of the day. There was only 1 percent of the accidents that occurred in the 11th hour of driving compared to all the others that were measured.

Secondly, in regard to driver pay, our starting driver will make $50,000 a year and it goes up. There is an awful lot of truck driving jobs in this country that pay $100,000. Also, there is an awful lot of the major truck stop people that are providing health centers now and better options for food.

I can tell you drivers will stand and eat, given the chance. You can lead a horse to water but you cannot make him drink.

Ms. CLAYBROOK. Mr. Chairman? Could I just comment 1 second on that? I just want to say the 11th-hour driving reveals lower deaths in that particular study because there were fewer drivers driving the 11th hour. You have to look at the data. That is not scientific. Thank you.

Mr. PETRI. Mr. Ribble?

Mr. RIBBLE. Thank you, Mr. Chairman. Thank you to the panel for being here. I would like to start with Mr. Williams.

Mr. Williams, I spent 35 years as a commercial roofing contractor before coming here to Congress. I need a 30-minute break because I am getting fatigued being here.

My question is this, it was my observation that if we could get a new employee beyond 6 months without an accident, we typically had a pretty safe employee. A lot of stuff happened in the early times. It was not whether they worked long days or short days, it was the amount of safety training they had and experience.

Could you talk a little bit about that? Also, would you tell me whether you believe this rule is going to affect the ability for you to recruit new drivers to this trade?

Mr. WILLIAMS. Thank you. Those are really great questions. Historically, we were a company that hired only experienced people. Last year, we actually hired 1,069 individuals, 922 of which we trained, 86 percent, at a cost of close to $8 million.

That is just because of the demographics of our workforce has changed dramatically. We have an awful lot of people that are leaving the industry because of age.

In the LTL industry, the unionized LTL industry, Wal-Mart, for example, has a lot of the top line jobs, there is an awful lot of people that are exiting the industry because of demographics.

We are compelled if we are going to seat people in our trucks to reach out and train to do that. The important thing is that training

be done correctly and we are using driver simulators to simulate situations, hands on training. It goes on for up to 10 weeks depending on a person's level of experience. There is a tremendous cost associated with it.

The good news is that it works. We are actually putting up some of the best safety numbers in the industry as a carrier using people that have tremendously less experience than they previously had.

A training requirement and ability to train properly in the world we are living in and the challenges we are going to face with changing demographics going forward is going to be really, really important.

Mr. RIBBLE. Would it be more important than hours-of-service changes?

Mr. WILLIAMS. I do not think I am capable of distinguishing that. I truly believe in getting the hours of service right. I think there are limits to that, as to how much a person needs to work. I agree with that completely.

I do believe that losing the 34-hour restart is going to lessen our driver's home time, which in fact is going to make it more difficult for us to keep a driver working for us. Most of our drivers are home every weekend.

This will prevent that from happening, and that will increase turnover, which we had an industry leading turnover rate of 59 percent last year, to me, it is pathetic, but it is almost half of what the balance of the industry is.

As the economy heats up, you are going to see driver turnover move up as people move around from company to company trying to find a better job. That is not good for anyone necessarily.

The 34-hour restart will probably be problematic from a retention standpoint, not so much for attracting people.

I would also maybe use this opportunity to say that the 30-minute break and the part that we really want to point out is in order for us to get the 30-minute break, it will probably take us an hour in order to achieve that.

These trucks have to get off the road, go through an intersection, get into a truck stop, take the 30-minute break, and start that process over again.

I am not saying that the 30-minute break is wrong, I am just saying the impact on the industry is not 30 minutes, it is more of an hour. I just wanted to point that out.

Mr. RIBBLE. Mr. Stocklin, first of all, I want to thank you for coming. I want to thank you for your service in Vietnam. I know you have come all the way from Washington State and you are an independent.

What would you be doing today if you were not here?

Mr. STOCKLIN. Trucking. My wife would make sure I was trucking, I guarantee that.

Mr. RIBBLE. I appreciate that. I apologize if you feel that what is going on here is so important and affecting your business that you had to come from your business to tell us these things.

In your testimony you said if we get in an accident, regardless of fault, it is our truck that is in the shop, we have to pay the out of pocket to get it fixed, we will not be out there hauling freight

and earning money until it is fixed, the down time alone can mean bankruptcy for owner-operators.

You say a little bit later regarding flexibility, "Flexibility means giving me, the professional truck driver, the ability to drive or take rest when I am best able to get the rest I need, and when I am best positioned to operate my truck safely and efficiently."

Do you believe that during the rulemaking process the Administration took into consideration those thoughts?

Mr. STOCKLIN. No, they do not see it like I do at all. In order to see what really goes on, you have to get in the truck and go with me for a week, then you will know.

Like I say, if I leave Seattle and have an overdimensional load, I go to the east coast or Midwest, wherever I go, I take 5½ days to do the whole turn, depending on the situation, depending on weather, depending on all of the above, when I get there and I unload and I have to restart my clock, which I take my 34 and restart, I have plenty of time to do the maintenance I need to do on the truck, whatever I need to do, usually end up waxing it because I am so bored, I load my load, I try to load it in a certain time of the week where the traffic is the best, because in a lot of cities, I am in curfew, I cannot go through, so I have to do certain times.

That is where Mr. Williams was saying half an hour is not just pull over and park for half an hour. Now you have to get a safe place to park so it takes you a lot longer. You could have an hour or more.

This restart they want to do, it just takes more time for me to do it. It is going to cost me $30,000 or $40,000 this year for 1 year to do this. I will lose that money, which means less revenue to maintain the truck and do these different things.

Mr. RIBBLE. Thanks again for being here and for your testimony today. With that, Mr. Chairman, I yield back.

Mr. PETRI. Thank you. Mr. Carson?

Mr. CARSON. Thank you, Mr. Chairman. This is for Administrator Ferro. MAP–21 includes language requiring the DOT to issue final regulations establishing minimum entry level truck driving requirements, which would include both classroom and behind-the-wheel training for first time commercial driver's licenses.

Can you talk a little bit about the importance of behind-the-wheel driving, if you will? From what I understand, it was not even mandatory prior to MAP–21 language.

I would like to know if you agree a truck driver should spend time behind the wheel of a truck before obtaining the CDL. I have seen numerous reports of driver training schools offering programs that advertise that drivers can obtain a commercial driver's license in as little as 24 hours or a shorter period of time.

Will the upcoming rulemaking include a core curriculum that every driver training school must instruct before drivers can graduate?

Ms. FERRO. Thank you, Congressman. Yes, I agree some level of behind-the-wheel training must be part of any sort of entry level driving training requirement.

The agency has worked on this issue for a number of years and has been challenged to identify the benefits, the safety benefits of training in the longer term career of a driver.

What is so challenging about this rule is that it is common sense. Everybody agrees. This is a very complex task. Drivers should be trained. They should be well trained. It should include behind-the-wheel training. The challenge is to find the research that documents there is a cost/benefit, a net benefit when you do this rule.

We have undertaken that research. That research is underway. The rule is very important on our agenda. We have begun our working groups. We have done several listening sessions. We had a great listening session at the Mid-America Trucking Show in March and heard from lots of drivers about just the points you made, and what should the credentials of the trainer actually be.

Today, some trainers have only had 3 months of driving and they are popped into a truck to train another driver. Drivers are saying they should have at least 3 to 5 years. I expect Mr. Williams would agree based on the investment he has made in training.

Yes, I agree, and we are pressing forward. It is absolutely part of MAP–21, which is a positive development.

Mr. CARSON. Thank you. Mr. Chairman, I yield back.

Mr. PETRI. Mr. Williams?

Mr. WILLIAMS OF TEXAS. Thank you very much. I appreciate all of you being here. I, too, want to acknowledge the families that have lost loved ones. God bless your families.

Also, I want to first of all say I am from the private sector. I have owned a business, still own a business, for 42 years, car and truck dealerships, transportation.

I want to thank Mr. Williams, Mr. Stocklin and Mr. Hinkle for your investment in the free enterprise system and for what you do. I appreciate that greatly.

I guess what I would ask you is what can we do as Congress to help improve your industry and your safety, and at the same time, making sure that we help your business so you are able to do business and not be regulated out of business?

I am one of those that I believe you know your business better than the Federal Government. There is no question that you want to be safe and safety is probably the most paramount thing you have.

I would just like to hear what can we do? This is your chance to tell us. I am a business guy.

I would just like to say one thing before you answer to Ms. Claybrook, in the private sector, many, many more people work more than 8 hours a day. I must tell you that. Eight hours is not the standard. I found that only to be frankly since I have been up here in the Federal Government.

With that being said, Mr. Williams, let us know how we can help your industry.

Mr. WILLIAMS. I think there is a proper amount of regulation. I have done this—I started the company 33 years ago, recognized as a leader in safety. I am very proud of our people. We do a really good job with the challenges we face.

I have also seen the good, the bad and the ugly in trucking. I can say that left without any regulatory oversight, the trucking industry, like many other industries, will not be what we need it to be to meet the fundamental challenges we are going to face in the

years ahead with congestion and growth of the economy and all of the above.

I think it is important that we encourage and continue to evolve in the proper regulatory oversight. Again, I give credit to Ms. Ferro and her group for the work they have done on CSA and their willingness to continually try to make things better that maybe needed additional tweaking.

Again, I think it is important we understand the necessity of good regulations, to ensure constraints are placed upon the people that need to have constraints placed upon them.

By the name of my company, Maverick, it kind of implies I do not really like to be hemmed in too much. I am not sure which came first, the name or whatever.

The fact is there are constraints that must be placed upon us in order for us to have a positive outcome that we need to have. I would say just continually committed to listening and willingness to modify and change and improve. We all believe in continuous improvement or we really will not be around here much longer anyway.

Mr. WILLIAMS OF TEXAS. Thank you. Mr. Stocklin?

Mr. STOCKLIN. I think there are a few things you can do. I think you need to make sure when they are doing the training on some of these people, I have seen a lot of trucks that come into truck stops that cannot even back into a parking place or back out of one, I have actually had to do it for them, and I ask them how long have you been driving, they said oh, like 2 months, and where did they get their driver's training, I do not have a clue.

I think some regulation is fine but too much is going to put the little guy out of business because you just cannot absorb the cost of it. That is just my opinion from what I can see.

Mr. WILLIAMS OF TEXAS. Mr. Hinkle?

Mr. HINKLE. In the ready mixed concrete industry, just like Mr. Rice brought out, the regulations are not one size fits all. The short-haul or the ready mixed industry is a totally different animal when it comes to looking at hours of service, on-duty time, driving time.

We need to look at that specific industry, just like we have exemptions for agriculture, the ready mixed industry is different and we would like to be looked at and see if we can adjust the regulations to help us.

Mr. WILLIAMS OF TEXAS. Thank you. Thank you, Mr. Chairman. I yield back.

Mr. PETRI. Thank you. Mr. Perry?

Mr. PERRY. Thank you, Mr. Chairman. I would like to just start out by acknowledging the families that are here for their loved ones. I assure you if the same thing had happened to my family, I would imagine I would be sitting right where you are.

That having been said, I have to say that I am concerned that maybe we are getting the cart before the horse here, in deference and in honor of the folks that have lost their lives and your families, I want to make sure we are getting to the point. I have to be truthful, I am not sure we are.

As I read this, there is a restart field study that I guess is required. I do not know if that is part of or if it is something separate than the real-world study.

Ms. Ferro, if you could let me know if those are the same thing or if they are two separate things.

Ms. FERRO. The study that supported the development of the rule and restricted use of the restart was a laboratory study, with the theory that if an individual has a challenge sleeping with recovery sleep, after this kind of a grueling schedule, with the current restart, under ideal conditions, then imagine what it will be like with someone who is not as healthy——

Mr. PERRY. Are there two studies or one study?

Ms. FERRO. That is the first study. The second study is mandated under MAP–21 and it is the field study that we launched as soon as MAP–21 was enacted. The first driver was entered into the actual field test——

Mr. PERRY. It is not complete yet?

Ms. FERRO. It is underway now; that is correct.

Mr. PERRY. The first one, the restart, is that one complete?

Ms. FERRO. The lab study is complete. That is very much a part of what is supporting this rule in the context of the need for recovery——

Mr. PERRY. The real-world study is not complete yet?

Ms. FERRO. That is correct.

Mr. PERRY. The first one is a lab study?

Ms. FERRO. Yes.

Mr. PERRY. The rule goes into effect July 1?

Ms. FERRO. That is correct.

Mr. PERRY. Why are we not getting all the information before we—it seems to me you have incomplete information. I hear some of the episodic data here.

Let me ask you another question because that is somewhat rhetorical. With all due respect to the folks in the agency and so on and so forth, what is their experience? The people that are making this rule, that are writing the rule? I hear you are receiving testimony and so forth. Have they driven a cement truck? Have they driven 80,000 pounds across country? What is their experience level?

Ms. FERRO. We have plenty of employees who have prior industry experience. They are either CDL holders themselves and in some cases CDL holders, prior safety managers, a specific number of this team was a dispatcher and safety manager in the industry.

Yes. Is that the basis on which we hired them? No, but they bring all that perspective to the table.

The hours-of-service rule that takes effect on July 1st is based on years of peer-reviewed research, more current research into fatigue and its impact on workplace safety, and specifically with regard to the 34-hour restart, a study to examine how that restart used under today's rule, where a driver could actually run up to 82 hours in a week, how that contributes to chronic fatigue week after week after week.

The majority of the industry does not maximize the use of that 34-hour restart. In fact, they do not even have to use it. It is a voluntary restart provision.

The vast majority of the industry does not run the currently mandated limits of 60 hours in 7 days or 70 hours in 8 days. Those limits existed prior to 2003. They existed during the 2003 and subsequent rule, and they exist under this current rule.

The only difference that happened between 2003 and 2013 is that 60- and 70-hour workweek could be restarted sooner with the use of that 34-hour restart. Again, it is lab based in terms of specific to the restart, but the science behind fatigue, the impact of chronic fatigue on a driver's health, the impact on fatigue on a driver's safety, are absolutely solid research.

Mr. PERRY. From my background, I am fairly familiar, but I can tell you from personal experience that I can leave home to come here, I could pull over within 15 minutes and take a nap on some days because I am tired before I leave.

I can also tell you overseas in a combat zone, I went days without sleeping and still operated safely and operated complex machinery safely.

I just feel like we are throwing this rule out which does not support Mr. Hinkle's business at all. I have also been a contractor that received plenty of loads of concrete where the guy on the truck, unless he is pulling the lever, he is just standing there waiting for me to get done with my work, and he is getting plenty of rest while I am toughing it out.

I feel like this one-size-fits-all approach is not in line with the practical reality of what is happening in the industry. With all the input you have gotten, it seems like these folks from industry, this gentleman here represents 40 percent of trucking, independent truckers, they disagree with your findings completely.

If you have gotten all the input, it seems to me without the results of this final study, you are putting the cart before the horse in some respect and issuing the rule. Once these rules get issued, they get a life of their own.

That is one of the problems people have with the Federal Government, it goes unbridled and there is no accountability and there is no turning back. It only gets worse from here.

Thank you, Mr. Chairman. I yield back.

Mr. PETRI. Thank you. Mr. Hanna?

Mr. HANNA. Thank you. I want to concur with Mr. Perry. The divergence between the practical and the real world and the theoretical world to me, as I listened to this conversation from all of you, could not be greater.

I have heard accusations, Ms. Ferro, that you do not use science, that your opinions are subjective, they sound somewhat value based, that in fact there is some data mining.

Long haul trucking for the 8 hours, it may be applicable to ask someone to rest for half an hour, but for the concrete, the asphalt, the aggregate delivery system, it has no bearing and yet we are perfectly comfortable costing these people maybe hundreds of millions of dollars over time, when it would be a simple fact, you could just exclude them from the process, local deliveries like that.

You have heard Mr. Stocklin accuse the CSA of being impractical. You heard Mr. Hinkle say it is impractical. What these people are saying is they want to be safe, they want to run a tight, com-

petent business. Their insurance companies, believe me, have more of a hammer over their head than you ever will.

We have heard the State policeman say none of this may help or may or may not help without a way to monitor these people on an regular and scientific basis through these truck mounted devices, GPS devices, et cetera.

All of this makes me feel as though we are creating a whole host of rules, confining a whole lot of people to do less, make less, cost the public more, and without doing the one thing I thought we were charged to do, and that is to do a study before we write the rule.

Are you not concerned, Ms. Ferro, applying all of this, and arguably it is not all this way, applying these rules before the study is complete actually undermines the credibility of you and your agency?

Ms. FERRO. There is a significant amount of research and study behind the rule that is taking effect July 1. Let me be very clear about that. It is substantial. It is a full body of peer-reviewed research and analysis. It is in the rule that was published. We incorporated it into our NPRM.

When we issued the NPRM, we held an enormous number, really unprecedented number, of listening sessions.

Mr. HANNA. Do not their opinions count?

Ms. FERRO. Their opinions count a great deal.

Mr. HANNA. Where do they count? Apparently, they do not count. Mr. Hinkle is sitting here telling you none of this is going to make things safer, to paraphrase, but it may make things worse. It may make the public pay more. In his case, asphalt, and I assume asphalt and concrete and other local deliveries, are completely irrelevant to what you are trying to talk about.

Have you ever done a study about concrete specifically or asphalt specifically?

Ms. FERRO. Two things. The relevance of what I am doing is all about safety, saving lives. The fact that the agency has been tremendously transparent and responsive to a host of concerns that were raised, where we went out and did listening sessions across the country, we heard a great deal of input—this rule started out with the option of a 10- to 11-hour drive time. We were not sure. We had our finger on 10.

Our research, our analysis, our listening sessions, all led us to conclude the 11-hour driving time is the right time, and in fact, it cut the cost of the rule by half a billion dollars.

Mr. HANNA. Have you studied Mr. Hinkle's business?

Ms. FERRO. Mr. Hinkle's business has the opportunity to take advantage of a 24-hour restart. They already have an exception in law that provides them the flexibility that he wants.

Mr. HANNA. Mr. Hinkle, would you like to respond to that?

Mr. HINKLE. It is the 30-minute break that we are concerned with. Thirty minutes consecutive is going to be a problem for our industry, where they get several breaks shorter than that, which I think are sufficient to keep their fatigue level down.

Ms. FERRO. All right. The 30-minute break is a body of scientific research that goes well outside of the trucking industry, any sort of workplace science.

Back to your original point, the concept and the challenge of this one size fits all, I think that is at the heart of much of what you have heard. I understand this.

This is a very big industry. It is a very diverse industry. Half a million companies that we regulate across the country, some private, some for hire, some hauling steel, some operating locally within a 20-mile radius doing concrete.

The agency long before I was here tried about 15 to 20 years ago to do a rule that segmented out the sectors, that recognized short haul had a different operating environment, construction had a different operating environment, oil fields. That was roundly panned. That thing did not see the light of day beyond the NPRM.

I am not saying that should not be examined again, and my sense is with the use of electronic logging devices, with improved registration requirements, we will be able to look again at that concept of segmentation, but today, it is true, the best structure we can use is a rule that constrains the margins of abuse while still sustaining the vast majority of today's operation in a very healthy and productive way.

Mr. HANNA. Thank you, ma'am. My time has expired.

Mr. PETRI. Mr. Duncan?

Mr. DUNCAN. Thank you very much, Mr. Chairman. I had to come late to this hearing because of another hearing. I did hear Mr. Williams, part of his testimony, when he said these new rules are just not supported by the facts or evidence. I have been in and out.

It seems to me that the gist of the testimony of all the witnesses who work in this field seems to be that they just need and want more flexibility. And I actually can understand that. These truck drivers are human beings. They are not computers or machines. People need different amounts of rest. They need different—they have different body clocks and so forth. And it seems to some people that these new regulations would keep drivers from splitting up their break time and really adjusting in the way that they need to.

But, Administrator Ferro, is it correct that these new rules are in litigation at this time? They are in court right now?

Ms. FERRO. That is correct. Oral arguments were heard March 15th of this year.

Mr. DUNCAN. Would it not have been better to have given the courts the time to determine if these regulations—I mean what happens if we put these in effect, then the court turns around and throws them all out?

Ms. FERRO. In my view, it is not worth the trade off of losing the safety benefits today while we are waiting for the court decision. And I say that for two reasons: One, the safety benefits of improved driver rest for those operating at the margins and their health are significant. Second, I have very high confidence that the rule is strong. It will be upheld by the court.

The last time there was a court challenge, I think it took almost a year for the court—the court has a lot on their plate—a year for a decision. We could have conceivably had to delay this rule a year or more. It was put into effect. It was finalized almost a year and a half ago. So, there has been lots of time for folks to prepare.

Mr. DUNCAN. Was Mr. Williams incorrect when he said that these deaths and accidents were going down significantly over these last few years?

Ms. FERRO. He was correct. I used some of the same data in my opening remarks. He is absolutely correct, and that is very positive news. And it does not stop us from driving forward towards getting to zero.

Mr. DUNCAN. Let me ask Mr. Hinkle and Mr. Stocklin and Mr. Williams, these Federal agencies come up with these comment periods to make themselves feel like they are getting some public input, but they really do not. They get comments from the professionals and the lobbyists and so forth, but from the ordinary people, they hear very little. Have any of you—have your drivers been polled or has there been any significant effort, have some of these Federal officials come to your locations to interview your drivers? Or have you heard about that happening any place? Mr. Williams, has that happened at your business? Or, Mr. Stocklin, has that happened to you or drivers that you know? Or Mr. Hinkle?

Mr. STOCKLIN. No, it has not happened to me at all. Nobody has asked me any opinions of what—how it should be. I just want to say one thing, part of this 34 restart, and the money that you would lose, and they are all concerned about safety, well, part of safety is maintaining your equipment. And if it costs you money, and you cannot, you lose that money to maintain your equipment, is not that part of safety? You have got to do brakes. You have got to do tires and all of these above things.

Mr. DUNCAN. Mr. Williams, how many drivers do you have?

Mr. WILLIAMS. About 1,450. And I would have to say that the listening sessions were very publicly acknowledged. I think CVSA would probably agree with that as well, that they did a really good job on their listening sessions. And I had many drivers of ours that did participate in those. And then, of course, in the radio blitz and everything that they did as well.

Mr. DUNCAN. Do your drivers support these new rules?

Mr. WILLIAMS. Well, no, our drivers do not like the 34-hour restart, anticipated challenges—changes in the 34-hour restart. They do not particularly like having to take the 30-minute break. So, no, it is—yes, I have heard their voices, and I have passed those along. And they have spoke them individually at a lot of these different listening sessions.

Mr. DUNCAN. Mr. Hinkle?

Mr. HINKLE. Well, I can tell you at Chandler Concrete, we spent the last 3 to 4 weeks going through bringing all our drivers in and going through all the changes that are coming up because we are going to comply one way or the other, whether we agree or not. Do they like it? No. Just like I said, the 30-minute break is the biggest issue with us. And basically they are going to lose 30 minutes of pay a day.

Mr. DUNCAN. Alright, thank you very much.

Mr. PETRI. Mr. Mullin?

Mr. MULLIN. Thank you and thank you for this opportunity. Mr. Williams, Mr. Stocklin, Mr. Hinkle, I kind of feel what you guys are talking about. I have said this over and over again that our

biggest threat anymore to our companies are Federal Government trying to comply and still be profitable.

And, Mr. Stocklin, I found it very interesting that you said, "I will just quit." It is not because of your safety record. It is not from the fact that you cannot manage your company and make a profit. It is the fact that it is going to eventually get not worth it, where you cannot invest in it because, see, there is a fine line between a 7 percent profit margin and being able to reinvest in your company, and 6 percent profit margin when you just try to maintain your equipment. And when you just try to maintain any company, you begin to die.

And that is the reason why I sit in front of you today because we also have over 80 trucks on the road. And what Ms. Ferro and some other groups are trying to push, just simply, it does not add up with the industry. If you look at the industry since 1975—since 1975, 77 percent fatality—we have reduced fatality rates by 77 percent. There is something to be said about that. And I commend the industry for the work that you guys have done, constantly working on trying to improve the safety records of our own companies. As I tell everybody, it is our best interest. None of us want to have an accident. It is our companies, and it is the lives of those who are around us too.

Ms. Ferro, I have got a quick question, and then I am going to kind of switch gears. But, as you are probably aware, I introduced a bill, H.R. 1097, that would ensure the on-duty times not included on—not include waiting times and natural gas and oil sites for operators of commercial vehicles transporting supplies and equipment. This is an exemption that had been place for over 50 years, and for some reason it was taken away in 2012. Can you explain why that was taken away?

Ms. FERRO. Congressman, thank you for that question. The exception policy that applies for oil field operators was not taken away. There are two provisions. One allows oil field operators and servicing organizations to——

Mr. MULLIN. It actually has been taken away because we are not allowed—a wait time is not included anymore when we are sitting at a drill site. So what do you mean? It has been taken away.

Ms. FERRO. So the first provision uses a 24-hour restart. They take full advantage of it, not unlike the concrete industry.

The second exception that you are speaking of that was put into place by the Interstate Commerce Commission 50 years ago provides an exception to on duty——

Mr. MULLIN. I know what the exception is. What I am saying is why is that exception not provided anymore? Why was it taken away in 2012, increasing the number of trucks on drill sites now, increasing the costs to deliver those supplies have increased now. Essentially, when they are waiting at a drill site, it is like a country truck stop. They can go in and get coffee, watch TV, do whatever they can. But now that is having to count as on-duty time.

Ms. FERRO. Yes, we restated the exception that was put in place by the ICC 50 years ago to allow special equipment that requires specialized training to operate in the oil fields an exception from the on-duty nondriving time. The entities that were excluded from that from the beginning and today now, since they are operating

in much higher numbers, are generally water trucks and sand trucks.

Now, again, we had a comment period. We received lots of good input.

Mr. MULLIN. I almost crack up all the time when I hear agencies saying we had a comment period, a comment period, a comment period. It does not. The fact is that the industry rate just went up. The trucks on the road have increased. And we have wrote letters to you. We have got zero reply. We have introduced a bill, and have got zero comment from you guys on this.

Ms. FERRO. Yes.

Mr. MULLIN. Now, with that being said before my time runs out. Mr. Hinkle, you made a comment that you think we would be smart enough to figure out exemptions on this when we are talking about 30-minute down times. That does not always exist in DC. I am sure you are probably aware of that. But, Ms. Ferro, you made several comments suggesting to Mr. Hinkle and the Concrete Company of how they could do things. Have you ever been in a concrete truck? Have you ever been to a job site? Have you ever ran a full 24 hours with any construction company?

Ms. FERRO. No.

Mr. MULLIN. So, for you to make suggestions is saying that every party that graduates from a college with a business degree is going to be successful in business. You talk about these researchers and these studies and all this, but you have no practical experience yet. Until you have practical experience, what you have learned in college and what you have learned from research and all these studies is just numbers and it is just paper. It does not really apply yet.

My suggestion would be why don't you go and visit the job site? Since you are the head of the department, since you are the one making these rules, why don't you go to Mr. Hinkle? I bet you he would allow you to run 1 day in his company, and see what he is talking about by this time that is waiting, these individuals. Why it does not make any sense why someone would have to stop for 30 minutes when they stop every few—every hour or why they are sitting there waiting for their truck to be loaded, why they would all of a sudden have to stop. What would be so hard about you actually going and getting hands-on experience other than just having studied? You would probably learn a lot more.

Ms. FERRO. Nothing stops me, and I look forward to the invitation. And I will say I have been—several times reached out to your office to meet with you to talk about the very concerns you have raised, and for some reason that——

Mr. MULLIN. Ma'am, I have never—I would assure you I would meet with you in a heartbeat.

Ms. FERRO. I would be pleased to.

Mr. MULLIN. We could meet tomorrow morning because I have never had your office reach out to me that I am aware of.

Ms. FERRO. We will call, and we will set that up.

Mr. MULLIN. OK.

Ms. FERRO. Thank you.

Mr. PETRI. Mr. Barletta?

Mr. BARLETTA. Thank you. I am probably not one of the last people you want to speak to right now because my family was in the construction business, asphalt and concrete.

When people ask me about Washington, I have a common phrase I usually say is that, "Common sense is not so common in DC." And this hearing is pretty interesting because it reminds me of one we had last week about a rule. And I had a big problem with the rule. It was with HHS Secretary Sebelius, who tried to defend a rule that anyone under the age of 12 could not qualify for a lung transplant, that you had to be 12 or older in spite of the fact that the little girl that I was advocating for was 10 years old. She had approximately 3 weeks to live. Her doctors at Children's Hospital in Philadelphia said that they could take an adult lung and modify it. This girl would have a good chance of living. However, the Secretary defended the rule that you needed to be 12. And we were OK with letting a little girl die because she was only 10.

Now, I know this hearing is not at the same level as that, but it reminds me of that, that this is not practical. I understand what you are trying to do. My family was in the concrete business, was in the asphalt business. I had a line painting business where our drivers would drive 2 hours to a job site and sit on a job site and wait before we could paint the lines. When you are dealing with a business like in asphalt and concrete and line painting, and there are many others, the rule if it does not make sense, and we do not have the scientific data to claim that it is going to make anything safer, why do we do it? Why cannot Washington sometimes just use practical everyday common sense and still try to achieve the goals of making our roads safer?

I offered an amendment to keep heavier trucks, triple trailers, off the road because I had a problem with safety. So I understand what you are trying to do, but it just does not make sense for so many businesses.

Ms. FERRO. Congressman, I appreciate your comments, and I think I join so many in being impressed by the advocacy you exercised that saved that little girl's life. And I would suggest that today's hearing is just as significant because you are talking about 4,000 lives. In the case of this rule, 19 lives.

Mr. BARLETTA. But do you have scientific data to back that up?

Ms. FERRO. Absolutely.

Mr. BARLETTA. But the 30-minute rule——

Ms. FERRO. The 30-minute break.

Mr. BARLETTA. The 30-minute break.

Ms. FERRO. The 30-minute break, yes, absolutely improves the ability of that operator to operate more safely, to minimize the risk of any kind of cumulative fatigue with that quick 30-minute break. They are more alert behind the wheel. They are more ready to respond if someone does——

Mr. BARLETTA. Well, how do they—I guess I just cannot understand how they could do that study. When you are delivering asphalt, you are driving the truck. Then you are getting in line, waiting to back into the paver. The driver is sitting there. I just do not understand how they assess a 30-minute break when there may be periods of breaks throughout the day. Every day is different. How do they accomplish that?

Ms. FERRO. Well, it sounds though we are not that far apart. Certainly, I have watched many a construction site. I have certainly been around a lot of construction folks. And you and Mr. Hinkle both identify the number of breaks that operators are taking just by virtue of the cycle and the schedule and moving product quickly and moving it fresh. And then going back for more. I do not think that we are that far apart in understanding how those breaks work in that operation. I am not sure where else to go on that point other than again to reinforce——

Mr. BARLETTA. But how does another——

Ms. FERRO [continuing]. This rule is research-based.

Mr. BARLETTA [continuing]. Thirty-minute break when there may be periods of breaks throughout the course, how does another 30-minute break increase the safety?

Ms. FERRO. It is not another. It is taking advantage of existing breaks they are already taking. It is the simple fact that the break itself improves the safety performance of that operator after the break, within that first hour after the break.

Mr. BARLETTA. So even if they have had four 30-minute breaks during the course or five 30-minute breaks, adding another 30 minutes——

Ms. FERRO. They do not need another one. They only need one. They only need one. Under this rule, they only need one within the 14-hour workday. And it has got to occur some time before that operator gets behind the wheel after the eighth hour of work, just one under this rule. So, if he is already doing four, if your guys were doing four, my gosh, they are way ahead of the curve, and they are probably much more alert as a result of that.

Mr. BARLETTA. So if they are just sitting alongside the road waiting to unload into the paver, how do you enforce that? How do you enforce that? They are not keeping a log, so how enforceable is that?

Ms. FERRO. That is the challenge. It gets back to Major Savage's point. The enforceability generally comes through compliance reviews in this case until we have electronic logs in place. Now, in the case of those operators, because, again, you are right, they are not keeping logs, they need to measure it within their normal timekeeping system.

Mr. BARLETTA. But how would you enforce whether or not somebody complied or not? I mean there is no record of whether or not, so basically it is up to the driver to say I did not have a 30-minute?

Ms. FERRO. It could be. It could be driver interviews. It could be, you know——

Mr. BARLETTA. How else other than that?

Ms. FERRO [continuing]. Outside observation.

Mr. BARLETTA. How else other than that? How else other than that if there is not a log——

Ms. FERRO. Yes.

Mr. BARLETTA [continuing]. Could you determine whether or not they had the 30-minute break or not? Other than the driver, how else could you determine?

Ms. FERRO. Well, again, Mr. Savage can speak to it because he spent a lot of time doing compliance reviews and more inspection work. Thank you.

Mr. SAVAGE. Mr. Chair, Congressman, there are two ways that I would suggest we could enforce it. One would be to provide the enforcement officer with the ability to enforce it by giving—making a requirement that they keep supporting documents on the vehicle to confirm that the driver may have taken the time off. And the other thing is to increase enforcement through the MCSAP, which is a particularly effective program, and making sure the States are fully funded so that they can do the good work that the officers are doing on the road.

Mr. PETRI. Thank you.

Mr. BARLETTA. Thank you, Mr. Chair.

Mr. PETRI. Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman. It looks like I am it, so your day is almost over. First off, the benefit of being in freshmen row here and going last is that most of my questions have been asked already, so I will not be redundant and ask them again. But thank you to all of you for being here today.

Administrator Ferro, I actually want to say thank you. I want to say thank you on behalf of the agricultural industry in my district and the rest of the country for quickly issuing rules under MAP–21, exempting our agricultural producers. It is extremely important in my rural district.

Secondly though, I am wondering if the FMCSA has considered exemptions or the issues faced by other companies that are involved in helping ensure that our crops get from the field to our elevators out into the global marketplace? For example, in Atwood, Illinois, in my district, a company repairs grain elevators. And during harvest, their technicians can spend up to 5 hours driving to a site, 2 to 3 hours for repairs, and then driving home to be ready for their next job in the morning. And because of the weight of their trucks, they are included under the HOS rules.

And in a letter to my office, the company's owner, Mr. Harris, wrote about the impact of these regulations. And I will quote him. He says, "As you can see, driving hours accumulate quickly. Should we get caught, one fine could put us out of business financially. On the other hand, not responding ASAP to our customers' needs spells disaster for our business. Losing one customer can mean losing all the individual grain elevators owned by that company."

So, my business owner is in a conundrum. We have helped one portion of the agricultural sector with the exemption. Are there any ideas, any other opportunities we can have to make it a little more flexible for those who work in that same business?

Ms. FERRO. Congressman, first thank you for your recognition of the agency's work and for the nature of that question. Of course, my starting point is to encourage all operations and operators and business owners to look at their operation and their customers' needs and work them within the pretty broad hours parameters that exist today. That is my starting position.

Understanding that, the agency does have, and the law allows us to have, an exemption application process. Any individual company, or in some cases a sector, can apply to the agency for consideration for an exemption. And we will examine it. In some cases, some of these exemptions we are talking about, like the agriculture exemp-

tion, is enacted by Congress. In other cases, there is a broader authority.

The condition we start from is that should an exception be granted or an exemption be granted, it has got to ensure that the operating condition is as safe or safer than the condition today.

And so that inlet, I should say, to the process exists today. And I will be happy to follow up with your office and make sure your constituent has a clear understanding of where—what that process is. It is spelled out on our Web site.

Mr. DAVIS. I appreciate that. Speaking of that, how many exemption requests do you get on an annual basis?

Ms. FERRO. Well, I will have to follow up. I can either lean out to my help line here if——

Mr. DAVIS. Go ahead. I used to be part of the help line.

Ms. FERRO. Thank you. Ten? Thank you very much.

Mr. DAVIS. About 10?

Ms. FERRO. About 10 per year.

Mr. DAVIS. About how many of those are approved?

Ms. FERRO. About 20 to 30 percent.

Mr. DAVIS. Twenty to thirty percent.

Ms. FERRO. Oh, pardon me.

Mr. DAVIS. No, no, you are fine.

Ms. FERRO. Yes, that is outside of the exception process that drivers apply for routinely for a vision exemption or a diabetes exemption. Those are a different process, much higher numbers. But in this case, it is—did I say a vision? Yes, or hearing. In this case, it is about 20 to 30 percent.

Mr. DAVIS. OK, so about 2 to 3 a year out of 10 on average. My time is running out, and I know you all want to leave too. Can you provide my office with a listing of what those exemption requests were and the ones that were granted?

Ms. FERRO. Certainly.

Mr. DAVIS. So we can kind of get an idea of what to expect when we tell constituents about that process?

Ms. FERRO. We certainly will, and we are required to post every one in the Federal Register. And we will provide all of that to your office.

Mr. DAVIS. Well, thank you very much.

Ms. FERRO. You are welcome.

Mr. DAVIS. Thank you all. I yield back.

Mr. PETRI. Thank you. And I would ask unanimous consent the record for today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing. And unanimous consent the record remain open for 15 days for additional comments and information submitted by members or witnesses to be included in the record of today's hearing. And without objection, so ordered.

Mr. PETRI. It is very easy to get unanimous consent if you wait.

Beyond that, I will really thank you all for a civil, somewhat contentious but very important discussion. And we hope it will help work things out as we go forward in a way that continues the improvements we have seen in highway safety over the last 10 years.

This hearing is adjourned.

[Whereupon, at 12:25 p.m., the subcommittee was adjourned.]

ANDY BARR
SIXTH DISTRICT, KENTUCKY

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

UNITED STATES
HOUSE OF REPRESENTATIVES

1432 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4706

2709 OLD ROSEBUD ROAD, SUITE 100
LEXINGTON, KY 40509
(859) 219-1366

Congressman Andy Barr Statement for the Transportation & Infrastructure Committee Record

To accompany the June 18, 2013 hearing in the Subcommittee on Highways and Transit
Hearing on "The Impacts of DOT's Commercial Driver Hours of Service Regulations"

I would like to thank Chairman Petri and the Subcommittee on Highways and Transit for holding this hearing. This hearing provides a very important opportunity to scrutinize the impact of the Department of Transportation's (DOT) Commercial Driver Hours of Service (HOS) Regulations, and to illustrate the many consequences with the rules.

I hold significant concerns with the DOT's Hours of Service Regulations, and I offer these comments for the record in order to encourage the Federal Motor Carrier Safety Administration (FMCSA) to suspend implementation of the rules.

The FMCSA plays an important role in promoting safety on our nation's roadways and I appreciate its goal of reducing crashes attributable to driver fatigue. However, it is clear that these rules, as designed, are simply too rigid and out of touch with the day-to-day realities of trucking operations.

I have heard from a number of employers directly impacted by the HOS rules, and the common theme conveyed is that these rules will limit productivity and considerably impair their ability to conduct business. For instance, changes to the 34-hour restart rule are expected to pose significant problems. Prior to the new HOS rules, a driver could take a 34-hour restart at any time during the week in order to restart their 70 hour clock. This permitted drivers the discretion and flexibility to apportion their time in the manner they felt best to provide service to the customer.

This new rule, however, forces individuals to substitute their business judgment for a rigid, one-size-fits-all federal mandate. By limiting the 34-hour restart to only one time within a 168 hour

period, and by requiring that it include two periods between 1:00 a.m. and 5:00 a.m., the new rule could impose on drivers a break that ends up being 50 plus hours. In an industry so central to the around-the-clock demands and free flow of commerce in this nation, it is hardly insignificant for the federal government to force such an extended break on drivers.

Additionally, provisions related to mandatory rest breaks and classification of "on-duty time" will undoubtedly create unintended disruptions in the industry. The HOS final rule will prohibit truck operators from driving if more than eight hours have passed since the end of their last off-duty period of at least 30 minutes. This does not include any time resting in a parked vehicle, meaning that periods of inactivity occurring while a shipment is unloaded would not be counted toward the 30-minute break requirement.

Further, concern exists about the application of mandatory off-the-clock rest periods to certain types of field technicians who drive to and from a work site each day. Due to this framework, companies are actually exploring alternative methods of transportation for returning these workers home without triggering the HOS limitations.

Finally, it should be noted that there is presently litigation before the U.S. Court of Appeals for the District of Columbia on these exact rules. Because preparation and training for compliance with these rules comes at a significant cost to the trucking industry – the FMCSA itself estimated this cost to total at least $320 million I believe it is premature for the FMCSA to move forward with implementation while the possibility exists for the Court to vacate or alter the rules.

I appreciate the FMCSA's commitment to safety on our nation's roadways. However, the reality is that these rules will ultimately lead trucking companies to add more trucks to the road in order to compensate, and will ultimately increase the transportation costs for goods in commerce. Both of these concerns create an entirely new set of unintended consequences.

Therefore, I encourage DOT and the FMCSA to suspend implementation of the Hours of Service Rules, and instead work with Congress to ensure any action in this area is consistent with the intent of Congress and the American people.

STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
U.S. HOUSE OF REPRESENTATIVES
OPPORTUNITIES AND CHALLENGES TO MEETING THE NEW HOS REGULATIONS

JUNE 18, 2013

Mr. Chairman, Ranking Member DeFazio, and Members of the Subcommittee, thank you for inviting me to testify today on the impacts of the Federal Motor Carrier Safety Administration's (FMCSA) changes to the hours-of-service (HOS) regulations for drivers of large trucks.

