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WRONG WAY: THE IMPACT OF FMCSA'S HOURS OF SERVICE REGULATION ON SMALL BUSINESSES

HEARING

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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WRONG WAY: THE IMPACT OF FMCSA'S HOURS OF SERVICE REGULATION ON SMALL BUSINESSES

THURSDAY, NOVEMBER 21, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Richard Hanna [chairman of the subcommittee] presiding.

Present: Representatives Hanna, Tipton, Huelskamp, Rice, Meng, and Clarke.

Chairman HANNA. I would like to thank today's witnesses for appearing before the Committee today to discuss the effects of the Federal Motor Carrier Safety Administration's recently enacted Hours-of-Service regulation on Small Business. Before I read the rest of my statement, I would like to thank the FMCSA administrator, Ann Ferro for being here. While we may disagree deeply on this issue, I always appreciate how forthcoming you have been, and it is kind of you to be here.

On July 1, 2013, the FMCSA enacted its new rule of Hours of Service rule for Commercial Drivers. Among the rule's many provisions, the revised 34-hour restart requirements have caused the most damage to the integrity of the rulemaking process and our nation's economy, particularly small businesses. Whether it is a small carrier transporting goods to the West Coast or a local grocery store awaiting a delivery shipment, when truckers are slowed, small businesses suffer. The Small Business Committee is deeply concerned about the impact of these new regulations on small businesses.

The Moving Ahead for Progress, MAP 21, required the FMCSA to conduct a statistically valid field study on the then-proposed 34-hour restart provision to measure the effects of the proposed rule on both large and small trucking operators. This study was due to Congress by September 30, 2013. It has not yet been delivered.

Under the MAP–21 provisions, Congress intended to have the study completed before the enactment of the new rule; however, even with the field study unfinished, the FMCSA finalized and enacted these untested new Hours-of-Service regulations.

Since July, small businesses, workers, and consumers across America have raised serious concerns about the restrictive 34-hour restart provisions of the rule which went into effect without being

backed by solid data, research, or a representative sample of the trucking industry.

While the FMCSA estimate that the new rule would cost truckers less than one percent of revenue per year and impacted less than 15 percent of commercial drivers, the trucking industry, estimates that the Hours-of-Service rule, cost $376 million annually. By any measure, this is a large sum of money and costs jobs.

In fact, the latest American Transportation Research Institute (ATRI) survey of commercial drivers found that nearly 70 percent have lost pay since the enactment of the rule. The survey also found that 80 percent of carriers are experiencing a loss in productivity.

The trucking industry is a key link in the small business supply chain. Not only are many trucking companies small businesses, but also nearly every type of small business in our country—food, logging, cement, retail, apparel, asphalt—depends on efficient, on-time, reliable trucking to sell, move, and use their goods.

Most disturbingly, there is a case to be made that the rule does not only cause economic harm, but may also make our roads less safe.

In the past, when drivers completed the 60- or 70-hour work week, he or she would need to spend 34 hours not driving to reset their week clock to zero hours. Now, the restart time must include drivers resetting for two consecutive periods between 1 AM and 5 AM.

The new rule therefore compels some truckers to stop driving by 7 PM in order to take the most advantage for the restart and begin driving again at 5 AM two days later. Commercial motor vehicle drivers often drive at night, both as a matter of necessity and convenience. The FMCSA, in effect, is pushing truckers onto the road at an earlier time in the day during morning and evening rush hours, slowing them down and prompting safety concerns.

I look forward to hearing more about the new rules of service and how they have affected small businesses across America, and I want to again express to my appreciation to Administrator Ann Ferro for appearing today.

I also want to take just a moment. This is a letter that I received the day before yesterday from the Prospect Transportation Company, a woman-owned business, been in business I think since the 1950s or before, and I will try to get to the meat of it here. She says, "Unfortunately, the 34-hour restart provision's specific requirement of two periods of off between 1 AM and 5 AM has taken away the quality of life, reduced the productivity, as well as disrupted the drivers' normal sleep schedule and has done nothing to show its improved safety."

And I will give you a copy of this letter and I submit it for the record.

Ms. MENG. Thank you, Mr. Chairman.

With more than $600 billion in revenue in 2012, the trucking sector is the backbone of our nation's economy. Employing nearly seven million individuals, it is essential to the success of America's companies that depend on the timely delivery of their goods to customers around the globe, and not surprisingly, like so many other industries, the trucking industry is dominated by small businesses.

In fact, more than 97 percent of trucking companies maintain fleets with fewer than 20 trucks.

Central to the performance of this industry is its ability to operate in a safe manner for its employees, its consumers, and the public that shares the road. On average, truck crashes are responsible for nearly 4,000 deaths and 100,000 injuries every year. In an attempt to reduce these accidents caused by sleep deprivation, the Federal government has been regulating hours of service for truck drivers since 1937.

These rules have gone through a number of changes over the years in responses to evolving research on driver fatigue and traffic-related accident patterns. This July, after years of lawsuits and debate by industry participants and public safety advocates, the newest version of these rules went into effect. These new changes maintain the maximum driving limit at 11 hours but require that it take place within a 14-hour period. Drivers are now limited to one 34-hour restart in a seven day period and required to take periodic 30-minute breaks. Such provisions were included to ensure that drivers were better rested when they are behind the wheel. Taken as a whole, the new rules represent a significant change in how and when truckers will be able to operate.

From a public safety perspective, many have suggested that the rule falls short and does not go far enough to address driver fatigue. By not reducing the 11-hour driving limit, some believe that the rule will not be effective in reducing driver fatigue. Similarly, the 34-hour start rule could be used in a manner that would result in operators being able to drive more hours than before. Such outcomes could lead to more tired drivers on the road and adversely impact highway safety.

From the industry perspective, we continue to hear that the rules are costly and burdensome. A recent study by the American Transportation Research Institute found that the changes FMCSA made to the restart requirement will ultimately have a net annual cost of up to $376 million, rather than the net benefit of $133 million the agency claimed. In addition, the ATRI found that the rule has led to a productivity decrease of 3 to 4 percent. This has led many carriers to have to spend more to achieve the same level of performance as they did prior to the rule's implementation.

Finally, research has indicated that the new rule has increased drivers' dissatisfaction during a time when there is driver shortage and led to no changes in safety performance. Such outcomes call into question the justification for the rule.

Taken as a whole, the rule reduces driver flexibility. This tradeoff will undoubtedly affect drivers as weather delays and the uncertainty associated with loading and unloading often require them to be highly adaptable. By requiring mandatory breaks and two consecutive nights at home, operators will be less able to tailor their schedules to the constantly changing factors that they confront each week.

Today, we will examine all of these claims and how the Hours-of-Service rules are affecting small trucking companies, as well as their potential to reduce traffic accidents. As with so many rules, analysis done prior to implementation can only tell us so much.

Time will only show what the true effect of this rule will be on the industry and on public safety.

With this in mind, it is imperative that Congress continue to oversee the rule's implementation. Doing so will help ensure that new regulations are striking the proper balance between promoting safer roads with the economic impact on small trucking companies and their drivers. Overall, it is important that we seek to achieve our policy objectives without unnecessarily burdening those small businesses that are subject to these regulations.

In advance of the testimony, I want to thank Administrator Ferro and all our witnesses today who traveled here for both their participation and insights into this important topic.

Thank you, and I yield back.

Chairman HANNA. Thank you.

If Committee members have opening statements, they may submit them for the record.

You are familiar with how the clocks work. We want to hear from you so, you know.

Administrator Ferro, you may begin.

STATEMENT OF ANNE FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Ms. FERRO. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member Meng, thank you very much for this opportunity today to talk about the hours-of-service rule and its impact on small business.

The top priority of FMCSA is safety—reducing fatalities and injuries due to large truck and bus crashes. According to NHTSA's most recent report, in 2012, nearly 4,000 people were killed in crashes involving trucks. That is a 4 percent increase over 2011, which was actually a higher number than 2010. Truck drivers work some of the toughest and longest hours of any business, and in some of the most difficult operating conditions. It is a demanding and unappreciated job, certainly under-appreciated.