Safety is FMCSA's number one priority and our employees and State partners are committed to saving lives. Since FMCSA's inception in 2000, we have witnessed a drop in the fatality rate from 0.205 fatalities in large truck and bus crashes per 100 million vehicle miles traveled by all motor vehicles to 0.136 in 2011, the most recent calendar year for which we have the final highway safety data. We have also seen a 29 percent decrease in the number of people killed in large truck- and bus-related crashes, from 5,620 in 2000 to 4,018 in 2011.

While we are aware of this progress, more must be done. Every life is precious and even one person injured or killed is one too many.

The December 2011 HOS final rule makes reasonable and common sense changes to the current HOS rules while helping to realize important safety benefits for the American public. We estimate these rules will prevent 1,400 crashes and 560 injuries, and save 19 lives each year.

Changes to the HOS Rules Will Improve Safety

Fatigue is a leading factor in large truck crashes. Under the HOS rules in effect until July 1, 2013, drivers operating large trucks may face demanding driving schedules, including workweeks in excess of 80 hours, averaging 13 hours per day. These schedules increase both the risk of fatigue-related crashes and long-term health problems for drivers.

The objective of the 2011 HOS final rule is, therefore, to reduce both acute and chronic fatigue by limiting the maximum number of hours per day and week that the drivers can work, thereby reducing the risk of fatigue-related truck crashes. The rule reduces a driver's average maximum allowable hours of work per week from 82 to 70 hours, ensuring that drivers have enough time off to obtain adequate rest on a daily and weekly basis.

The final rule is the product of years of fatigue research, safety studies, and analysis of public comments. FMCSA sought input from a wide range of stakeholders, including trucking companies, drivers, law enforcement, unions and safety advocates, and held numerous public listening sessions as it developed the 2011 final rule. This unprecedented public engagement

contributed to a fair and balanced final rule that provides a net gain in public safety and driver health.

Overview of Changes to HOS Rules

In general, the changes in the 2011 final rule are designed to impact only those drivers working the most intense schedules. As a result, the changes primarily impact the 15 percent of drivers who average 70 or more hours of work per week. Drivers who average less than 70 hours per week would not be affected by the changes included in this rule, including the new restart provision, and would not likely approach the daily driving, on duty, or weekly on duty limits set by the 2011 final rule. Drivers working more moderate schedules may approach 11 hours of driving, or 14 hours on-duty without the imposed 30-minute break, on a particular day they do so only occasionally. As a result, drivers working more moderate schedules are largely unaffected by the changes.

The HOS final rule reduces the maximum allowable weekly on-duty hours from 82 to 70 hours per week. Our research shows that 85 percent of the truck driver workforce (1.36 million drivers) has an average weekly work time of 60 hours or less. Of the remaining 15 percent (240,000 drivers), 160,000 work an average of 70 hours per week and approximately 80,000 drivers work an average of 80 hours per week. Overall, the reduction in maximum weekly on-duty hours to 70 hours will have a limited impact on the truck driver workforce, while helping to prevent 1,400 crashes and 560 injuries, and save 19 lives each year.

The HOS rule limits the use of the "34-hour restart" to once a week (or once every 168 hours). This change limits a driver's work week to an average of 70 hours in 7 days, compared to the current rule which allows up to approximately 82 hours when the restart is used more than once in a 7-day period. The Agency took this action because FMCSA research shows that working long daily and weekly hours on a continuing basis is associated with chronic fatigue, a high risk of crashes, and a higher risk of death for drivers. As stated above, the new restart provision does not affect drivers averaging 60 hours or less per week of work time. For those drivers working an average of 70 hours per week, the new restart is estimated to result in a loss of half an hour per week due to the 2-night restriction in the restart provision. The impact of the restart for drivers working an average of 80 hours per week is estimated to result in an average loss of 8.7 work hours per week.

Under existing rules, alternating 14 hours on-duty and 10 hours off-duty, a driver would reach 70 hours in less than five full days. After a 34-hour break, the driver could then begin this same cycle again, totaling 70 hours on-duty every 6 calendar days, for an average of almost 82 hours per calendar week. Limiting restarts to once every 168 hours – measured from the beginning of the previous restart – prevents this excessive buildup of on-duty hours, while still allowing the driver to use the restart provision to his/her advantage and avoiding the safety risks associated with more frequent restarts.

Another key element of the 2011 final rule is the requirement that the 34-hour restart must include at least 2 periods between 1:00 a.m. and 5:00 a.m. We did not opt for two periods between midnight and 6:00 a.m. as proposed in the 2010 Notice of Proposed Rulemaking for the

changes to the HOS rules. Only nighttime drivers who work more than 60 hours in 7 consecutive days, or 70 hours in 8 consecutive days will be impacted by this change. Generally, the drivers most likely to be impacted by this provision work grueling and irregular schedules that include some nighttime driving. By contrast, nighttime operations of the major less-than-truckload (LTL) carriers should be impacted minimally, as their drivers generally receive 2 days off-duty per week.

In an effort to address acute fatigue during the workday, the final rule requires drivers to take a 30-minute break, if more than 8 consecutive hours on-duty have passed since the last off-duty (or sleeper berth) period of at least 30 minutes, before continuing to drive. The driver can take this break at a time and place of his or her choosing, and may include meals, rest stops, and other rest periods.

A Net Gain for the U.S. Economy

In 2009 alone, large truck and bus (also called commercial motor vehicles or CMV) crashes resulted in $20 billion in societal costs, including medical, insurance, infrastructure damage, lost wages and productivity. These far-reaching impacts on the economy and taxpayers point to the need for policies that reduce dangerous truck driver fatigue and prevent needless tragedies on our highways.

The estimated annual cost of the 2011 final rule is more than 50 percent less ($530 million) than FMCSA's preliminary estimates discussed in the 2010 notice of proposed rulemaking. The new HOS rule will result in many public safety benefits, as well as benefits to the industry, through reduced health care costs associated with crash injuries and overall improved driver health. FMCSA estimates the rule will provide $280 million in savings from fewer crashes and $470 million in savings from improved driver health (i.e., reduced mortality).

Opportunities and Challenges to Implementing the New HOS Rules

February 27, 2012, was the implementation date for those provisions in the rule that provide increased flexibility for carriers and drivers. The Agency's outreach efforts have resulted in a smooth transition by the industry and enforcement community. FMCSA selected a later implementation date, July 1, 2013, for other provisions of the rule to ensure adequate time for training of enforcement officials, motor carriers, and drivers, with the expectation that the affected parties would not postpone their training efforts because of the litigation. Generally, the Agency sets shorter compliance dates for new safety rules. However, FMCSA recognized that industry and law enforcement may need extra time to train personnel and to adjust schedules and automated systems to adapt to the changes to the 34-hour restart.

Definition of "On-Duty Time"

Prior to February 2012, the definition of "on-duty time" included all time that the driver spends in the CMV, with the exception being the time the driver spends in the sleeper berth. The 2011 final rule changed the definition to provide drivers with greater flexibility. As a result, the time a driver spends resting in a parked CMV may be considered "off-duty time" provided the driver is

relieved of all duties and responsibilities for performing work, including paperwork. This change applies to both truck and bus drivers. Drivers were allowed to begin using the new provision on February 27, 2012.

The final rule also allows truck drivers in team-driver operations to include up to 2 hours in the passenger seat immediately before or after 8 consecutive hours in the sleeper berth to log the time as off-duty time. This means the driver may log up to 2 hours in the passenger seat as off-duty time and combine it with the 8 consecutive hours in the sleeper berth to accumulate 10 consecutive hours off duty. As an alternative, the driver may use 1 hour in the passenger seat before the 8-hour sleeper berth period and 1 hour in the passenger seat after the sleeper berth period to accumulate 10 consecutive hours. Truck drivers were allowed to begin using this new, more flexible regulatory provision on February 27, 2012.

Egregious Violations of the HOS Rule

Current Federal statutes concerning civil penalties require that the Agency consider a number of factors, including the nature, circumstances, extent, and gravity of the violation, as well as the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and certain other matters. Congress also requires that the Agency calculate each penalty to increase compliance (49 U.S.C. 521(b)(2)(D)). Although some of the statutory factors may limit the Agency's ability to impose penalties, others – like the extent and gravity of the violation – support enhanced penalties.

The final rule includes a provision to support imposing the maximum penalty for a first HOS offense that has significant potential to cause serious injury or death, such as excessively long driving hours. We will consider a violation of 3 or more hours beyond the driving time limit (10 hours for bus drivers, 11 hours for truck drivers) as an egregious violation subject to maximum civil penalties. The new penalty applies to both truck and bus drivers, and took effect February 27, 2012.

Compliance Assistance Materials for the Industry

FMCSA's expectation is that the overwhelming majority of companies with drivers subject to the HOS requirements would have conducted training sessions on ALL of the 2011 changes to the HOS rule by now. However, the Agency continues to provide comprehensive compliance assistance information at its website (http://www.fmcsa.dot.gov/rules-regulations/topics/hos/index.htm) for trucking companies that have not yet trained their drivers and dispatchers on the changes to the 34-hour restart and the new 30-minute rest-break requirement.

The Agency has posted "Hours of Service Logbook Examples" at its website – this publication provides detailed illustrations of how the new rules would apply in many common scenarios that truck drivers would face in filling out their logbooks. The examples cover the changes to the on-duty definition and how the time would be recorded in the logbooks and the changes to the 34-hour restart. The examples also cover the new 30-minute break requirement. In addition, as part of the 2013 "Roadcheck" inspection activity carried out two weeks ago by FMCSA and its State

partners, the Agency distributed visor cards summarizing the HOS changes and emphasizing the provisions that take effect on July 1, 2013.

In addition to our publications, FMCSA participates on a monthly basis on two separate satellite radio programs geared towards the trucking community (i.e., the Dave Nemo Show and the Mark Willis Show – the successor to the Evan Lockridge Report), during which senior agency officials provide updates on the Agency's major safety initiatives and answer questions from drivers and carriers. Most of the broadcasts over the past year have included extensive discussions about the HOS requirements. We provided numerous clarifications of the new rule and frequent reminders of the approaching July 1, 2013, compliance date for the changes to the 34-hour restart, and the new 30-minute break requirement.

Through the development of compliance assistance materials and participation in satellite radio broadcasts, the Agency has provided carriers and drivers a means of learning about the new HOS requirements, at minimal cost.

The Agency also engages daily with the motor carrier industry and the law enforcement community through our field work and industry association meetings. We are committed to assisting with the implementation of this law.

Congressional Concerns About Training Costs to Meet the July 1 Deadline

The FMCSA acknowledges that some Members of Congress and certain stakeholders would like the Agency to delay the July 1, 2013, implementation date of the new HOS rule until 3 months after the U.S. Court of Appeals' issues its decision on the current legal challenge. The industry cites the Agency's estimates of the training costs and argues that these costs should not be imposed to achieve compliance with a rule that could be overturned.

However, the Agency continues to believe it is inappropriate to sacrifice several months of safety benefits from the timely implementation of the rule. The new HOS rule will:

(1) Reduce excessively long work hours that increase the risk of fatigue-related truck crashes;
(2) Give drivers more off-duty time to obtain more rest during the workweek; and
(3) Help reduce both acute and chronic fatigue experienced by drivers who work the longest schedules.

Furthermore, in their request to delay the effective date, the organizations did not provide adequate support for their request. The uncertainty over the outcome of the HOS litigation does not create the likelihood that the industry or the enforcement community will suffer harm due to expenditures for training or the potential for confusion.

FMCSA selected the July 1 compliance date for its December 2011 final rule to ensure adequate time for training of enforcement officials, motor carriers, and drivers, with the expectation that the affected parties would not postpone their training efforts based solely on the assumption that the Court would vacate the 2011 final rule. The FMCSA has made no assumptions about the

Court's decision but has chosen to focus on the crashes and injuries that could be prevented through implementation of the rule on July 1 and the lives that could be saved while we await the outcome of the litigation.

The FMCSA emphasizes that most of the training costs associated with the new HOS rule involve re-training several million CMV drivers already operating on the Nation's highways. Almost all of these drivers had to undergo training to understand the changes that took effect on February 27, 2012, and it is reasonable to expect that most carriers would have trained them on all the changes rather than split the training into two modules, based on the expectation that the Court would only vacate the specific provisions that impose costs on the industry. And, once the drivers have been trained, there are no additional training costs in the subsequent years for these drivers. Any new drivers entering the industry would have to undergo training on the HOS requirements irrespective of any rule changes.

Conclusion

Since Congress directed the Department of Transportation to undertake an HOS rulemaking in 1995, the Department has focused on implementing a new rule that will help reduce the number of fatigue-related fatal crashes involving large trucks. While the cycle of rulemaking and litigation has created an atmosphere of uncertainty, FMCSA remains committed to working with its safety partners and stakeholders to provide an HOS regulatory approach that raises the safety bar for the industry and saves lives on our roadways.

Thank you for the opportunity to discuss FMCSA's implementation of the 2011 HOS final rule. I am glad to answer your questions.

Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on "The Impacts of the DOT's Commercial Driver Hours of Service Regulations"
June 18, 2013
Questions for the Record

Questions from Rep. Petri:

Question: What is the status of the 34-hour restart field study mandated by MAP-21? When will the study be completed and when will the report on the study be submitted to Congress?

FMCSA Response: FMCSA has initiated the 34-hour restart field study required by MAP-21 and is in the process of collecting data from the participating fleets and drivers. The Agency anticipates completion of the field study later this year.

Question a: Also, why did FMCSA not conduct a restart field study prior to implementing the rules?

FMCSA Response: During the notice-and-comment rulemaking process that led to the December 2011 final rule, FMCSA examined many studies on the relationship between work hours and health and safety, both in trucking and other industries. The Agency also reviewed the comments and information submitted to the rulemaking docket, and completed elaborate analyses in accordance with Executive Order 13563, "Improving Regulations and Regulatory Review," issued on January 18, 2011. FMCSA concluded there was sufficient scientific basis, without a field study, for moving forward with changes to the 34-hour restart. FMCSA does not believe the subsequent MAP-21 mandate for a field study warranted a delay in implementing the 2011 final rule on July 1, 2013.

To study the effectiveness of the 2-night restart provision, FMCSA sponsored research by Washington State University (WSU) that tested subjects in a controlled sleep lab environment. This was done under the premise that if a provision was not effective in a lab, it would not be effective in a field-related environment. That is, if people cannot obtain adequate sleep in the best-case environment (a dark, quiet room, with no possibility of interruption), they would not be able to obtain adequate sleep in a sleeper berth at a truck stop or at roadside. The first phase of the WSU study FMCSA cited found that the 34-hour restart was effective at mitigating sleep loss and consequent performance impairment for daytime drivers, but not for nighttime drivers. The second phase, which tested a 2-night recovery period for nighttime drivers, found that the 2-night provision works better than 1-night to mitigate driver fatigue in nighttime drivers.

Question b: And, if the results of the restart study mandated by MAP-21 do not support the change scheduled to go into effect July 1st, what will FMCSA do to modify the rule?

FMCSA Response: The FMCSA welcomes the opportunity to consider new, peer-reviewed research in making a determination whether it is appropriate to initiate a new rulemaking concerning truck drivers' hours of service. The Agency anticipates completion of the

MAP-21 mandated field study later this year. Agency experts will review the report to determine whether the findings suggest the need for additional regulatory action, and if so, the specific changes that should be considered.

Question: Does the mandatory 30-minute rest break apply to all local, short-haul drivers who are not currently required to complete a logbook? If so, why did FMCSA decide to apply this rule to this particular segment of drivers?

FMCSA Response: Yes. The rest break requirement is applicable to all interstate drivers of property-carrying vehicles who are subject to the HOS requirements, irrespective of whether the drivers are required to prepare records of duty status (RODS) or "logbooks." The Agency did not have basis for excluding local and short-haul drivers from the mandatory break. Research studies cited in the December 2011 final rule indicate any break from driving reduces crash risk in the hour following the break, and off-duty breaks produced the largest reduction in risk.

However, the HOS requirements have historically been enforced differently for short-haul and long-haul drivers, and the new rule does not revisit this. The Agency recognizes the complexity of short-haul operations and the frequent changes of duty status these drivers experience during a shift; as a result, FMCSA does not require short-haul drivers to maintain logbooks. Instead, FMCSA requires an employer of a short-haul driver to use a time card that tracks the time an employee begins and ends each shift, plus total time he or she worked. This makes it difficult to track HOS compliance unless (1) a driver files a whistleblower complaint with the Occupational Safety and Health Administration, or (2) an enforcement official observes a systematic disregard for the safety rules.

Question: Has FMCSA considered the safety risks to armored car drivers and our nation's financial infrastructure of requiring armored car drivers to comply with the 30-minute rest break requirement given that armored vehicles are significant targets for criminals and leaving the armored vehicle unoccupied could pose a significant risk to the driver and the goods being transported?

FMCSA Response: FMCSA has not conducted an analysis of the impact of the 30-minute rest break requirement on armored car operators. However, the Agency has received an application for an exemption from this unique segment of the motor carrier industry. In accordance with the statutory requirements concerning applications for exemptions, the Agency will publish a Federal Register notice seeking public comment on their exemption application. At the end of the 30-day comment period, FMCSA will consider the responses to the notice and issue a decision on the application.

Questions from Rep. Nolan:

In discussions during the hearing regarding fault in truck crashes, the FMCSA's Compliance, Safety, Accountability (CSA) program was said to be an impractical tool.

Question: Is it true that by dispensing more data it gives the Agency the ability to reach more carriers without a dramatic increase in resources?

FMCSA Response: Yes. The Agency's staff of approximately 1,100 is responsible for overseeing a population of over 525,000 active interstate motor carriers. So it is imperative that FMCSA effectively allocate its enforcement resources. Therefore, one of the founding principles of the CSA program was the goal of extending the reach of the Agency's intervention efforts to a broader segment of the motor carrier population.

The CSA Safety Measurement System (SMS) uses all safety-based citations recorded during roadside inspections, rather than just out-of-service violations, as a performance-based means to more precisely identify the specific compliance problems of a motor carrier for intervention.

Prior to CSA, FMCSA generally conducted a full compliance review of motor carriers without regard to the scope of their known compliance deficiencies. Under the CSA program, the Agency has implemented less resource-intensive interventions designed to induce compliance and remedy on-road performance deficiencies identified by the more extensive SMS data. Specifically, FMCSA now issues automated warning letters and undertakes focused investigations to augment full compliance reviews. A motor carrier that has not demonstrated past safety and compliance deficiencies, but is beginning to do so, will receive a warning letter from FMCSA highlighting the specific compliance areas identified by SMS that may require attention. This letter serves to notify carriers of the SMS results and provides them an opportunity to address any safety management practices prior to a more significant intervention taking place. In fiscal years 2011 and 2012, FMCSA reached over 65,000 motor carriers through the CSA warning-letter process.

The specific nature of the more extensive SMS data is also used to conduct focused investigations. These investigations target the noted deficiency for review. As focused investigations are not looking at all safety management systems, they are less labor intensive than full compliance reviews, thereby allowing FMCSA to reach more motor carriers. Summary information regarding FMCSA interventions can be viewed at: http://www.fmcsa.dot.gov/facts-research/art-safety-progress-report.htm.

Question: Do you agree that CSA has been successful in starting a cultural change in the industry by forcing carriers to focus on the details of safety management?

FMCSA Response: Yes. FMCSA's deployment of the CSA SMS has significantly raised safety awareness throughout the motor carrier industry. In 2012, the public website that summarizes a motor carrier's status in the SMS prioritization system hosted 48 million user sessions, up 60 percent from 2011, and more than a tenfold increase from the approximately 4 million user sessions per year under the prior public SafeStat system. FMCSA continues to hear that this increased awareness and transparency have raised the status of safety within corporate cultures, and we are seeing this increased awareness in improved safety compliance and performance data. For example, since rollout of the CSA SMS, the Agency has seen the most dramatic decrease in violation rates in a decade – violations per roadside

inspection are down nearly 14 percent and driver violations per inspection are down 17 percent.

Question: What is the logic and scientific evidence for including all crashes, regardless of fault in the Crash Indicator BASIC?

FMCSA Response: The Agency receives over 100,000 crash reports involving commercial motor vehicles from the States each year. These reports do not indicate a motor carrier's role in the crash. However, FMCSA, the University of Michigan Transportation Research Institute (UMTRI), and the American Transportation Research Institute (ATRI) have studied past crash involvement as a predictor of future crashes. The studies show that crashes, regardless of the carrier's role in the crash, are a strong predictor of future crashes. As a result, the Agency's SMS uses all reportable crashes to identify motor carriers for intervention even though the carrier's role (i.e., fault, if any) is not known. This Crash BASIC score for the carrier is not publically revealed because the Agency understands that this information may be misinterpreted.

In July 2012, the Agency released the scope and schedule for a crash weighting study. As part of this study, FMCSA is determining if a carrier's role in the crash is a better predictor of future crash risk. The Agency is also reviewing the uniformity and consistency of Police Accident Reports; the process for making "final" crash determinations; the process for accepting public input; and the actual effect on SMS' ability to better identify carriers that have a high crash risk. The Agency intends to release the results of this study later this year.

Throughout the hearing there was much discussion on practical experience and data as it relates to the physical capacity of truck drivers. The FMCSA has reported that, in a survey sponsored by the agency, nearly 48 percent of the drivers said that they sometimes or often had trouble staying awake while driving. Moreover, truck-involved crash fatalities have increased the last two years.

Question: Has the FMCSA determined precisely what, if any, affect the current hours of service rule has had on truck crash rates?

FMCSA Response: No. The Agency has not conducted a study attempting to determine the impact of the August 25, 2005, final rule concerning truck drivers' hours of service. The cycle of rulemaking and litigation in the last few years has made such a study essentially impossible. The Agency will consider options for research or analysis on fatigue-related crashes as part of its effort to complete a regulatory effectiveness review of the December 2011 final rule.

Question: What specific requirements in the 2011 HOS final rule address the widespread problem of truck driver fatigue? And how do they reduce driver fatigue?

FMCSA Response: The December 2011 final rule limits the use of the 34-hour restart to once a week (168 hours); the restart must include 2 nighttime periods between 1:00 a.m. and 5:00 a.m. based on the driver's home terminal time zone. These changes reduce maximum

possible weekly on-duty hours by 15 percent – from an average of 82 to an average of 70 hours. This affects truck drivers with the most extreme driving schedules. The changes to the 34-hour restart reduce the risk of chronic fatigue. This translates to an estimated 1, 444 crashes avoided, 19 lives saved, and 560 injuries prevented.

In addition, the final rule requires that if more than 8 consecutive hours on duty have passed since the last off-duty (or sleeper-berth) period of at least half an hour, a driver must take a break of at least 30 minutes before continuing to drive. The rest-break requirement reduces the risk of acute fatigue.

You testified that even though the current weekly limits on driving is 60 hours in 7 days or 70 hours in 8 days, the 2011 final rule allows truckers to work an average of 70 hours a week.

Question: Does this mean that some drivers can work and/or drive in excess of the 60- and 70-hour limits?

FMCSA Response: No. The HOS rules prohibit driving after the driver has accumulated 60 hours of on-duty time (including any driving time) in a 7 consecutive day period if the motor carrier does not operate commercial motor vehicles (CMVs) every day of the week (60-hour rule). Drivers are prohibited from driving after accumulating 70 hours of on-duty time (including any driving time) in an 8 consecutive day period if the motor carrier operates CMVs every day of the week (70-hour rule). Prior to July 1, 2013, drivers were allowed to restart their calculations of the 60- and 70-hour rule after taking 34-consecutive hours off-duty, and there were no restrictions on how often the restart could be used in a given time period. With the implementation of the new requirements on July 1, use of the 34-hour restart is limited to once a week (168 hours). This change limits a driver's work week to 70 hours a week on average, compared to the previous rule, which allowed up to approximately 82 hours when the restart was used more than once in a week.

Question: What specific steps is FMCSA taking to address the increase in truck-related crashes and fatalities in the past two years?

FMCSA Response: Since FMCSA's inception in 2000, the fatality rate has dropped from 0.205 fatalities in large truck and bus crashes per 100 million vehicle miles traveled by all motor vehicles to 0.136 in 2011, the most recent calendar year for which we have the final highway safety data. Fatalities in large truck and bus crashes dropped from 5,620 in 2000 to 4,018 in 2011, a reduction of nearly a third. The successes in reducing crashes, injuries, and fatalities are noteworthy, but clearly there is more to be done. The Agency will continue to execute a strong and aggressive safety agenda to raise the bar to entry into the industry, maintain high standards to remain in the industry, and remove unsafe truck and bus operators.

Among other things, FMCSA will strengthen its new applicant screening process and its New Entrant Safety Assurance Program to raise the bar to entry into the industry. This includes implementation of the MAP-21 requirements concerning oversight of new entrant carriers.

The Agency will maintain high standards for carriers to remain in the industry by implementing the CSA program fully, including the publication of a new Safety Fitness Determination (SFD). The new SFD will be supported by data in the Agency's Safety Measurement System and provide a critical tool to help the Agency oversee safe operations by approximately 500,000 motor carriers. Increased enforcement and compliance are proven to increase safety and reduce commercial truck and bus crashes, injuries, and fatalities.

In addition, FMCSA will move forward with a rulemaking agenda to implement MAP-21 provisions such as the requirement for a controlled substances and alcohol testing clearinghouse, and rules mandating the use of electronic logging devices.

Questions from Rep. Graves:

Question: One way truckers may try to save time under the new HOS regulations is by qualifying for pre-clearance, pre-screening, or other programs to bypass weigh stations. FMCSA has announced its intent to approve mobile device apps for this purpose. These apps may collect user data from truck drivers that may be used for purposes other than weigh station bypass. What has FMCSA done to ensure driver privacy is not compromised?

FMCSA Response: The electronic screening process does not involve driver information. However, where access to Federal government information is provided, FMCSA requires compliance in accordance to OMB A-130 Appendix 3, Security of Federal Automated Information Resources. Electronic screening is used to identify enrolled vehicles and screen them based on the safety history of the carrier, vehicle weight, and credential status (e.g., registration, fuel tax payment, operating authority), and other criteria determined by the participating States. On July 19, 2013, FMCSA published a *Federal Register* notice announcing that Commercial Mobile Radio Services (CMRS) network devices can be used as transponders for the purposes of Commercial Vehicle Information Systems and Networks (CVISN) electronic screening inspection station bypass systems. This announcement makes it clear that States may now use CMRS networks to screen trucks equipped with wireless mobile data devices used as transponders. CMRS network devices such as smartphones, tablets, fleet management systems, GPS navigational units, and onboard telematics devices capable of transmitting and receiving multiple forms of wireless mobile data are considered transponders for the purposes of the CVISN program.

Question: One way truckers may try to save time under the new HOS regulations is by qualifying for pre-clearance, pre-screening, or other programs to bypass weigh stations. FMCSA has announced its intent to approve mobile device apps for this purpose. These apps also give truckers another reason to look at their phones instead of the road while driving at highway speeds. This seems to encourage, rather than discourage, distracted driving. However, there are long-standing, proven technologies that do not require a driver to interface with a mobile device to communicate with enforcement. Why would FMCSA encourage truck drivers to use their mobile devices during highway driving?

FMCSA Response: FMCSA's policy announcement concerning CMRS network devices does not affect the applicability or enforcement of FMCSA's regulations under 49 CFR part 392 prohibiting texting and the use of hand-held wireless mobile phones by CMV drivers.

CMRS transponders use commercially available mobile radio transmission frequencies to access cellular data networks and exchange carrier and vehicle credentials utilizing web-based technologies. Triggered via GPS signaling, CMRS transponders communicate through the internet to electronic screening systems that issue traditional red light/green light responses for in-cab displays mounted on the dashboard. Given the automated operation of the CMRS network devices, drivers would not have to take actions that would put them in conflict with FMCSA's rules prohibiting texting and the use of hand-held wireless mobile phones.

Questions from Rep. Barletta:

I understand FMCSA recently withdrew funding from the organization (the University of Michigan's Transportation Research Institute) that administered the "Trucks Involved in Fatal Accidents" database – [which] **is the only truck crash database that tracked the incidence of fatigue in fatal truck crashes.** The database is no longer being populated with crash data, and no new analyses are being conducted.

Question: Are you currently studying the incidence of fatigue in fatal truck crashes? How do you plan to evaluate whether these new fatigue rules are meeting your goal of reducing fatigue-related crashes without studying fatigue-related incidences?

FMCSA Response: No. FMCSA does not have any studies in progress concerning the incidence of fatigue in fatal truck crashes. The Agency will consider options for conducting research or analysis of fatigue-related crashes as part of its regulatory effectiveness review of the December 2011 final rule. Regulatory effectiveness reviews are typically conducted several years after the implementation date of a new rule to ensure the availability of sufficient data to isolate the impact of the rule itself from other factors or trends. Therefore, FMCSA would consider initiating the review within approximately 3 to 5 years of the July 1, 2013, implementation date to determine the impact of the new requirements on reducing fatigue-related crashes.

Questions from Rep. DeFazio:

Administrator Ferro, earlier this week the American Transportation Research Institute (ATRI) issued a report assessing the impacts of the 34-hour restart provision in the hours of service regulations set to take effect on July 1. This report calls into question many of the underlying assumptions provided in the Regulatory Impact Analysis justifying the new rule, so I am curious about your reaction to this report. Additionally, I am curious about your reaction to a number of assumptions in the ATRI report, including:

Question: Is it correct that ATRI counts each off-duty period of 34 or more hours as a "restart," whether or not the driver required a restart due to reaching the 60- or 70-hour limits?

FMCSA Response: ATRI appears to have counted any off-duty period of 34 hours or more as a restart, whether or not the driver would have been required to take a restart to avoid an HOS violation. This is indicated by the fact that their report states that drivers in the "moderate" working group – those who average 45 hours of work per week – are the most likely to have a "conflict" with the once-a-week restart limitation. Drivers have to work more than 60 hours in 7 days, or 70 hours in 8 days, before a restart is required by the new HOS regulations. Drivers in the moderate group do not approach these limits, and therefore would not be required to take a restart, nor would any extended off-duty period have to contain two periods between 1:00 a.m. and 5:00 a.m.

Since drivers in the moderate working group are working far less than the weekly working limits, these drivers should not have a conflict with either aspect of the new restart requirement. The fact that ATRI attributes conflicts with the new provision to these drivers indicates that any period of 34 hours or longer was counted as a restart, whether or not that off-duty period was required under the new rule.

Question: Given that less than 3 percent of drivers are working more than 65 hours per week, why does ATRI think all drivers would be losing time due to the 34-hour restart?

FMCSA Response: As the Agency did not conduct the study in question, we cannot say with certainty why ATRI believed that all drivers' schedules would be affected on a weekly basis by the new restart provision. However, it is clear from the report that relatively few drivers are working more than 70 hours in 8 days, which is roughly equivalent to working 61 hours in 7 days. The report also indicates that nearly 90 percent of restarts – as defined by ATRI – comply with the 1:00 a.m. to 5:00 a.m. requirement.

Since the majority of restarts contain two night-time periods, even drivers working close to the weekly maximum would be compliant with the new requirement on most weeks. These drivers could designate one off-duty period as their restart, and log any other extended off-duty period as off-duty time. They would have to make no adjustments to their schedules. The majority of drivers in the study appear to work well within the weekly limits, and they would also not have to adjust their schedules to avoid an HOS violation. Given that most drivers in ATRI's sample are compliant with the new rule on most, if not all, weeks, it appears that ATRI's conclusion that all drivers would be affected on a weekly basis is the result of an error in interpreting the new rule, or a misapplication of that rule to the data.

Question: Is the sample of drivers listed in the study representative of the industry as a whole?

FMCSA Response: As the Agency was not consulted on the development and implementation of the sampling methodology for this study, we do not know whether the sample is representative of the industry. However, if the sample is representative, it appears

that the new restart provision would impose minimal costs. Very few drivers would have to adjust their schedules to comply with the new provision, and of those few, most would have to make only minor adjustments. As a result, the industry would suffer few if any adverse impacts from the new restart provision.

The data available to the Agency at the time the Regulatory Impact Assessment was developed indicated that drivers were working longer hours on average than ATRI's data indicates. The Agency expressed concern at that time that the data was biased in the direction of overestimating weekly work hours. The ATRI data tend to confirm that concern. Overestimating weekly work would have resulted in overestimating costs as well as benefits. If drivers are working the shorter hours the ATRI data indicate, the estimated costs and benefits of the 2011 rule should decline in roughly equal measure.

Questions from Rep. Michaud:

Administrator Ferro – As you know, many drivers plan their schedules to be on the road during nighttime hours when there is less traffic and thus fewer safety hazards. Yet in order for drivers to utilize the 34 hour restart, FMCSA's new rules require that the restart period include two consecutive nighttime shifts from 1 AM to 5 AM. This encourages additional commercial traffic to start their Hours of Serve clock at 5 AM – putting more trucks on the road during the heavily-congested morning commute.

Question: How is highway safety served by forcing more commercial traffic on the road during the heavily-congested morning rush hour?

FMCSA Response: Based on the information FMCSA reviewed in developing the 2011 final rule, the Agency does not believe the changes to the 34-hour restart would result in more CMV traffic on the road during the morning rush hour. The impact of the 2-night requirement on the restart length will vary with the time a driver goes off duty and the time he/she resumes work. For solo drivers who work a regular schedule that starts at night, the 2-night provision will generally require the driver to take 2-plus days off to maintain the regular work schedule. For solo drivers who work at night occasionally, the restart length may be much shorter because the driver may be able to stop in time to get 2 nights into a shorter time frame; a driver who can stop between 7:00 p.m. and 1:00 a.m. can take the minimum 34 hours off while obtaining 2 periods that include 1:00 a.m. to 5:00 a.m.

For team drivers, the time that the truck would have to remain stopped for both drivers to meet the restart requirements would depend on the time of day that the truck stopped. If it stopped at midnight instead of 1:00 a.m., for example, the team would have to be off-duty for 29 hours for both drivers to be off-duty for two consecutive periods between 1:00 a.m. and 5:00 a.m. Similarly, if the truck stopped at 10:00 p.m., it would have to remain parked for 31 hours to reach 5:00 a.m. a second time, and so forth. The earlier the truck stopped, the longer it would have to remain stopped, but the time could be minimized by planning on the part of the team drivers.

The Agency is not aware of any specific reason why drivers would stop driving at night, putting more trucks on the road during rush hours, to avoid the extra hours that may be needed to meet the 2-night requirement.

Question: What objective facts does FMCSA use to support this 34 hour restart change and will it produce quantifiable crash reduction?

FMCSA Response: FMCSA examined many studies on the relationship between work hours and health and safety, both in trucking and other industries. In the course of the notice-and-comment rulemaking process that led to the December 2011 final rule, the Agency reviewed the comments and information submitted to the rulemaking docket and completed elaborate analyses in accordance with Executive Order 13563, "Improving Regulations and Regulatory Review," issued on January 18, 2011. The Agency concluded there was sufficient scientific basis for moving forward with changes to the 34-hour restart when the rule was published in December 2011. To study the effectiveness of the 2-night restart provision, FMCSA sponsored research by Washington State University (WSU) that tested subjects in a controlled sleep lab environment. This was done under the premise that if a provision was not effective in a lab, it certainly would not be effective in a field-related environment. That is, if people cannot obtain adequate sleep in the best-case environment (a dark, quiet room, with no possibility of interruption), they would not be able to obtain adequate sleep in a sleeper berth at a truck stop or at roadside. The first phase of the WSU study FMCSA cited found that the 34-hour restart was effective at mitigating sleep loss and consequent performance impairment for daytime drivers, but not effective for nighttime drivers. The second phase, which tested a 2-night recovery period for nighttime drivers, found that the 2-night provision works better than 1-night to mitigate driver fatigue in nighttime drivers.

Question: As we heard today from Mr. Hinkle, ready mixed concrete drivers are a rather unique subset of commercial drivers. They spend far less than 50% of their on duty time actually driving, typically drive less than 15 miles per delivery, and transport an extremely perishable product. What data does FMCSA have to justify that the new HOS rules will actually improve safety specifically within the concrete industry?

FMCSA Response: FMCSA has not conducted an analysis of the impact of the 30-minute rest break requirement on ready mixed concrete operators. However, the Agency has received an application for an exemption from this segment of the industry. In accordance with the statutory requirements concerning applications for exemptions, the Agency will publish a *Federal Register* notice seeking public comment on their exemption application. At the end of the 30-day comment period, the Agency will consider the responses to the notice and issue a decision on the application.

Written Statement of

The American Trucking Associations, Inc.

Before the

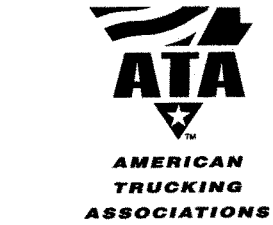
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
U.S. HOUSE OF REPRESENTATIVES

HEARING

The Impacts of the DOT's

Commercial Driver Hours of Service Regulations

June 18, 2013



Driving Trucking's Success

Introduction

Chairman Petri, Ranking Member DeFazio, and members of the Subcommittee, thank you for giving the American Trucking Associations (ATA) the opportunity to testify. ATA is the largest national trade association for the trucking industry. Through a federation of other trucking groups, industry-related conferences, and its 50 affiliated state trucking associations, ATA represents more than 37,000 members covering every type of motor carrier in the United States.

I am Steve Williams, Chairman and CEO of Maverick USA, a nationwide truckload carrier based in Little Rock, Arkansas. Our more than 1,600 employees use our 1,400 trucks to provide service coast-to-coast, in Canada and Mexico, to some of the nation's largest and finest corporations. The very foundation of our company is safety, as evidenced by the many progressive safety initiatives we have undertaken and the many safety awards we have earned over the past 30 years of being in business. We take great pride in the fact that many carriers attempt to emulate our safety standards and strive to live by our philosophy of "doing the right thing."

I am also a past Chairman of the Board of the American Trucking Associations, and currently serve as Chairman of the American Transportation Research Institute (ATRI). ATRI, part of the ATA federation, is a 501(c)(3) not-for-profit research organization based in Arlington, VA. ATRI's primary mission is to conduct transportation research with an emphasis on the trucking industry's essential role in a safe, efficient and viable transportation system.

I am here today to express ATA's concerns about the impending changes to the hours of service rules for drivers and describe how these rules will impact my company, safety and the economy. In particular, I will explain why these changes are unnecessary and can best be described as '*a solution in search of a problem.*' Though the resulting impacts to the industry and the economy are difficult to measure at this stage, it is clear to me that productivity losses are inevitable and that operating costs will rise.

I want to begin by thanking the many Members of the Committee who have supported the trucking industry on this issue. Many of you wrote Secretary LaHood in 2011 to support keeping the current hours of service regulations in place. And more recently, Mr. Chairman, you and the Ranking Member, joined by full Committee Chairman Shuster and Ranking Member Rahall asked the Secretary to stay the new rule until 90 days after the court rules in the pending litigation. Your support means a great deal to all trucking companies, large and small alike.

FMCSA has predicted that health benefits, and some very modest safety benefits, will offset these industry and societal costs. However, I am confident they will not. A recent examination and replication of FMCSA's regulatory impact analysis (i.e., its cost-benefit analysis) conducted by ATRI found the agency's assessment to be fundamentally flawed and unreliable. Because changes to the rules are not justified, ATA initiated litigation and, as you may know, a decision in this case is pending in the U.S. Court of Appeals for the D.C. Circuit. In the interim, Congress has an opportunity to intervene and we encourage it to do so.

The December 2011 Changes Are Unnecessary

The December 2011 changes to the hours of service rules, due to go into effect on July 1, are simply unnecessary. The trucking industry has dramatically improved its safety record while operating under the current HOS rules. Since 2003 when the basic framework for the current hours of service regulations was first published, truck involved fatalities have dropped by 25 percent.[1] In addition, a 2006 ATRI analysis of safety data on 100,000 drivers and a subsequent 2010 follow-up report found statistically significant crash reductions occurred after the new rules went into effect. For instance, from 2004 to 2009, ATRI identified an 11.7% drop in collisions and a 30.6% drop in preventable collisions.[2] These improvements beg the question: *Why was a change necessary?*

One thing is clear—FMCSA's motivation was not based on evidence or analyses demonstrating a problem. In fact, FMCSA did not undertake its own analysis on the effectiveness of the 2003 changes to the hours of service, even though they represented the first substantial modification to the rules in more than 60 years. For more than a decade prior to publication of the 2003 rule changes FMCSA sponsored multiple, large-scale, driver fatigue-related research studies and collected data on the efficacy of the existing rules. Regrettably, the same cannot be said of FMCSA's actions in the years leading up to FMCSA's publication of the latest changes in December 2011. And, FMCSA's 3 paragraph statement in the rulemaking called "The Purpose and Need for Regulatory Action" did not cite any research or data analysis showing a problem. That speaks volumes.

It is important to acknowledge that a small percentage of crashes that occur each year are attributable to driver fatigue. Indeed, these crashes are tragic and we must take appropriate steps to prevent them. We must all acknowledge, however, that tweaking the limits on working and driving hours is not the only option and certainly is not the most effective one. In fact, it's a 1930's band-aid approach to a complex human problem. People become fatigued for a variety of reasons – the most critical one being how they choose to use their time off-duty. Those who do not use that time responsibly to get rest will continue to be fatigued. Adjustments to the limits on working and driving time will not change this behavior. Further, modifying the rules will do nothing to prevent people from breaking them.

Hours of service rules can be better enforced, however. In 2009, ATA and the law enforcement community pressed FMCSA and the Department of Transportation to first mandate electronic logging devices to improve compliance with the existing rules.This approach also would have allowed FMCSA to collect data on the true level of non-compliance. Good data drives good decision making. This is true for business leaders, and it's equally true for government policy decision makers. If FMCSA would have moved forward with an electronic logging mandate first, it would have better data on which to make hours of service policy decisions.

---

[1] Large Truck and Bus Crash Facts 2010: Trends Table 4 & 7
http://ai.fmcsa.dot.gov/CarrierResearchResults/PDFs/LargeTruckandBusCrashFacts2010.pdf

[2] American Transportation Research Institute. *Hours-of-Service Rules Safety Impacts 2010 Analysis.* Arlington, VA. May, 2010.

Real Industry Impacts

There has been much discussion over the impact that these changes will have on the industry, the economy, and society. Because the changes have not yet been implemented, though, the true impact is difficult to quantify. Nonetheless, I can confidently tell you that the impacts *will* be felt and *will* result in increased costs and productivity losses in the supply chain. Conversely, it is very unlikely that the safety and health benefits FMCSA contends will actually materialize.

Though the impacts of the rules are difficult to fully understand and quantify, no one is disputing the fact that the industry will lose some degree of operating flexibility and productivity. Initial information and data gathered by ATA reflects the industry's likely average productivity loss will range between 2 and 3 percent. Though this estimate was developed in 2012 from a relatively small sample of member fleets, it is consistent with estimates from other organizations. For instance, a recent Wells Fargo Securities analysis predicts that the productivity loss will likely be between 1.5 and 4 percent, depending on the type of trucking operation, with certain fleets likely to experience larger productivity losses.

Specifically, the Wells-Fargo Securities report said:

> *In particular, we think expected changes to Hours of Service (HOS) rules will reduce productivity by 1.5-4.0% (beginning in H2 2013), depending on the nature of the trucking operation. As we discuss later, this is a very rough estimate given the complexity of the issue. That being said, we cannot envision a scenario where it would be positive for productivity. On an annualized basis, we think each 1% decrease in productivity (miles per tractor) can equate to a 2-3% reduction in operating income. Perceived benefits from reduced driver fatigue may prove allusive, in our view, and is not something we considered in our estimate revisions.*[3]

Maverick USA conducted an informal analysis on our own fleet's operations and discovered the following facts based on electronic logging data generated between February and July, 2012:

- Maverick drivers utilized 25,230 restarts in this time period; 13,761 (54%) met the new two consecutive 1-5 am rest period requirement, while **46%** did not meet these new requirements;
- An additional analysis of 148,037 days of electronic logs showed that 44,106 (**30%**) of the logs would be in violation of the new 'working more than 8 hours without a consecutive 30 minute break' requirement. These electronic logs showed there were 93,157 times that the drivers worked more than 8 hours in the day, and 44,106 (47%) of these possible days would have resulted in violation. *[Important note: This does not mean these drivers did not take any break, it simply means they didn't take at least 30 consecutive minutes off-duty as the new rule specifies.]*

Maverick USA does not believe, however, that these findings indicate its productivity losses from these rules will substantial. One reason is that Maverick's drivers use the restart not because they have exhausted their maximum weekly hours, but rather to ensure they have a full

[3] *Equity Research: Regulatory Matters--Trimming Estimates*, Wells Fargo Securities, January 8, 2013.

set of weekly hours available to them for future working schedules that can be unpredictable in the irregular route trucking business. In fact, Maverick believes it will experience an overall loss of productivity in the range estimated by ATA and Wells Fargo Securities. This range may seem small but it is not insignificant. Government estimates suggest that each percentage point loss in productivity amounts to an industry wide cost of at least $356 million per year.[4] In other words, a productivity loss of 2.5% equates to an $890 million annual cost.

Though the changes to the rules have not yet gone into effect, the industry is already bearing costs to prepare for them. Some of the more significant costs stem from the need for driver training on the rule changes. The new rules will affect each of the more than 3 million professional drivers the trucking industry employs. Though ATA has not attempted to quantify the industry-wide training costs, Maverick USA, has already trained its drivers, operations personnel and customer service representatives, and has spent more than $57,000 doing so. This figure includes only direct training costs, and does not include substantial preparation time spent by my Vice President of Safety and his safety leadership team. As such, it is a very conservative training cost estimate. Thousands upon thousands of fleets like mine and their industry suppliers are also enduring costs relating to re-programming of the software running the hundreds of thousands of electronic logging systems already in use, as well as routing and route optimization systems used by fleets. In fact, FMCSA estimated that training, re-programming and transition costs would total at least $320 million which is likely to be a conservative estimate. Because FMCSA declined your request for a short delay of the effective date of the rule, the industry will spend this considerable sum even though the rule may be vacated or altered by the Court.

It is difficult, bordering on impossible, to accept FMCSA's suggestion that corresponding benefits will result from these changes and, even if they do, that they will somehow offset these costs. Even FMCSA's own analysis found that the proposed **safety** benefits would not outweigh the costs related to industry productivity losses. In fact, the costs to society and the economy would outweigh the alleged safety benefits by $144 million annually.[5]

Challenged to justify the changes to the rules and pass required cost-benefit tests, FMCSA applied a unique and creative two part theory to claim so-called driver health benefits. In part one, the agency contended that if given additional time off, such as a 30 minute break and a longer restart period, drivers would use that additional time to sleep and would become healthier as a result. In part two, FMCSA contended that these drivers would then enjoy greater longevity (i.e. they would live longer) which could then be monetized to offset the economic costs. It is these theoretical health benefits which allowed FMCSA to claim its rule changes passed the cost-benefit test.

---

[4] Federal Motor Carrier Safety Administration (FMCSA) 2010-2011 Hours of Service Rule Regulatory Impact Analysis (RIA) RIN 2126-AB26, FMCSA Analysis Division, December 2011.

[5] Federal Motor Carrier Safety Administration (FMCSA) 2010-2011 Hours of Service Rule Regulatory Impact Analysis (RIA) RIN 2126-AB26, FMCSA Analysis Division, December 2011.

ATRI's June 2013 HOS Restart Analysis

It is appropriate that this hearing is focused on the "impacts" of these HOS changes. It is also fortunate that just yesterday, June 17, 2013, the American Transportation Research Institute published a new analysis entitled, "Assessing the Impacts of the 34-Hour Restart Provision." In it, ATRI used representative industry data to test the validity of FMCSA's aforementioned cost-benefit analysis claims.

A particularly suspect element of FMCSA's cost benefit analysis is the data presented in support of changes to the restart provision. In brief, FMCSA claimed that only 15% of the long-haul driving population would be impacted by these changes and that 85% would be unaffected. More specifically, FMCSA contended that 10% of these drivers routinely work 70 hours a week and 5% of the drivers work 80 hours per week.[6]

In their June 2013 study, ATRI summarized results of their survey of over 500 motor carriers and 2,000 drivers. This survey was designed to gather data and information about driver's use of the restart provision and the impact the pending changes would have on both drivers and carriers. In addition, ATRI reviewed daily hours of service logs for 14,000 drivers over a 101 day period. Said another way, ATRI researchers examined over 1.4 million logs.

Using this representative data on driver and industry operating patterns, ATRI replicated FMCSA's analysis for both costs and benefits of the restart changes using the agency's own methodology. ATRI's findings strongly contradict FMCSA's contentions with respect to the percentage of the industry that would be affected by restrictions on the use of the restart, and with respect to the alleged net benefits of it. For example, 71% of drivers in the ATRI logbook analysis had recently completed a restart that would not qualify under the new rules. In addition,74% characterized the expected impact of the pending 1 a.m. to 5 a.m. restart restriction as either "major" or "moderate." The drivers and carriers surveyed enumerated a variety of anticipated impacts, some of which had not been considered by FMCSA, including greater exposure to accidents as a result of increased congestion due to daytime driving, unproductive time waiting for (just prior to 5 a.m.) in order to begin a shift, loss of schedule flexibility, increased stress, and decreased income.[7]

In ATRI's data, drivers also explained how their use of the restart is largely misunderstood. Most do not use the restart because they have already achieved the maximum weekly hours allowable under the rules. Instead, they use the restart to hedge running out of time in the coming days or to prepare for future schedules and freight demands that can be unpredictable. These restart uses, and the unpredictable nature of freight movements resulting in variable work weeks, were entirely discounted by FMCSA in its analysis.

---

[6] Federal Motor Carrier Safety Administration (FMCSA) 2010-2011 Hours of Service Rule Regulatory Impact Analysis (RIA) RIN 2126-AB26, FMCSA Analysis Division, December 2011.

[7] *Assessing the Impacts of the 34-Hour Restart Provision*, American Transportation Research Institute, June 2013.

Further, ATRI found FMCSA's claim that 15% of drivers work 70 hours a week to be inaccurate. According to ATRI's analysis, only 0.27% of drivers worked more than 65 hours a week and 0% of drivers in the ATRI logbook sample averaged more than 75 hours per week. ATRI clearly pointed out that FMCSA's percentages and assumptions were based on poor and unrepresentative data gathered during targeted agency enforcement and compliance activities. ATRI applied the model and methodology FMCSA's used in its own cost/benefit analysis to the aforementioned large and representative data set (1.4 million driver logs) to provide a more meaningful understanding of the impact of the pending restart changes. After correcting for FMCSA's assumptions with respect to the percentage of drivers who work 65 or more hours per week, ATRI discovered the pending restart changes would have a net annual cost (not a benefit) to the industry. ATRI also discovered FMCSA's model and analysis did not capture many additional costs particularly those related to the expected shift of some nighttime driver to daytime operations.

By following FMCSA's cost-benefit methodology using industry representative data, and including additional weekly time lost from impacts and costs ignored by FMCSA, ATRI's cost-benefit analysis produced a strikingly different outcome than was found by FMCSA. ATRI found a delta between FMCSA's alleged net benefit and likely industry costs of $228 million based on a conservative estimate of 7.5 minutes per week lost by the average drivers due to productivity losses not captured by FMCSA's calculations.

ATRI's results call into question the use of FMCSA's Regulatory Impact Analysis to justify the new restart provisions.

An Executive Summary of the new ATRI report can be found at Appendix A. The full report can also be found at http://http://atri-online.org/

ATA's Ongoing HOS Litigation

Our many concerns with the rule changes, and how they were developed and justified, led ATA to challenge the new rules in U.S. Court of Appeals for the D.C. Circuit. ATA is hopeful the Court will issue a decision prior to the scheduled July 1 effective date. A one-page summary of ATA's case can be found at Appendix B. ATA's complete litigation briefing documents will be provided upon request.

Congress Can Help

Congress has been actively engaged in the hours of service issue for some time, and we encourage it to continue to provide direction and oversight to FMCSA. Most recently, in recognition of the unsubstantiated changes to the restart provision, Congress directed FMCSA in MAP-21 to complete a field test of the restart. The study was to have been completed by March 31st of this year, well in advance of the July 1st effective date of the proposed change. In reality, FMCSA is just beginning its field study work. Maverick is one of the 3 companies that is currently participating in the study. Congress should postpone the effective date of the new hours of service rules until the restart study is completed and the results are reported to Congress. Given the fast approaching effective date of the rules, however, we realize that may

not be possible. We certainly hope Congress will require FMCSA to modify the rule based on statistically valid findings from FMCSA's MAP 21 directed field study of the restart changes.

Congress should also consider requiring FMCSA to commission an independent analysis of the impact of the new rules on safety, productivity, and the cost to consumers, and submit a report to Congress and the industry. Without such analysis, we will never know the true actual impacts of these sweeping regulatory changes.

Further, to stave off future attempts to modify rules without appropriate justification, FMCSA should be required, by law, to issue a report to Congress on any anticipated future changes to HOS rules, the specific problem the anticipated changes are trying to address, the likely costs and benefits of these proposed changes, and a specific plan for independently evaluating the resulting impact of the changes, once implemented.

Finally, we encourage you to continue to hold oversight hearings on this and other safety matters before FMCSA

Again, thank you for the opportunity to testify. We look forward to continuing to work with the Committee on the many important transportation challenges facing our nation.

Appendix A

AMERICAN TRANSPORTATION RESEARCH INSTITUTE
ASSESSING THE IMPACTS OF THE 34-HOUR RESTART PROVISION
June 2013

EXECUTIVE SUMMARY

Since the implementation of far-reaching changes to the Federal Motor Carrier Safety Administration's (FMCSA) Hours-of-Service (HOS) regulations in 2003, there has been significant debate and uncertainty related to the rules. FMCSA's HOS rules govern both the number of hours a commercial driver may be on-duty and operate a commercial motor vehicle (CMV), as well as how much rest is required between periods of work. Safety benefits aside, the rules are critical to the financial viability of drivers and motor carriers; hours-of-service regulations limit the time that is allowed for earning income, and non-compliance carries severe penalties.

From 2010 through mid-2013 a rulemaking process took place to change the HOS. That process considered decreasing daily driving allowances, limiting the use of the 34-hour restart and requiring many drivers to take a 30-minute rest break. The final rulemaking ultimately included two changes or provisions to the 34-hour restart rule and a 30-minute rest break requirement. This report focuses on the impacts, in terms of costs and benefits, of the two 34-hour restart provisions which are defined as follows:

1) Use of the restart is limited to one time per week (once every 168 hours from the beginning of the prior restart).

2) A valid 34-hour off-duty restart period must include two periods from 1 a.m. to 5 a.m.

To date, the key document assessing the impacts of the restart provisions (both in terms of costs and benefits) is a 2011 Regulatory Impact Analysis (RIA) produced by FMCSA.[8] Through this analysis the agency found a net benefit for the new HOS rules of $205 million annually. Using FMCSA's data, the American Transportation Research Institute (ATRI) estimated that $133 million of that net benefit calculation is attributed to the restart provisions.

According to FMCSA, the costs and benefits of the restart provisions are limited to the 15 percent of the 1.6 million over-the-road driving population with the most intense driving schedules. This limitation forms the basis for two significant problems with the FMCSA analysis:

1. Many drivers in the remaining 85 percent of the population will likely experience productivity losses due to the restart provisions; these costs, however, are not included in the FMCSA assessment.

[8] Federal Motor Carrier Safety Administration (FMCSA). *2010-2011Hours of Service Rule Regulatory Impact Analysis (RIA)*. RIN 2126-AB26, FMCSA Analysis Division. December 2011.

2. The 15 percent of drivers with the most extreme driving schedules are practically nonexistent according to data representing normal industry operating patterns; therefore, there are only limited costs or benefits associated with this population.

FMCSA identified this population using logbook data sourced from compliance reviews and safety audits as the foundation of their analysis. These data are by their very nature skewed toward drivers operating at the higher limits of available hours. As a result, the FMCSA analysis greatly overestimates the benefits of the restart provisions, while at the same time ignoring the productivity losses that all driver-types will experience under the new HOS rules.

With a goal of developing a more accurate analysis of the costs and benefits of the changes to the 34-hour restart, ATRI assembled a large and unique set of logbook and survey data. These data were critical in documenting how the restart provisions would impact motor carrier and driver operations.

ATRI first conducted a survey of more than 500 motor carriers and more than 2,000 drivers. Through this data collection and analysis effort it was determined that the majority of respondents expect a moderate to major impact from each of the restart provisions. These results are far different from the 15 percent of the driving population that FMCSA indicates will see a cost due to the restart provisions. Though both provisions are anticipated by the industry to have a moderate/major impact on operations, the 1 a.m. to 5 a.m. provision was cited as an issue by a larger percentage of both driver (74%) and carrier (84%) respondents. Additionally, a majority of respondents in both the driver and motor carrier categories expected a loss of flexibility during peak periods, increased exposure to congestion, increased driver stress and decreased driver income as a result of the restart provisions.

ATRI also obtained and analyzed logbook data to understand normal operating patterns within the trucking industry. The analysis tested the hypothesis that FMCSA's average weekly work time groupings were incorrect. The FMCSA figures were compared against the logbook dataset and ATRI found that between 0 percent and 2 percent of drivers actually fall into the two categories in question, with the most likely scenario having 0 percent in FMCSA's "Extreme" group and 0.27 percent in the "Very High" group. Given that FMCSA's costs and benefits are predicated upon the assumption that 15 percent of drivers fall into the Very High and Extreme categories, additional tests were conducted.

ATRI next assessed how the new driver group assignments impacted FMCSA's estimate of productivity loss, safety benefits and health benefits. To do so, the research team reviewed the methodology described in the RIA and produced a "best-possible" replication of the calculation tables based on the available information. The results of these calculations were compared with summary statistics from FMCSA's Option 3 Cost, Benefit and Net Benefit table to assure the quality of the estimates.[9]

The normal industry operating patterns generated by the ATRI data were then incorporated into the FMCSA methodology. ATRI's calculations indicate that implementation of the 34-hour restart provisions will result in a net loss to the industry.

Many additional costs were not included in FMCSA's analysis, particularly those related to the expected shift of some nighttime drivers to daytime operations. By limiting its productivity calculations to lost work hours for drivers in its extreme intensity groupings, FMCSA ignores

[9] FMCSA 2011 RIA, Exhibit ES-9

costs related to increased congestion exposure and increased restart times which will be experienced across a much larger percentage of the driving population. Components of the restart provisions may also result in shipper costs, scheduling issues and could exacerbate the ongoing driver shortage.

Table ES.1 displays a comparison of FMCSA's findings with the ATRI findings. It is estimated that FMCSA finds a net benefit of $133 million for the restart provisions. ATRI conducted the same analysis using driver groupings based on normal operating patterns. Using the "medium 7-Day" scenario that is described in this report, the cost/benefit calculation indicates an estimated industry cost of $95,730 annually. In addition, a series of reasonable productivity costs not captured by FMCSA are calculated using the same driver groupings and methodology to monetize productivity loss, resulting in a projected loss to the industry ranging from $95 million to $376 million.

Table ES.1. Cost/Benefit Estimates Using Revised Driver Group Assignments and Additional Productivity Costs

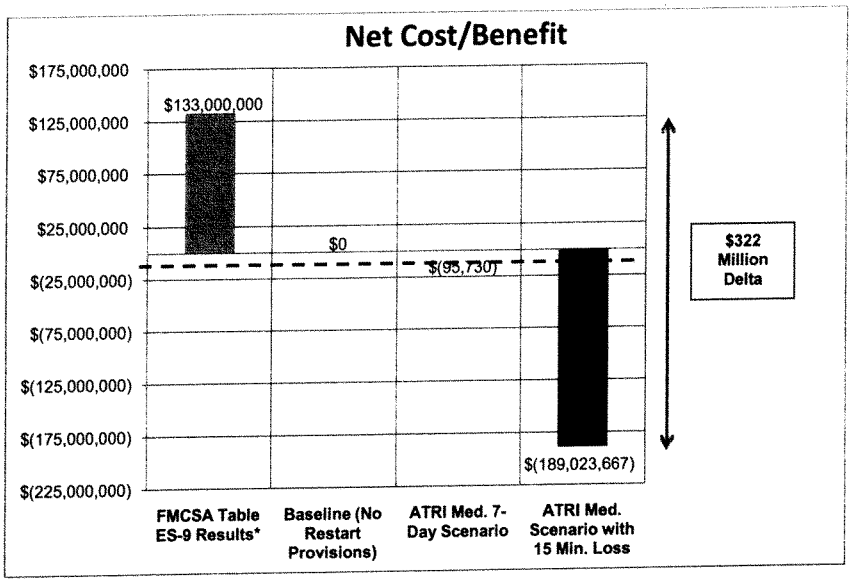
	FMCSA Restart Change Costs	Restart Change Safety Benefits	Restart Change Health Benefits	Additional Restart-Related Productivity Cost	Net Benefits (Costs) ~Restart Only~
FMCSA Table ES-9 Results*	$331,000,000	$210,000,000	$254,000,000	$ -	$ 133,000,000
ATRI Medium 7-Day Scenario	$ 1,005,640	$ 501,267	$ 408,643	$ -	$ (95,730)
Average Additional Weekly Work Time Lost per Driver*					ATRI Scenario + Additional Cost
7.5 min lost	$ -	$ -	$ -	$ (94,966,788)	**$ (95,062,518)**
15 min lost	$ -	$ -	$ -	$ (188,927,937)	**$ (189,023,667)**
30 min lost	$ -	$ -	$ -	$ (376,850,234)	**$ (376,945,964)**

*Not captured by FMCSA in RIA.

It should be noted that none of the net benefit or cost figures include FMCSA's estimated $40 million annual cost for motor carrier and driver training and reprogramming in response to the rule.

By following the methodology described herein the ATRI research team's cost/benefit analysis produced a strikingly different outcome than was found by FMCSA. ATRI's analysis identified significant errors in FMCSA's methodology for calculating industry costs and associated benefits. This results in a delta between FMCSA's net benefit and actual industry costs of $322 million based on a conservative estimate of 15 minutes per week lost by the average driver due to productivity losses not captured in FMCSA's calculations, as shown in Figure ES.1.

Figure ES.1. Net Cost/Benefit Discrepancies



In conclusion, the results of this analysis call into question the use of the FMCSA Regulatory Impact Analysis to justify the restart provisions of the final FMCSA rule. Further analysis should be conducted by the agency related to impacts beyond hours lost by drivers in the extreme groups, and FMCSA should consider repeating their analysis using a non-biased logbook dataset.

Appendix B

SUMMARY OF ATA'S HOURS OF SERVICE LITIGATION

In its case pending before the D.C. Circuit Court of Appeals, ATA has challenged three aspects of FMCSA's 2011 Hours of Service rule changes:

(1) the new limitations on the use of the restart, liming its use to once every 168 hours and mandating that it include two 1 a.m. to 5 a.m. periods;

(2) the requirement that the mandatory 30-minute break exclude not just driving but all on-duty non-driving activity; and

(3) the previously uncontemplated narrowing of an exemption for short-haul delivery drivers that subjects them to the new break requirement.

ATA brought its challenge because the changes were unwarranted and based on a cost-benefit analysis that was a results-driven sham rather than an honest appraisal of the evidence. In reaching its desired outcome, FMCSA relied on assumptions that contradicted the evidence in the record, and ignored—without justification or explanation—numerous contradictory positions it had previously adopted.

The many ways in which FMCSA's rule changes were arbitrary and capricious are difficult to summarize briefly, but its justification for adding new restart restrictions provides a vivid example. FMCSA concluded that the changes would produce net benefits by reducing driver fatigue; but the agency's assessment of purported safety benefits defies all logic and evidence. First, the agency began by relying on a study of pre-2003 large truck crashes—in other words, crashes that predated the 2003 HOS rule changes that themselves addressed fatigue, and which thus could shed no light on the incidence of fatigue under the current HOS regime. The agency then treated *every* crash in the study in which fatigue was listed as an "associated factor" as though it had been *caused* by driver fatigue—even if the actual cause of the incident was known to be entirely different, and ignoring the express warnings of the study authors that the data could not be used that way. By egregiously misreading data that was in any event obsolete, FMCSA unjustifiably concluded that 13% of large truck crashes are caused by driver fatigue—a figure that dwarfs the agency's own prior reading of the same data, and that of other, more relevant studies. When a fatigue rate consistent with those studies is substituted for FMCSA's inflated number, the rule changes produce net costs, rather than net benefits.

Equally vivid is the agency's unjustifiable approach to driver health benefits. Here, FMCSA began with a study suggesting that, compared to sleeping seven hours per night, sleeping either less than five or more than nine hours per night is correlated with an increased mortality risk. From this, FMCSA drew the unjustifiable inference that *precisely* seven hours of sleep is optimal, and that *any* deviation from seven hours is deleterious (even though the study they

relied on reported no significant risk for individuals sleeping six or eight hours a night). FMCSA also assumes that by reducing the average work day by a few minutes, the new rules will increase the average sleep period by a comparable amount—ignoring the likelihood that drivers who do not currently feel under-rested would use the marginal time for other purposes. Piling these assumptions upon one another, the agency concludes, for example, that the 10% of drivers who currently sleep for an average of 6.28 hours per night will derive $170 million in annual health benefits from an extra 4.8 minutes of sleep under the changed rules. Even more incredibly, it attributes over $20 million in annual health benefits to the extra 14.4 *seconds* of sleep for drivers who now sleep 6.66 hours per night.

These representative examples make clear that FMCSA's rule changes did not represent a good-faith, scientific approach to the best evidence available, but on the contrary amount to an agenda-driven attempt to make the evidence fit the desired outcome. Under the relevant legal standards, the court should thus vacate the rule changes as arbitrary and capricious

Maverick
MAVERICK USA, INC

July 10, 2013

Mr. Thomas Petri
Chairman
Subcommittee on Highways and Transit
B-376 Rayburn HOB
Washington, DC 20515

Dear Chairman Petri,

In response to the question from Congressman Nolan, please find my response.

In addition to previously being Chairman of the American Trucking Assocation's, Arkansas Trucking Association, I currently serve as Chairman of the American Transportation Research Institute as well as Chairman of the Alliance for Driver Safety and Security. The "Trucking Alliance's" principle objective was to pass a legislative mandate on the use of ELDs or EOBRs. It is in that capacity that I can confidently state that a device that is compliant of FMCSA's rulemaking on this subject will cost no more than $500.

I have been previously quoted saying "if an equipment owner cannot afford this critically important safety device... they can't afford a front steer tire for their tractor either".

Sincerely,

Steve Williams
Chairman & CEO

Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on "The Impacts of the DOT's Commercial Driver Hours of Service Regulations"
June 18, 2013
Questions for the Record

Questions from Rep. Nolan:

During the hearing, Mr. Stocklin, representing the Owner-Operator Independent Drivers Association, estimated that electronic logging devices (ELDs) would cost $4,000 for him to implement and install. Others have cited that ELDs will cost $500 or less.

- *What is your best cost estimate of ELDs, without the optional fleet management information functions, to meet the minimum requirements following an industry-wide requirement?*

Response:

Some electronic logging devices (ELD) are currently available today for less than $500 each, with some costing as little as $200 plus a modest monthly service fee (e.g., $6). Some stakeholders have erroneously contended that such devices cost $1,500 to $2,000 each. The basis for these erroneous claims is two-fold.

First, many commercially available devices capable of electronic logging also include fleet communications and management functionality. Naturally, as a result, they cost more than devices that are merely capable of electronically capturing compliance with hours of service requirements. A future ELD mandate would only require devices to be capable of capturing hours of service compliance.

Second, FMCSA's February 2011 proposed rule to mandate ELDs estimated the average per-unit cost would be $1,675. However, this estimate was set artificially far high for several reasons. FMCSA acknowledged that this cost was based on a price point of one "mid-2010 state of the practice" device (footnote 1).[1] Though less costly devices were on the market at the time, FMCSA stated it took a conservative approach of using a higher priced device for its cost-benefit analysis on the assumption that an adequate number of lower cost devices would not be available by the anticipated implementation date. However, in the past two and a half years (since the proposed rule was published) many more low cost ELDs have entered the market and are now readily available. Increased production and sales of these units have continued to place downward pressure on unit prices.

---

[1] *Electronic On-Board Recorders and Hours-of-Service Supporting Documents Preliminary Regulatory Evaluation and Regulatory Impact Analysis*, Federal Motor Carrier Safety Administration Washington, D.C. January 24, 2011

Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

STATEMENT OF

MAJOR MARK SAVAGE

PRESIDENT

COMMERCIAL VEHICLE SAFETY ALLIANCE

BEFORE THE

HIGHWAYS AND TRANSIT SUBCOMMITTEE

OF THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

ON

"The Impacts of the DOT's Commercial Driver Hours of Service Regulations"

JUNE 18, 2013

6303 Ivy Lane Suite 310 Greenbelt, MD 20770-6319
Phone: 301-830-6143 Fax: 301-830-6144 www.cvsa.org

Mr. Chairman, Ranking Member, Members of the Subcommittee, thank you for holding this important hearing and for inviting the Commercial Vehicle Safety Alliance (CVSA) to provide input on the pending Hours of Service requirements, set to take effect July 1, 2013.

My name is Major Mark Savage, with the Colorado State Patrol and I am testifying here today in my role as the President of CVSA. I am also responsible for the Commercial Vehicle Safety and Enforcement Program for the state of Colorado. The troopers who work for me will be enforcing these new regulations starting July 1. CVSA is an international organization representing state, provincial, and federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems. Every state in the United States, all Canadian provinces and territories, the country of Mexico, and all U.S. territories and possessions are CVSA members. The ultimate objective of what CVSA strives for is to save lives.

Before I go further, I want to briefly describe the process that the states and CVSA go through to implement any new regulation:

1. The states enforce state law, so when FMCSA establishes a new regulation, the states need to go through a process to adopt it into their state law or regulation. Technically speaking, the states have up to three years to adopt any new regulatory change(s).
2. CVSA evaluates the rule change to determine what impacts, if any, it has on the inspection process and roadside enforcement.
3. If there are impacts, changes to North American Standard Inspection Procedures, operational policies, software/IT systems, and training are considered and made as appropriate.
4. Changes to the *North American Standard Out-of-Service Criteria* are considered and if warranted, changes are made and guidance is distributed to the states and FMCSA.
5. There are approximately 13,000 CVSA-certified inspectors across North America. Once all the above has been completed, these officers in the field are made aware of the changes and are trained appropriately.
6. Once the enforcement community is fully trained and well versed in the regulations, inspectors begin conducting educational outreach to industry and the courts to ensure that they understand the new rules as well. When industry and enforcement understand the regulations, compliance increases.

I want to first say that, regardless of our opinion on any given regulation, CVSA members will enforce the rules and requirements set forth by Congress and FMCSA. Secondly, we appreciate FMCSA's efforts on the development of this rule to balance safety and commerce. The Hours of Service regulations are a critical component to commercial vehicle safety, and it is very difficult to create rules that will please

everyone with a stake in their outcome. However, as we indicated in our February 2011 comments to the Agency's Notice of Proposed Rulemaking on the matter, the commercial motor vehicle enforcement community believes portions of the new requirements create more opportunity for a driver to falsify their records of duty status, therefore making the new Hours of Service rules more challenging to enforce.

There are four key principles that should guide the crafting of any regulation and its impact on safety:

- **Uniformity** – Uniformity in regulations facilitates reciprocity and equitable treatment to industry across jurisdictional boundaries; provides a better means with which to measure the impacts on safety and enforcement programs; results in more straightforward and effective training of enforcement personnel; and, provides a better means with which to share and implement best practices among the various enforcement jurisdictions.

- **Clarity** – Overly complicated regulations lead to inconsistencies in interpretation and enforcement. Clear, concise regulations are easier to enforce uniformly, easier to train enforcement personnel on and easier for industry to understand. Clarity in regulations eliminates confusion and subjectivity.

- **Enforceability** – Having regulations does no good if they are not enforceable roadside. All regulations should be developed with their practical application in mind. Further, the enforcement community must have the tools they need to enforce the regulations effectively.

- **Science-based/data driven** – It is imperative that any regulation be based on objective science-based research on factors such as driver fatigue, health, workload, safety performance and crash reduction.

CVSA is not equipped to comment on the science behind the rules; however, we are hopeful that as we get experience with these rules we will see an increase in safety and compliance. We certainly anticipate that FMCSA will continually monitor this issue so the affected constituencies are able to understand their impacts. From CVSA's standpoint, while we see the new rules as fairly straightforward, we do believe that several provisions will create enforceability challenges. The three major regulatory changes; the 34-hour restart provision, the 30-minute rest break requirement, and the new definition of 'on-duty' time, provide greater opportunity for concealment and misrepresentation of Hours of Service by drivers and carriers who are so inclined. These changes have the effect of shortening the driver's work day and work week, creating more incentive for some to falsify. Furthermore, the new rules will require more time and effort from the enforcement community to identify inconsistencies and concealed hours within a driver's record of duty status. The new Hours of Service rules will be more difficult to enforce roadside because the rules expand, rather than reduce,

opportunities for concealing hours. In my testimony, I will present several examples to demonstrate where enforcement will have challenges with the new rules.

34-Hour Restart Provision

Within the new 34-hour restart provision, there is a requirement that, when taking advantage of the restart, drivers must be off-duty for at least 34 hours, which must also include two separate and consecutive 1:00 a.m. to 5:00 a.m. periods. When it goes into effect, this provision will be difficult to enforce; however, once the electronic logging device mandate included in Moving Ahead for Progress in the 21st Century Act is implemented, an inspector could access the vehicle activity logs, through the electronic logging device, and see that, while the driver has indicated that they were 'off-duty' and resting, the vehicle was operated within the restart period, and the inspector could note the violation. Without that device, which would register the movement of the vehicle, the inspector would have a difficult time verifying whether or not the driver was truly 'off-duty' and resting during that restart period. In addition, the inspector, in some cases, will have difficulty verifying compliance with the restart provision due to the limitation at the roadside of only being able to view the current day and previous seven days of records of duty status. FMCSA has indicated that this can be verified during a Compliance Review.

30-Minute Rest Break Requirement

The new Hours of Service requirements state that a driver may not drive after having been on-duty for eight consecutive hours without taking a 30-minute rest break. This requirement seems fairly straightforward, but again allows for potential falsification of a driver's records of duty status. In this scenario, the driver sees that she is approaching her eight hour limit and a 30-minute rest break will be required. The driver then pulls into a truck stop and changes her duty status to 'off-duty' to reflect that she is taking the required rest break. However, during this time, the driver fuels up and checks her tie-downs for proper cargo securement. These activities are actually considered 'on-duty, not driving', but the driver records the time as 'off-duty', allowing her to say she has met the 30-minute rest break requirement. However, the driver did not use the time as intended – for a rest break. In this case, the electronic logging device would show the vehicle as parked, not moving, so there is no opportunity to detect the falsification. However, in this scenario, tighter supporting document requirements would benefit enforcement. Currently, there is a requirement for motor carriers to retain supporting documents at their place of business, but no requirement for them to be available on the vehicle for review at the roadside by enforcement officials. If the driver were required to provide the inspector with her supporting documents, a fuel receipt, time-stamped during the 30-minute period the driver had marked as 'off-duty', would indicate to the inspector that the driver was using the rest break period to conduct work-related tasks and the violation would be detected. While it's true that this sort of falsification of Hours of Service exists today, the new provision provides another opportunity and

incentive to conceal hours and another point in the inspection process where inspectors will have to examine the records of duty status and search for the concealment of hours.

On-Duty Time Definition

The new definition reads:

> *"(4) All time in or upon a commercial motor vehicle, other than:*
>
> *(i) Time spent resting in or on a parked vehicle, except as otherwise provided in § 397.5 of this subchapter;*
>
> *(ii) Time spent resting in a sleeper berth;*
>
> *(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."*

In this scenario, a driver pulls up to his delivery location at 6:00 p.m. after driving/working all day, just after the business closes, due to being stuck in traffic caused by an unforeseen crash. The vehicle does not have a sleeper berth. Under the new definition, the driver can claim he was sitting in the parked vehicle until 8:00 a.m. the next day when the business re-opens and claim 14 hours 'off-duty' time for the night. The driver could then continue on with a regular work day, without ever getting a full, restful night's sleep, as the regulation intends.

These few scenarios help to demonstrate how the new rules will further complicate enforcement and provide additional opportunity for the concealment of hours and falsification of records of duty status.

As noted above, the implementation of electronic logging devices will help to alleviate some of the concerns regarding the enforceability of the new rules. While it's true that a persistent driver might find a way to trick or beat the device, the provision in MAP-21 calls for more stringent certification and tamper resistance requirements, which will make cheating the devices more difficult. CVSA continues to support the requirement for electronic logging devices for Hours of Service compliance for all commercial vehicle drivers. The devices, once deployed, will help improve the enforceability of a number of the existing and new requirements, including the change to the definition of 'on-duty' time, the 30-minute rest break requirement and the 34-hour restart provision.

However, electronic logging devices will likely not address all the enforcement gaps. In order to more effectively enforce Hours of Service rules, drivers should be required to maintain supporting documents in the vehicle, not just at the motor carrier's place of business, so the documents can be reviewed roadside by enforcement personnel and compared with the information being recorded in the records of duty status or the electronic logging device. With no current regulation regarding

maintaining supporting documents on the vehicle, the ability for inspectors to check the validity of records of duty status roadside is compromised.

It is true that some of these violations can be detected and addressed later, during a Compliance Review. However, a major purpose of the roadside inspection program is to be proactive and help to identify dangerous vehicles and drivers, and to get them off the road before there is a crash. If an inspector cannot detect an Hours of Service violation roadside, a driver who has exceeded his/her hours could be permitted to continue driving. Furthermore, only a small percentage of the industry is subject to a Compliance Review, which means violations undetectable roadside may continue to go undetected. The Compliance Review is an investigation of a motor carrier's compliance with the safety regulations that is conducted onsite at the carrier's place of business. It is a comprehensive review of records that is based on the prior history of the motor carrier. Further complicating the matter is the fact that priority for conducting Compliance Reviews is set, in large part, by results from previous roadside inspections. If violations are not discovered roadside, because the inspector has limited ability to verify or refute the information, then that motor carrier might not be flagged for a review. In addition, enforcement personnel should be equipped with all the tools they need in order to effectively enforce the Hours of Service requirements, but without regulations addressing supporting documents to be maintained on the vehicle, they do not.

One additional point I would like to make has to do with challenges created by continuous changes to the rules. The Hours of Service regulations have changed frequently over the past decade. Each new iteration of the rules requires a tremendous amount of work to implement, as I outlined earlier. Thousands of inspectors have to be retrained, industry has to learn to comply with the new rules, court personnel have to be trained and software has to be updated. This is a significant task, which requires time and resources to accomplish. An important aspect to any rule change is providing enough time to educate both enforcement and industry with respect to the changes. Additionally, an adequate amount of time must be allowed to pass with the rules in place to effectively evaluate their impacts on compliance and safety. During the time period the previous Hours of Service rules have been in place, we have experienced significant drops in commercial vehicle crashes. While we do not know what relationship this drop may have to those changes to the Hours of Service regulations, to our knowledge this was not studied.

In summary, while CVSA members will enforce the rules to the best of our ability, we believe the pending Hours of Service changes will continue to make enforcement more difficult, especially for those drivers and carriers who choose to not comply. While the Hours of Service regulations are designed to help the driver to obtain quality rest, each of the three new rules can easily be disguised or falsified. The rules have shortened the work period for some drivers, thus increasing the temptation to falsify their records of duty status. While we will not know for some time what impacts this ultimately

will have on safety, we do know that without additional tools in the toolbox such as electronic logging devices and supporting document requirements to be maintained on the vehicle, roadside enforcement's job will continue to be challenging and those who seek to break the rules will have more opportunities to do so. Each year, there are approximately 3.5 million roadside inspections conducted in the United States versus about 18,000 Compliance Reviews. The Compliance Review program certainly is effective and has its place in the implementation of an effective safety oversight regime; however, it is an after-the-fact review and assessment of performance. The roadside inspection program is a complement to the Compliance Review program and is designed to be a proactive mechanism to identify high-risk operators and remove them from the road ***before*** a crash occurs. If we do not have regulations designed properly or provide roadside enforcement with the appropriate tools to be effective at their work, the anticipated safety impacts will not be realized to their full potential.

Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

CVSA Response on Behalf of Major Mark Savage
to the
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit's
Hearing on "The Impacts of DOT's Commercial Driver Hours of Service Regulations"
June 18, 2013
Questions for the Record

Question from Rep. Nolan:

- *During the hearing there was significant discussion that a one-size-fits-all approach was not the best way to manage the HOS regulations. As Administrator Ferro pointed out, there are already multiple exemptions in place to accommodate the different needs of industries like concrete, agriculture, oil drilling, utilities, and others. Do you agree that allowing request for dangerous and deadly special interest exemptions to HOS regulations further compromises safety, erodes uniformity and weakens enforcement efforts?*

We agree that, in general, exemptions from federal safety regulations have the potential to undermine safety, while also complicating enforcement efforts. First and foremost, laws and safety regulations exist principally to protect those who use our nation's roadways. The federal motor carrier safety regulations exist to ensure that those operating in the transportation industry are doing so safely. Unfortunately, all too often exemptions are granted to accommodate a particular industry group based on economics and not safety. Rarely is the safety case made in these exemption requests, nor are accountability measures put in place for the monitoring and potential revocation of these exemptions should safety be compromised.

When exemptions are granted, enforcement has difficulty exerting proper oversight and thus, adequate performance data can be difficult to obtain and measure. Each exemption from the safety regulations is an opportunity for confusion and inconsistency in enforcement, which undermines the very foundation of the commercial motor vehicle enforcement program – uniformity. When exemptions are issued, enforcement officers must be trained on these exemptions and, even with training, it can be difficult for enforcement to determine whether a particular carrier or trip is covered by the exemption. Furthermore, training requires taking inspectors off the road, impacting their productivity. Additionally, the potential for non-uniformity can create inequities with respect to the CSA scoring methodology. Since CSA is a relative scoring system, it needs consistent, uniform data to be effective. When regulations are complicated and

6303 Ivy Lane Suite 310 Greenbelt, MD 20770-6319
Phone: 301-830-6143 Fax: 301-830-6144 www.cvsa.org

difficult to enforce, it can result in inconsistencies in enforcement activities across North America, which can result in variability in scores, with the potential to skew the data in the system and negatively impact safety.

Therefore, the decision to grant an exemption should be considered only under extreme conditions, and not as a matter of general practice. The more complicated and complex a regulation is, further exacerbated by exceptions and exemptions, the more difficult it is to enforce. In addition, when exemptions are issued, they should not be done so on an indefinite basis. The exempted industry must be required to show that they can establish and maintain an equivalent level of safety.

CVSA recognizes that there may be instances when exemptions could be appropriate and also not compromise safety. At times, certain industry segments may seek an exemption because a single set of safety rules simply does not work effectively to allow for safe operations. Recognizing that, 49 USC § Section 31315(b) already provides a mechanism for those in industry to obtain an exemption through an administrative (agency) process. This process includes providing for an equivalent level of safety, requiring that the exemption *"would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption."* In addition, exemptions obtained through this process are limited to a maximum of two years (subject to renewal), which provides for a time limitation and an accountability feature to ensure that safety is not compromised, as well as an opportunity to eliminate exemptions that have not maintained an equivalent level of safety. In contrast, exemptions obtained through legislation do not always include safety considerations and are difficult to remove once established.

Question from Rep. Barletta

- *If states and specific industries receive unique exemptions from parts of the hours of service rule, how will these exemptions impact law officers' ability to enforce the regulation? Will the costs of enforcement increase as well?*

Each exemption from motor carrier safety regulations is an opportunity for confusion and inconsistency in enforcement, which undermines the very foundation of the commercial motor vehicle enforcement program – uniformity. The more complicated and complex a regulation is, the more difficult it becomes for the roadside inspector. The Inspector is required to remember when, where and how exemptions apply, to which sectors of industry, and under what conditions. This means the inspector is spending more time on each inspection; in order to verify that an exemption does, in fact, apply. This, in turn, means an inspector sees fewer drivers and vehicles, lowering the safety benefit of that inspector's time on duty.

In terms of the cost of an exemption, such as those from the hours of service regulations, there are both direct and indirect costs that drive up the cost of enforcement. Exemptions require additional training, to bring inspectors up to date on how the regulations apply. This means taking inspectors off the roadways, in order to train them, thus reducing their productivity and impacting safety. It also requires the development and dispersion of training materials and software updates. Additional costs are also incurred when States are forced to resolve the inappropriate application of an exemption. Each new exemption results in an increase in opportunities for errors and carrier DataQs. More time needs to be spent reviewing challenges, and potentially making changes. Inspectors can be asked to appear in court to address a challenge, again removing them from the field, diminishing safety on the roadway, while also potentially incurring court costs for the State. The increased costs are not limited to enforcement either. Industry must also educate drivers and safety employees on new exemptions. Motor carriers also spend time and money reviewing and challenging violations and having their drivers appear in court.

Statement of

EDWARD STOCKLIN
PROFESSIONAL TRUCK DRIVER AND MEMBER,
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Before the

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS & TRANSIT
U.S. HOUSE OF REPRESENTATIVES

Regarding

THE IMPACTS OF THE DOT'S COMMERCIAL DRIVER HOURS-OF-SERVICE REGULATIONS

JUNE 18, 2013

****

On behalf of

Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029
Phone: (816) 229-5791
Fax: (816) 427-4468

Good morning Chairman Petri, Ranking Member DeFazio, and distinguished members of the Subcommittee. Thank you for inviting me to testify on matters of importance to our nation's truck drivers and the tens of thousands of small business trucking professionals who are members of the Owner-Operator Independent Drivers Association (OOIDA).

My name is Ed Stocklin and I am from Wauna, Washington, a small town between Bremerton and Tacoma. I have approximately 35 years of experience in the trucking industry, starting out after my service in Vietnam. During that time, I have seen all sides of this industry and have hauled almost every imaginable kind of freight, including general cargo in a van trailer, logs off the landing sites in forests across the Pacific Northwest, and the over-dimension permitted loads that I haul today largely in trips across the country. I have been an independent operator the majority of career, and I have driven well over two million miles.

As you are likely aware, OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 150,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 200,000 individual heavy-duty trucks.

The majority of the trucking community in this country is made up of small businesses, as more than 93 percent of all motor carriers have less than 20 trucks in their fleet and 78 percent of carriers have fleets of just five or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of motor carriers operating in the United States. It is estimated that OOIDA members and their small business trucking peers collectively move around 40 percent of the freight moved by truck nationally each year.

I am here today on behalf of OOIDA and my fellow professional drivers. Before discussing the Federal Motor Carrier Safety Administration (FMCSA)'s proposed changes to the current hours-of-service (HOS) regulations and the impact they would have on small business trucking, I want to highlight OOIDA's approach to highway safety and some areas where our organization feels the energies of this Subcommittee and the regulatory agencies should be focused as we work to continue to improve safety out on our nation's highways.

OOIDA's members have a unique perspective when it comes to highway safety. The average OOIDA member has been making a living behind the wheel of a tractor trailer for around a quarter of a century and has more than two million miles of accident-free driving under their belt. To put that in perspective, the average passenger car driver would need to drive for almost 150 years to reach that level of experience out on the highway.

OOIDA strongly feels that the key to highway safety is ensuring there is a safe and knowledgeable driver behind the wheel of every tractor-trailer on the highway. To see why this is so important, one only has to review safety data from recent years which showed a considerable drop in truck-involved fatality accidents during 2008 and 2009 when the economy faced significant challenges. This time period saw a significant reduction in the number of

truckers out on the road, with largely experienced drivers sticking through the rough patch. With the improvement in the economy, we have seen both an increase in new entry-level drivers on the road as well as an increase in truck-involved fatality accidents.

Despite the important role played by a safe and knowledgeable driver, the attention of regulations from the Department of Transportation across the past several years and administrations has largely been focused on increasing restrictions on drivers and adding costs to trucking companies through mandated technologies. These costs and restrictions hit small carriers the hardest, despite the clear economic incentive that small truckers like myself have to drive safely: if we get in an accident, regardless of fault, it is our truck that is in the shop, we have to pay out of pocket to get it fixed, and we will not be out there hauling freight and earning money until it is fixed. The downtime alone can mean bankruptcy for owner-operators.

That is why OOIDA is so focused on ensuring that long-overdue entry-level driver training requirements are addressed in short order, especially for the long-haul segment of the industry. This Subcommittee and its partner on the other side of the Capitol included important language in MAP-21 calling on the Department of Transportation to complete an entry-level driver training rule. OOIDA is actively engaged in that process and other activities here in Washington on addressing driver training and we encourage the Department and the members of this Subcommittee to pay special focus to ensure new long-haul tractor-trailer drivers get the safety skills they need at the beginning of their trucking career instead of working to address safety challenges through supposed technology solutions and other costly mandates and regulations that can never compensate for an untrained or undertrained driver.

The Professional Truck Driver's Perspective on Hours-of-Service Rules

To fully comprehend a truck driver's standpoint on the hours-of-service regulations, it is necessary to look back on past hours-of-service (HOS) regulations, how the trucking industry is structured, and how truckers are compensated. Finally, it is important to highlight the significant and varied pressures on a truck driver's day.

A major element of these initial HOS rules and generally all subsequent approaches to HOS regulation has been a balance between ensuring a well-rested driver and providing that driver with the flexibility to operate profitably within the everyday challenges of their workday. Truckers are normally paid by how many miles they drive, hence the saying "if the wheels aren't turning you aren't earning." While there is certainly compensation-based pressure to drive as many miles as possible during the day, there are also other factors that pressure drivers, from the potential of fines by shippers for missing a delivery window to constant contact from your carrier's dispatcher pushing you to drive just a little further, even if you are fatigued or tired.

Under the current HOS regulations, truckers may drive a maximum of 11 hours a day within a 14- hour "on-duty" window. The remaining 10 hours of a 24-hour day is to be reserved for

resting during a consecutive time period. For the vast majority of truckers, the time spent "on-duty, not driving" is often, or sometimes always, uncompensated. There are general and administrative functions that are required of drivers such as completing paperwork, fueling, performing or undergoing safety inspections, and general maintenance that require daily on-duty uncompensated time that counts against their 14-hour on-duty clock. To some extent, truckers can predict and control those administrative duties, but there are many other activities that occur regularly that are also uncompensated yet highly unpredictable.

For that reason, flexibility for a truck driver is critical, as one small thing can have a significant impact on our schedule and quickly turn a profitable load into one that costs us money if we do not make the right decisions. Flexibility does not mean, however, that truckers drive when they are tired or without sufficient rest. Instead flexibility means giving me, the professional truck driver, the ability to drive or take rest when I am best able to get the rest I need and when I am best positioned to operate my truck safely and efficiently.

What are some of those unpredictable factors that can impact a schedule? Most of us can think of several without much effort: an accident, a breakdown, unscheduled construction, or bad weather that forces me to pull off the highway. Further, for a trucker there are many other factors and challenges that can impact our day and our ability to operate both profitably and safely.

One of the most significant challenges we face as truckers is the prospect of waiting at a shipper or receiver for hours after our scheduled appointment to load or unload. This detention time is usually uncompensated throughout the industry, especially for small carriers like me who do not have the major negotiating power of large fleets. Considering that most truckers are paid on a per-mile basis and that detention time is generally uncompensated, shippers and receivers have little incentive to make more efficient use of drivers' time. Further, our time waiting cuts into our available time on-duty, directly reducing the amount of time we are able to drive.

While sitting through congestion, accidents, and construction naturally impact my driving time, the majority of experienced truckers understand the benefits of avoiding these situations all together. Most of us will plan our trips through major cities to avoid rush hour traffic, not only because it improves our timing, but also because it significantly reduces the likelihood that we will be in an accident because there will be fewer passenger cars on the road. Just ask your staff how many of them wait around in the office an extra hour or so in the evenings to let traffic die down so their commute is shorter and less stressful. Flexibility in HOS rules is a key factor in ensuring that professional drivers are able to make these safety-focused decisions.

Most importantly, experienced truckers recognize the safety benefits of following not just the HOS rules, but also their own body when it comes to ensuring they are alert and refreshed while driving. HOS regulations should ensure that drivers are not penalized if they take a break whenever or for whatever length of time they need during their driving day to get needed rest.

One driver may need several breaks of varying lengths distributed throughout the driving window, another may need multiple breaks later in the driving window, and yet another may need only one daily break for a meal. Moreover, any particular driver's needs may change from day to day, depending upon weather, traffic congestion, other driving conditions, time spent waiting to load and unload, and personal business that must be dealt with on any given day. As noted above, stress is common place within our world as truck drivers, and stress is a major contributing factor to fatigue. Compliance with regulations should not cause even more stress among truckers.

Certain types of trucking present unique challenges from the perspective of the trucker. Take, for instance, the over-dimension work that I do. The movement of every single load that I haul is not only restricted by HOS and other federal regulations, but also by permits issued by states and localities. Many of these permits severely restrict when and where I am able to operate, holding me to daylight-only operations only on certain highways. There are safety reasons behind these restrictions, but a misalignment between the permit restrictions and federal HOS rules often times put me in between a rock and a hard place when it comes to maintaining the profitability of loads. This is where flexibility within HOS rules becomes important to me, especially as it pertains to my total driving time for the week and when I can restart my duty cycle.

Other situations also require flexibility. Many shippers, especially those that operate factories or distribution centers that demand "just-in-time" deliveries, demand that deliveries are made in the evening, so many truckers operate overnight to meet the demands of these shippers. A good example of this from my area of trucking is the delivery of steel and pre-cast bridge components to construction sites. Just a few miles down the road is the Wilson Bridge, and during the construction of that project almost all deliveries were conducted overnight to reduce the impact on traffic. Other truckers, especially those who do cross-country operations, prefer to drive at night because of less traffic, fewer safety risks from passenger vehicles, and more predictable travel times.

Trucking is a very diverse industry, with many different types of operations and countless demands on those operations. A significant part of our efforts as professional drivers to balance all of these demands while ensuring that we operate our vehicle rested and alert are HOS rules that permit us some level of flexibility as part of our operations. A huge part of that flexibility is ensuring that we are not penalized on the backend for making the decision to stop because we do need a rest, because we want to avoid traffic or another hazard, or because we were delayed at a shipper or receiver.

One major area of concern for OOIDA and truckers is the pressure that the continuous clock associated with current HOS driving window places on drivers. The non-stoppable 14-hour clock not only is a major reduction in the flexibility that we need to maximize the safety and efficiency of our operations, but it also forces us as truckers to be constantly pushing ahead to ensure we fit our driving for the day into this block of time. Further, the 2005 rule's decision to

eliminate the long-standing split sleeper birth rule further restricts and reduces flexibility and adds additional pressure on truckers to push through what may be metaphorically a square peg into a round hole.

Because of their limiting impact on driver flexibility, OOIDA has long supported efforts to reexamine these changes from 2005 by allowing drivers the ability to: 1) break up their 14-hour driving window with short breaks on their terms that do not count against the driver's available driving time; 2) the opportunity to extend the driving window beyond 14 hours while still ensuring the driver obtains sufficient rest; and 3) the return of the pre-2005 split sleeper birth rule.

The Importance of the 34-Hour Restart

The Final Rule's most significant change comes in revisions to the 34-hour restart provision. Under current regulations, truckers are able to restart their duty cycle anytime they need to simply by taking 34 hours off-duty.

According to OOIDA members, the 34-hour restart provision is generally used by drivers who spend long periods on the road to complete their deliveries so they are able to return home and get the best possible rest and restorative sleep. The restart period is not typically used by drivers at home, a reality shown by FMCSA in its *HOS Field Survey*, which found that "most drivers typically take more than 34 hours off duty."

Under the Final Rule, while the 34-hour restart provision is maintained, its use by truckers is significantly restricted. The restart can only be used once every 168 hour/7-day period, and the period must include two consecutive "overnight" periods where the trucker is off duty between 1:00 am and 5:00 am. This is a significant reduction in the flexibility of the HOS rules, and this reduction in flexibility will have a significant impact on the ability of myself and other truckers like me to balance out the demands of our work in a way that best maintains safe, efficient, and profitable operations.

To illustrate the impact of this change, allow me to walk you through a typical set of freight moves that I go through in my operation. The majority of my moves are cross-country, taking me from the West Coast all the way to the East Coast and back. As an over-dimensional hauler, a common load for me would be the delivery of a major piece of industrial equipment or structural element that was shipped to a West Coast port from Asia and is needed at a factory or on a construction site in the East. After delivering the load, I then make a reverse trip with another load that is needed on the West Coast and the process begins again.

The current flexibility with the 34-hour restart has been utilized by me and other cross-country drivers to accomplish two important goals: 1) it gives us the ability to get the rest we need following our cross-country drives; and 2) it gives us the opportunity to reset our weekly duty

cycle under the HOS regulations to conduct our trips in a way that minimizes the time our trucks are sitting idle simply for the sake of sitting idle.

Under the current version of the restart rule, I am still getting the necessary and required daily off-duty time to obtain the restorative sleep I need to operate refreshed and alert. The unrestricted use of the 34-hour restart period, when combined with the current off-duty rest periods, has been shown to address any "cumulative sleep deficit" that may be faced by truckers out on the road.

Impacts of New Revisions to the Restart Rule & Other Changes

The Final Rule's changes to the use of the 34-hour restart provision will have an impact on my ability to be as flexible as necessary in my operations and will lead to me spending longer time on the road and away from home. Much of this is due to my cross-country and over-dimensional operations, but these impacts will be felt by many other truckers, especially small business truckers who tend to operate in the niche areas of the trucking industry where special demands and requirements are placed on a trucker by a shipper.

As I noted above, the majority of my loads are moved under permits, which include additional restrictions on top of current HOS regulations. These constraints and the demands that customers place on my operations make the current unrestricted use of the 34-hour restart rule an important tool in my ability to efficiently operate.

By limiting the use of the restart period and by requiring the restart period to include two consecutive "overnight" periods, the changes included in the Final Rule will add additional and burdensome restrictions on my operations. Often my operations go beyond simply driving, and I must play an active role in loading and unloading the vehicle, time that is today and will continue to be recorded as on-duty time. This combination of on-duty time and permit-restricted driving hours often leads to me hitting the total duty-cycle hours limit before I am able to complete my trip. Under the current use of the restart period, I am able to take my restart at times that best match my need for rest with the demands of my schedule.

Under the Final Rule's revision to the restart period, again in combination with non-driving/on-duty tasks and permit restrictions, I will now be faced with the prospect of taking my restart period as part of an extended off-duty layover away from home, which is exactly the problem that the original 34-hour restart provision was designed to help address. Additionally, in some situations it may be beneficial to me to take multiple 34-hour restarts during the course of a seven day period. Amazingly, the Final Rule actually prevents me from having more than one of these off-duty periods in a week, despite the fact that previous versions of HOS regulations have increased off-duty time.

Another challenge presented by the Final Rule's changes to the restart provision is the requirement that the period include two "overnight" periods from between 1:00 am and 5:00 am. The 34 hours that a trucker takes off for their restart period is now no longer of their choosing.

This will present significant problems to those truckers who operate overnight due to customer demands or operational preferences.

Further, according to the Final Rule, the 1:00 am to 5:00 am period is based upon the time at the trucker's home terminal and not in the area they are currently operating. Calling the West Coast home, this means that when I am on the East Coast, my restart periods will need to include two consecutive periods between 4:00 am and 8:00 am, and a driver based on the East Coast will need to include two periods between 10:00 pm and 2:00 am when they are on the West Coast. These changes will not only place restrictions on our operations, but they will also exacerbate the challenge all truckers face in finding a safe and secure parking location for the evening and enforcement, especially on the roadside, will see additional complications.

What does this mean to truckers? As noted above, small business truckers are paying costs whether or not our truck is moving. Take insurance as an example. I am already paying a significant amount in insurance premiums based upon my operations, yet those do not go into a holding pattern when I am sitting idle. Another example unique to my work as a specialized hauler is the pilot car team that is often required as part of my permits. While pilot cars have recently been in the news due to the I-5 bridge collapse, I can say that these folks do important work, especially in areas where clearances are not adequately marked. Common practice within the trucking industry is for the trucker to pay the pilot car team. When I am idle, so are they, but, I still need to pay them. These economic realities are not reflected in the final rule.

Another change within the Final Rule that is important to highlight is the 30 minute break requirement. The requirement that this break be taken within the first eight hours of a driving period adds additional rigidity to the trucker's schedule. As noted above, the vast majority of drivers gain real value from breaks, but only when those breaks are taken on their terms and within the demands of their driving day. This is especially true for me as an over-dimensional hauler since I am not able to just pull over along the side of the road or into any rest area available. I am restricted on my routes and as noted before restricted on when I operate.

It is important to go back and discuss more the difference between how a trucker sees these rule changes and how a shipper sees them. While an individual trucker will see significant changes, especially if they operate cross-country like me, shippers are largely insulated from these changes. They will not be adjusting their just-in-time demands or eliminating the current and very common practice of fining truckers who are late for a delivery appointment hundreds of dollars. If anything, they will approach these HOS changes as an opportunity to place even greater stress and pressure on the truck driver because the margin for error is even smaller.

And that takes us back to the important issue of flexibility within the regulations. As this Subcommittee has examined in the past, today's truck drivers are under significant pressures, from the shipping community, from carriers, from the regulatory and enforcement community, and from the general day-to-day challenges of living a life on the road. I can say with one-

hundred percent certainty that the pressures I face today are the most I have faced in my entire career in trucking. The majority of these challenges are operational, and while they have not been created by the changes to the HOS regulations included in the Final Rule, the reduced flexibility afforded under it makes them more difficult for me as a trucker to deal with.

While the Department is taking steps to examine more fully these every-day issues for truckers, especially the detention issue, their full impact is not reflected as part of the December 2011 Final Rule. OOIDA looks forward to working with Administrator Ferro and her team as they continue to examine the detention issue, especially in light of language included by the House and Senate transportation committees as part of MAP-21 that addresses coercion of drivers by carriers and shippers. That said, we urge the Department to at the very least stay implementation of these new rules until the pending court decision is finalized.

Conclusion

Throughout the Department's HOS rulemaking process, which OOIDA recognizes was brought about due to court actions, we have held that to meaningfully improve highway safety, any changes would need to include all aspects of a truckers' workday that affect their ability to drive safely. This includes loading and unloading times, split sleeper berth for team operations, and the ability to interrupt the 14-hour day for needed rest periods. Further, changes must not be made to the 11-hour driving limit, as this time is critical not only for truckers to operate profitably, but also the time is needed for truckers to address needs like ensuring they have a safe place to park for their required rest period.

While the Department's Final Rule does not change the 11-hour driving limit, the rule misses clear opportunities to provide needed flexibility for truckers as they work to balance out the demands of their work day, especially situations that are out of their control such as when they are detained by shippers or when traffic or other problems impact their day. Further, while the Final Rule does include some minor changes to treatment of split sleeper berth operations for team drivers, it does not provide drivers the ability to break up their driving day in a way that meaningfully lessens fatigue.

Of greatest impact to truckers, the Final Rule adds new restrictions onto the 34-hour restart period that will significantly reduce the flexibility provided to truckers under current HOS rules. Today's 34-hour restart provision is an important tool for many truckers, especially cross-country truckers like myself, as we work to be flexible as necessary in our operations. Further, this change will lead to many truckers spending substantially longer time on the road and away from home. What it will not mean is that we will suddenly become more rested and more aware during our time behind the wheel. If anything, this reduction of flexibility, when combined with the demands of the road and the constant pressure of the 14-hour driving clock, will lead to greater stress put on truckers as we work to do our jobs safely, efficiently, and professionally.

As a small business trucker, the success of my business is predicated on me operating safely. Highway safety begins not with restrictions on driver flexibility or costly technology mandates, but instead with ensuring a safe and knowledgeable driver behind the wheel of every truck on the road. This is a goal that OOIDA and its members are passionate about and will continue to be our highest safety priority moving forward.

Thank you for the opportunity to testify and thank you for holding today's hearing to highlight these important issues.

Highway Subcommittee Hearing – June 18, 2013

Question for the Record Response from the
Owner-Operator Independent Drivers Association

"Do you agree that the current federal truck size and weight limit of 80,000 lbs. should be retained and that special interest exemptions to truck size and weight limits that further imperil motorists and our infrastructure should not be granted?"

The Owner-Operator Independent Drivers Association (OOIDA) has long opposed efforts to increase federal truck weight and size limits. The small business truckers that make up the majority of the trucking industry in the United States and form the heart of OOIDA's membership know first-hand the impact that heavier trucks have on their cost of equipment and operations, safety matters, including the handling characteristics of a truck, and the conditions of our nation's roads and bridges. As such, OOIDA strong supports retaining current federal truck size and weight limits.

While some within the trucking industry argue that the entire industry is supportive of a weight increase, the overwhelming majority of trucking, from independent owner-operators up to most fleets, will not see a benefit from increasing truck size and weights. While proponents talk about savings from heavier trucks, for the small business truckers that make up more than 90 percent of the trucking industry, heavier trucks only mean higher fuel, repair, and equipment costs, including the likelihood of spending tens of thousands of dollars on new trailers designed to haul the heavier weight simply to remain competitive.

OOIDA's members are some of the most experienced truckers in the country, with an average of more than two decades behind the wheel and two million miles driven without a DOT reportable accident. Their collective experience shows that heavier trucks suffer from reduced stability on the road and accelerate the damage of roads and bridges. It also must be recognized that that higher limits permitted by past weight increases have quickly become the new standard across the entire industry, not simply an option used by a select group of shippers, spreading negative impacts across all highways.

Small business truckers are even more concerned about efficiently moving goods than large carriers and shippers - the cost of additional fuel and the cost of delay are paid for directly out of the trucker's pocket. Instead of looking at ways to continue to pass costs onto truckers, OOIDA urges proponents of size and weight increases to instead join us in advancing true efficiency improvements by addressing the issues surrounding the delay of drivers at the dock by warehouses and others. These delays lead to trucks sitting for hours waiting to load and unload, costing the economy billions each year according to the GAO. Driver delay negatively impacts the ability of drivers to comply with HOS regulations and leads to increased idling and congestion on freight corridors.

Looking at the issue from the critical perspective of safety, should there be a weight increase, truck weights that today are moved by experienced drivers would now be moved by the general driver population, especially the entry level drivers that make up a significant portion of the driver population of large truckload fleets. As OOIDA has highlighted as part of its recently launched highway safety campaign, Truckers for Safety, truck driver training requirements are extremely low and need to be addressed for general long-haul operations.

Further, bigger and heavier trucks put further demands on the driver, all of which have the potential for negative safety impacts. These areas are not simply ones that will "go away" with additional technology, and much of the "tests" done with heavier trucks have not truly replicated real world driving situations. Safe performance of a brand-new truck with perfectly calibrated equipment does not mean the same results on the highway in the real world of bad weather, congested roads, and other situations.

Earlier this summer, OOIDA members attended an FHWA listening session on the MAP-21-mandated Truck Size and Weight Study. The OOIDA members in attendance, all career truck drivers and small business owners, voiced these issues to the FHWA and study staff that were in attendance, and we look forward to participating in the study process as it moves forward. A copy of the written comments OOIDA submitted are enclosed under cover of this document.

It is critical in the view of OOIDA that policymakers not simply focus on the views of shippers and large trucking companies in regards to issues surrounding truck size and weight polices, but also ensures that the expertise of truck drivers and small business truckers are consulted and taken into consideration. As truckers, we have the most expertise and the at stake when it comes to these issues because of their impact on our lives and our businesses.

Comments Submitted to Comprehensive Truck Size & Weight Study Listening Session

United States Department of Transportation
via e-mail (CTSWStudy@dot.gov)

Owner-Operator Independent Drivers Association
&

Tilden Curl	Scott Grenerth	Steve Davenport
Olympia, WA	Arlington, OH	Lewisville, TX

Professional Truck Drivers & Members, Owner-Operator Independent Drivers Association

June 5, 2013

Thank you for holding the recent listening session on the issues surrounding proposed increases to truck size and weight limits. This is an important issue and it is important that this study not only objectively consider the facts, but also comprehensively examine the many facets and perspectives that this issue touches.

The Owner-Operator Independent Drivers Association (OOIDA) is a not-for-profit corporation incorporated in 1973 in Missouri with its principal place of business located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. The more than 150,000 members of OOIDA are independent owner-operators, small-business motor carriers, and professional truck drivers ("small business truckers") located in all 50 states and Canada. These groups have a significant presence in the trucking industry: One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks.

OOIDA is the largest international trade association representing these small business truckers. The Association actively promotes their views through interactions with state, provincial, and federal government

agencies, legislatures, courts, other trade associations, and private businesses. OOIDA also actively represents the positions of these groups on all aspects of highway safety and transportation policy in numerous committees and various forums on the local, state, national, and international level.

In addition to OOIDA, these comments are also submitted on behalf of the three OOIDA members who attended the listening session in person: Tilden Curl, Scott Grenerth, and Steve Davenport. Mr. Curl is a career long-haul truck driver from Olympia, Washington. He has been a professional truck driver for more than twenty years, has driven more than two million miles without a reportable accident hauling lumber, building materials, steel, and machinery, including oversize and overweight loads. In 2010, he was named the 28th annual Goodyear North America Highway Hero for his actions that helped save the lives of two people in a car that had come to a stop on railroad tracks, including pulling the unconscious driver from his car before it was struck by an approaching train.

Mr. Grenerth, from Arlington, Ohio, has been a professional truck driver for more than ten years and currently pulls a flatbed trailer hauling steel, aluminum, and other industrial products throughout the mid-West and mid-Atlantic. He has previously testified before Congress on behalf of OOIDA in October 2011, and is an active member of the Trucking Solutions Group, an organization of truckers focused on sharing best practices and helping grow successful trucking operations.

Mr. Davenport, from Lewisville, Texas has been a professional trucker for more than 40 years and has around six million miles of driving experience. Today he pulls a flatbed hauling building materials throughout the country. Before becoming an owner-operator, Mr. Davenport was a company driver for 33 years and has hauled general freight, dry goods, refrigerated goods, meat and produce. A Vietnam Veteran, he is active in veteran's organizations and the annual Rolling Thunder Rally. Mr. Davenport was

recognized by the White House and the Department of Transportation as a "Champion of Change" in 2011.

Unlike the majority of the organizations who are submitting comments to this study, OOIDA's members do not see the trucking industry and the impacts of policy decisions set here in Washington from behind a desk or on a balance sheet. Instead, they see them on the highway and in their personal pocketbook.

Unlike the mega fleets with thousands of trucks, trailers, and drivers or the shipping interests who only see transportation as a cost, moving freight is their lives, the highway is their office, and those who have experience in this industry know it inside and out. Their views on this topic are some of the most important that DOT will consider as part of its study.

From the perspective of a professional truck driver, while there are several facets to this proposal, especially implementation, safety, and economic impact that deserve special focus because they include issues that truckers will face. It is critical that this study examine these areas because for the folks who are going to be actually out there operating the vehicles these areas are even more critical than the broader issues that will be examined as part of this study. While our comments will discuss those areas in more detail, our comments first discuss the importance of reaching out to truck drivers as part of this study and ensuring that the impact of any proposed change on trucking, especially small business truckers, is fully considered.

It was stated during the listening session by a representative of the major shipper group in support of heavier weights that "trucking industry competitiveness issues" are outside the scope of this study and that the DOT should not even investigate them. Speaking on behalf of our nation's truckers, it is absolutely imperative that the Department considers these costs and the impact that a new heavier weight or LCV standard will have on small business truckers in comparison to large fleet operations.

The entire argument that shippers make for bigger and heavier trucks is based upon their view that it will improve their competitiveness by reducing *their* transportation costs. This study cannot simply assume that those costs evaporate into thin air. It must examine the reality that with bigger and heavier truckers, costs for some of our nation's largest and most profitable corporations are being pushed onto small businesses truckers who are already struggling to maintain competitiveness in one of the lowest margin industries in the country.

To do this, the DOT and its contractors must aggressively conduct outreach with the men and women who will be asked to drive these heavier and longer trucks, especially those who operate their own small business trucking operation. This should not be done through surveys of fleet operations managers or other methods where "talking to the trucking industry" means that not a single driver was consulted. Instead, the agency should go where truckers go, utilizing events like truck shows, locations like truck stops, and media such as satellite radio's Road Dog Trucking station and social media tools to obtain real honest feedback from professional drivers and small business truckers. It is OOIDA's opinion that the feedback received during these kinds of outreach sessions will be more informative to the DOT than many of the other data sources that are being examined as part of this study.

Now onto the specific issues DOT must consider as part of its study. First, implementation:

In the view of OOIDA, the majority of the discussion regarding proposals to increase truck size and weight limits are consistently oversimplified by proponents. They fail to raise or even acknowledge a whole host of significant issues that will make the issue of implementing their proposals far more difficult for the for-hire motor carrier, especially the small business carriers that make up more than 90 percent of the trucking industry. For this study to truly be a comprehensive study, these issues must be examined by the Department of Transportation.

On weight, no state currently restricts below the federal standard, and the system governing LCVs has been fairly consistent over the decades. If a higher weight limit or an expansion in longer combination vehicles is permitted by law, this would in effect become the new federal standard. Each state would either accept or reject the new standard. This situation would create a patchwork of various weight and LCV standards across our nation, and the impacts of this patchwork must be considered as part of the study.

However, the study should not simply examine the impacts of patch worked standards on the efficiency of freight movement. This study should also consider the impacts this will have on truckers. It would force the purchase of new heavier equipment by motor carriers to serve states with heavier gross weight limits. This would reduce the payload in states that choose to remain at the current limits, causing challenges for shippers and truckers alike, especially small business truckers.

In addition, the study should not ignore the reality that terminal access routes would need to be reviewed to allow access for new, heavier and longer trucks beyond the Interstate. Every downgrade roadway would need to be reevaluated for a new recommended maximum truck speed. All weight restricted bridges would need to be immediately upgraded to the new standard or closed to significant freight traffic. The remaining bridges would need to be evaluated for the ability to handle the new standard weight, potentially taxing already stretched state transportation budgets. These costs must be considered because they are important to how truckers like me do our jobs safely.

There is also the issue of tire scrubbing. This is when axle configurations, such as an additional sixth axle, force tires to slide on the pavement in a turn. Tire scrubbing reduces the life of road surfaces and often tears up pavement, and its impact will be seen on the local roads and streets surrounding factories, distribution centers, warehouses, and truck stops that longer and heavier trucks will visit. It should be noted that the

expense of the repairs fall to the local jurisdictions and the equipment owners. Tire scrubbing also creates expensive equipment maintenance issues that start with increased tire wear and expand into other areas. This is an important cost factor – especially for local governments – and it must be considered as part of the study.

For truckers, existing trailers would need to be reengineered for modification and certification before use, requiring a significant investment of dollars and time. All securement laws will need to be reviewed, revised, and implemented. Van trailers would need further certifications for securement and load distribution and random verification of proper securement by law enforcement. Drivers would need to be educated and trained on these new rules. These implementation costs are never mentioned by those who support bigger and heavier trucks, but they are real for truck drivers and they must be evaluated if this study is to truly be comprehensive.

Next, we address safety:

The proponents of this proposal dismiss the safety concerns with the simple explanation that you have extra brakes to compensate for the extra weight. This determination is made mostly by people who do not sit behind the wheel of a truck. Any seasoned driver will tell you that extra weight means extra responsibility and a reduced margin for errors, and it is critically important that when examining safety as part of this study, the team go out and interact with actual truckers and not limit their investigation to speaking with trucking fleets, engaging with manufacturers, or looking at the results of studies or test track runs. You need to truly engage with the professional men and women and get a true understanding from real truckers about the many safety questions tied to this issue.

We have grown to depend more and more on technology and less and less on training and experience. When technology fails, and it will, can you count on entry or intermediate level drivers to control a previously

classified heavy haul load of just less than 100,000 pounds down the hill, or with a blowout on a steer tire, or going into a sharp curve, or any number of things that happen daily?

A reality that truckers must deal with is inclement weather – especially issues related to icy highways. Longer stopping distances, greater chances of skidding, and other challenges that put demands on even the most skilled drivers become more common and more serous with heavier and/or longer vehicles. This is not only true when the vehicle is fully loaded but also when the trailer or trailer are running empty, something that must be considered as part of this study. DOT cannot simply look at the performance of truck equipment under perfect situations – it must consider real-world, worst-case scenarios.

Should there be a weight increase, truck weights that today are moved by experienced drivers would now be moved by the general driver population, especially the entry level drivers that make up a significant portion of the driver population of large truckload fleets. For the most part, this population has not benefited from a strong driver training program – certainly not one required at the federal level. Experience with driving for newer drivers is also not as great as it once was. The past generations of truckers came from the farm, were familiar with equipment and driving, and saw trucking as a career. Today's new drivers see trucking as a job to do until something better comes along.

Understanding the impacts of this gap on safety is a critical area for this study to investigate. The study needs to consider the demands that bigger and heavier trucks put on the driver, and it must not simply look at safety through the lens of additional technology. Just imagine, in the major accident that took place in Texas last November due to fog, how much worse would it have been with heavier weight trucks? Would a 97,000 lb. truck be able to avoid that school bus? There is no evidence that this proposal would enhance safety in any way. Safety is really about what went

right. Accident reports are about what went wrong, and this is one area where truck drivers around the country do not want us to make a mistake.

Speaking of technology, there are areas of concern and consideration here as well. Most consider the brakes at the wheels to be the truck's braking system, but truckers generally depend on technology and engine compression brakes to control downhill speeds with some assistance from the brakes. Today, horsepower is used to slow a truck as much as it is to speed up a truck. With a 20% increase in weight, there needs to be a 20% increase in horsepower to maintain the equivalent braking power.

Extra power is also needed to pull the heavier loads up a hill. At 80,000 pounds, many trucks can only manage 28-32 mph on a 5-6 % grade. The heavier weight would have today's trucks down to 20-24 mph. This creates speed differentials of 50 mph or more between cars and trucks. This problem is compounded when a 24 mph truck starts to pass a 20 mph truck in an area where there are no additional lanes for cars to pass. Truckers, especially those hauling heavy weights, already face challenges from passenger car drivers who do not know the safe way to drive around trucks. This proposal would open them up to more risk and to greater road rage incidents.

To put heavier loads on current length trailer, you have to stack the load higher. This moves the center of gravity higher and increases the chance of rollover or blow over in a crosswind, or for a rollover to occur as a secondary element of an accident.

Expanded LCVs in more states and on more highways would be an even greater problem, and it must be considered as part of the study. Currently, multiple lanes have to be used to negotiate a 90° turn. If a car positions itself in the pinch point or blind spot at the time of the turn and the vehicles make contact, the truck driver is cited for improper lane usage. This problem would only be worse with three axle and/or longer trailers. The following from a previous OOIDA document on this topic discusses it in more detail:

One of the major safety problems is off-tracking. All combination trucks experience off-tracking to some extent. As a tractor trailer transverses a curve the path of the front wheel and path of the rear inside wheel are different. When tractor trailers turn in an intersection the outside wheels of the truck take a wider path than the inside wheels. One of the most difficult things to learn when driving a CMV is how to turn in an intersection without going into the adjacent on-coming lane. The driver on urban or rural roads especially has to swing out of their lane to avoid going over the top of a car that may be parked in the adjacent on-coming lane. This action is a function of the wheelbases of the tractor and trailers and the number of articulation points. In low-speed off-tracking the rear wheels track inside the path of the front wheels. In high speed off-tracking the rear wheels off-track outside the path of the front wheels. There is a definite safety factor when the wheels of the trailer or trailers go into an adjacent lane or shoulder of the road. Ask any road maintenance crew or city maintenance crew about how often they have to repair curbs and shoulders at intersection used by combination vehicles. These types of maintenance repairs will undoubtedly escalate if LCVs are more common.

In an AASHTO survey based on off-tracking and length characteristics, researchers found that fewer than half of urban and rural interchanges could handle 48 foot tractor trailers, and this number "decreased dramatically" for LCVs. With current designs less than 25% of urban or rural interchanges could handle turnpike doubles.

To summarize the safety issue, truckers are a huge resource for FHWA and the study contractor as you go out and do your work to ensure that this study is truly comprehensive. We will identify issues and ask questions that will not show up in past academic studies or other activities on this issue, yet these issues and questions are critically important because we, the truck drivers, are the ones who will be out there driving these longer and heavier vehicles.

One constant point you will hear truckers reference on this issue is the need to look at equipment performance in the real-world, not simply how it performs on a test track when everything is new and perfectly adjusted. Brakes out of adjustment, for instance, are one of the major reasons any truck is taken out-of-service by enforcement personnel, yet this reality will not show up in any test track situation.

Next, we take a look at the economic impact of this proposal, specifically what impact it is going to have on the small business truckers who make up

more than 90 percent of our nation's trucking industry. The scale of this impact cannot be understated and is best summed up by the reality that most truckers will not see an economic benefit from longer and heavier trucks.

The proponents claim to be able to move more goods at a reduced cost to combat the coming shortage of capacity. To fairly understand this statement, we need to turn to statistics from DOT itself. It says that 1 % of carriers employ 50% of the trucks on the road today. The other 99% of carriers are made up mostly of fleets with 6 trucks or less. These fleets make up the other 50% of trucks on the road.

It is safe to assume that carrying 20% more payload will not result in a 20% pay raise to those company drivers assuming the greater responsibilities. They simply are paid to drive. Therefore, this will generate larger profits for the 1% of company owners, not the 50% of all drivers on the road that they employ.

The remaining 50%, of which I fall into, will be forced to purchase new equipment simply to remain competitive. A new trailer to replace the one I currently use would cost me upwards of $60,000. This is an expense that could not be completely offset by higher rates.

To compound the problem, small business truckers cannot get fleet prices or government grants on my equipment. They pay full rate because they are not a large enough operation qualify for help, even though today many of these fleets receiving assistance from EPA-funded grants report record profits. This expense would put many small business and owner-operator truckers out of business. At the very least, it would reduce our standard of living even further.

The higher costs of longer and heavier trucks would most clearly be felt by small business truckers in their on-going costs, especially fuel. Hauling a heavier load will increase their fuel costs, with no guarantee that they will make these higher costs back through rates and surcharges. The additional

equipment required for this type of trucking itself adds weight to their truck and trailer, requiring more fuel for driving when they are not carrying a load. Further, when they are hauling a load that is below the heavier weight, they will still be paying for the modifications required to haul heavier weight.

Other on-going costs come in the form of greater repair costs, higher insurance premiums, and more wear and tear on my truck and trailer. These costs are not even acknowledged by the proponents of bigger and heavier trucks yet they must be considered by the study if it is to truly be a comprehensive look at the issue.

The individual companies that are the major proponents – and major funders – of this effort often tout the need for this change to ensure they remain competitive. Well, let's look at the profits of a few of these companies. Last quarter, International Paper reported a profit of $571 million, up over $30 million from the first quarter last year. Schneider National, one of the most vocal supporters in the trucking industry for longer and heavier, saw its profits last year increase by 9.7 percent. Needless to say, small business truckers on average did not see a similar profit growth, and for many truckers, one major breakdown can turn a profitable period into one that is very costly.

Also noteworthy is that today we are moving freight cheaper (using inflation-adjusted dollars) than at almost any time in history. OOIDA supports maintaining current weight and LCV limits and letting our system work.

To be considered as well is the current state of the infrastructure. We are struggling to find a way to afford repairs. Adding almost 20% more weight to the roads at when the Federal Highway Trust Fund faces a $100 billion shortfall over the next ten years makes no sense. OOIDA members who move freight into states where heavier weights are permitted know full well the damage the roads in those states have seen, and they do not want to see this spread to more states. And nationally, our roadways are beat

and broken over far too many miles, so much so that the American Society of Civil Engineers gives them a grade of D, with bridges barely better at a grade of C plus. The recent bridge collapses, including the I-5 bridge which Mr. Curl travels on frequently, highlight this sad reality.

The current state of our roads has caused truckers to experience broken shocks, alignment issues, excessive tire wear, loosened body panels, broken shock mounts, and a list of other mechanical issues too long to list. The increasing truck weights and lengths should not be used as a trade-off for higher highway user taxes. We need to make investments in our infrastructure today to ensure the future of our roads and bridges at today's size and weight specifications.

In conclusion, this is not a simple issue, and anyone who tries to tell you it is just does not understand trucking, our highways, and highway safety. It is incumbent upon FHWA as it conducts this study to reach out to the truck driver community – not simply fleet executives or trucking associations but actual truck drivers – to understand the impact of these proposed changes.

In your engagement with truckers, you will hear about how we are concerned that bigger and heavier trucks will have a negative impact on highway safety, how they will significantly increase our operating costs as truckers, and how they will lead to countless implementation challenges that will make it harder for truckers to do our jobs. At a time when federal regulations are placing more and more pressure on truck drivers, bigger and heavier trucks only increase the pressure.

That's why OOIDA and small business truckers see this proposal for what it really is, little more than an effort to transfer costs from already wealthy shipping interests and a few major trucking firms, over to small business truckers and all American taxpayers.

As representatives of truck drivers, small business owners, husbands, wives, mothers, fathers, and grandparents, OOIDA and the undersigned members respectfully ask that you consider this issue from the perspective of the

truck driver. OOIDA stands ready to assist FHWA and the study contractor as you do your work, and all of us are committed to help in any way to ensure this study is truly comprehensive in nature.

Thank you for the opportunity to provide comments on this important study.

Testimony of Joan Claybrook, Consumer Co-Chair,

Advocates for Highway and Auto Safety

and former Administrator, National Highway Traffic Safety Administration

On

The Impacts of the Department of Transportation's Commercial Driver Hours of Service Regulations

Before

The House Committee on Transportation and Infrastructure

Subcommittee on Highways and Transit

June 18, 2013

Chairman Petri, ranking member DeFazio, and Members of the Subcommittee on Highways and Transit of the House Committee on Transportation and Infrastructure, thank you for inviting me to testify before you today. I am Joan Claybrook, Consumer Co-Chair of Advocates for Highway and Auto Safety (Advocates) and former Administrator of the National Highway Traffic Safety Administration. Advocates is a non-profit organization that promotes safety on our roads and highways by advocating for laws and regulations that reduce traffic crashes, fatalities and injuries. Advocates is a coalition of public health, safety, and consumer organizations, and insurers and insurer agents that advances highway safety through the adoption of safety policies and regulations, and the enactment of state and federal traffic safety laws. Advocates is a unique business and consumer coalition dedicated to improving traffic safety by addressing motor vehicle crashes as a public health issue. I appreciate being invited to testify before you today on the impacts of the commercial driver hours of service regulations last revised in a final rule issued in December, 2011.

Introduction

Advocates has been involved in the issue of motor carrier safety and truck driver Hours of Service (HOS) regulations for over 20 years. Truck crashes are a serious and deadly problem. Over the past decade on average, from 2002 through 2011, large truck crashes have claimed the lives of over 4,000 people and injured nearly 100,000 each year.[1] Despite declines during the recent recession, fatalities and injuries in large truck crashes have experienced increases every year since 2009.[2] Large truck crashes killed 3,757 and injured 88,000 in 2011.[3] This is equivalent to a major airplane crash every other week of the year all year long. The annual cost to society of large truck crashes is over $83 billion.[4] Truck driving continues to be identified as one of the most dangerous occupations in the United States with 547 large truck drivers being killed in crashes in 2011.[5] Advocates is concerned with the recent increases in truck crash deaths and injuries as these numbers continue their march toward a return to pre-recession levels.

During the past 20 years, Advocates has participated in numerous truck safety-related events, including the 1995 National Truck and Bus Safety Summit[6] of experts and stakeholders that identified driver fatigue was the number one safety issue in the trucking industry. Advocates has also filed numerous, detailed and well-documented comments on the HOS rule at every step in the regulatory process since 1997, served as a participating party in the National Transportation Safety Board's (NTSB) 2011 Truck and Bus Safety Forum, and litigated the legality of several versions of the HOS final rules in federal court. Two of the past rules were overturned as a result of our litigation and the most recently case was held in abeyance under an agreement with the DOT that a new rule would be published. Moreover, and most poignantly, Advocates has worked with many families of victims of truck crashes caused by truck drivers who have been pushed beyond their limits and fallen asleep behind the wheel. In the audience today, representing these thousands of families are Jane Mathis, of St. Augustine, Florida, whose son and daughter-in-law were returning from their honeymoon when a truck struck their car from behind and killed them, and Daphne and Steve Izer of Lisbon, Maine, whose son and three friends were killed when their vehicle was struck while in the breakdown lane by a truck driver who had fallen asleep at the wheel. These families have

paid the ultimate price for federal HOS regulations that put corporate profit before the safety of innocent motorists.

There is a stunning disconnect in the way fatigue is treated in commercial truck as compared to commercial air transportation. When an air traffic controller fell asleep on the job at Reagan National Airport in 2011, and when two pilots flew past their destination over Minnesota because they were dozing in 2009, the public, the media and Members of Congress were justifiably outraged over those transgressions and the Secretary of Transportation took immediate action to rectify the problems. Luckily, no casualties resulted from those fatigue incidents. In sharp contrast, however, the Federal Motor Carrier Safety Administration (FMCSA) has not taken similar immediate or effective responsive action to what has become a public health epidemic of truck driver fatigue. The FMCSA's 2011 HOS final rule, which is about to be implemented on July 1, 2013, fails to address driver fatigue in two important ways. First, it does not return to the 10 hour limit on continuous hours of driving, which was in place for nearly 70 years, and, second, it fails to ensure that all truck drivers, regardless of their schedules, could not continually use the minimum 34-hour off-duty period ("restart") to maximize driving hours.

Nonetheless, the final rule does take several small steps in the right direction by requiring drivers who use the minimum 34-hour "restart" to get two nights sleep, by limiting the use of the "restart" to just once a week for some drivers, and by requiring rest breaks after eight (8) hours on duty. These provisions will improve the current situation, even if only incrementally, and because they could save lives, they should be implemented on time, on July 1, without further delay.

Other improvements to the HOS regulations are necessary, however, because studies have found that since the current HOS rule went into effect, large numbers of truck drivers admit to being affected by fatigue behind the wheel while operating commercial motor vehicles that weigh up to 80,000 pounds or more. A survey sponsored by the Federal Motor Carrier Safety Administration (FMCSA) found that:

- nearly *48 percent* of drivers admitted that they had fallen asleep while driving in the previous year;
- about *45 percent* of the drivers said they sometimes or often had trouble staying awake while driving;
- *13 percent* reported that they often or sometimes fell asleep while driving;
- nearly two-thirds of drivers, *65 percent*, reported that they often or sometimes felt drowsy while driving; and,
- a third of the drivers reported that they became fatigued on a half or more of their trips. [7]

The FMCSA estimates that truck driver fatigue is involved in about 13 percent of fatal crashes, killing nearly 500 people a year, a conservative estimate that is likely much higher based on other reports.[8]

While the 2011 HOS final rule makes several changes which will save the lives of some truck drivers and other road users, it fails to address the serious underlying major sources of driver fatigue. .

Background

Driver fatigue was a major safety concern under the HOS rule that was in place for nearly 70 years, from 1937 until 2003. Even though that rule limited drivers to 10 consecutive hours of driving without a rest break, and did not permit a "restart" during the week, driver fatigue and driving while tired were recognized as serious safety problems that led to both fatal and injury crashes. The 1995 National Truck and Bus Safety Summit, sponsored by the U.S. Department of Transportation (DOT), convened experts and stakeholders to discuss all aspects of truck operations and safety issues. The participants, including truck drivers, representatives of motor carriers, researchers, members of the safety community, victims and survivors of truck crashes and government officials, concluded that "driver fatigue" was the number one safety problem in the trucking industry. In response, Congress in 1995 enacted section 408 of the Interstate Commerce Commission Termination Act (ICCTA)[9] which required DOT to address with fatigue-related issues and adopt necessary "countermeasures for reducing fatigue-related incidents and increasing driver alertness[]."

Despite this congressional directive to reduce fatigue and improve driver alertness, the FMCSA, in 2003, adopted a final rule that increased the maximum limit on consecutive hours of driving from 10 to 11 hours and instituted the 34-hour "restart" that effectively reduces the end-of-week rest and recovery period for drivers who use up their maximum weekly hours before the end of the week. Both of these changes to the original rule exacerbate driver fatigue by dramatically extending driving tours-of-duty later into the day and by adding to cumulative fatigue or sleep debt from which drivers suffer when driving on short sleep from shift-to-shift and from week-to-week. The effect of the "restart" was to allow drivers to substitute additional work and driving hours, especially more hours of driving, for the rest and recovery off-duty periods that had been required at the end of each work week in order to ensure that drivers obtained sufficient rest.

In addition, in its analysis accompanying the 2003 HOS final rule, FMCSA failed to consider the health impact that longer driving hours and less rest would have on individual drivers and the driver population as a whole. Federal law, enacted in 1984,[10] requires the Secretary of Transportation to take into account the impact of regulations on the health and physical condition of truck drivers. This congressional mandate was completely ignored by the agency when proposing the significant increases in driving and working hours of truck drivers.

Because the 2003 FMCSA final rule contradicted both the scientific evidence and research regarding fatigue and the agency's own findings of fact, and neglected to analyze the effect of the rule on driver health, Advocates joined with other health and safety groups to litigate these issues in federal court. In 2004, the U.S. Court of Appeals for the District of Columbia Circuit ruled against the agency and remanded the HOS rule for necessary revisions.[11] The Court ruled that, by ignoring the mandatory issue of driver

health, the HOS final rule violated federal law and had to be vacated. The Court went on to state that there were serious problems with the agency's rationale for extending the longstanding 10 hour consecutive driving limit to 11 hours and for failing to address the inherent problem of cumulative fatigue in allowing drivers to take as few as 34 hours off-duty to rest between weekly driving tours of duty. The Court stated that "the agency's failure to address [the increase in the number of weekly driving hours] . . . makes this aspect of the rule's rationality questionable."[12]

The reintroduction of those same flawed provisions in the subsequent 2005 and 2008 versions of the HOS final rules remain at odds with the scientific research, the agency's findings of fact, and the legal criticism voiced by the Court of Appeals. After filing a third lawsuit in 2009,[13] the parties reached a settlement agreement with DOT in order to avoid prolonged litigation and to provide an opportunity to revise the HOS rule to conform to the overwhelming body of safety research and the deficiencies identified in the 2004 decision of the Court of Appeals.

The latest version of the HOS rule was issued by DOT on December 27, 2011,[14] and included several beneficial changes to the current rule including limiting use of the "restart" to once in every 168 hours (one calendar week), requiring the "restart" to include two rest periods between 1 a.m. and 5 a.m., and requiring a 30 minute rest break for drivers within the last 8 hours of being on duty. Despite these marginal improvements, Advocates and other safety organizations and independent drivers filed suit because the final rule failed to return to a 10, rather than 11, hour limit on continuous driving, and because the modification of the "restart" provision does not apply to all drivers, allowing long-haul drivers who operate 7 days a week to continue to accumulate excessive driving hours and fatigue over multiple weeks. Oral arguments in the case were presented at the U.S. Court of Appeals on March 15, 2013.

Needed HOS Reforms

The current, unsafe and illegal HOS rule adopted in 2003 substantially increased maximum daily and weekly driving and working hours for truckers in two ways.

First, driving time allowed for each shift was increased from the traditional, long standing, limit of 10 consecutive hours of driving per shift to 11 consecutive hours. By extending the limit to 11 hours, the current HOS rule increases the time drivers are on the road when they are most tired, at the end of their shift. More important, historical data clearly shows that crash risk among truck drivers increases exponentially after eight hours of driving, and is at high danger levels during the 10^{th} and 11^{th} hours of driving. Nevertheless, the agency tacked the additional hour onto the maximum driving limit, permitting another hour of exposure at the end of the driving shift – when crash risk is at its highest. This action not only contradicted the scientific data and research but also, as the Court of Appeals pointed out, called into question the legality of the rule since it exposes drivers and the public to an unreasonable risk of crash involvement. The Court of Appeals 3-judge panel stated that "[w]e have our doubts about whether [the agency's] two justifications [for the 11-hour limit] are legally sufficient."[15] The failure of the

revised 2011 HOS final rule to limit the daily driving hours is one of the reasons Advocates filed its most recent suit.

Second, the danger posed by these provisions to the health and safety of truck drivers and the motoring public are made even worse by the 34-hour "restart" provision. The "restart" eviscerates what was previously a "hard number" 60-hour weekly driving cap (or 70 hours for drivers on an 8-day schedule). Instead, the current rule permits drivers to reset their accumulated weekly driving hours to zero and start a new driving week, at any point during the work week they choose, after taking only a 34-hour "restart", merely one day and 10 hours off. This permits drivers who use the "restart" provision to cram an extra 17 hours of driving into a 7-day schedule, actually operating their trucks for up to a total of 77 hours in seven calendar days instead of the stated limit of 60 hours. Drivers operating on an 8-day schedule can drive an extra 18 hours in 8 days for a total of up to 88 driving hours instead of the legal limit of 70-hours. These hours of working and driving, week after week, month after month, are dangerous and deadly compared to the typical 40 hour work week of most Americans. If a truck driver nods off for even a second of those 11 hours it could result in a deadly crash. The stakes here are very high.

The FMCSA admits that the 2011 HOS final rule does not reverse this problem of excessive driving hours but, at best, only limits drivers who work six days a week to an average of 70 hours of work and/or driving a week.[16] The final rule still allows truckers to drive at least 10 more hours, on average, each week than the supposed maximum limit of 60 hours of driving for these drivers, and does nothing to curb the excessive hours of work and driving performed by long-haul drivers operating seven days a week.

The "restart" permits truckers to drive and work excessive hours which promote driver fatigue. Instead of having a full weekend of 48 to 72 hours off-duty for rest and recovery, as was required under the pre-2003 HOS rule, the 34-hour "restart" permits drivers to trade rest time for extra driving hours in order to maximize income. Fewer hours of rest and more hours of driving and work dramatically increase truck driver crash risk exposure.

The FMCSA acknowledges that sleep research shows that humans need at least 7 to 8 hours of sleep each night to perform well and avoid sleep deprivation.[17] Studies conducted since the current HOS rule went into effect show that drivers are actually getting *less* than 6 hours of sleep, on average on work days and only slightly more than 6 hours on days off.[18] This means that under the current HOS rule, drivers are frequently driving even though sleep deprived, resulting in high rates of tired, fatigued drivers behind the wheel of trucks that weigh up to 80,000 pounds or more.

Beyond this, the current HOS rule did not take into consideration the impact it would have on the health of truck drivers. In 2003, FMCSA completely ignored the issue and the Court of Appeals held that doing so violated federal law and the Court remanded the rule to the agency. The next time around, FMCSA analyzed the driver health issues and, despite finding that the HOS regulations have an impact on numerous diseases and

ailments common among truck drivers, including heart disease, hypertension, sleep disorders, back problems, etc., the agency refused to include in its regulatory analysis any costs associated with allowing drivers to operate trucks for more hours every shift, each week, from month-to-month, year-in and year-out. When the Court of Appeals vacated and remanded this second version of the HOS rule, the Court reiterated its admonitions on the other safety issues in the case, including the need to account for the impact on driver health. This flaw in the agency's cost-benefit analysis for the current rule is another reason it was necessary for the FMCSA to revise the HOS rule and its accompanying analysis.

The 2011 HOS final rule partially addresses concerns about driver fatigue with the "restart" provision in two ways. First, by limiting the use of the "restart" to once every 168 hours (one calendar week), the rule limits the number of consecutive weeks with extensive weekly driving hours but only for those drivers operating six days a week. Advocates and the other petitioners filed suit, however, because the 2011 final rule did not go far enough. The once a week or 168 hour limitation on the use of the short "restart" should also have been applied to long-haul truckers who operate seven days a week. By not also covering those drivers, the final rule allows a huge loophole that limits the safety benefits of the rule.

Second, the 2011 final rule improves safety by requiring that the "restart" rest period include two night-time rest periods from 1 a.m. to 5 a.m. This ensures that drivers will be able to take two periods of off duty time in which to obtain sleep under optimal conditions (at night and in sync with the natural circadian rhythm of the body). As discussed below, in the original proposed HOS rule, the FMCSA specifically stated that any "restart" should include two nighttime rest periods.

Because these two changes afford modest safety benefits for the travelling public, implementation of the 2011 final rule, even though deficient in other important respects, will have a positive impact on public safety and the implementation of the rule should not be delayed any longer. While these positive changes should be implemented, more effective safety reforms, that will have a greater impact on driver fatigue, need to be adopted.

Scientific Evidence and Research

Over the past 20 years, scientific research has documented the adverse effects of long working hours, especially in industries involving shift work. Advocates has highlighted the numerous research studies and scientific findings which conclude that there is an increased risk of crashes associated with more driving and working hours among commercial drivers.[19] Advocates' bibliography of relevant scientific studies and sleep research is attached to my testimony as **Appendix A**. Among the findings and conclusions in the scientific evidence are the following:

- Crash risk increases geometrically after the eighth (8^{th}) consecutive hour of driving;

- Under the current HOS rule drivers are not getting sufficient sleep, obtaining, on average, less than six (6) hours of sleep on work nights;
- Because humans have a biological diurnal schedule that normally requires nighttime sleep, attempts to sleep during daytime result in shorter and less restful sleep periods as compared to nighttime sleep; and,
- Lack of sufficient sleep from day-to-day and week-to-week results in cumulative sleep deprivation, or sleep debt, that can only be overcome through extended periods of off-duty time for rest and recovery.

Despite unfounded assertions that the current HOS rule is working well and contributing to safety, fatigue is still a major problem that drivers readily acknowledge. Studies have found that a substantial percentage of truck drivers admit to high levels of fatigued driving and actually falling asleep behind the wheel.

Regarding the need for the two night requirement during the "restart", the FMCSA stated, in the 2000 notice of proposed rulemaking (NPRM) that:

> ...the research indicates that to negate the effect of accumulated weeklong sleep deprivation and restore alertness to the human body it is necessary to have at least two consecutive nights off-duty that include the periods from midnight to 6:00 a.m. For long-haul CMV drivers, this ''weekend'' (i.e., a period to permit recovery from cumulative fatigue, not necessarily falling on a Saturday and Sunday) should be up to 56 hours long, but could be reduced to 32 hours as long as that period included two nights covering two periods from midnight to 6:00 a.m. The research suggests that drivers may need even more nights off duty if they have a severe sleep deficit.[20]

Additionally, in the 2010 NPRM, the agency cited work by Washington State University which identified that the 34-hour "restart" was effective for daytime workers who obtained 2 nights of sleep but not for night workers who received only one night of sleep. The agency cited other works which found that daytime sleep is less restorative than nighttime sleep and that time spent sleeping during the day is often less than at night even when the same amount of time is available for sleep.[21]

With regard to the once per week (168 hour) limit on the use of the "restart", the agency summarizes its analysis on a driver outreach page when it states:

> The purpose of the [168-hour provision] is to limit work to no more than 70 hours a week on average. Working long daily and weekly hours on a continuing basis is associated with chronic fatigue, a high risk of crashes, and a number of serious chronic health conditions in drivers.[22]

These findings of fact were based on the agency's review of the applicable scientific research and available studies.

The Court Decisions

In two separate unanimous decisions, in 2004 and again in 2007, the U.S. Court of Appeals vacated previous, nearly identical versions of the current HOS rule and remanded the rules to the agency for changes consistent with the Court's rulings. In each case, the Court questioned the basis for the agency's decision-making in allowing longer driving hours despite the safety threat, adverse health effects and increased crash risk posed by the rule, indicating that the current HOS rule was not based on sound reasoning.[23]

In the 2004 decision, the Court held the HOS rule invalid because of the FMCSA's failure to address the impact of the rule on driver health, a statutorily mandated concern. The Court, however, went on to point out, issue by issue, the many deficiencies in the agency's reasoning and the problems in logic and law that the Court perceived the agency would need to address in order to correct the flaws in the HOS rule.

The Court's 2007 decision turned on a critical point of administrative law, the agency's failure to make its statistical analysis available to the public for comment. However, the Court also reiterated its previous statements from the prior decision regarding the safety issues that were still pending. Attached to my testimony **as Appendix B** is a document that quotes excerpts from the Court decisions regarding each of the safety issues[24] and I have also included a chronology of the HOS rulemaking and litigation history.

Despite back-to-back judicial decisions overturning the rule in each case, FMCSA refused to make changes to the maximum daily and weekly driving and work hours allowed by the current HOS rule.

The current HOS rule is substantially similar to the two prior HOS rules which were struck down twice by the Court of Appeals and truck driver fatigue remains a serious problem that is killing and injuring too many motorists and truck drivers. While the 2011 final rule takes several steps toward improving truck driver fatigue, overall the rule falls short of making the necessary improvements for safety that are needed to reduce the annual toll of truck-involved crash deaths and injuries as outlined by the court.

Thank you for the opportunity to testify before the Subcommittee and I would be pleased to respond to any questions you may have.

Endnotes.

---

[1] NHTSA Traffic Safety Facts, Large Truck fact sheets 2002 through 2011.

[2] *Id.*

[3] *Traffic Safety Facts 2011 Data: Large Trucks*, DOT HS 811 752, NHTSA (Apr. 2013).

[4] *Commercial Motor Vehicle Facts – March* 2013, FMCSA, available at http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf.

[5] *Traffic Safety Facts 2011*, DOT HS 811 754, NHTSA (2013). *National Census of Fatal Occupant Injuries in 2011 (Preliminary Results)*, USDL-12-1888, Bureau of Labor Statistics, (Sep. 20, 2012).

[6] 68 FR 22456 (Apr. 28, 2003), reissued in substantially the same form at 73 FR 69567 *et seq.* (Nov. 19, 2008).

[7] Dinges, D.F. & Maislin, G., "Truck Driver Fatigue Management Survey," May 2006, p. 29, FMCSA–2004–19608–3968.

[8] Hours of Service of Drivers, Final Rule, 76 FR 81134 (Dec. 27, 2011).

[9] Interstate Commerce Commission Termination Act, Pub. L. 104-88, § 408 (Dec. 29, 1995).

[10] The Motor Carrier Safety Act of 1984, Pub. L. 98-554, Title II, 98 Stat. 2832 (Oct. 30, 1984) *codified at* 49 U.S.C. § 31136(a), requires that regulations prescribing minimum safety standards for commercial motor vehicles shall, at a minimum, ensure that:

(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;
(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;
(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and,
(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

[11] *Public Citizen, et al., v. FMCSA,* 374 F.3d 1209 (D.C. Cir. 2004).

[12] *Id.*, page 1223.

[13] *Public Citizen et al., v. FMCSA,* No. 09-1094 (D.C. Cir. 2009).

[14] 76 FR 81134.

[15] *Public Citizen v. FMCSA,* 374 F.3d 1218.

[16] Questions & Answers – HOS Final Rule (December 2011) for CMV Drivers, FMCSA Feb. 2012, http://www.fmcsa.dot.gov/rules-regulations/topics/hos/qanda.aspx.

[17] Hours of Service of Drivers, Notice of Proposed Rulemaking, 75 FR 82169, 82176 (Dec. 29, 2010).

[18] *Id.*, citing Hanowski, et al., "The Sleep of Commercial Vehicle Drivers Under the 2003 Hours-of-Service Regulations," *Accident Analysis and Prevention,* Vol. 39, No. 6, pp. 1140-1145, Nov. 2007. The study documents that between work shifts drivers are currently getting only 5.6 hours of sleep a night, only just slightly more than five (5) and one-half hours each night.

[19] *See* Research Reports and Studies Showing The Adverse Health and Safety Effects of Longer Working Hours and Inadequate Rest Time, Advocates for Highway and Auto Safety (2011).

[20] Hours of Service of Drivers, Notice of Proposed Rulemaking, 65 FR 25540 (May 2, 2000).

[21] 75 FR 82182.

[22] Questions & Answers – HOS Final Rule (December 2011) for CMV Drivers, FMCSA Feb. 2012, http://www.fmcsa.dot.gov/rules-regulations/topics/hos/qanda.aspx.

[23] *Owner-Operator Independent Drivers Ass'n v. FMCSA,* 494 F.3d 188 (D.C. Cir. 2007); *Public Citizen v. FMCSA,* 374 F.3d 1209 (D.C. Cir. 2004).

[24] Truck Driver Hours of Service (HOS) Rule Overturned Twice by Unanimous Decisions, Advocates for Highway and Auto Safety (Dec. 2010).

APPENDIX A

RESEARCH REPORTS AND STUDIES SHOWING THE ADVERSE HEALTH AND SAFETY EFFECTS OF LONGER WORKING HOURS AND INADEQUATE REST TIME

Jovanis, P., Wu, K., Chen, C.; ***Hours of Service and Driver Fatigue: Driver Characteristics Research*****, FMCSA, May 2011:**

◊ Examined the patterns of driving and work in the week before a crash.
◊ "There is a consistent increase in crash odd as driving time increases."
◊ "LTL drivers experienced increased crash odds after the 6th hour of driving."
◊ "Breaks from driving reduced crash odds."
◊ "There was an increase in crash odds associated with the return to work after a recovery period of 34 hours or more."
◊ TL drivers who drive during the day have increased odds of a crash with long driving hours.
◊ LTL drivers:
- Driving time substantially associated with crash odds.
- Highest odds in the 11th hour.
- Consistent increase in odds after the 5th through the 11th hours.

◊ Decrease in odds of a crash were significant for two breaks (sleeper or off duty).
◊ Using all of the data the crash exposure ratio gradually increases, especially after the 6th hour of driving.

Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S., Guo, F.; ***The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial motor Vehicle Operations*****, FMCSA, May 2011:**

◊ Studies 100 drivers, 4 companies, naturalistic data collection over 4 weeks for each driver.
◊ Analyses of driving hours/safety-critical event (SCE) risk found a time-on-task effect across hours.
◊ Analysis on work hours found an increase risk of SCE as work hours increased.
◊ SCE risk increased with driving late into the 14-hour workday.
◊ Breaks from driving were effective to counteract the negative effects of time on task.
◊ SCE rate in the 11th hour was statistically significantly higher than in hours 8, 9, or 10.
◊ No statistically significant difference between SCE rate in 11th and 10th.
◊ As work hour increases from beginning to end, there is a statistically significant increase in SCE rate.
◊ Rest breaks of at least 30 minutes were shown to decrease the SCE rate in the hour after the break compared to the hour before.
◊ Off duty break provided the greatest benefit.
◊ *Analysis of all of the data indicated increase in SCE risk with increasing driving time.*

APPENDIX A

Sando, T., Mtoi, E., Moses, R.; *Potential Causes of Driver Fatigue: A Study on Transit Bus Operators in Florida*, Transportation Research Board 2011 Annual Meeting, Nov. 2010:

◊ Studied data from transit agencies in Florida.
◊ "Scientifically and average person needs eight hours sleep every 24-hours cycle."
◊ "Most of the accidents (56.69%) occur when the operators are exposed to red fatigue conditions" ("red fatigue" is a highly fatigued state identified by the software utilized in the study, the Fatigue Audit Interdynamics (FAID) program).
◊ "The survey also revealed that the minimum off duty period of eight hours might not be adequate. It is likely that this could be another cause of fatigue among operators because it leads to inadequate rest and sleep."
◊ A fatiguing work schedule includes: split schedules, less sleep, long driving hours and early starting – late ending schedule patterns.
◊ Fatigue is cumulative, "after the accumulation of fatigue, the operator needs enough off duty period to recover from critical fatigue condition. To start with a green fatigue condition (full recovery) in a weekly schedule the operator needs at least two days off duty."
◊ "there is a statistically strong association between fatigue condition and crash occurrence."

Sando, T., Angel, M., Mtoi, E., Moses, R.; *Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions*, Transportation Research Board 2011 Annual Meeting, Nov. 2010:

◊ Studies four transit agencies from the state of Florida.
◊ "The results show a discernable pattern of an increased propensity of collision involvement with an increase in driving hours. . . According to the findings of this study, it is clear that the present regulation that limits driver's on-duty time to a maximum of seventy hours per week should be revisited."
◊ Bus driver with straight schedules in preventable collisions drove an average of 49.8 hours in the week before the collision (95% confidence interval).
◊ Bus driver with split schedules in preventable collisions drove an average of 53.7 hours in the week before the collision (95% confidence interval).
◊ On average, drivers who were involved in preventable collisions drove over six hours more per week than that of the general population of drivers.
◊ Preventable collisions are more prevalent as the length of the driving period increases.

Park, S., P.P., Jovanis., *Hours of Service and Truck Crash Risk: Findings from 3 national U.S. Carriers during 2004.*Presented at 89th Annual Meeting of the Transportation Research Board, Washington, D.C., 2010.

◊ "The study reported a non-linear increase in crash odds after the 6th hour of driving. According to the study, the odds ratios increase from 50% to 200% in the 10th and 11th hour."

APPENDIX A

F. Saccomano, M. Yu, and J. Shortread, Effect of Driver Fatigue On Truck Accident Rates, *Urban Transport and the Environment For the Twenty-First Century* (ed. L.J. Sucharov), Computational Mechanics Publications, Southhampton, U.K., 1995, 439-446; and,
F. Saccomano and J. Shortread, ATruck Safety: Perceptions and Reality, *The Institute for Risk Research*, Ontario, 1996, 157-174.
◊ Found a significant increase in crash rates for truck driving shifts of more than 9 hours.
◊ The strong relationship between single-vehicle truck crashes and length of continuous driving time held regardless of the time of day.
◊ Findings confirmed earlier Federal Highway Administration research.

T. Lin, P. Jovanis, and C. Yang, Modeling the Effect of Driver Service Hours On Motor Carrier Accident Risk Using Time Dependent Logistic Regression, 72nd Annual Meeting of the Transportation Research Board, Washington, DC, 1993; and,
T. Lin, P. Jovanis, and C. Yang, Time of Day Models of Motor Carrier Accident Risk, *Transportation Research Record* 1467: 1-8, Transportation Research Board, National Academy of Sciences, 1994.
◊ Found a consistent elevation of crash risk from about the 8th to the 9th hour of driving.
◊ Found a dramatically increased risk if driving exceeded 9 continuous hours.
◊ Confirmed earlier Federal Highway Administration research.

T. Kaneko and P. Jovanis, *Multiday Driving Patterns and Motor Carrier Accident Risk: A Disaggregate Analysis*, U. of CA at Davis, Research Report UCD-TRG-90-9, April 1990.
◊ Driving patterns over the previous 7 days significantly affected crash risk on the 8th day.
◊ Consecutive driving hours have a consistent crash risk relationship.

T. Kaneko and P. Jovanis, Multiday Driving Patterns and Motor Carrier Accident Risk: A Disaggregate Analysis, *Accident Analysis and Prevention*, 25:5, 1992, 437-456.
◊ Consecutive hours of driving were the most significant predictor of accident risk.

I. Jones and H. Stein, *Effect of Driver Hours of Service on Tractor-Trailer Crash Involvement*, Insurance Institute for Highway Safety, Arlington, VA, 1987; and,
I. Jones and H. Stein, Defective Equipment and Tractor-Trailer Crash Involvement, *Accident Analysis and Prevention*, 21: 469-481.
◊ Study used case-control design (3 matching controls for each case), controlled for time of day.
◊ Widely regarded as one of the most rigorous in-depth studies of fatigue ever conducted (*e.g.*, Haworth, Triggs, and Grey (1988)).
◊ Found a substantial increase in crash risk if drivers exceeded 8 continuous hours of driving.
◊ Crash risk for drivers whose reported driving time exceeded 8 hours was almost twice that for drivers who had driven fewer hours.
◊ Crash risk estimates conservative because number of driving hours based on driver self-reporting.

APPENDIX A

W. Frith, A Case-Control Study of Heavy Vehicle Drivers Working Time and Safety, *Proceedings of the 17th Australian Road Research Board Conference*, 1994, 17(5): 17-30.

◊ Case-control methodology, matched-pairs.
◊ Crash risk substantially increased for drivers with greater than 8 hours of driving but less than 9 hours.
◊ Crash risk rose even higher if driving exceeded 9 hours.
◊ Emphasized that his findings confirmed the 1987 research of Jones and Stein, and the 1993 research of Lin, Jovanis, and Yang.

S. Folkard, Time On Shift Effects In Safety: A Mini-Review, Abstract in the *Shiftwork International Newsletter*, May 1995, 12:1, Timothy Monk, ed., presentations from the 12th International Symposium On Night- and Shiftwork, Ledyard, CN, June 13-18, 1995.

◊ Major meta-analysis of relative risk of performance lapses over the course of various shift durations.
◊ Increase in relative risk of crashes over time was exponential.
◊ Risk was approximately doubled after 12 hours of work and trebled after 14 hours of work.
◊ Found that safest work duration is 6 to 9 hour long shifts.

P. Krauth, et al., A Systematic Selection of Shift Plans for Continuous Production With the Aid of Work-Physiological Criteria, *Applied Ergonomics*, 1979, 10:1, 9-15.

◊ Working times of more than 8 hours must be avoided because of long-term deleterious effects on worker health.
◊ Longer shift times found to reduce effective daily recuperation, produce adverse impacts on sleep length and quality [*e.g.*, see Smiley and Heslegrave (1997], and reduce leisure activities.
◊ Showed that research literature consistently demonstrates that only in exceptional cases have 12 hours shifts, in particular, proved successful without measurable deterioration in safety, sleep quality, and worker health.
◊ Cites corroborative research findings, such as Rutenfranz (1973); Knauth and Rutenfranz (1972); Rutenfranz et al. (1974).

C. Abrams, T. Shultz, and C. Wylie, *Commercial Motor Vehicle Driver Fatigue, Alertness, and Countermeasures Survey*, Report FHWA-MC-99-067, Federal Highway Administration, U.S. Department of Transportation, August 1997.

◊ Survey of 511 commercial motor vehicle drivers undertaken concurrently with the 1997 Driver Fatigue and Alertness Study.
◊ Twenty-eight (28) percent of surveyed drivers admitted falling asleep at the wheel during the previous month.
◊ One-third of these fall-asleep drivers admitted falling asleep at the wheel from 3 to 6 times in the prior month.
◊ The majority of drivers who fell asleep at the wheel reported that they sometimes or always are aware of the danger of falling asleep, but nevertheless continue to drive.
◊ Nearly 47 percent of surveyed drivers stated that they sometimes cut their sleep short to make delivery schedules.

APPENDIX A

◊ Drivers often begin trips already fatigued, *e.g.*, more than 38 percent have already been awake for 6 to 12 hours before beginning to drive.
◊ More than a third of drivers surveyed said that loading/unloading contributed to their fatigue and lowered their alertness.
◊ Ninety-one (91) percent of surveyed drivers slept in tractor sleeper berths, 6.7 percent in motels.
◊ About one-quarter of sleeper berth drivers split their sleeping time and overall slept fewer hours than drivers who rested in one period.
◊ Most drivers use breaks for other than napping purposes, *e.g.*, eating, fueling, restroom use, *etc.*
◊ Authors conclude that fatigue, drowsiness, difficulty of preventing falling asleep at the wheel may be more prevalent in the driver community than previously thought.

J. Rutenfranz and P. Knauth, Hours of Work and Shiftwork, *Ergonomics*, 19:3, 1976, 331-340.
◊ Found that the primary protection afforded workers against undue health risks were achieved by limitation of working hours as a direct means of curtailing risk exposure.
◊ A daily working time limit of 8 hours is shown to be optimal.

Simon Folkard, Black Times: Temporal Determinants of Transport Safety, *Accident Analysis and Prevention*, 29:4, 1997, 417-430.
◊ Showed that circadian rhythms are insufficient to account for the variation in crash risk over the 24-hour day.
◊ Deleterious effects of time on task overarch those derived from circadian effects (time of day).
◊ Safest continuous task duration, except for very short duty periods of about 2.5 hours, is about 8 to 10 hours of maximum shift length.

E. Grandjean, *Fitting the Task to the Man: An Ergonomic Approach*, London 1982.
◊ Shows that many studies have demonstrated that shortening the work day actually raises worker efficiency.
◊ Making the working day longer causes worker hourly efficiency to decline.
◊ Shows that many studies of actual workplace productivity demonstrate that increasing daily working hours beyond 10 hours actually results in a decline in productivity as a natural product of increasing fatigue which more than offsets the increased working hours.
◊ Found that work time of 8 hours a day cannot be increased to 9 hours or more without ill effects.

D. Linklater, Fatigue and Long Distance Truck Drivers, *Australian Road Research Board Proceedings*, 10:4, 193-201, 1980.
◊ Interviewed drivers of all types of vehicles at roadside restaurants and found that relative crash rates of truck drivers increased when weekly driving time exceeded 55 hours.
◊ Cites U.S. Bureau of Motor Carrier Safety finding in 1969 that 30 percent of single-vehicle truck crashes involved commercial drivers asleep at the wheel with 13 percent of those drivers verified to have exceeded maximum permitted hours of driving.
◊ New South Wales commercial drivers limited to a maximum of 72 hours driving per week, yet the crash risk of drivers has already begun to rise before this limit is reached.

APPENDIX A

Mark Rosekind, et al., From Laboratory to Flightdeck: Promoting Operational Alertness.
◊ All estimates of fatigue-related accidents in transportation are underestimated.
◊ Many shiftwork studies have found reductions in performance, lowered alertness, and increased proneness to error and injuries for 12 hour shifts.
◊ Cite many supporting research studies such as Rosa (1991); Rosa and Bonnet (1993); Rosa (1995).
◊ Authors point out that in Rosa (1995), analysis of a national occupational-injury database showed a constant accident/injury rate through 9 hours of work, but then a rapid and progressive increase to three times the rate at the end of 16 hours of work.

Raymond Fuller, *Prolonged Heavy Vehicle Driving Performance: Effects of Unpredictable Shift Onset and Duration, and Convoy vs. Independent Driving Conditions*, U.S. Army Research Institute for the Behavioral and Social Sciences, Tech. Report 585, Sept. 1983.
◊ Found that symptoms of fatigue were most typical near the end of the driving shift, becoming evident from about the 9th hour of driving.
◊ Asserts that his research shows that prudence dictates a driving regime of no more than 8 or 9 hours long.

Gunther Hildebrandt, A12 & 24 H Rhythms In Error Frequency of Locomotive Drivers and the Influence of Tiredness, *International Journal of Chronobiology*, Vol. 2, 175-180 (1974).
◊ Tiredness was shown to play an important role in error frequency by train engineers, especially in the afternoon.
◊ Found that the increase in error frequency was linearly related to the number of hours previously worked.

Federal Highway Administration Report to Congress On Commercial Driver Hours of Service, November 1990.
◊ Openly endorses research findings showing the adverse effects of longer continuous driving times and of cumulative fatigue resulting from several consecutive days of driving.
◊ Asserts at the outset that the risk of crashes increases with the number of hours driven.
◊ Supports the 10-hour maximum regulatory restriction on continuous driving time because it is consistent with research showing that the potential for crashes rises as the hours of driving increase due to increasing driver fatigue.
◊ Favorably cites the Jones and Stein (1987) study by the Insurance Institute for Highway Safety that driving in excess of 8 hours may be associated with a significantly increased risk of crash involvement.
◊ Asserts that this increase in relative risk with increasing time of driving also confirms the 1978 FHWA study of Mackie and Miller.
◊ States that research has shown a cumulative fatigue effect after several successive days of driving.
◊ States that research indicates that time spent on-duty may be a more important factor in driver loss of alertness.

APPENDIX A

◊ These statements repeat previous assertions to the same effect made in 1980 (45 FR 82284, 82286, 82288, 82290).
◊ FHWA in 1987 again endorsed the findings that both increased consecutive driving hours and consecutive days of driving directly contribute to driver errors and crashes (52 FR 45215).
◊ Assertions to the same effect were made by FHWA in its November 29-30, 1988, Proceedings of the Federal Highway Administration Symposium On Truck and Bus Driver Fatigue.

W. Harris and R. Mackie, *A Study of the Relationships Among Fatigue, Hours of Service, and Safety of Operations of Truck and Bus Drivers*, Bureau of Motor Carrier Safety, Federal Highway Administration, BMCS-RP0-71-Z, June 1971-November 1972; and,
R. Mackie and J. Miller, *Effects of Hours of Service Regularity of Schedules and Cargo Loading On Truck and Bus Driver Fatigue*, Federal Highway Administration, DOT-HS-803-799, May 1975-October 1978.
◊ Classic federal studies funded through the Federal Highway Administration whose findings have been sustained by numerous later studies.
◊ Found that drivers suffered increased risk of crashes whether they were on regular or irregular driving schedules.
◊ Even on regular daytime schedules, adverse safety effects were clearly seen after about 8.5 hours of driving.
◊ Significant increases in driver errors and significant decreases in driver level of alertness began to show as early as the 4th hour of driving time on irregular schedules in particular (at about 8 hours on regular schedules) and increased throughout the trip.
◊ Frequency of crashes increased disproportionately after 7 hours of driving and remained significantly higher than expected for all driving times longer than 7 hours.
◊ Amount of driver recovery declined with each successive rest break; drivers taking a third rest break, after about 9 hours, showed no recovery and an actual further decline in alertness [See Lisper, Laurell, and VanLoon (1986): taking breaks had no lasting effects on reducing sleepiness among drivers].
◊ About twice as many crashes per mile traveled occurred in the second half of the trip as in the first half.
◊ Significant increases in driver errors and decreases in alertness occurred within the current 10-hour consecutive driving limit.
◊ Cumulative effects of fatigue appeared after the first 4 consecutive days on duty.
◊ Later U.S. Department of Transportation study (J.P. Eicher (1982)) relies heavily on the findings of these two studies.
◊ These findings further evaluated and relied on by the Office of Technology Assessment of the United States Congress in its September 1988 report (OTA-SET-382).

Benjamin F. Jones, et al., *Fatigue and Hours of Service of Interstate Truck Drivers*, U.S. Public Health Service, Public Health Bulletin No. 265, Washington, DC, 1941.
◊ Tests conducted showed lowered functional efficiency with increasing hours of work per week.

EEC Council Regulation No. 3820/85 (December 1985); EEC Council Regulation No.

APPENDIX A

98/0319SYN Amending Reg. 3820/85 and Directive 93/104/EC.
◊ Regulations establishing the European Economic Community policy on worker hours as based on extensive research and consensus agreements among member states.
◊ Regulations curtail weekly driving time to an average of no more than 48 hours per week as averaged over 4 months, with some derogations permitted (48 hours a week averaged over 6 months, 39 hours a week over 9 months, and 35 hours averaged over 12 months).
◊ Another EEC publication of November 18, 1999, emphasizes that 18 percent of fatal crashes in the European Union involve trucks or motor coaches, with 45,000 people killed each year.

F. van Ouwerkerk, Sub-Topic 4: Quality of Life and Social Costs - c) Working Conditions, *Resources For Tomorrow's Transport: Introductory Reports and Summary of Discussions*, ECMT, Brussels, September 12-14, 1988.
◊ Found serious, adverse health and social impacts from truck driver hours of service demands.
◊ High percentages of drivers admit to falling asleep or almost falling asleep at the wheel.
◊ Sixty (60) percent of drivers report anxiety, chronic heart problems, and hypertension.
◊ Relies heavily on B. Jansen (1987) study which showed that shiftwork produces pervasive problems of fatigue, sleep deprivation, gastrointestinal complaints, low family contact time, no community life, personal isolation, inability to pursue education, inadequate access to commonly available public facilities and activities such as public transportation/schools/sports, etc.
◊ Drivers have little leisure time and are disengaged from common social activities.
◊ More than one-quarter of drivers are not home on one of two weekend days.
◊ Drivers cannot schedule reasonable social time because much of their weekends are spent recovering from fatigue and sleep deprivation accrued from previous week's driving.
◊ Drivers report adverse impacts on spouses and households where the net effect of international driving is a one-parent home.
◊ Nearly half of all drivers have high rates of domestic discord with spouses and children.
◊ Drivers have more problems and more severe problems than the general population.
◊ Relatively high percentage of drivers reporting crash involvement due to falling asleep at the wheel of a moving truck probably a considerably low estimate because many drivers fell asleep and died in the crashes.

Torbjorn Akerstedt, Readily Available Countermeasures Against Operator Fatigue, *Managing Fatigue In Transportation: International Conference Proceedings*, April 29-30, 1997, 105-117.
◊ Valuable review of research literature on shift work, sleep/fatigue, and related risk.
◊ Allowing the same minimum off-duty or layover time for driver recovery following successive nights of driving are not equivalent to the restorative effects of the same amount of time allowed for recovery from the fatigue of daytime driving.
◊ Stresses other major research findings on the effects of extended shiftwork hours (Kurumatani (1994): very high correlation between length of free time between shifts and proportional sleep duration; Hamelin (1987): fast rise in crashes beginning before the 11th hour of driving).

◊ Emphasizes that all studies since 1971 show rest breaks induce only very short-lived increases in alertness with a return to sleepiness and error proneness almost immediately afterwards.

APPENDIX A

C.D. Wylie et al., *Commercial Motor Vehicle Driver Fatigue and Alertness Study*, FHWA Report No. MC-97-001, U.S. Department of Transportation, 1997; and,
C.D. Wylie et al., *Commercial Motor Vehicle Driver Rest Periods and Recovery of Performance*, Transportation Research Centre, TP 12850E, Transport Canada, Montreal, Canada, 1997.

◊ Major study effort conducted over 5 years by the Trucking Research Institute of the American Trucking Associations in cooperation with Transport Canada.
◊ Prospective cohort study of commercial operators driving different schedules, truck equipment, time of year, and routes in U.S. and Canada.
◊ Severe methodological deficiencies, including threshold errors in sample size and subject selection, also unrecorded sleep and unmonitored naps.
◊ Many data gathering inadequacies, including acquisition of data from intermittent vigilance tests of drivers, *e.g.*, authors failed to acknowledge the well-known phenomenon resulting from use of secondary task techniques which provide extratask stimulus (alerting effect) offsetting effects of fatigue on alertness and capacity (see, *e.g.*, Brown (1978); Brown, Simmonds, and Tickner (1967); Brown, Tickner, and Simmonds (1966); Home and Wilkinson (1985); Haworth, Triggs, and Grey (1988); Dinges and Kribbs in Monk (ed.) (1991)).
◊ Study adversely criticized by peer review panels and in peer review journals for study design.
◊ *Post hoc* statement by researchers of hypothesis of interest, *viz.*, whether time of day of driving (circadian effect) overarches driving duration or time-on-task.
◊ Evidence of drowsiness in drivers not found in physiological testing but through visual interpretation of drivers' faces recorded on camera; drowsiness judgments uncorroborated in research community because face videos protected from disclosure.
◊ Primary reliance on judgments made from face videos confuses drowsiness indicators with fatigue -- drivers can be fatigued, *i.e.*, increasingly unable to perform a task well or safely, without appearing drowsy because of, *e.g.*, drooping eyelids.
◊ Due to lack of adequate data and multiple research design failures, study could not demonstrate a dominant circadian effect in comparison with performance and alertness deficits associated with duration of time-on-task.
◊ The follow-up study by Wylie et al. for Transport Canada studied 25 of the original 40 Canadian drivers participating in the DFAS, but statistical power of the follow-up is quite low (primarily from small sample size), especially as regards the study premise of whether adequate driver recovery from fatigue and sleep debt following 60 hours of driving within a seven-day period occurs after no (actually a nominal 12 hours), one (actually a nominal 36 hours), or two workdays (nominally 48 hours) of off-duty time.
◊ The follow-up study also relied on EEG, face video interpretation, vehicle lane tracking, and surrogate performance testing data as collected for the DFAS, all of which had various major deficiencies as described above.

◊ Use of these drivers during the layover days during the DFAS study further confounded the findings of both the DFAS and the follow-up study, and constitute a major research design failure.

◊ However, the initial study and its follow-up produced corollary information which is nevertheless highly suggestive:

(1) No objective evidence that drivers could sufficiently recover from consecutive days of driving with a 36-hour or even a 48-hour off-duty period [*e.g.*, see Smiley and Heslegrave (1997)];

(2) All driver cohorts, whether driving 10-hour or 13-hour shifts, suffered severe and chronic sleep deprivation throughout the length of the study.

A. Smiley and R. Heslegrave, *A 36-Hour Recovery Period for Truck Drivers: Synopsis of Current Scientific Knowledge*, Transportation Development Centre, Transport Canada, 1997.

◊ Excellent literature review of studies specifically relating to driver recovery time needs.
◊ Evaluation of known research (*e.g.*, Lille (1967)) indicates serious concerns over the sufficiency of a 36-hour driver clock reset provision after several consecutive days of driving – drivers still fatigued and carrying unresolved sleep debt, resulting in quickly deteriorating performance when resuming work.
◊ Thirty-six- (36) hour layover especially inadequate following night shift work.
◊ Several studies strongly indicate inadequacy of even 48 hours off for full performance recovery (*e.g.*, Hildebrandt, Rohmert, and Rutenfranz (1975); Mallette (1994)).
◊ Authors conclude that commercial drivers need minimum of 48 hours off after several consecutive days of driving, but this still does not secure full performance and alertness recovery -- 72 hours or more are needed.
◊ Research literature also consistently shows that long work shifts result in accumulation of sleep debts.
◊ Concludes that Wylie study strongly indicates that even four 13-hour consecutive driving shifts results in significant performance deterioration.
◊ Long work shifts and associated inadequate sleep/recovery results in family and social dysfunction, increased substance abuse and health problems.

Roger Rosa and Michael Colligan, Extended Workdays: Effects of 8-Hour and 12-Hour Rotating Shift Schedules On Performance, Subjective Alertness, Sleep Patterns, and Psychological Variables, *Work and Stress*, 1989, 3:1, 21-32.

◊ Demonstrated the lower performance and alertness produced by an extra 4 hours added to shifts which result in more sleep reduction, disruption of personal activities, and increased self-reported stress.
◊ Use of a 12-hour rather than an 8-hour shift caused an increasing accumulation of unresolved sleep debt, as shown by substantial diminishment of sleep latency.
◊ None of these adverse effects was found on an 8-hour shift.
◊ Shift workers make inroads on sleeping time to perform normal personal activities within less off-duty time.

Roger Rosa, Performance, Alertness, and Sleep After 3-5 Years of 12 H Shifts: A Follow-Up Study, *Work and Stress*, 1991, 5:2, 107-116.

◊ Confirmed findings of earlier study.
◊ Also showed the adverse health effects of 12-hour versus 8-hour work shifts.

Roger Rosa and Michael Bonnet, Performance and Alertness On 8 H and 12 H Rotating Shifts At a Natural Gas Utility, *Ergonomics*, 1993, 36:10, 1177-1193.
◊ A review of the data of the 1991 study confirming the lowered performance, decreased alertness, reduced quality of social life, and increased health complaints associated with 12-hour shifts.

Ivan Brown, Driver Fatigue, *Human Factors*, June 1994, 36:2, 298-314.
◊ Drivers may be fatigued, yet sustain performance effectiveness, but at an increasing cost of experienced fatigue until performance begins to collapse.
◊ Long work shifts produce reactive inhibition in which the human brain becomes disinclined to continue producing the same repeated response to the same environmental stimuli.
◊ Typical 8-hour shift has no adverse implications for drivers.
◊However, research has long established that extended work periods both impair task performance and increase sickness absence and injuries (*e.g.*, Vernon (1921)).
◊ Daily hours and weekly hours must be balanced to avoid fatigue and performance degradation (*e.g.*, Rosa et al. (1985) showed that a 12 hour/4-day week more detrimental to performance and produces more self-reports of drowsiness and fatigue than 8-hour/6-day week).
◊ The longer the duty period, more stressful the task, and more hazardous the working conditions, the more restitutive sleep a driver will be obliged to take.
◊ Performance deterioration more severe in performance of tasks which are long, familiar, monotonous, and complex such as driving.

T. Sanquist, et al., *Fatigue and Alertness In Merchant Marine Personnel: A Field Study of Work and Rest Sleep Patterns*, U.S. Coast Guard Report No. CG-D-06-97, June 1996.
◊ One hundred forty-one (141) mariners in commercial maritime industry studied for their work and sleep patterns on shipboard duty.
◊ Major fatigue/sleep deprivation problem in commercial maritime industry.
◊ Mariners averaged 6.6 hours of sleep in each 24 hours and quickly accumulated large sleep debts with pervasive symptoms of fatigue, including critically low alertness levels and extremely short sleep latencies.
◊ Response of Congress to sleep deprivation of watch mate prior to grounding of Exxon Valdez was enactment of legislation limiting tank vessel personnel to 15 hours duty time in each 24 hour period, 36 hours duty in 72 hour period.
◊ This statutory regime promotes sleep deprivation and accumulated sleep debt coupled with deteriorating performance over consecutive days.
◊ Minimum off-duty period of 9 hours provides insufficient opportunity for enough sleep by mariners.
◊ Once diurnal alertness is achieved, even with some accumulated sleep debt, mariners avoid afternoon naps in particular because of high sleep inertia following them.

◊ Conversely, mariners often report poor sleep following duty periods because of work inertia,

resulting in insufficient sleep even with enough time available to secure needed sleep.
◊ Cites numerous research findings that fragmenting sleep into shorter, intermittent periods [*e.g.*, in truck sleeper berths] results quickly in sleep deprivation, reduced alertness, and lowered performance, a practice explicitly avoided for flight crew in commercial aviation because FAA regulations require 9 consecutive hours of rest following a flight of 8 hours or less.
◊ Cites research (*e.g.*, Kecklund and Akerstedt (1995)) showing that at least 16 hours between work shifts in necessary to consistently achieve sleep durations of 7-8 hours.

A. Fletcher and D. Dawson, Cabin Safety and Hours of Work: Developing a General Risk-Control Model for Fatigue, *Journal of Centre for Sleep Research*, 2: 9-26, 1997.
◊ Surveys research literature showing that the longer a work period, the more fatiguing it is likely to be.
◊ Fatigue impact of longer working hours is compounded by also abbreviating the available time for rest and restorative sleep.
◊ Confirms previous studies that laboratory-based studies such as those showing no differences in performance between shifts of varying lengths are unreliable for making generalizations applying to specific workplaces.
◊ Experimental studies typically oversimplify the complex psycho-social context in which shiftwork occurs and fail to model real-world shift schedules.
◊ Stresses that many organizations view financial and service imperatives as overriding determinants of shift schedules.
◊ Without reliable empirical tools to accurately quantify actual relationships between fatigue and organizational costs, there is little incentive to implement coherent hours of work schedules.
◊ In developing fatigue policies, organizations will ignore objective scientific information not suiting their economic goals.

Patrick Hamelin, Lorry Driver' s Time Habits In Work and Their Involvement In Traffic Accidents, *Ergonomics*, 1987, 30:9, 1323-1333.
◊ Cites MacDonald (1984) and concludes that, based on a comparison with exposure to risk, both long hours of work and driving at night are associated with a much higher rate of accidents than shorter hours and daytime driving.
◊ The accident rate in the second half of driving trips is twice as high as in the first half.
◊ Risk rate linked to work span duration is probably underestimated.
◊ Points out that several authors (*e.g.*, Pokorny et al. (1981)) have show the existence of a slight excess-risk rate immediately after work resumption following a break.

James C. Miller, *Fundamentals of Shift Work Scheduling*, 2nd ed., c1992.
◊ Manual sets forth quantitatively-based recommendations for shift work scheduling, including shift rotations.
◊ Most current work schedules are not based on worker efficiency and health needs, but on productivity goals which have been abstracted from the workers' needs.
◊ Stresses that real-world policy investigations of shiftwork impacts have clearly shown that 12 hour shifts are not appropriate for continuous operations (citing P.M. Lewis, *Recommendations*

for NRC Policy On Shift Scheduling and Overtime At Nuclear Plants, U.S. Nuclear Regulatory Commission, NUREG/CR-4248, PNL-5435, 1985).
◊ Also cites J.T. Mets, AAdverse Effects of Working 12-Hour Shifts, *Proceedings of the 2nd Annual Conference of the Ergonomics Society of Southern Africa,* Cape Town, April 14-15, 1986, who showed the increased injury rates for workers in auto manufacturing plants when management changed plant policy from 9 to 12 hour shift lengths.
◊ Also cites Gardner and B.D. Dagnall, AThe Effect of 12-Hour Shift Working On Absence Attributed to Sickness, *British Journal of Industrial Medicine*, 1977, 34, 148-150, who showed the consistent increase in work absence rates for sicknesses among process workers in an oil refining/petrochemical plant as a direct consequence of switching from 8 hour to 12 hour shifts.

P.M. Lewis, *Shift Scheduling and Overtime: A Critical Review of the Literature*, Nuclear Regulatory Commission Contract DE-AC06-76-RLO, 1985; and,
P.M. Lewis, *Recommendations for NRC Policy On Shift Scheduling and Overtime At Nuclear Power Plants*, Division of Human Factors Safety, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 1985.
◊ Found that the number of hours worked in a 7-day period must be limited.
◊ Basis of recommendations was a comparison of findings from studies of work/risk relationships in other industries.
◊ Relied on federal regulations limiting airline pilots/flight crew to 30 hours aloft in 7-day period.
◊ Cites Nicholson's (1972) findings of total duty time of 55 hours in 7 days and Mohler's (1976) physiological index for pilots and crew indicating that 56 hours/7days is a high work load and that 84 hours in 7 days is far too much.

David Dinges and Nancy Kribbs, Performing While Sleepy: Effects of Experimentally-Induced Sleepiness, *Sleep, Sleepiness, and Performance*, Timothy H. Monk, ed., John Wiley and Sons, Ltd., c1991, 97-128.
◊ Inadequate sleep is endemic in industrialized societies that prize irregular hours and view sleep as a potential source of additional work time.
◊ More attention has been paid to the physiological, neurological, and psychopathological effects of sleep loss than to performance effects.
◊ The most powerful determinant of lapsing [on tasks] and decreased performance in a sleepy person is the required task duration -- the longer the task duration, the greater likelihood that performance will show evidence of impairment early on during sleep deprivation.
◊ Cites studies to support this conclusion, including Williams, Kearney, and Goodnow (1959) who consistently found that reaction time was an increasing monotonic function of task duration.
◊ Even providing enough time for gaining off-duty sleep cannot by itself offset the increased risk from longer exposure to high-risk tasks such as driving a commercial motor vehicle because many drivers will still get inadequate sleep.
◊ Research literature consistently shows that increased exposure time will correspondingly produce more performance lapses (failures), especially if workers get inadequate sleep.

APPENDIX A

Gregory Belenky, The Effects of Restricted Sleep On Performance and Subsequent Recovery: Implications for Managing Sleep to Sustain Performance, *Fourth International Conference On Fatigue In Transportation*, Freemantle, Australia, Mary 19-22, 2000.
◊ Reviews studies conducted by the U.S. Army and Walter Reed Hospital showing that anything less than eight to nine hours of sleep per night leads to degraded work performance over time.
◊ The longer a person suffers from restricted sleep, the longer it takes them to recover even when given optimal conditions for sleep.

T. Balkin *et al.*, *Effects of Sleep Schedules on Commercial Motor Vehicle Driver Performance*, Walter Reed Army Institute of Research, Report No. DOT-MC-00-133, Federal Motor Carrier Administration, U.S. Department of Transportation, May 2000.
◊ Study comprised two separate research efforts, one a field study using wrist actigraphy to determine sleep duration and timing in long- and short-haul commercial drivers over 20 consecutive days, the other a sleep dose/response laboratory study on commercial drivers to determine the effects on performance of differing times spent in bed each night (3, 5, 7, 9 hours) over 7 consecutive days.
◊ Overall purpose of the study was the attempt to quantify the relationship between different amounts of sleep and subsequent performance during wakefulness.
◊ Field portion of the study showed that daily sleep duration was strongly correlated with the amount of off-duty time.
◊ In the field portion, long- and short-haul drivers averaged about 7.5 hours of sleep.
◊ Long-haul drivers obtained almost half of their daily sleep during work shift hours principally in sleeper berths which suggests that they spend a significant portion of the work shift in a state of partial sleep deprivation.
◊ Even for small reductions in average nighttime sleep duration to about 6.3 hours in the 7-hours of sleep group, there was measurable performance decrements on several tests, including the psychomotor vigilance test.
◊ The performance deterioration for even small amounts of sleep restriction was maintained over the entire 7 consecutive days of sleep restriction suggesting that there is no compensatory or adaptive response to even mild amounts of sleep loss.
◊ For more severe sleep restriction, it was found that recovery of performance is not complete even after three consecutive nights of attempted recovery sleep based on 8 consecutive hours of time in bed each night, showing that expunging substantial sleep debt takes extended periods of recovery sleep over several days.
◊ These findings also suggest that the extant level of daytime alertness and performance capability is a function not only of an individual's circadian rhythm, amount of time since his/her last sleep period, and the duration of that sleep period, but is also a product of that person's long-term sleep history extending back several days.
◊ Temporal concordance between electroencephalograph defined lapses in alertness and performance on simulated driving was low, indicating that sleepiness-induced performance reductions most often occur in the absence of visually observed electrophysiological evidence of impaired alertness.

APPENDIX A

N. Haworth, T. Triggs, and E. Grey, *Driver Fatigue: Concepts, Measurement and Crash Countermeasures*, Australia Transport and Communications, Federal Office of Road Safety, Report CR72, June 1988.

◊ Massive, detailed evaluation of prior research and speculation on nature, origin, effects, and measurement of fatigue.

◊ Precise estimation of contribution of fatigue to road crashes in Australia cannot be made, but there are strong indications that the effects are far greater than hitherto believed, with 5 - 10 percent in all crashes, 20 - 30 percent in casualty crashes, 25 - 35 percent in fatal crashes, and perhaps up to 50 percent in single-vehicle tractor-semi-trailer fatal crashes.

◊ Authors' review of prior research shows that drivers' relative risk of crashes increase with increasing work duration and is compounded by drivers taking more risks as fatigue increases.

◊ In-depth studies of fatigue effects, even as rigorous as the Jones and Stein (1987) study, may still underestimate the contribution of fatigue to crash causation.

◊ Probable that most fatigue-related crashes are unidentified because they do not result in serious injuries or deaths, therefore are unreported and/or disregarded for investigation (see, *e.g.*, Hampson, *Contributing Factors In Road Crashes*, Working Document No. WD78, Federal Office of Road Safety, Australia).

◊ Cites studies showing the poor relationship between breaks or naps and recovery of alertness, *e.g.*, Lisper, Laurell, and van Loon (1986) (drivers fell asleep again soon after a five-minute walk break); Lisper and Eriksson (1980) (no difference in recovery of alertness after one, two, or five rest pauses as compared with control who had no pause); Lisper et al. (1979) (no difference between breaks of 15 and of 60 minutes for restoration of alertness).

◊ Discusses repeated findings that commercial drivers, including U.S. truck drivers, widely use amphetamines to increase alertness and performance to offset the fatiguing effects of long driving hours, which use, however, also measurably increases risktaking behavior (*e.g.*, Guinn (1983); Baumler (1975) in Seppala et al. (1979)) and increases crash rates (*e.g.*, Smart, Schmidt, and Bateman (1969)).

◊ Prolonged hours of service, including both driving and non-driving duty time, is an important cause of fatigued commercial drivers and reduction of excessive driving hours is an effective countermeasure.

J. Stutts, J. Wilkins, and B. Vaughn, *Why Do People Have Drowsy Driving Crashes?: Input From Drivers Who Just Did*, AAA Foundation for Traffic Safety, Wash., DC, Nov. 1999.

◊ Case-control study of drowsy driving crashes, large sample size of over 1,400 cases and controls.

◊ Cases were drivers involved in police-reported crashes in North Carolina whose condition following the crash was explicitly characterized as asleep or fatigued, two control cohorts of non-sleepy crash-involved drivers and non-crash-involved drivers.

◊ Both cases and controls interviewed by telephone (interviewers blinded to case or control status of each interviewed driver) with survey results analyzed descriptively and through multiple logistic regression models.

◊ Very high percentages of both cases and controls interviewed regard drowsiness in driving to be

a major cause of motor vehicle crashes, second in importance only to alcohol consumption.

◊ Study importantly recognizes distinction between sleepiness and fatigue: the former is the inclination to sleep, the latter a disinclination or inability to continue performing a task.
◊ Drivers in sleep- and fatigue-related crashes were behind the wheel significantly longer prior to the crash, were awake for longer the day of their crashes, and had slept fewer hours the night before (both asleep and fatigued crash-involved drivers averaged about 6.5 hours of sleep per day).
◊ Twenty-seven (27) percent of the asleep crash-involved drivers and 20.6 percent of the fatigued crash-involved drivers work more than 60 hours each week; 43.4 percent asleep drivers and 37.3 percent fatigued drivers 50 or more hours per week; and 88 percent asleep drivers and 83.3 percent fatigued drivers 40 or more hours per week.
◊ Working more than 60 hours a week increased the odds of having a crash by 40 percent.
◊ More than half of all asleep crash-involved drivers and almost half of all fatigued crash-involved drivers have regular daytime work schedules.
◊ Half of the fatigued and asleep drivers reported feeling only slightly drowsy or not at all drowsy prior to their crashes.
◊ There was evidence that fatigue-related crashes are underreported, as well as drivers unable or unwilling to recognize the influence of drowsiness or fatigue in their crashes.

The National Highway Traffic Safety Administration and National Center On Sleep Disorders Research Program to Combat Drowsy Driving: Report to the House and Senate Appropriations Committees Describing Collaboration Between the National Highway Traffic Safety Administration and the National Center on Sleep Disorders Research, National Heart, Lung and Blood Institute, National Institutes of Health, March 15, 1999; and,
***Drowsy Driving and Automobile Crashes*, NCDSR/NHTSA Expert Panel Report on Driver Fatigue and Sleepiness, DOT HS 808 707, April 1998.**
◊ Report jointly authored by NHTSA and NCSDR to comply with the mandates of the Fiscal Year 1996 and Fiscal Year 1997 Senate Appropriations Committee Conference Reports which stated that police statistics on fatigue-related crashes represent underreporting of the prevalence of these crashes, as well as a failure to identify driver inattention problems leading to crashes.
◊ The FY96 Report asserted that NHTSA has not devoted sufficient resources to understanding and addressing driver fatigue, sleep disorders, and driver inattention.
◊ The FY97 conference agreement supplied $1,000,000.00 to NHTSA to analyze the role of driver fatigue, sleep disorders, and inattention in cooperation with NCSDR.
◊ One of the risk factors identified by the Expert Panel was shift workers accruing long daily working hours, including drivers driving long hours each day.
◊ The Panel emphasized that periods of work longer than 8 hours have been shown to impair performance and increase crashes (*e.g.*, performance is worse on 12 hours per day work schedules than 8 hours per day (Ivan Brown (1994)).
◊ The Panel explicitly distinguished from fatigue, recognizing that fatigue is a disinclination to continue performing a task at hand whereas sleepiness is a neurobiological drive or need to sleep.
◊ The Panel found that sleepiness can contribute to fatigue- and inattention-related crashes, but

that fatigue-related crashes do not necessarily involve sleepiness [See Stutts, Wilkins, Vaughn (1999)].

T. Dingus, *et al.*, *Impact of Sleeper Berth Usage on Driver Fatigue: Final Project Report*, Virginia Tech Transportation Institute, Federal Motor Carrier Safety Administration Contract DTFH61-96-C-00068, USDOT, July 2002.

◊ Prospective study of 56 commercial drivers in 13 team cabs and 30 solo drivers working for 4 for-hire, over-the-road trucking firms, using Class 8 tractors with semi-trailers.

◊ Multiple data acquisition systems including PERCLOS (videoed driver face drowsiness interpretation as percentage of eye closure), steering movements, lane maintenance and departures, braking, automated piezo-electric sleep-monitoring system, subjective driver sleep self-ratings, Karolinska Sleepiness Scale (trained observer interpretative use), sleeper berth data noise/vibration/temperature.

◊ Study preceded by 10 focus group interview sessions in 1997-1998 comprising 74 drivers.

◊ Several drivers in focus groups admitted to illegal conduct related to their commercial driving.

◊ The focus group driver admissions of violations were confirmed later in the study participants: there were a significant number of cases where study drivers, even though they knew they were being observed, violated hours of service regulations by driving in excess of 10 consecutive hours without taking the required minimum 8 hours off-duty rest period.

◊ Excessive (illegal) consecutive hours of driving ranged from 11 hours to 15 hours, and most violations were committed by solo drivers.

◊ However, the 5 percent of the shifts that illegally exceeded 10 consecutive hours of driving had very few recorded critical incidents, and although there were 22 cases where a drive drove over 14 hours in a single shift, there were no occurrences of a critical incident or driver error in any of these cases, according to the authors.

◊ Study authors could only verify whether violations of driving hours were committed because logbooks and truck data collection systems cannot verify on-duty not-driving time.

◊ Drivers in the focus groups are required to stay awake while waiting in line for long periods of time to load/unload and would like to sleep, but don't for fear of losing their place in the loading/unloading queue.

◊ Drivers in the focus groups mentioned that they often cannot load/unload within schedules, and if schedules are not adhered to, they would like to be able to sleep.

◊ Drivers in every focus group claimed that carrier dispatchers coerce them to continue driving even when the drivers feel they need to rest.

◊ Drivers in the focus groups complained that trucking companies do not give them enough anticipation of a driving tour of duty to enable the drivers to get sufficient sleep before going on the road.

◊ Drivers in the focus groups emphasized that they were paid by the mile, were not paid for any time when their trucks were immobile (*e.g.*, during waiting to load/unload), and that this practice impelled them to violate hours of service requirements and to speed.

◊ Authors suggest that this industry practice leads drivers to falsify their logbook entries to conceal violations.

◊ Low study participant (driver) interaction with data collection systems, but drivers had to don Nightcap sleep monitoring system and attach piezoelectric film to one eyelid.

APPENDIX A

◊ One study participating driver subverted the data collection systems by placing opaque tape over the cab-mounted video camera.
◊ Critical incident recordation protocol (video and computer storage) governing indications of fatigue, performance lapses, safety-related events, potentially hazardous driving behavior.
◊ Solo drivers were found to be greatly affected by drowsiness which compromises their ability to safely operate large trucks.
◊ Solo drivers were greatly affected by their level of drowsiness which translated into dangerous driving behavior.
◊ Solo drivers had many more critical incidents at all levels of severity as compared with team drivers and the differences were large at all trigger severity levels.
◊ The ratio of critical incidents to timed triggers in the extremely drowsy category for solo drivers was far greater than expected and hypothesized.
◊ Solo drivers were found to be extremely drowsy in almost 2.5 times as many incidents as hypothesized.
◊ Solo drivers were involved in 4 times the instances of very/extremely drowsy observer ratings than were team drivers (20 occurrences solo drivers, 3 occurrences team drivers).
◊ Six (6) of the extreme fatigue occurrences took place when drivers had <5 hours sleep in previous 24 hours.
◊ Authors note that only 9 of the extreme drowsiness drivers had more than 7 hours of sleep in the previous 24 hours.
◊ However, only 3 of the extremely drowsy drivers had rated themselves subjectively for prior quality of sleep as worse than Level 4 (slept fairly well) [Note GAD: a finding that accords with several studies over the years showing that drivers cannot accurately judge or predict how drowsy they are or will be while driving].
◊ Solo drivers were more alert in the morning and gradually became fatigued as the day progressed.
◊ Solo drivers experienced high rate of extreme drowsiness after the second or third bout (authors use the term shift) of driving after the first day of several days of consecutive driving.
◊ The authors believe that this high rate of extreme drowsiness is the combination of long consecutive driving hours and multiple days of consecutive driving, and several measures indicate that this extreme drowsiness is the product of cumulative fatigue.
◊ The impact of drowsiness on single drivers increased as the days of a duty tour accumulated.
◊ Solo drivers in the extremely drowsy category were involved in over 20 times as many abrupt steering incidents than hypothesized, a result that was much larger than expected by the authors.
◊ The authors believe the combination of long driving shifts over multiple days creates a high potential for significant drowsiness for commercial drivers, especially in the final days of several consecutive days of driving.
◊ Quality and depth of sleep during a tour of duty were worse than home sleep, especially for team drivers who had difficulty especially sleeping in sleeper berths while trucks were moving.
◊ Team drivers got more sleep during the study than solo drivers, but the sleep was overall of poorer quality.

◊ Both solo and team drivers reported having a harder time falling asleep in sleeper berths than at home.
◊ Both solo and team drivers slept more deeply during a tour of duty as the days of consecutive driving elapsed due perhaps to the presence of a growing, cumulative sleep debt.
◊ Solo drivers, unlike team drivers, continued to push their driving when very tired and judged to be extremely drowsy.
◊ Solo drivers on average reported one hour less sleep per day than team drivers during a tour of duty.

B. Wright and E. Fogel, *On-Board Recorders: Literature and Technology Review*, Cambridge Systematics, Inc., FMCSA Contract No. DTFH61-99-Z-00083, July 2002.
◊ Literature review of 4 studies:
- Deborah Freund, *Agency Working Paper: On-Board Automated Recording for Commercial Vehicle Driver's Hours-of-service Compliance: The European Experience.*
- Federal Highway Administration Global Positioning System Pilot Program 1998 (unpublished materials reviewed by authors), derived from GPS Technology Notice of Interpretation with Request for Participation in Pilot Demonstration Program, 65 FR 16697 (April 6, 1998).
- K. Campbell and S. Lang, *Electronic Recorder Study: Final Report*, University of Michigan Transportation Research Institute, Federal Highway Administration, June 1998.
- *Field-Testing of On-Board Recorder, Smart Card, and Digital Signature Technology: Phase I*, Public Works and Government Services Canada Western Quebec Region and TECSULT, September 2001.

◊ Technologies include digital tachographs, engine control modules (widely used and installed by engine manufacturers, GPS, and wireless communication system.
◊ Technologies need to record number of hours driver has rested, number of hours driver has been awake and the time s/he awoke, number of hours driver on duty but not driving.
◊ About 4.2 million commercial drivers subject to logbooks.
◊ Authors note early on concerns regarding sufficiency of relying exclusively on GPS data for determining RODS and hours-of-service compliance.
◊ Authors recommend that RODS and compliance need to be governed by effective combinations of technologies, not just one type.
◊ 49 CFR Pt. 395.15, adopted in 1988, cannot be fulfilled by GPS because reg specifically requires any non-logbook technology to be integrally synchronized with specific vehicle operations, therefore must record engine use, road speed, miles driven, date, and time of day.
◊ Special pilot program necessary in 1998 because GPS does not use engine data to create RODS reports.
◊ Clear from GPS pilot program that technologies chosen must protect the regulatory interests of the federal government.

◊ **Deborah Freund agency working paper review**: European Union has made advances in

promoting use of on-board recordation technologies along with defining their requirements for monitoring compliance with hours-of-service requirements.
◊ EU specifies that buses carrying more than 9 passengers and trucks weighing more than 7,700 lbs. must have automatic recording devices for distance traveled, speed, driving times, non-driving work time, and rest time.
◊ EU reg. Annex 1 prescribes requirements for development, testing, installation, and periodic inspection of the recording devices (includes design specs even for cable types and insulation).
◊ Digital tachographs poised to replace tamper-prone mechanical tachographs in near future.
◊ Digital tach uses electronic recording on a smart card, and permits printouts of daily, weekly, monthly info of date, time, names of drivers and inspectors, driving times, breaks, rest periods, standby times, start-finish times of all transportation-related activities.
◊ Authors concluded that few available on-board technologies in the market designed specifically to capture Record of Duty Status (RODS) because they cannot record activity of driver while not in a driving mode, cannot distinguish between on-duty/not-driving and off-duty activities.
◊ Some European interest groups opposed to use (International Road Transport Union).

◊ **GPS pilot program** conducted 1995-1998, 2000 drivers, written logbooks used alongside GPS.
◊ System calculates driving time by determining time and distance between truck location updates not direct recordation of driving time.
◊ GPS operates on several algorithmic default assumptions B if vehicle idle >2 hours, system codes sleeper berth; if vehicle idle for <2 hours, driver status coded off-duty; no driving time recorded if truck and trailer travels <15 miles or tractor alone travels <25 miles; if driver fails to record how long on-duty not-driving, GPS automatically records default of 15 minutes for loading/unloading.
◊ Inspection and enforcement personnel can examine either display or printed hard copy of RODS.
◊ No FMCSA claims either supporting or opposing company claims about value or accuracy of RODS with GPS; however, Cambridge Systematics interviewed several FMCSA personnel about GPS pilot program.
◊ FMCSA personnel said that technology needed because commercial driver so not always accurately log on-duty times per regs and provide other economic/administrative benefits.
◊ FMCSA do not believe that there has been any documented improvements in compliance or safety due to GPS use in the pilot program.
◊ FMCSA personnel observed that 40% of HOS OOS citations were for no log or log not up to date, not falsified entries.
◊ FMCSA personnel cautioned that default assumptions governing GPS in pilot program could lead to an inaccurate picture of a driver's working time and total distance traveled.
◊ FMCSA staff questions accuracy of sleeper berth default judgment (2 hours motionless vehicle).
◊ FMCSA personnel think GPS not enough, need use with other engine-related EOBRs.
◊Some GPS pilot program drivers found ways to tamper with data, compromise safety.
◊ FMCSA personnel admitted that some carriers don't want EOBRs because they regularly violated HOS limits, want to avoid enforcement.

◊ FMCSA personnel do not believe an EOBR mandate is imminent because, among other things, current Administration is pro-business.

◊ **UMTRI electronic recorder study** conducted 1998 on benefits/costs of EOBRs by interviewing major trucking organizations and independent owner-operators.
◊ Low response rate (1,200 responses of 10,000 distributed survey forms).
◊ Of respondents, only 175 use EOBRs.
◊ Multiple purposes of EOBR use, not just regulatory.
◊Larger firms = more common use.
◊ Private fleets use more than for-hire.
◊ 57 percent have HOS function for EOBRs.
◊ Only 37 fleets of 1,200 use EOBRs for HOS compliance and RODS tracking.
◊ But no for-hire and owner-operators used EOBRs for HOS compliance.
◊ EOBR buy/install $2,000 or less, <$200 annual operating costs.
◊ Fleets cite driver paperwork timesaving, better fleet management.
◊ Most carriers don't want them, won't get them.
◊ UMTRI authors concluded no economic benefits to EOBR use.

◊ **Transport Canada October 2001 Study EOBRs, Smart Cards, Digital Signatures** Phase 1 conducted with several national and provincial transportation agencies and one motor carrier.
◊ 16 companies providing EOBRs, smart cards, and digsigs evaluated.
◊ No company could prove that its technology could meet regulatory requirements.
◊ But part of problem is the lack of clear legal framework to tailor technical specs.
◊ Study (Phases 2-4) will proceed to other phases of actual in-service testing, specification of actual processes for recordation.

APPENDIX B

TRUCK DRIVER HOURS OF SERVICE (HOS) RULE OVERTURNED TWICE BY UNANIMOUS DECISIONS

U.S. COURT OF APPEALS HAS VACATED KEY ASPECTS OF HOS RULE IN TWO PREVIOUS DECISIONS AND HELD THIRD CASE IN ABEYANCE PENDING OUTCOME OF NEW RULEMAKING

The U.S. Court of Appeals for the District of Columbia Circuit (Washington, D.C.) has twice ruled that prior versions of the Hours of Service (HOS) rule issued by the Federal Motor Carrier Safety Administration (FMCSA) were adopted in violation of federal law.

In the first case, a unanimous 3-judge panel of the appellate Court held in a 2004 decision that the FMCSA failed to consider the effect of longer driving and work hours permitted by the HOS rule on the health of truck drivers. Federal law required the agency to examine the impact of regulations on driver health. The Court went on to analyze and criticize every other aspect of the HOS rule including:

- increasing in the limit on consecutive driving hours from 10 to 11 hours of driving, even though data shows that crash risk increases geometrically after 8 hours of driving;
- allowing drivers to restart their maximum weekly driving hours after only 34-hours off duty, even though the agency found that drivers need two nights of sleep in order to be fresh and alert for driving;
- permitting a continuation of split sleeper berth off-duty time, where drivers can take two five hour breaks instead of one 10-hour off duty period, even though data shows that drivers cannot get a full night sleep or adequate rest in shorter off duty periods;
- failing to address the need to require automatic on-board recorders (EOBR) that accurately collect information on truck engine operation and driver on and off duty compliance.

The Court stated that the FMCSA had not provided reasoned explanations for the increases in maximum driving and on-duty time, casting doubt on the safety of the 11-hour daily driving limit and the 34-hour restart requirements. The Court remanded the rule to the FMCSA which began a separate rulemaking process for the EOBR issue.

In 2005, the FMCSA reissued nearly the identical rule except that the revised rule required drivers using sleeper berths to take at least 8 hours off-duty in a single rest period, allowing an 8/2 split of the 10 hour off duty period but no shorter split sleeper berth rest periods.

In the second lawsuit, another unanimous 3-judge panel of the Court, in a 2007 decision, ruled that the 11 hour limit on consecutive driving hours and the 34-hour restart provision must be sent back to FMCSE because the agency had acted illegally in failing to disclose during the public comment period critical information in its cost-benefit analysis and by failing to explain the assumptions and methodology used by FMCSA in arriving at the statistical models on which the HOS rule cost-benefit analysis relied. The HOS rule was, once again, returned to the agency for further action and, once again, FMCSA issued the same, exact rule in 2008.

The third lawsuit was filed in March, 2009, but just as the briefs were due in Court the parties and the government reached a settlement agreement in which FMCSA agreed to issue a new revised HOS rule by the end of July, 2011. The third lawsuit is pending but held in abeyance until the FMCSA issues the new HOS rule. If the HOS rule is essentially the same as the HOS rule issued in 2008 then the Court can reinstate the lawsuit and the briefing would proceed.

APPENDIX B

Six federal judges of the appellate court that is directly below the U.S. Supreme Court have found the prior iterations of the HOS rule illegal. Beyond the specific legal holding in each case, the Court in both decisions criticized other shortcomings of a number of critical aspects of the FMCSA HOS rule. The attached side-by-side includes quotations from each Court opinion about the various issues considered by the Court panels in the two cases.

ISSUE	ANALYSIS of July *2004* COURT OF APPEALS DECISION	ANALYSIS of July *2007* COURT OF APPEALS DECISION
Driver Health	"The FMCSA points to nothing in the agency's extensive deliberations establishing that it considered the statutorily mandated factor of drivers' health in the slightest" "[The FMCSA's] failure to [explain its reasons for not considering the effect of the rule on driver health], standing alone, requires us to vacate the entire rule as arbitrary and capricious, as the agency's failure to consider this factor, to borrow a phrase from the agency's brief, 'permeated the entire rulemaking process.' "	N/A
Cost-Benefit Analysis (Operator-Fatigue Model Methodology)	"[T]his analysis assumes, dubiously, that time spent driving is equally fatiguing as time spent resting – that is, that a driver who drives for ten hours has the same risk of crashing as a driver who has been resting for ten hours, then begins to drive. [citation omitted]. In other words, the model disregarded the effects of 'time on task' because, the agency said, it did not have sufficient data on the magnitude of such effects." "The exponential increase in crash risk that comes with driving greater numbers of hours, presumably caused by time-on-task effects, raises eyebrows about the agency's increase in daily driving time. Yet the agency excluded time-on-task effects from the cost-benefit analysis. That analysis, then, assumes away the exact effect that the agency attempted to use it to justify. The agency's reliance on the cost-benefit analysis to justify this increase is therefore circular, and the rationality of that explanation is correspondingly doubtful."	"FMCSA's decision to plot the data point for Hour 13 and beyond at Hour 17 – instead of at Hour 13 (or some other point) – was entirely unexplained in the RIA [regulatory impact analysis] and final rule. This complete lack of explanation of an important step in the agency's analysis was arbitrary and capricious." "Although we apply a deferential standard of review to an agency's use of a statistical model, we cannot uphold a rule based on such a model when an important aspect of its methodology was wholly unexplained." "FMCSA gives no explanation for the failure of its operator-fatigue model to account for cumulative fatigue due to the increased weekly driving and working hours permitted by the 34-hour restart provision. . . . [t]he agency's failure of explanation renders the restart provision arbitrary and capricious."
Increase in Maximum Driving Time from Ten to Eleven Hours	"The exponential increase in crash risk that comes with driving greater numbers of hours . . . raises eyebrows about the agency's increase of daily driving time." "[P]etitioners' challenge raises very real concerns."	"First, we expressed 'very real concerns' about the increase in the daily driving limit from 10 to 11 hours. [cite omitted]. We noted that the 'agency freely concedes that 'studies show [] that performance begins to degrade after the 8th hour on duty and [the

APPENDIX B

Increase in Maximum Driving Time from Ten to Eleven Hours (Continued)	"We have our doubts about whether [the agency's] two justifications are legally sufficient." "The agency freely concedes that 'studies show[ ] that [driver] performance begins to degrade after the 8th hour on duty and increases geometrically during the 10th and 11th hours' on duty. Despite this finding, the agency cited absolutely no studies in support of its notion that the decrease in daily driving-eligible tour of duty from fifteen to fourteen hours will compensate for these conceded and documented ill effects from the increase [in consecutive driving hours]." "The agency did refer generally to studies, but that generalized reference is of doubtful legal sufficiency." ". . . the effects from the increased weekly driving hours may offset any decrease in fatigue flowing from the fact that drivers have overall [one hour] shorter tours of duty. For these [] reasons, it is unlikely that we would find the agency's first explanation legally sufficient." "The agency's reliance on the cost-benefit analysis to justify this increase [in driving hours] is therefore circular, and the rationality of that explanation is correspondingly doubtful."	degradation] increases geometrically during the 10th and 11th hours'.' " "Second, we also found suspect the agency's claim that the increase in daily driving limit to 11 hours could be justified by 'the cost-benefit analysis it conducted.' "
34-Hour Restart Provision	". . . this provision has the effect of increasing the number of hours drivers can work [i.e., drive] each week." "While the agency's explanation seems sound enough as far as it goes, it does not even acknowledge, much less justify, that the rule . . . dramatically increases the maximum permissible hours drivers may work [i.e., drive] each week." "And the agency's failure to address it [the increase in the number of weekly driving hours] . . . makes this aspect of the rule's rationality questionable."	"[W]e regarded as 'problematic' the fact that FMCSA's justification for the 34-hour restart provision '[did] not even acknowledge, much less justify, that the rule . . . dramatically increases the maximum permissible hours drivers may work [i.e. drive] each week.' [citation omitted]. That increase, we said, 'is likely an important aspect of the problem[,] [a]nd the agency's failure to address it . . . makes this aspect of the [2003] rule's rationality questionable.' "
Electronic On-Board Recorders (EOBRs)	"The agency's justification for not requiring EOBRs to monitor driver compliance is another aspect of the final HOS rule of questionable rationality." "The agency's explanation in all likelihood does not conform to [its] statutory requirement." "The agency concedes that it 'did not test the	**N/A**

APPENDIX B

	(very few) EOBRs currently available.' The agency offers no excuse for not doing so, and we can think of none that would suffice to fulfill the agency's duty to 'deal [] with' the issue of EOBRs." "We cannot fathom, therefore, why the agency has not even taken the seemingly obvious step of testing existing EOBRs on the road, or why the agency has not attempted to estimate their benefits on imperfect empirical assumptions." "The agency has given no good reason for treating this problem with such passivity."	
Sleeper Berth Exception	"Despite the premise [that each driver should have an opportunity for eight consecutive hours of uninterrupted sleep every day], the agency offered several justifications for nevertheless permitting drivers to obtain the required continuous period of rest in two chunks, all of which are quite weak." "In sum, we have grave doubts about whether the agency's explanation for retaining the sleeper-berth exception would survive arbitrary and capricious review."	**N/A**

Hours of Service Laws, Fact & Chronology

Key Laws Affecting Motor Carriers

1937: Current Hours-of-Service rules issued by Interstate Commerce Commission (ICC):

- ICC Commissioners expressed misgivings that rules might not be conducive to safety.

1938: Fair Labor Standards Act exemption:

- trucking industry exempted from overtime compensation;
- creates incentive to drive long hours putting drivers and the public at risk;
- no major profession in the U.S. accrues more work hours under a formal regulatory regime than truck and motor coach (bus) drivers.

1984: Motor Carrier Safety Act requires DOT standards that must ensure:

- commercial vehicles (trucks and buses) are operated safely;
- driver responsibilities do not impair ability to operate vehicles safely;
- physical condition of drivers is adequate to operate their vehicles safely;
- operation of trucks does not have a deleterious effect on the physical condition of drivers.

1995: Interstate Commerce Commission Termination Act:

- directs FHWA (predecessor agency to FMCSA) to deal with a variety of fatigue-related issued pertaining to commercial motor vehicle safety;
- specifically mentions need to address amount of sleep after driving time, loading/unloading, automated recording devices, rest/recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, other measures to reduce fatigue-related crashes and increase driver alertness.

1999: Motor Carrier Safety Improvement Act of 1999:

- requires creation of a new safety agency, the Federal Motor Carrier Safety administration (FMCSA);
- emphasizes need to focus on and improve commercial motor vehicle safety;
- establishes safety as the highest priority of new agency.

2004: Congress enacts temporary extension of surface transportation authorization legislation:

Following July, 2004, U.S. Court of Appeals decision finding FMCSA HOS final rule of April, 2003, to be in violation of law and probably arbitrary and capricious, Congress supersedes court decision and allows agency to continue to enforce final rule until completion of new rulemaking or September 30, 2005, whichever comes first.

The Hours of Service Rule Chronology

1937: Interstate Commerce Commission adopts hours of service for interstate commercial drivers:

- drivers are required to work on 24-hour cycle, drive maximum 10 hours, rest minimum 8 hours;
- drivers can accrue up to 60 hours of driving over 7 consecutive days, 70 hours of driving over 8 consecutive days.

1962: Interstate Commerce Commission Eliminates Requirement for work/rest on a 24 hour cycle:

- commercial drivers can now constantly alternate maximum 10 hours of driving with minimum 8 hours of rest – an 18-hour, non-circadian cycle that increases sleep deprivation and fatigue;
- commercial drivers can exhaust available 60 hours of driving over 7 consecutive days, in less than 5 days and 70 hours of driving over 8 consecutive days, in slightly more than 5 days;
- when drivers are "out of driving hours," they must lay over until the beginning of a new 7- or 8-day tour of duty that allows them another 60 or 70 total hours of driving.

1978: Federal Highway Administration (FHWA) issues Advanced Notice of Proposed Rulemaking (ANPRM) to provide drivers with more rest time:

- proposal to improve driver rest and recovery without increasing driver duty and driving hours;
- stressed elevated health risks to drivers including chronic problems of diet, sleep deprivation leading to hazardous driving, mental and physical stress, emotional/psychological deficits resulting from long periods away from home and family, and exposure to excessive heat and carbon monoxide.
- proposed rule issued by the Carter Administration withdrawn by the Reagan Administration in 1981.

1992: FHWA issues Notice of Proposed Rule Making (NPRM) to increase on-duty hours and shorten weekly off-duty layover period:

- over 70,000 comments filed, with the overwhelming majority opposed to longer hours;
- leading Congressional members opposed longer hours;
- major health, safety, union, insurer, law enforcement, consumer, victims and some industry groups opposed longer driver hours;
- FHWA stated supporters of rule provided no substantive research to justify increasing duty hours and reducing off-duty time;
- proposed rule issued by Bush Administration (1992) withdrawn by Clinton Administration (1993).

1997: FHWA issues ANPRM request for research on driver fatigue:

- FHWA failed to cite numerous studies on fatigue and performance;
- FHWA spent $4.5 million on deeply flawed Driver Fatigue and Alertness Study (DFAS) which was partly directed by the trucking industry;
- FHWA tries to avoid inclusion and public review of DFAS in the ANPRM;
- FHWA withholds expert panel report severely critical of DFAS until required to release report under Freedom of Information Act.

2000: FMCSA issues NPRM that proposes to increase the maximum consecutive driving hours and divide trucking industry into segments (May 2, 2000):

- HOS Proposed Rule: requires that work and rest alternate only within a 24 hour period; mandates electronic onboard recorders for long-haul and regional drivers; increases maximum consecutive driving hours from 10 to 12 hours; increases off-duty rest time from 8 to 9-12 hours, depending on the type of driver; provides no distinction between driving and non-driving on-duty time;
- There is no research that shows increasing off-duty time counteracts the decreased performance and elevated risk produced by more driving hours.

2003: FMCSA issues a final rule that increases maximum driving hours (April 28, 2003):

- Key anti-safety elements in HOS Final Rule: allows work and rest to alternate on a 21 hour rotation; does not require electronic onboard recorders; reduces time for rest in each shift to 10 hours; re-establishes split rest time periods in sleeper berths; increases former consecutive driving time in each shift from 10 to 11 hours; allows drivers to take off a minimum of 34 consecutive hours, after which they can again start driving another 70 or 80 hours; 34-hour layover forces drivers to drive during what formerly was layover time between tours of duty; increases maximum driving hours from 60 to 77 hours over 7 consecutive days, and increases maximum driving hours from 70 to 88 hours over 8 consecutive days;
- FMCSA provides no support for these changes in the final rule or in the accompanying regulatory evaluation and benefit-cost analysis.

Public Citizen and other safety groups, with Advocates as *amicus curiae*, file suit against the FMCSA challenging validity of HOS final rule (June 12, 2003):
Lawsuit challenges HOS rule as arbitrary, capricious, and not in accordance with law; shows that the agency failed to fulfill a statutory requirement to address the need for electronic onboard recorders; emphasizes that none of the changes in the final rule are adequately supported in the administrative record; shows agency ignored earlier admissions of the dangers of increasing consecutive driving time; demonstrates that the benefit cost analysis on which the final rule relies is fundamentally flawed.

2004: U.S. Circuit Court of Appeals decision, issued July 16, 2004, overturns and vacates entire final rule and remands to the agency:

- opinion holds that the agency violates the Motor Carrier Safety Act of 1984 by failing to ensure that the regulation protects the health of commercial drivers;
- remainder of opinion vacates the entire rule and indicates that each of the major features of the final rule is inadequately supported in the existing rulemaking record;
- remainder of opinion states that agency failed to satisfy all of the requirements of Sec. 408 of the Interstate Commerce Commission Termination Act of 1995;
- FMCSA begins work to attempt to justify the April 2003 final rule by forming an expert intra-agency task force to study how to defend or modify the regulation;
- Congress approves special provision that retains HOS rules for one year giving FMCSA until September 30, 2005 to complete new HOS rulemaking in response to court decision.

2005: New FMCSA HOS rule - retains dramatic increases of maximum driving hours:

- FMCSA publishes proposed HOS rule on January 24, 2005 that merely restates the 2003 rule;
- On August 16, 2005, FMCSA issues new HOS final rule that is identical to the 2003 HOS rule in most respects, keeping the longer 11-hour limit on consecutive driving hours, the minimal 34-hour off duty "restart", and allowing more cumulative work and driving hours than the pre-2003 rule;

2005: Continued:

- Only changes in new HOS from 2003 rule is to allow short-haul drivers to work even longer hours twice each week, and to require, and to require at least one 8-hour rest period in sleeper berths;
- Petition for Reconsideration filed by Public Citizen, Advocates, CRASH, P.A.T.T., Trauma Foundation and the International Brotherhood of Teamsters on September 23, 2005.

2006: Groups File Lawsuit Opposing 2005 HOS Rule:

- Petition for reconsideration filed by Owner-Operator Independent Drivers Association (OOIDA) is denied on December 5, 2005; OOIDA files suit over the sleeper berth issue on Jan. 23, 2006.
- After waiting 5 months with no response from FMCSA to the petition for reconsideration, Advocates, Public Citizen, CRASH, PATT, and the International Brotherhood of Teamsters withdraw petition from agency and file petition for review in federal court of appeals on Feb. 27, 2006. The case was argued in court on Dec. 4, 2006.

2007: FMCSA Issues Weak EOBRs Proposed Rule and Court Again Strikes Down FMCSA HOS Rule:

FMCSA announces weak proposed rule on Electronic On Board Recorders (EOBRs) that will require few, if any, motor carriers to install currently available technology to monitor driver hours of service compliance and other aspects of commercial vehicle operation. Notice of proposed rulemaking, Jan. 11, 2007, 71 FR 2340 (Jan. 18, 2007).

U.S. Circuit Court of Appeals decision, issued July 24, 2007, again overturns and vacates major portions of 2005 final rule:

- Court's opinion reiterates flaws in reasoning on major issues identified in first case;
- Opinion vacates the increase to 11 consecutive driving hours and 34-hour restart provision;
- Court holds that agency revised model used to explain reasoning is flawed and fails to properly represent data on truck crashes during and after the 11th hour of driving;
- Court also rules that FMCSA failed to afford public notice and an opportunity to comment on the agency model before it was issued as part of the final rule;
- Court grants 90-day stay of the issuance of the order to vacate the two provisions, giving FMCSA to Dec. 27, 2007, to provide the trucking industry and law enforcement with guidance regarding the changes in hours of service rules that will take effect after the mandate is issued.

FMCSA Issues Interim Final Rule reinstating rules vacated by Court of Appeals:

- FMCSA, citing no legal authority, reinstates both the 11th hour of driving and 34-hour restart provisions that the Court held were promulgated in violation of law;
- FMCSA claims that disruption of trucking industry and inability to get states to change enforcement policies necessitated this action, even though the Court of Appeals already rejected these arguments when FMCSA presented them seeking a one-year stay of the Court's order;
- Interim Final Rule continues the 2005 HOS rule intact while agency collects data and information to support eventual reissuing the same rule sometime in 2008;
- Interim Final Rule reinstates provisions vacated by Court of Appeals without giving public prior notice or opportunity for public comment, one of the reasons the Court cited in its July, 2007 opinion for vacating the two rules; provides public with after-the-fact comment period of 60 days.

2007: Continued:

Senate Holds Public Hearing on Hours of Service Regulations:
December 19, 2007, before the Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Subcommittee of the Commerce, Science and Transportation Committee.

Safety Groups and Labor Union Seek to Set-Aside Interim Final Rule:
Groups file motion in on Dec. 19, 2007, requesting that Court of Appeals enforce its decision to vacate features of the 2005 HOS rule and set-aside agency interim final rule. Court denies request.

2008: FMCSA Issues New HOS Final Rule, Petition for Reconsideration Filed with Agency; FMCSA reissues HOS rule without change:

- Agency issues final rule on December 17, 2008, that formally adopts the HOS provisions contained in the interim final rule and the prior 2005 HOS regulation.
- Safety groups and labor union file petition for reconsideration of HOS final rule on Dec. 18, 2008.

2009: Petition for Reconsideration Denied , Parties File 3rd Lawsuit, Reach Settlement:
Agency responds by denying petition for reconsideration of safety groups and labor union on Jan. 16, 2009, just three days before leaving office.

Safety groups and labor union file third HOS Lawsuit challenging FMCSA rule:

- Third HOS law suit filed by safety groups and labor union on March 9, 2009, seeking review of the HOS final rule and the denial of the petition for reconsideration in U.S. Court of Appeals, and send contemporaneous letter to Transportation Secretary Ray LaHood requesting new HOS rulemaking.
- Petitioners and FMCSA file a joint motion on October 26, 2009, requesting that the Court hold the Petition for Review in abeyance pending fulfillment of a settlement agreement between the parties in which FMCSA agrees to reopen rulemaking on hours of service by forwarding a draft notice of proposed rulemaking to the Office of Management and Budget within nine months of the date of the settlement agreement (by July 26, 2009), and by issuing a final rule within 21 months of the settlement date (by July 26, 2010).
- The FMCSA federal advisory committee, the Motor Carrier Safety Advisory Committee (MCSAC), meets in early December to discuss HOS rules and compile list of issues and ideas the agency should consider in developing revised HOS rule.

2010: FMCSA Undertakes New HOS Rulemaking:

Agency conducts outreach and listening sessions to prepare draft of new rule:

- FMCSA holds five public listening sessions around the country to take public comment on HOS rule.
- The FMCSA MCSAC holds a second meeting in early February to complete deliberations and list of issues and ideas the agency should consider in developing revised HOS rule.
- Court of Appeals issues an order on March 3, 2010, granting the October, 2009, joint motion to hold the petition for review in abeyance pending further proceedings before the FMCSA consistent with the joint motion and settlement agreement.
- FMCSA adheres to deadline in litigation settlement agreement by sending proposed HOS rule to Office of Management and Budget (OMB) on July 26, 2010.
- OMB Office of Information and Regulatory Affairs (OIRA) completes review on Dec, 17, 2010.

2010: FMCSA issues new proposed HOS rule (Dec. 20, 2010):

- Notice of proposed rulemaking (75 FR 82170, Dec. 29, 2010) issued, proposed rule includes—
  - consideration of return to imposing maximum of 10 consecutive hours of driving per shift; requiring minimum one-half hour rest breaks after seven hours on duty if further driving is contemplated;
  - requiring 34-hour restart be taken over two night time periods of midnight to 6 a.m. and limiting use of restart to once every seven days;
  - reducing on-duty time during 14 hour daily work window from 14 to 13 hours per day;
  - allowing non-work extension of 14-hour day to 16 hours twice each week;
  - and permitting sleeper berth 2-hour off duty period to be taken in-cab immediately before or immediately following 8-hour off duty period.
- FMCSA holds public listening session and on-line question and answer public availability on Feb. 17, 2011.
- American Trucking Association and trucking interests mount media campaign and effort in Congress to prevent proposed rule from being issued as final rule.

2011: FMCSA reopens docket for new research publications (May 9, 2011):

FMCSA publishes four new studies –

- Hanowski, et al, "The Impact of Driving, Non-Driving Work, and Rest Breaks On Driving Performance in Commercials Vehicle Operations, " FMCSA (April 2011);
- Jovanis, et al, "Hours of Service and Driver Fatigue – Driver Characteristics Research," FMCSA (April 2011);
- Sando, et al, "Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions," TRB 90th Annual Meeting (Nov. 2010); and
- Sando, et al, "Potential Causes of Driver Fatigue: A Study On Transit Bus Operators In Florida," TRB 90th Annual Meeting (Nov. 2010);
- FMCSA reopened HOS rulemaking docket to accept public comment on the studies;
- FMCSA files third status report on pending litigation stating intent to publish final rule on or before October 28, 2011.
- **FMCSA issues final rule (Dec. 27, 2011):**
  - Retains 11-hour consecutive driving maximum;
  - Limits use of restart to once per week (each 168 hours);
  - Requires 2 night time sleep periods during 34-hour restart;
  - Requires one-half hour rest break after 8-hours of reporting for duty;
  - Sets July 1, 2013 as implementation date.

Electronic On-Board Recorders –

- Motor Carrier Safety Advisory Committee establishes subcommittee on EOBRs;
- OOIDA wins 7th Circuit lawsuit against FMCSA remedial EOBRs rule, agency failed to define what actions constitute illegal use of EOBRs to harass operators.

2012: Safety Organizations, Trucking Industry File Lawsuits Opposing New HOS Rule:

- Advocates, Public Citizen, Truck Safety Coalition and two truck drivers file suit opposing continuation of rule that allows 11-consecutive hours of driving and unhindered use of 34-hour restart by long-haul drivers operating on 70 –hour in 8-day schedules.
- Trucking industry groups file lawsuit opposing limitation on use of 34-hour restart by long-haul drivers operating on 60-hour in 7-day schedules, imposing two night time sleep periods, and requiring one-half hour rest break after 8 hours of reporting for duty.

2012: Continued:

- Briefs Filed in lawsuits opposing HOS rule, case #12-1092 & #12-1113.
- **MAP-21 Legislation Enacted (July 6, 2012)**
  Requires FMCSA to conduct field study of benefits of nighttime sleep.

2013: HOS Litigation

- Oral argument in the HOS cases was heard on March 15, 2013 before judges Brown, Griffith and Randolph.
- FMCSA denied petitions from ATA and CVSA seeking delay of July 1, 2013 date for implementation of changes in HOS rule regarding rest breaks and limits on use of 34-hour restart, required by final rule issued Dec. 27, 2011.
- House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, holds hearing on *The Impacts of the DOT's Commercial Driver Hours of Service Regulations* on June 18, 2013.

Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on "The Impacts of the DOT's Commercial Driver Hours of Service Regulations"
June 18, 2013
Responses to Questions for the Record for Joan Claybrook

1) What scientific data is there to support an increase to 11 hours actually improves safety for a truck driver?

There is no scientific data or research to support the claim that an increase to 11 consecutive hours of driving improves safety for a truck driver. The statement made during the hearing that the 11th hour of driving is actually the safest hour is extremely misleading and false. This misstatement of fact is predicated on the idea that a smaller number of total crashes occur during the 11th consecutive hour of driving. But this is true only because fewer trucker drivers are still on the road, as compared to earlier hours in each driving shift when far more drivers are on the road. For instance, the first hour of driving always has the most total crashes because every truck driver must necessarily drive the first hour of each driving shift. But not all drivers need to or are required to drive for 11 consecutive hours so the number of drivers on the road in the 11th hour decreases significantly.

The key to determining comparative crash risk is to compare the crash rate, i.e., the number of crashes divided by the number of drivers actually on the road, during each driving hour. By this standard measure of crash risk, the risk of being in a crash for those drivers who actually drive during the 11th hour is significantly higher than in the earlier hours of driving. The most important statistic on driving hours and fatigue is that crash risk dramatically increases after the 8th consecutive hour of driving. Also, those drivers who continue to drive during the 9th, 10th and the 11th consecutive hour of driving suffer from extreme fatigue at the end of a long driving shift.

The Federal Motor Carrier Safety Administration (FMCSA) showed this in the analysis it prepared for the 2011 hours of service (HOS) final rule. The FMCSA's Regulatory Impact Analysis (RIA) for the HOS final rule clearly indicates that the risk of a crash, particularly the risk of a fatigue-related crash, increases significantly as drivers stay on the road beyond eight consecutive hours of driving.

In fact, the U.S. Court of Appeals, in its decision on the lawsuit following the issuance of the 2003 HOS final rule, stated that the FMCSA acknowledged "studies show[] that performance begins to degrade after the 8th hour on duty and [the degradation in safety performance] increases geometrically during the 10th and 11th hours." Thus,

750 First Street, NE Suite 901 Washington, DC 20002 Tel: 202/408-1711 Fax: 202/408-1699

while it is true that less than one percent of all crashes occurred in the 11th hour of driving, this is unrelated to the safety concern of fatigue and the risk posed by those drivers operating their trucks during their 11th consecutive hour of driving. Those drivers who operate their trucks in the 11th hour pose a greater danger to the public and themselves.

2) Are there scientific studies to verify that driver performance decreases after 8 continuous hours of driving?

Yes, there is clear and convincing data that show that the risk of a crash, particularly a crash that is fatigue-related, increases dramatically as drivers stay on the road beyond 8 hours of driving. Over the past 20 years, peer-reviewed scientific research has documented the adverse effects of long working hours, especially in industries involving shift work. Numerous research studies and scientific findings conclude that there is an increased risk of crashes associated with more driving and working hours among commercial drivers. Attached to my written testimony I provided a comprehensive list of this research as appendix A. Among the findings and conclusions in the scientific evidence are the following:

- Crash risk increases geometrically after the 8th consecutive hour of driving;
- Under the current HOS rule, drivers are not getting sufficient sleep, obtaining, on average, less than six hours of sleep on work nights;
- Because humans have a biological diurnal schedule that normally requires nighttime sleep, attempts to sleep during daytime result in shorter and less restful sleep periods as compared to nighttime sleep; and,
- Lack of sufficient sleep from day-to-day and week-to-week results in cumulative sleep deprivation, or sleep debt, that can only be overcome through extended periods of off-duty time for rest and recovery.

3) Can you please respond to the claim that in crashes involving large trucks, 75 percent of crashes were not the fault of truck drivers and were in fact caused by motor vehicles?

This claim by some in the trucking industry is absolutely untrue and unfounded. There are no data or studies that have shown that passenger vehicle drivers are the major reason for truck crashes. It has been wrongly claimed that about 7 out of 10 deaths resulting from truck-related crashes are the fault of the passenger vehicle drivers; however, this statement has been repeatedly shown to be false. This figure was based on a misuse of past studies and data and has been openly rejected by both the Department of Transportation and the FMCSA. This is simply a disingenuous statement that is used in an effort to shift the blame for truck crashes to the victims in passenger vehicles.

Studies that have been used to support this claim are unscientific and misleading. Reports continue to cite old information, misuse study results and rely on inaccurate analyses of the Fatal Analysis Reporting System (FARS), the Large Truck Crash Causation Study (LTCCS), and the Trucks in Fatal Accidents (TIFA) database, which do not assign fault and cannot be used to support the conclusion that passenger vehicle drivers are primarily at fault. All of these databases also clearly state that the data cannot

be used to determine crash fault. While studies have relied on "driver factor codes" from FARS, these codes cannot be equated with fault.

Furthermore, when large trucks collide with passenger vehicles, 98 percent of the people who die are occupants of the cars and light trucks. This means that often, the truck driver is the lone survivor of truck-car crashes. The investigating officer or post-crash investigators then code the crash and any critical factors based on the account of the surviving truck driver, whose job could be at risk if he/she is found to be responsible for causing the crash. The victims of the crash, the dead passenger vehicle occupants, do not get the opportunity to provide information about the crash to the officer at the scene to include in the police accident report (PAR). This is compounded by the fact that the PAR often fails to indicate whether other truck mechanical or maintenance problems, fatigue, cell phone use or other factors could have contributed to the cause of the crash.

Most of the recent research on this topic contradicts the industry claim and in fact reaches the opposite conclusion. For example, a study conducted in 2003 found that in all crashes between trucks and light vehicles, trucks were more likely to be the "contributor" to the crash than light vehicles by 48 percent to 39 percent, and trucks were more responsible than light vehicles in backing, rear-end, right-turn, left-turn, and sideswipe collisions. It is deeply troubling that the inaccurate and misrepresented studies are still being touted by some in the trucking industry even though there is no scientific evidence that actually supports this proposition.

4) What is your position on the recently released ATRI study cited by Mr. Williams?

The American Transportation Research Institute (ATRI) is the research arm of the American Trucking Associations (ATA), the major trade association representing the economic interests of the motor carrier industry. Mr. Williams, Chairman and CEO of Maverick USA, Inc. and currently the Chairman of ATRI, was testifying at the hearing on behalf of the ATA.

The ATRI report, "Assessing the Impacts of the 34-hour Restart Provisions" to which Mr. Williams referred in his testimony, claims that there has been a reduction in truck-involved collisions between 2004 and 2009. However, this study, and its conclusion that the safety performance of large trucks has been improving, is very misleading. Repeated analyses have shown that, historically, periods of economic recession are associated with significant decreases in crashes as well as changes in driving patterns. During times of recession, there is a reduction in miles driven, and this economic pressure influences both the overall number of fatalities and those associated with crashes involving large trucks.

The period of the ATRI study, 2004 to 2009, included the most recent general economic downturn, so it is not surprising that overall truck crash statistics went down. While it is true that large truck fatalities have declined by 25 percent since 2003, this is consistent with the reduction in overall fatalities from all motor vehicle crashes. However, the historic record also indicates that the number of fatalities associated with

large trucks generally show year after year increases immediately following periods of reduced economic activity. As predicted and shown in the past, this pattern was again demonstrated by the increase in truck fatalities for 2010 and 2011.

Therefore, despite the study claims, there has been no evidence of a drastic improvement in trucking industry safety. Rather, there has been general improvement in safety of all vehicles on the road. It is also important to note that the study released by ATRI was limited in its data analysis to years through 2009, although there is data currently and publicly available through 2011. Between 2009 and 2011 the number of fatalities associated with crashes involving large trucks experienced back-to-back annual increases, despite an overall decline in the number of highway fatalities -- data which ATRI conveniently did not include in its study.

There are several other problems with the ATRI study that call into question the reliability and validity of its conclusions. First, the data is not representative of the industry. The data sources it relies upon are an industry-funded survey of drivers and carriers, and an analysis of logbooks. The report provides no proof that the driver population examined in the report is an accurate representation of the entire industry.

Second, ATRI claims to have replicated the analysis of the FMCSA, yet at the same time admits that it adjusted the FMCSA's methodology because they were unable to precisely recreate the agency's process. Rather, ATRI developed its own process and set of assumptions to generate a conclusion that supports ATRI's pro-industry outlook.

Finally, the study relies on self-reported survey information by subjects who have a vested interest in the outcome. The simple fact that the study surveys those that likely support a conclusion showing adverse effects makes the data subjective and insufficient to support or validate the study's claimed actual effects. It is to be expected individuals or companies who perceive a burden or limitation as being unnecessarily imposed on them will respond by giving voice to high levels of opposition, regardless of whether the limitation actually affects them.

This study is nothing more than another industry attempt to mislead the public about the actual and true effects of the new HOS rules. Data clearly show that the safety and crash performance of the trucking industry has not improved to any degree in recent years. On the contrary, any recent declines in truck crashes are following a larger trend in the economy that affects traffic safety for all vehicles and that the downward trend, related to a weak economy, is now reversing.

Chandler inc.
CONCRETE COMPANY

STATEMENT OF
JEFFREY HINKLE

MANAGER OF TRANSPORTATION,
CHANDLER CONCRETE COMPANY, INC.

ON BEHALF OF THE
NATIONAL READY MIXED CONCRETE ASSOCIATION

BEFORE THE

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS & TRANSIT

ON

COMMERCIAL DRIVERS' HOURS OF SERVICE RULES

JUNE 18, 2013

STATEMENT OF
JEFFREY HINKLE
MANAGER OF TRANSPORTATION,
CHANDLER CONCRETE COMPANY, INC.
ON BEHALF OF THE
NATIONAL READY MIXED CONCRETE ASSOCIATION
BEFORE THE
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS & TRANSIT
ON
COMMERCIAL DRIVERS' HOURS OF SERVICE RULES

June 18, 2013

Chairman Petri, Ranking Member DeFazio and other members of the committee, thank you for this opportunity to share the ready mixed concrete industry's concerns with the new changes to the Federal Hours of Service (HOS) regulations put forth by the Federal Motor Carrier Safety Administration (FMCSA).

My name is Jeff Hinkle, I'm the Manager of Transportation for the Chandler Concrete Company, a family owned and operated ready mixed concrete company based out of Burlington, NC. Chandler Concrete Company was founded in 1946 and currently employs 380 people. We operate 40 ready mixed concrete plants, 256 commercial motor vehicles, deliver 655,000 yards of concrete annually, and have operations in North Carolina, Virginia, and Tennessee.

As well, I am also the former chairman of the National Ready Mixed Concrete Association's (NRMCA) Operations, Environment and Safety Committee Task Group on Operations, and I am the current Vice Chairman of NRMCA's full Operations, Environment and Safety Committee.

The NRMCA, which I'm here on behalf of today, was founded on December 26, 1930, and today represents more than 2,000 member companies and subsidiaries that employ more than 125,000 American workers who manufacture and deliver ready mixed concrete. The Association represents both national and multinational companies that operate in every congressional district in the United States. The industry is currently estimated to include more than 70,000 ready mixed concrete trucks.

Background:
In November 1996, the Federal Highway Administration (FHWA) announced its intention to review federal regulations on drivers' HOS by issuing an Advanced Notice of Proposed Rulemaking (ANPRM), thus beginning a twelve year ordeal in revising the regulations, which had remained relatively unchanged since their establishment by the Interstate Commerce Commission in 1937. In May 2000, the FMCSA issued a Notice of Proposed Rulemaking (NPRM) outlining significant and sweeping proposed changes for drivers of all types. Opposition to the proposed changes was immediate and fierce. Not only did the proposal seek to severely diminish the total number of hours drivers could be on-duty, it sought to eliminate the

24-hour clock reset exception enjoyed by the construction and other industries and to eliminate the tolerance guidelines enacted in some states that provide additional flexibility for intrastate drivers. It was immediately evident that, should the regulations included in the NPRM move forward, prices on everything from toothpaste to groceries to concrete would dramatically increase and an already well-documented driver shortage would be exacerbated.

NRMCA took immediate action to defeat the proposed changes and engaged the entire ready mixed concrete industry to take action against the rule. NRMCA members and staff participated in all of the hearings held by the FMCSA throughout the country and submitted comprehensive comments including a recommendation for establishing a construction industry type driver. NRMCA worked in coalitions with several trucking and construction industry groups that ultimately secured congressional support in keeping the proposed regulations from moving forward.

In April 2003, after receiving over 50,000 comments on the proposal, the FMCSA issued a final drivers' HOS rule that is vastly different from the original proposal. Although the ready mixed concrete industry scored significant victories in retaining the 24-hour clock reset exception and intrastate tolerance guidelines, the regulations made several changes to which the ready mixed concrete industry is subject. The regulations were challenged a year later and a second final rule was issued in October 2005 with very minor changes to only the sleeper birth requirements.

In December 2006, public safety advocacy groups challenged the October 2005 rule in the DC Circuit Court of Appeals. In July 2007, the DC Circuit court issued an opinion striking down certain provisions of the 2005 HOS rule because their implementation had not been fully subject to notice and comment. A stay was then filed with the court which was granted for a 90-day period. At the end of the stay in December 2007, the FMCSA issued an interim final rule (IFR) that retained the vacated provisions. FMCSA issued the IFR after they had obtained new data showing that the vacated provisions have actually helped to improve highway safety. NRMCA commented, in April 2008 on the IFR, advocating for the retention of the provisions.

Then, in November 2008, the FMCSA issued a final rule on HOS. The new rule left the regulations unchanged, with all HOS provisions taken advantage of by the ready mixed concrete industry remaining intact.

Following the November 2008 final rule however, public safety advocacy groups again filed their third suit challenging the rule in the DC Circuit Court of Appeals. In response, just one day before FMCSA was scheduled to file its court brief, in October 2009, at the direction of the new Administration, FMCSA entered into an agreement with the public safety advocacy groups to re-review the final rule. FMCSA was given nine months to propose its changes, if any, to the White House and an additional 12 months to issue a new final rule.

In furthering the process of re-reviewing the rule, FMCSA held four listening sessions in January 2010, all of which NRMCA presented comments at. Following the listening sessions, FMCSA published a new proposed HOS rule in December 2010 with suggested changes to the driving window, on-duty time frame, the definition of on-duty, and limits on restarting weekly hour accumulations. FMCSA then held another listening session in February 2011 on the new

proposal, which NRMCA presented at as well. February 2011 also held the due date for comments to be submitted on the rule, which NRMCA submitted. In June 2011 the U.S. House of Representatives Committee on Small Business held a hearing on the new HOS proposal, during which NRMCA provided testimony for an NRMCA member who detailed the erroneous nature of the proposal.

Finally, in December 2011, after missing two court-set dates to finalize a new HOS rule, the FMCSA issued a new final rule on HOS containing drastic changes. Following the rule's finalization, in February 2012, both trucking advocates and public safety advocacy groups filed the fourth law suit against FMCSA and HOS regulations. The groups alleged the rule was over burdensome or didn't go far enough, respectively. The U.S. Court of Appeals for the District of Columbia Circuit heard both groups' arguments in March 2013. Absent a court ruling overturning the December 2011 rule, the new HOS rule changes will go into effect July 1st, 2013.

July 1st changes:
In part, the rule:

- Requires drivers to take a 30-minute break after at most eight consecutive hours; and
- Limits the use of the 34-hour restart provision to just once a week covering "at least two periods between 1 a.m. and 5 a.m.".

Looking toward July 1st:
The current HOS regulations our nation's commercial motor vehicles (CMVs) are operating under are not perfect, however they are manageable and much more flexible for operations of the ready mixed concrete industry, than the new impending HOS rule changes.

As with most small businesses, operating a ready mixed concrete company means that you are responsible for everything whether it's ordering inventory, hiring employees, meeting environmental and labor regulations, dealing with an array of mandates from federal, state and local governments, or in the case of HOS, making sure our drivers are compliant with an already complicated and burdensome safety measure while trying to deliver a perishable, just in time, as soon as possible type product. Adding another layer of regulation to this only hinders the ability to run a successful small business, especially during trying economic times.

Chandler Concrete Company, as well as the ready mixed concrete industry, takes issue with a number of the HOS changes slated to go into effect on July 1st. Here's why these changes don't work for the ready mixed concrete industry:

Mandatory break of 30 minutes every 8 consecutive hours:
This new provision is by far the most over burdensome and difficult for the ready mixed concrete industry. Ready mixed concrete drivers typically spend far less than 50% of their on-duty time actually driving (roughly only 2-6 hours per day), the other 50% to 75% is spent at the plant waiting to be dispatched, at the jobsite waiting for the contractor to receive the concrete, unloading concrete, and performing other administrative duties. Companies need to have the flexibility to give breaks as the schedule dictates throughout the day. For example: a concrete delivery often takes more than 2 ½ hours to complete. Concrete is a perishable product needed on a just-in-time basis. Once a delivery is started it must be completed or the concrete may

harden in the truck causing thousands of dollars worth of damage, and potentially violating a delivery contract. Every day is different in the construction field, thus companies need the flexibility to deliver concrete when the customer needs it. Mixer drivers have a flexible start time, where one day they start at 7 a.m. and the next at 12 p.m. Ready mixed concrete deliveries do not happen on a regular 9 a.m. to 5 p.m. schedule, nor do concrete customers always plan deliveries. Often customers order concrete on an "as soon as possible" basis. Another burden associated with the 30-minute rule is attempting to mesh it together with the host of other HOS requirements for intrastate drivers. Many ready mixed concrete operations adhere to different state specific HOS regulations for operations that happen solely within a single state. Trying to reconcile all of these regulations while adding this new piece to the puzzle merely sows confusion and creates a patch work of compliance rules. Further complicating this is the fact that from state enforcement officials, to state departments of transportation, up to the federal government, there is a different practice with recognition of and enforcement of HOS rules. With this impending change, drivers are constantly requiring clarification on exactly when and what regulations will be enforced. As well, by requiring this 30-minute break, which more often than not will be required to be taken as off-duty/non-paid time, this break ultimately keeps drivers away from their families and personal lives longer, and it keeps them away longer with no additional pay. Due to all of these factors, compliance with the 30-minute break is not only arbitrary, capricious and unnecessary; it makes it near impossible to comply with. Compliance with the 30-minute break unfairly affects the effectiveness of delivering ready mixed concrete and the practices of the ready mixed concrete business without improving safety.

Limiting 34-hour restarts of the 60/70 hour clock to once a week:
Weather plays a huge factor in the placement of concrete. Many companies operate on a very busy summer schedule and use a reduced workforce for the winter months. A rainy day will often stop deliveries for an entire day, more than once a week. Many ready mixed concrete drivers use this period to reset their weekly clock more than once in a 7 or 8 day period thus allowing construction schedules to continue when the weather improves. However, this change would eliminate the industry's current and much needed restart practice which has not had any adverse effects on safety or compliance. Drivers should have the flexibility to restart their weekly clock as they see fit instead of only once per week. Construction schedules fluctuate and companies need the ability to stay compliant with the regulations and still service their customers.

Include at least two periods between 1 a.m. and 5 a.m. within a 34 hour restart period:
Many ready mixed concrete producers, especially those in the southern tier and desert southwest, work exclusively at night during the hot summer months. The cooler temperatures are better for the placement of concrete along with reduced traffic congestion. By mandating a driver's off-duty time to include at least two consecutive periods between 1 a.m. and 5 a.m. reduces the numbers of hours available to meet construction and delivery schedules to an unacceptable level. Not every work day takes place during daylight hours, making this change overly restrictive.

Hours of Service regulations erroneously use a one-size-fits all method:
Local short-haul operators (SHO), such as ready mixed concrete truck drivers, have not been adequately recognized in the process of establishing regulations that are generally meant for a category of commercial motor vehicle (CMV) drivers other than local SHOs. Ready mixed

concrete truck drivers are truly local short-haul operators, as noted above and in our comments to FMCSA on the original HOS proposal; industry studies show that a concrete mixer driver's average delivery is only 14 miles from the ready mixed concrete plant and drivers are actually only driving about 2 to 6 hours per day. As FMCSA noted in the final HOS rule, such situations make local SHOs not as prone to fatigue and allow for "...frequent non-driving breaks..." This begs the question then, why would local SHOs, such as concrete mixer drivers, be mandated to take a 30-minute break at any point during their shift or be off-duty for two consecutive nights, when FMCSA clearly recognizes the safety and fatigue realities of local SHOs as sufficiently meeting positive safety and fatigue standards? Ready mixed concrete truck drivers take frequent breaks, in fact, in many situations drivers are required to take a break such as resting during meal time, and remain on-duty but not performing any work related tasks. NRMCA recognizes FMCSA's reluctance to address "segment-specific" HOS regulations or accept the "one-size-fits-all" argument, as noted in the final rule; however it is undeniable that there are inherent flaws that exist in the current rule and in the new changes. FMCSA's acknowledgement of SHOs being different from long-haul operators underscores the need to regulate such groups differently. FMCSA affording SHOs exemptions and exceptions in recognition of their difference from long-haulers and then suggesting that such a differentiation is not needed is both confusing and counterintuitive.

The cost to the ready mixed concrete industry:
In August 2011, the Obama Administration, in response to a request from House Speaker John Boehner (R-8-OH), stated that this new HOS rule is among 7 other rules that will cost industry upwards of at least $1 billion.

The ready mixed concrete industry has estimated industry wide compliance with the HOS rule changes to cost roughly $268 million in the first year alone. This cost in part, includes driver training, purchasing new technology to monitor and log these new changes, additional administrative expenses, customer complaints, additional fuel, hiring of more drivers to fill the numerous 30-minute gaps that will be created, and buying more equipment for times when a 30-minute break needs to occur away from a ready mixed concrete plant thus tying up necessary equipment.

In conclusion, the easiest, clearest, and most immediate solution to the problems outlined above is to reinstate the pre-December 2011 HOS regulations. The less time ready mixed producers spend having to comply with arbitrary, capricious and unnecessary rules not applicable to the industry, the more time they can spend pouring concrete, employing more workers, and helping to grow America's economy. We should be smart enough to recognize unique industries and how these types of regulations unnecessarily adversely affect them.

Again, thank you for the opportunity to comment on how FMCSA's HOS rule changes will affect the Chandler Concrete Company and the ready mixed concrete industry.

I'd be happy to answer any questions the committee members may have.

The International Brotherhood of Teamsters

Comments

On

Committee on Infrastructure and Transportation

Subcommittee on Highways and Transit

"The Impacts of DOT's Commercial Driver Hours of Service Regulations"

July 2, 2013

Submitted By:

LaMont Byrd, Director
International Brotherhood of Teamsters
Safety and Health Department

The International Brotherhood of Teamsters (IBT) welcomes the opportunity to submit comments, in response to a hearing conducted by the Committee on Infrastructure and Transportation's Subcommittee on Highways and Transit concerning, "The Impacts of DOT's Commercial Driver Hours of Service Regulations". The IBT is a labor organization whose members include hundreds of thousands of persons, mostly drivers, who are employed by motor carriers. Because of the large number of its members that are involved in motor transportation, the IBT has a vested interest in ensuring that the Hours of Service Regulations do not adversely affect the health, safety, or economic well-being of its members or the safety of the driving public. Although, the IBT has been a party to lawsuits filed in response to previous Hours of Service Regulations issued by the agency, the IBT is not a party to any lawsuits concerning the current final rule. However, the Union continues to have concerns about specific provisions of the current rule and our comments will focus on those provisions and our concerns.

34-Hour Restart Provision

In the 2003 NPRM, the FMCSA introduced the concept of weekly off-duty periods to provide drivers with the opportunity to compensate for sleep debt accumulated during the work week. This concept is similar to work rules that were negotiated into some of the union's collective bargaining agreements to allow for minimum rest periods between work weeks, so of course, in theory, the union could agree with this concept. It seems as though this idea has since evolved into a restart provision of which, according to the language in the preamble of the 2005 final rule, "The only reason for a restart provision is to allow increased productive time, notwithstanding the general regulatory requirements".[1] The trucking industry has pushed for a restart provision dating back to 1992. The FMCSA admits that the 34-hour restart provision allows an extra 14 hour shift every 7 days. So in a revised rule that is supposed to reduce driver fatigue, reduce crashes and fatalities, and make roads safer for the motoring public, FMCSA decided to allow drivers to work for an additional 14 hours per week, bringing the total weekly hours worked to 84.

The IBT opposes the restart provision and we have taken the position that Teamster drivers in the Less-Than-Trailer load sector will not use this regulatory provision. We negotiated language

[1] 70 FR 50017

into our collective bargaining agreements that prohibits the use of restart, except in rare situations, and those runs are negotiated with the employer on a case-by-case basis. By not using the restart provision, our members are afforded the opportunity to obtain nearly two times the hours off as compared to a driver who uses restart. Allowing drivers who already work extremely long hours to work even more is not a good decision for the safety and health of the driver or the safety of the motoring public.

The IBT opposes the use of the 34-hour restart because of the negative effect it has on a driver's ability to get restorative rest. Those companies that are signatory to our collective bargaining agreements have not experienced a negative economic impact resulting from the labor agreement. They have not been placed into a competitive disadvantage. The IBT contends that this voluntary provision has become mandatory to most drivers not protected by collective bargaining agreements. The FMCSA is naïve to think that a company would not push its drivers to drive the maximum allowed by law, by utilizing every provision, or special exception provided in the rules.

The Union would like to take this opportunity to acknowledge and commend the agency for taking positive action in the current rule to clarify the definition of a week, which is defined as 168 hours and to require all drivers who use the restart provision to do so once per week and that the rest time during the restart include two consecutive nights from 1 am to 5 am. We believe that the regulatory revision to require two consecutive nights to obtain restorative rest is consistent with the understanding of the conclusions reached in research studies submitted to the rulemaking docket. By clarifying the definition of a "week", drivers will not be able to "game the system" and use the restart provision more than one time each week. Although we continue to believe that drivers who are provided with the opportunity to get two consecutive full days of rest opportunities will be better rested than those who do not, we agree that the agency took steps in the right direction relative to revising the restart provision.

Mandatory Break Period

The Union received numerous telephone calls and correspondence from rank-and-file drivers and their representatives concerning the provision in the current hours of service regulation that prohibits a driver from operating a commercial motor vehicle after 8 hours of on-duty time,

unless, the driver takes, at a minimum, an off-duty rest break of 30 consecutive minutes. The vast majority of the Union's collective bargaining agreements for commercial drivers contain contract language that allows the driver to take breaks; therefore, we do not anticipate that this will pose a problem for the unionized motor carriers. We commend the agency for requiring all commercial drivers to take a break from driving and we anticipate that this provision will likely improve safety, driver health, and driver quality of work life.

Revised Definition of On Duty Time

The FMCSA revised the definition of "on duty time" to exclude time spent resting in or on a parked vehicle. We are very concerned that some motor carriers and drivers may interpret this exception to allow a driver to obtain 10 hours of off duty time in the parked truck, even if the vehicle is not equipped with a sleeper berth. This would defeat the purpose of requiring drivers to take the minimum 8 hour period in a sleeper berth, and would allow drivers without sleeper berths to avoid taking rest time in motels or hotels. Drivers with vehicles that are not equipped with a sleeper berth should not take more than the half hour or one hour rest breaks while seated in a parked vehicle.

Sleep Berth Exception

The current Hours of Service Regulation requires sleeper team drivers to obtain at least 10 consecutive hours off duty and spend at least 8 hours in the sleeper berth. The result of this requirement is that each team member must drive at least 8 consecutive hours, which is significantly more hours than what was typically the practice under the previous iteration of the Hours of Service Regulation. Under the previous regulation, when drivers could be declared "off duty" and extend the work day up to fifteen hours, team drivers typically had a work/rest cycle of 5 hours of driving followed by 5 hours of time in the sleeper berth. The Teamsters previously submitted comments in which we recommended that the agency allow team drivers to segment their sleep opportunity into two sessions one of which must be a minimum of 5 hours. The Union conducted a survey of Teamster team drivers who reported that a five-hour driving and five-hour rest cycle minimizes fatigue experienced by the team drivers. The accident rates reported by the motor carriers employing these drivers suggest that the drivers are able to drive

safely while utilizing the self-selected work/rest cycle.[2] Drivers surveyed expressed considerable concern that the more than 60% increase in required consecutive driving time will greatly increase cumulative fatigue and compel tired team drivers to operate commercial motor vehicles while fatigued.

During the time in which the rulemaking was being conducted, there were no definitive research studies to support the team driver's anecdotal information. It should be noted that a recent study that was conducted by Dr. Gregory Belenky of the University of Washington, suggests that segmented sleep is as restorative as continuous sleep. A copy of the research study accompanies the Union's comments. The FMCSA has repeatedly expressed the need to strike a balance between the needs of industry with the safety of commercial drivers and the motoring public. Sleeper team drivers have, through their respective driving experience, accomplished this feat by using the sleeper berth exception. The International Brotherhood of Teamsters is requesting that the Administration reconsider allowing for a sleeper berth exception for team drivers who use a sleeper berth.

The IBT would like to thank the Subcommittee for the opportunity to submit comments and provide our perspective regarding this important Hours of Service Regulation and we are willing to respond to any questions that the Subcommittee members may have concerning this matter.

2 http://dms.dot.gov.see Yellow Roadway Corporation Comments FMSCA-2004-19608-1601

[Editor's note: The sleep study that is referenced on the previous page is entitled "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health" and can be found at the Federal Motor Carrier Safety Administration Web site at: http://www.fmcsa.dot.gov/facts-research/research-technology/report/12-003-Split-Sleep__Investigation-of-the-Effects-of-Split-Sleep-Schedules-on-Commercial-Vehicle-Driver-Safety-and-Health-508.pdf.]

U.S. House of Representatives
Washington, D.C.
Attn: WA Delegation

June 21, 2013

Representative:

We are writing on behalf of the statewide members of the Washington Aggregates and Concrete Association to advise you of our concerns with the pending implementation of new changes to the Federal Hours of Service (HOS) regulations promulgated by the Federal Motor Carrier Safety Administration (FMCSA).

As written, the proposed changes are scheduled to be implemented July 1 and will be a very significant, impractical and costly regulatory burden to our industry (without adding another level of safety) in the delivery of ready mix concrete and related perishable construction aggregate products.

Since 2000, the FMCSA has a long history of creating rules that are controversial, do not contemplate industry specific impacts or are simply not consistent with small business economic impacts. The National Ready Mixed Concrete Association (NRMCA) estimates this rule will cost our industry segment over $268M in the first year alone.

Area of concern;
Our primary concern of the revised HOS rules is the requirement of a mandatory 30-minute break provision as contained in 49 C.F.R. 395.3(a)(3)(ii);

- *Prohibits Drivers from driving if more than 8 hours have passed since the driver's last off-duty or sleeper berth break of at least 30 minutes.*

FMCSA HOS rules have been continuously debated since 2000 and on Tuesday, June 18th before the House Transportation and Infrastructure Committee's Subcommittee on Highways and Transit, NRMCA testified in opposition to mandating this 30-minute break period. Their testimony does a good job of identifying the long and historical controversy of FMCSA rule making that often refuses to consider impacts on specific segments of the transportation industry.

The goal of the mandatory 30 minute break proposed by FMCSA is applied to *"drivers that put in very long work weeks and overcome chronic fatigue when working nights"*, typically long haul or over the road drivers. Their research shows a 30-minute break reduces the chances of an accident in the hour immediately following the break. We don't dispute the findings of this intent for implementing the 30-minute mandatory break. However, the intent is to provide rest periods for over the road, sleeper berth drivers versus being universally applied to all drivers regardless of specific driving workday practices that do not fit the profile of the driver the rule is intended to protect.

Nationally and in Washington State, the ready mix concrete industry is an industry that does not meet the criteria in which this provision is designed. Our drivers and transportation practices are very specific and narrow in scope. The profile of a ready mix driver includes:

- Short haul trips; usually less than 28 miles per round trip;
- Drivers generally make less than 5 trips per work day; and
- RM Drivers generally spent less than 40% (22%-48% in a national study) of their on duty time driving, (2-6 hours per day), 40% of their day may be spent awaiting dispatch instructions, load and unload periods, staging, waiting and discharge at the construction site, and other driver related administrative duties associated with their roles and vehicles.

The ready mix industry driver is by traditional work practices; *a short haul, immediate return trip, return to location driver that delivers perishable products.* Ready mix concrete has a limited service life by specification of only 90 minutes. The proposed mandatory 30 minute break rule is intended to provide specific rest periods to drivers that work *"excessively long work hours"* and do not have the abundance of sufficient rest periods and reduced driving time built into their day as ready mix drivers do.

Ready mix drivers and other construction material drivers are a specific segment of driver that needs to be considered separately when passing universal rules at the Federal level. Many states have implemented or provide the ability for local state exemptions to allow practical application of standards to construction material drivers. *This proposed rule supersedes all existing state exemptions, and discourages any current attempt to amend state exemptions or jeopardize existing grant funding. Washington receives approx. $5M from the FMCSA.*

The proposed rule does not provide any additional safety or necessary rest periods that are not already available in an ordinary workday for these specific drivers. To the contrary, we have identified the following consequences and impact of the rule if implemented as proposed:

- To manage the disruption of construction aggregate products, industry will need to employ additional drivers to perform extra and unnecessary work or to take drivers out of their work / shift rotations based on hours already worked.
- Purchase new trucks and equipment to provide additional drivers to perform the same level of work with no additional benefit other than to shuttle drivers on and off duty.
- The rule is in conflict with Washington state law that allows collective bargaining agreements (CBA's) to provide different provisions for meal and rest periods for construction trades as allowed under RCW 49.12.187.
- It is the preference of our drivers to regularly waive their meal period voluntarily as they would prefer to be paid rather than take an unpaid lunch break. Under this rule, in many cases, employees will automatically lose their paid meal breaks, driver pay and potential to earn overtime. In order to manage this complicated matrix of daily workplace conditions and variable start times of our employees, companies may need to lunch all drivers at a common lunch period. This will preclude delivery of construction materials during this period, delay project construction schedules, cause companies to be exposed to delays not anticipated in contract or specification documents.
- Unless a driver is released from all responsibility's for the vehicle during the mandatory 30 minute break, drivers may essentially be required to abandon their truck of perishable products regardless of location on the job, stuck in traffic or other circumstances outside of their or employer's control. This presents significant safety risks when a loaded construction vehicle is left unattended. Remember, ready mix concrete is a perishable product and the drum must remain turning to prevent the product from hardening and render the drum useless and require replacement.

On a practical level, the rule does not apply to these types of drivers on live and active construction projects. Employers and drivers are not in control of the numerous variables that can severely affect a driver's work and rest options due to; delays encountered on a construction site, traffic delays, unloading delays and numerous other unanticipated reasons.

In WA we have been attempting to work the process with the Washington State Patrol (WSP) to explore the possibility of fitting under existing WAC 446-65-010. We are not optimistic.

Given the absence of the overdue District of Columbia Court of Appeals determination which may help provide clarity, we are asking for your immediate intervention to call for a stay on the rule's implementation beyond July 1 so the rule can include practical exemptions for segment specific drivers that deliver perishable construction materials, or that do not fit the intent of this rule making, or do not receive any additional safety benefits as a result of required rest periods.

- The impact on our industry is significant.
  The impact on federal, state and local transportation and infrastructure projects will be significant.

- Small businesses will be at greatest risk and exposure to non-compliance penalties with specifications and signed contracts based on an arbitrarily established implementation date of July 1, 2013.

Thank you for your consideration of this request and we ask you to consider the full testimony provided by NRMCA regarding this issue as it impacts our national and state industry businesses.

Additionally, we would ask this rule be suspended or put on hold until a "real world" analysis can be conducted by FMCSA to ensure the rule makes sense, provides expected benefits, and as written; is applicable to correct industry segments and driver working conditions versus a universal application to all drivers without regard to impacts.

We would also ask for a second analysis to be conducted of states that already allow for exemptions, for intra-state drivers, have a process for considering exemptions, or chose not to adopt 49 CFR 395 amendments. A grace period giving states an opportunity to conduct their analysis, hear from local constituents and consider any exemption criteria should be conducted prior to implementation. FMCSA grant funding should not be at risk or in jeopardy as a result of their determinations. A number of states do understand and have in place exemptions for short haul simple *intrastate* delivery drivers versus over the road *interstate* drivers and *provide exemption provisions for perishable construction materials.*

Should you have any additional questions or wish to speak directly with employers that will be impacted by this rule making, please contact any of the individual members below.

Sincerely,

Bruce T. Chattin
Executive Director
Washington Aggregates & Concrete Association
22223 7th Ave. S.
Des Moines, WA 98198
O- 206-878-1622
C- 206-571-3395
www.washingtonconcrete.org

CC: Board of Directors
Board of member companies:
Salmon Bay S&G
Spokane Rock Products
American Rock Products
Konen Koncrete
Ferndale RM
Cowden S&G
Colville Valley Concrete
Concrete Norwest
Holroyd Companies
Stanwood Redi Mix
Smokey Point Ready Mix
Bayview Redi Mix

TESTIMONY

FOOD MARKETING INSTITUTE

THE IMPACTS OF DOT'S COMMERCIAL DRIVER HOURS-OF-SERVICE REGULATIONS

HOUSE TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

JUNE 27, 2013

The Food Marketing Institute (FMI), on behalf of the nation's supermarkets and food wholesalers, submits the following written testimony to the House Transportation and Infrastructure Subcommittee on Highways and Transit in response to the hearing on The Impact of DOT's Commercial Driver Hours-of-Service Regulations.

FMI member companies are extremely concerned about the new hours-of-service (HOS) regulations. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost $770 billion. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores.

The soon-to-be-effective hours-of-service regulations will be very problematic for the supermarket industry, particularly the 34-hour restart provision and the mandatory 30-minute rest break for every eight (8) consecutive hours on duty. This will translate into reduced driving time for commercial motor vehicles, added complexity to comply with municipal regulations and potential food outages during peak periods. Food prices must necessarily increase to keep the shelves stocked with products as they are today.

Industry Concerns over HOS Rulemaking

Virtually every product that is found on grocery store shelves is delivered by commercial motor vehicles. The universe of products that are typically found in your neighborhood supermarket includes dry goods, perishables, dairy, soft drinks, juices, deli items, meats, poultry, seafood, bakery, prescription drugs, household cleaning items, personal care products and over-the-counter medications, among others. The average neighborhood grocery store carries over 48,000 items.

Most grocery stores are open every day of the year, and many of those are open 24 hours per day. As stores continuously receive and restock products, the truck deliveries bringing these items occur at varying hours of the day. Average shoppers visit their neighborhood grocery store 2.1 times per week, and expect to find store shelves fully-stocked with a wide variety of products, particularly fresh produce.

The Federal Motor Carrier Safety Administration's (FMCSA) soon-to-be-effective HOS regulations will cause higher transportation costs. In an industry with only a 1% profit margin, these costs will have to be passed on to consumers in the form of higher prices for food and other essential items sold in grocery stores.

Our industry does not understand why the Administration has moved forward with this HOS initiative. The current HOS rules are working extremely well, and FMI's member companies understand how to comply with them.

In the seven (7) years since the previous HOS rules were put into place, fatalities and injuries involving large trucks has declined by more than one-third. This is the lowest level since DOT began collecting data.

Industry Effects of New HOS Rules

1. Food prices will rise due to increased transportation costs and lowered productivity and efficiency in the supermarket industry. The HOS regulations will impact not only grocery stores, but all other agriculturally-related sectors, including: food processors, food wholesalers, bakery companies and entities handling perishables, such as seafood, meat, poultry and fresh fruits and vegetables.

2. Small, independent grocers in rural communities will be hit hardest. These grocers, who receive products delivered from wholesalers often hundreds of miles away, will receive less frequent deliveries due to the new HOS rules.

3. In order to maintain the current level of service to retail grocery stores, more trucks will be needed as well as additional persons to operate them. This will lead to more trucks being on the nation's roads, causing higher pollution and greater congestion.

4. Due to the acute shortage of qualified truck drivers, new, inexperienced drivers will be required to meet the increased demand. This could lower the safety standard the new HOS regulations are attempting to achieve.

5. Many stores will suffer an unavoidable reduction in deliveries as a result of the new HOS regulations. This will lead to shortages of grocery items on store shelves, especially during the busy holiday seasons, such as Christmas and Thanksgiving, as well as other national holidays and pastimes, namely the Fourth of July, New Year's Eve and Super Bowl Sunday.

6. Shortages on store shelves are unacceptable to both retailers and customers. In particular, if a grocery store runs out of an item eligible under USDA's Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the store can be fined and potentially lose their WIC license -- negatively impacting both the store and the community.

7. Forecasts of major weather events, such as heavy snow storms or hurricanes, often trigger "panic" buying by shoppers at grocery stores, which will be further confounded by the new HOS regulations and the limitations they provide for restocking.

8. Many local ordinances restrict when trucks may deliver products; yet another hurdle for our industry, which is further complicated by the new 34-hour restart provisions that require drivers to spend two consecutive periods between 1:00 a.m. to 5:00 a.m. off duty. This will be especially troublesome where deliveries, such as bakery goods need to be made early in the morning. Clearly, the restart provisions should be more flexible in terms of when the four-hour off duty period shall occur.

FMI Requests the HOS Rulemaking be Withdrawn

In testimony presented before the Federal Motor Carrier Safety Administration's Listening Session on February 17, 2011, FMI expressed industry concerns about the adverse impact that the HOS rules, as proposed, would have on food prices and urged the agency not to go forward with this initiative. On March 4, 2011, FMI filed formal comments with FMCSA requesting the agency to preserve the HOS regulations in their current form. Regrettably, the issues that FMI raised with FMCSA did not resonate as the agency promulgated its new HOS regulations on December 27, 2011.

Legislative Solutions

FMI firmly believes the supermarket industry and its vendors and suppliers have legitimate and compelling concerns regarding the consequences that the new HOS regulations will have in terms of triggering higher prices for food products and other consumer essentials, increasing the difficulty of complying with municipal regulations regarding permissible timing of deliveries, as well as increasing the likelihood of food shortages and outages during peak-buying periods. Therefore, the supermarket industry is asking Congress to intervene.

Recognizing that Congress enacted the Moving Ahead in the 21st Century (MAP-21 Act) in 2012, which grants an agricultural exemption from the HOS regulations for the transportation of agricultural products during the planting and harvesting seasons, it seems appropriate to enact similar legislation for a limited exemption for supermarkets, wholesalers and other entities engaged in the manufacturing, processing and transportation of food products, beverages, and perishables to retail stores.

Therefore, FMI recommends enactment of legislation providing for the following limited exemptions:

- A ten-day exemption from the new HOS regulations prior to Thanksgiving, Christmas, New Year's Day, Super Bowl Sunday and Easter. Previous HOS regulations would apply.
- A ten-day exemption from the new HOS regulations prior to Memorial Day, Fourth of July (Independence Day) and Labor Day. Previous HOS regulations would apply.
- A five-day exemption from the new HOS regulations prior to anticipated major weather events, such as hurricanes and heavy snow storms. Previous HOS regulations would apply.
- An immediate suspension of the new HOS regulations following a natural disaster or an unforeseen emergency.

FMI appreciates the opportunity to provide testimony on the issue of hours-of-service and its impact on the supermarket industry.

Food Marketing Institute
Government Relations Department
2345 Crystal Drive
Suite 800
Arlington, Virginia 22202

Statement of
Daphne and Steve Izer, Parents of Jeff Izer,
Killed in a Crash Involving a Tired Trucker
Founder, Parents Against Tired Truckers (P.A.T.T.)
And
Jane Mathis, Mother of David Mathis,
Killed in a Crash Involving a Tired Trucker
Board Member, Parents Against Tired Truckers (P.A.T.T.)
Member, Motor Carrier Safety Advisory Committee (MCSAC)
And
Lawrence Liberatore, Father of Nick Liberatore
Killed in a Crash Involving a Tired Trucker
Board Member, Parents Against Tired Truckers (P.A.T.T.)

Submitted for the Record
Hearing on
The Impacts of DOT's Commercial Driver Hours of Service Regulations

Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
United States House of Representatives

June 18, 2013

My name is Daphne Izer and I am the founder of Parents Against Tired Truckers (P.A.T.T.). This statement is given on behalf of myself, my husband Steve, Jane Mathis, and Lawrence (Larry) Liberatore. P.A.T.T. is a member of the Truck Safety Coalition (TSC) and our statement reflects the views and position of our coalition. We are deeply concerned about the preventable deaths and injuries occurring every day on our roadways because of the serious industry-wide problem of overly fatigued commercial motor vehicle drivers. We respectfully ask that our statement be submitted for the record.

On October 10, 1993, my life was forever changed. A truck driver fell asleep at the wheel of his 80,000 pound rig, killing four innocent teenagers. One of them was my son Jeff. He and four of his friends were on their way to a hayride and had just pulled into the breakdown lane on the Maine Turnpike when a Wal-Mart truck driver fell asleep at the wheel of his big rig and crashed into my son and his friends. As a result of this horrific, preventable crash, four beautiful teenagers: Jeff – age 17, Angie - age 16, Dawn Marie - age 15, and Katie - age 14 were killed. One friend, Linda, survived but was seriously injured and she is emotionally scarred for life. Five families suffered incomparable personal loss as a result of a single tired trucker.

On March 25, 2004, Jane Mathis's 23-year-old son David and his wife Mary Kathryn were killed in a truck crash in Titusville, Florida as they drove home from their honeymoon. They had only been married for five days. David and Mary Kathryn were stopped in traffic because of an earlier wreck on I-95 when a truck driver, who had fallen asleep behind the wheel, rear-ended their car. The impact of the crash shoved them into the back of the truck in front of their car and set the car on fire. Jane is currently a board member of P.A.T.T. and a member of the Motor Carrier Safety Advisory Committee (MCSAC).

On June 9, 1997, Larry Liberatore's son Nick was killed just south of the Delaware/Maryland state line, by a fatigued truck driver. Nick was traveling with friends in several cars to Six Flags Great Adventure in New Jersey. When the cars were separated from their caravan while traveling north on Interstate 95, a few of them pulled over on the shoulder of the highway to wait for the others to catch up. Nick was sitting in the back seat of a car on the shoulder of the highway when a tired trucker carrying a load of steel veered across three lanes, and ran over the car. The truck driver had not slowed as he approached the toll booth which was about 1,000 feet past the crash site. Larry is a board member of P.A.T.T.

Sadly, our stories are neither unique nor the result of a freak or unpreventable accident. Each year, the lives of hundreds of victims throughout the country are tragically taken or irrevocably altered because of the actions of a fatigued truck driver. At our Sorrow to Strength conference, held this past May 4th through 7th, families and friends who lost loved ones in truck crashes and truck crash survivors from across the country came together to share our stories and to learn about truck safety issues and the need for vital truck safety improvements. We then shared our message in meetings with Members of Congress, Department of Transportation officials and media outlets. The families who attended Sorrow to Strength this year, and the hundreds of new families we work with each year, are painfully aware of the need for improvements to the truck driver Hours of Service (HOS) rule. We, and our fellow volunteers, work with the Truck Safety Coalition to achieve our mission to advance truck safety and hopefully save other families from suffering a similar tragedy.

Every year on average 4,000 people are killed in truck crashes in the U.S. and another 80,000 are injured. Truck driver fatigue has been recognized as a major safety concern and a contributing factor to fatal truck crashes for over 70 years. In fact, studies sponsored by the Federal Motor Carrier Safety Administration (FMCSA) reveal that 65 percent of truck drivers report that they often or sometimes feel drowsy while driving and nearly half of truck drivers admit that they had actually fallen asleep while driving in the previous year.

Yet, in spite of the industry wide safety issue of truck driver fatigue, in 2003, FMCSA issued a new HOS rule which increased both the daily and the weekly driving limits. Truck driver's hours behind the wheel were extended from 10 to 11 hours during a 14 hour work window, and drivers were now permitted to work more than 80 hours a week by maximizing the use of the new 34-hour off duty restart provision. As a result of these changes, FMCSA's 2003 HOS rule did not improve truck driver fatigue and instead exacerbates daily fatigue, as well as the cumulative fatigue which results from driving long hours on short sleep from week to week.

In response to the 2003 rule, and its negative impact on the health and safety of truck drivers and the motoring public, the TSC became a party to a lawsuit with other health and safety organizations, seeking to overturn this rule. As a result of our legal efforts, this HOS rule has been overturned in court twice. The first time was in 2004 when the U.S. Court of Appeals for the District of Columbia Circuit ruled against the agency because they had failed to address the issue of truck driver health. The Court ruled that the HOS final rule violated federal law and had to be vacated. After FMCSA reintroduced similarly flawed versions of its 2003 HOS rule in 2005 and 2008, a 2009 lawsuit produced an agreement between the parties and DOT, to provide DOT with an opportunity to revise the HOS rule once again, taking into account the 2004 decision by the Court of Appeals, and the safety research on which it was based, which showed the urgent need to reduce, rather than increase, truck drivers hours behind the wheel.

In 2011, the FMCSA issued a new HOS rule that kept the 11 hour maximum rather than return to the prior 10-hour rule as advocated by leading safety organizations, and failed to apply the modification of the re-start provision to all drivers. In response, safety groups returned to court, for the third time seeking to return the HOS rule to the 10 hour maximum. The case was argued in the U.S. Court of Appeals in March, 2013, and a decision is pending. While incremental safety improvements were made in the 2011 rule, including a requirement for overnight sleep for drivers, limiting the use of the restart to once in every 168 hours for some drivers, and requiring a 30 minute rest break for drivers within the last 8 hours of being on duty, the rule does not go far enough to protect truck drivers and the motoring public from the dangers of fatigued driving.

The absence of positive action by our federal government on the issue of fatigued truck driving lies in sharp contrast to actions taken to stop impaired driving due to substance abuse. After 17 to 19 hours without sleep, a person's response speeds are as much as 50 percent slower and equivalent to having a .05% blood alcohol level. Historically, the reaction of Congress and the U.S. Department of Transportation (U.S. DOT) to the epidemic of drunk driving on our highways was to pass stronger federal laws like the National Minimum 21 drinking age and the national .08% BAC law, as well as implement tougher enforcement programs like sobriety checkpoints and "zero tolerance" laws for underage drivers. Unfortunately, even though the issues are quite similar, compared to legislative

and executive branch resolve to combat alcohol impaired driving, the epidemic of truck driver fatigue has not been adequately addressed.

Truck driving is consistently listed in the top 10 most dangerous jobs.[i] Due to the nature of the job and exposure to diesel exhaust, whole body vibration, excessive noise, constant shift changes and roadway dangers, life expectancy for truck drivers is reduced to 61 years, 16 years less than the average. Additionally, truck drivers face a high health risk for: personal injury, high blood pressure, heart attacks, diabetes, obesity, cancer, liver, kidney, bowl and bladder issues, sleep abnormalities and hearing loss, among other diseases and physical injuries.[ii]

Truck drivers are being pushed beyond the limits of human endurance. The demands of the job, force truck drivers to spend up to 70 hours a week behind the wheel, and then work additional hours, for less pay than similar industries. As a result of their pay structure, being paid by the mile or the job rather than by the hour, they are incentivized to drive longer and faster in order to make more money at the expense of their own personal safety, as well as everyone with whom they share the roads. The current regulation does not sufficiently protect these drivers, who should be afforded the same respect as other workers, work reasonable hours, and be permitted to have sleep patterns that are in accord with normal human needs. Given these factors, it should not come as a surprise that the poor working conditions and low pay perpetuate the extremely high rate of truck driver turnover, which was above 90 percent in 2012.[iii]

Improvements necessary to reduce truck driver fatigue should also include the immediate release of the final rule for electronic logging devices (ELDs). Despite a provision in the Moving Ahead for Progress in the 21st Century Law, MAP-21 (P.L. 112-141) requiring electronic logging devices (ELDs) in all commercial vehicles, FMCSA has yet to issue a final rule. These devices would ensure accurate logging of truck driver hours behind the wheel, increase compliance with HOS regulations, and decrease paperwork and stopping time for HOS reviews, thereby reducing truck driver fatigue.

We appreciate the opportunity to submit these comments into the record of this hearing on an issue that has deeply impacted our families. Truck crash victims, like Steve and I, Jane, and Larry, depend on the federal government to protect our families and friends, and we are asking you to do more to reduce and eliminate truck driver fatigue. We need to put the brakes on longer workdays for truck drivers.

Thank you.

---

[i] Korch, Travers. "The 10 Most Dangerous Jobs in the U.S." *Yahoo! Finance*. Bankrate.com, 4 June 2012. Web. 30 Nov. 2012. <http://finance.yahoo.com/news/the-10-most-dangerous-jobs.html>.

[ii] "Trucking 101 An Industry Primer." *Trb.org*. Transportation Research Board, Dec. 2010. Web http://onlinepubs.trb.org/onlinepubs/circulars/ec146.pdf.

[iii] Casey, William. "Truckload Driver Turnover Tops 100 Percent." *Journal of Commerce*. UBM Global Trade, 12 Sept. 2012. Web. 30 Nov. 2012. Davidson, Paul. "USA TODAY." *USATODAY.COM*. Gannett Company, 25 June 2012. Web. 30 Nov. 2012.

Before the

Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure

U.S. House of Representatives

Testimony for the Record of the Hearing on

"The Impacts of DOT's Commercial Driver Hours of Service Regulations" held June 18, 2013

Submitted by:

The Snack Food Association

1600 Wilson Blvd
Suite 650
Arlington VA 22209

June 25, 2013

The Snack Food Association (SFA) is the international trade association of the snack food industry representing snack manufacturers and suppliers. SFA represents over 400 companies worldwide. SFA's membership includes, but is not limited to, manufacturers of potato chips, tortilla chips, cereal snacks, pretzels, popcorn, cheese snacks, snack crackers, meat snacks, pork rinds, snack nuts, party mix, corn snacks, pellet snacks, fruit snacks, snack bars, granola, snack cakes, cookies and various other snack foods.

The core business of SFA member-companies is manufacturing and distributing convenience foods to thousands of retail outlets such as grocery and convenience stores. In support of these activities, these companies collectively employ or contract with tens of thousands of professional drivers and operate commercial vehicles in a wide range of private fleet operations. Most of these drivers are engaged in short-haul store delivery activities and return to the same place of business each day.

In December 2011, the Federal Motor Carrier Safety Administration (FMCSA) published a final rule to revise the regulations for hours of service (HOS) for drivers of property-carrying commercial motor vehicles. Among other things, the rule requires drivers to take a minimum 30-minute break after no longer than eight hours on-duty before driving again; requires that a driver's "34-hour restart" include two periods between midnight and 5 a.m.; and requires that the

restart be limited to once during a seven-day period. The implementation date for these provisions is July 1, 2013.

We believe the greatest cumulative impact of the new rules is on the many thousands of manufacturers, distributors, retailers and others who rely on mostly short-haul trucking in support of their core business activities. These companies are not in the business of "trucking" except as a necessary support component. In many cases operating a commercial vehicle is secondary or even incidental to what their "drivers" are doing during a shift. Moreover, as FMCSA and other data show, most of the businesses regulated by HOS rules are private carriers engaged in short haul operations of less than 250 miles.

The rule changes published in 2011 are not substantiated by FMCSA's own health and safety data and would significantly diminish operational flexibility for SFA-member fleets. The Agency has not identified circumstances, events or new research that justifies the December 2011 changes. Moreover, the data FMCSA do have are, in its own words, "concentrated on inter-city long-haul or regional, as opposed to local, trucking operations."

The HOS rule changes made in 2003 and largely reiterated in 2005 significantly reduced the flexibility that was available to fleet operators before that time. However one provision that offered some degree of operational flexibility to short haul distribution is the so-called "34-hour restart."

Under the pre-2003 HOS rules, a driver was permitted to exclude intermittent periods of off-duty time from the maximum 15 hours of "daily" on-duty time. In this way, a driver taking meal breaks or other off-duty periods could "extend" his or her 15-hour tour of duty. While such extensions were not the norm in our industry, snack food and similar fleet operations were able to take advantage of this during peak periods and to accommodate unforeseen circumstances such as weather or traffic delays. Under the current HOS rules, drivers may not drive after the 14th hour of coming on duty following 10 or more consecutive hours off duty, regardless of any intermittent off-duty periods.

In support of the 2003 rules, which were mostly retained in the 2005 rulemaking, the Agency contended that the 11th hour of driving time and the 34-hour restart would offer counterbalance to the economic loss occasioned by the change from a tour of duty that could be extended by rest breaks, to one defined by a 14-hour non-extendable time period.

However, the increase in allowable driving time from 10 to 11 hours provides an economic benefit primarily to long-haul carriers. Drivers such as those in snack food fleet operations rarely come close to driving 10 hours, much less 11 hours during a single tour of duty. Therefore our companies have derived little offsetting economic benefit from the additional hour of driving time provided in the current rules. Nonetheless, some companies have been able to utilize the 34-hour restart as a means of offsetting a *portion* of the operational and economic loss occasioned by adoption of those rules. The anticipated July 1 changes would severely limit that flexibility by allowing the restart to be used only once in a seven day period and by requiring that the 34-hour period include two periods between midnight and 5:00 am.

We do not accept FMCSA's argument that the changes to the restart will not substantially affect nighttime operations. As a result of the new limitations, at any given time there will be less workforce available to make deliveries when they are most needed. SFA member-companies often schedule early morning deliveries as a means of avoiding traffic congestion and accident exposure and to ensure that product is delivered in advance of normal business hours. In fact, the midnight to 5:00 am time window is often the *ideal* time to make truck deliveries because traffic, congestion and accident exposure is reduced. The changes to the restart fly in the face of long-standing government and industry initiatives to move traffic to off-peak hours. They would force a shift in a significant portion of truck trips into peak traffic and business hours and inhibit our ability to schedule deliveries in the most productive manner. The result would be reduced operating efficiency and negative impacts on safety, congestion and air quality.

Due to concern over the impact of the changes to the restart, Congress required DOT to conduct a field study of the changes as a part of the MAP-21 legislation passed last year. That study was supposed to be completed by March 31 of this year but is just now getting started. Why would FMCSA not wait until that study is complete before implementing any changes?

The requirement that drivers take a minimum 30-minute break after no longer than eight hours on-duty before they can drive again is also problematic for store-delivery operations. While such a rule may be appropriate for long-haul drivers, it makes little sense for drivers who spend only a portion of their time driving with the rest spent stocking shelves or in other non-driving duties.

Whatever salutary effect the break rule may have on fatigue as it relates to long-haul driving, we have seen no evidence that this is the case when it comes to intermittent driving punctuated by non-driving activities. As noted above, drivers in our industry are typically engaged in short-haul retail delivery activities and return to the same place of business each day. They spend a large portion of their workday in non-driving activities such as unloading, stacking shelves and in sales operations at multiple locations. The bulk of fatigue research on commercial drivers addresses the effects on over-the-road driving. There is little evidence to suggest fatigue as a safety issue in the short haul segment. FMCSA has in the past freely acknowledged this point, admitting that "fatigue may be less problematic for local/short haul drivers." 68 *Federal Register* at 22492 and that "the fraction of crashes attributable to fatigue is considerably larger" for the long-haul trucking industry than for short-haul carriers, *id.* at 22497.

FMCSA claims that costs resulting from productivity losses (which we estimate to be in the neighborhood of 3-4% based on a recent Wells-Fargo Securities study) will be more than offset by the rule's health and safety benefits. A recent study by the American Trucking Research Institute, the research arm of the American Trucking Associations, calls these assumptions into question, finding the Agency's assessment "fundamentally flawed and unreliable." In addition, the Agency's claim that the 30-minute break provision will significantly improve driver health and longevity is highly speculative at best.

Finally, it is evident from favorable crash statistics that the rules in place today have not compromised safety. Truck-involved fatalities have actually dropped by 25 percent since 2003 when the main structure of the current rules was established.

We add our voice to those who have thanked this Subcommittee and the full Transportation and Infrastructure Committee for your leadership on this important issue. Earlier this year the Committee leadership very reasonably requested that FMCSA delay the implementation date pending a decision by the U.S. Court of Appeals for the District on litigation (which SFA is a party to) challenging the December 2011 changes. It simply makes no sense to proceed with the costly training and other preparation for the implementation of rules that may need to be revised.

We recognize the hour is late. Nonetheless SFA urges this Subcommittee and Congress to use whatever means it may have at its disposal to abrogate or at least delay the July 1 implementation date. Why the Agency is so firmly committed to this timeframe in the face of high potential costs, elusive safety benefits, inadequate supportive research and unresolved litigation remains a mystery. FMCSA should withdraw this rule unless and until there is sound data to support any changes.

○