FMCSA's changes to the hours-of-service rules will help truck drivers avoid the long-term health problems that can be caused by these demanding schedules, and will also help prevent an estimated 1,400 crashes, 560 injuries, and save 19 lives a year by reducing the risk of fatigue-related crashes. These 19 lives could be your community's kindergarten class, could be your son's baseball team, could be members of your extended family.

This rule was initiated by congressional requirements that date back to the 1995 Interstate Commerce Commission Termination Act. After a series of lawsuits, FMCSA developed the current rule through solid data and an unprecedented level of transparency, soliciting feedback from thousands of stakeholders, including small business owners, drivers, shippers, safety advocates, law enforcement, and trucking companies. Recently, the D.C. Circuit Court largely upheld the rule.

Critics have focused their attention on the change we made to the 34-hour restart provision. A restart allows a driver to work more than the maximum limits of 60 hours in seven days or 70 hours in eight days. The rule limits that restart, and it is a vol-

untary restart, to once a week, which does reduce a driver's work week to 70 hours on average from the 80 hours that were potentially available under the prior rule. Again, a restart is a voluntary tool that only a small percentage of drivers really need to use. Someone driving 60 hours or less does not ever need to use that restart.

DOT began examining the possibility of a restart as early as 1998 when we first assembled an expert panel to reveal the sleep science associated with excessively long work periods. Prior to 2003, there was no restart, meaning drivers found themselves many times a long way from home, waiting to have the hours to be able to drive again. That 1998 panel recommended "a continuous recovery time of sufficient length, to include at least two midnight to 6 AM uninterrupted time periods." In other words, the Washington State University study that is at issue today, confirmed over a decade of sleep research relating to the effects of fatigue and CMV operations. But we still sought extensive public input on the WSU study, and in fact, through that input, we were convinced to tighten up that period of off-duty and rest time to include instead of midnight to 6 AM, a restart that included a period of 1 AM to 5 AM, with no loss in safety.

Many critics want us to return to the restart provision that was implemented in 2003. It is important for you to know that that restart provision that the courts criticized when they threw out the 2003 rule, is the same restart that had only one lab study, a lab study with fewer participants than anything we did. In fact, a lab study that was carried out by ATA through a congressional earmark.

This rule will help save the trucking industry, and actually our nation, the public at large, an estimated $87 billion a year in the costs and implications of crashes. In fact, even ATA's own research is failing to show a significant impact on a driver's hours. Their recent ATRI report that was released shows that less than a third of 1 percent of drivers' logbooks actually changed after the rule went into effect July 1. Even we estimated a larger impact than that. The only data they have produced to show the drivers' schedules did change was through that survey, but their logbook examples and their logbook analysis showed a very small change.

Bringing the restart research full circle, I am happy to report that the agency has been very diligent in pressing ahead as soon as MAP–21 requirements and the congressional mandate for a field study on the 34-hour restart get underway. We have completed the data collection, and I am looking forward to sharing our findings with Congress as soon as the full report is complete.

I want to draw on my experience, my very recent experience and a really treasured one, where I had the opportunity to ride along for two days with Leo Wilkins, a professional owner-operator. My time with this remarkable small business owner helped me better understand the challenges truck drivers face and to experience firsthand what the agency's safety rules mean to a driver's daily life. I also saw how the shipper and receiver drive the unpredictability that plagues the trucking industry. Exempt from the Fair Labor Standards Act for more than seven decades, truck drivers, by and large, are paid by the mile or by the load, and the hours

a driver might spend waiting for a load could cost that driver a day's pay. Driver pay and extreme loading dock delays have a significant impact on a driver's ability to be efficient, professional, and safe. In short, uncompensated delays force drivers to press legal and physical limits to capture that day's pay. The logistics industry gets this time free on the backs of drivers and the backs of small business. Uncompensated detention time needs your attention because what makes the job better often makes the job and the driver safer.

Keeping people safe is not a choice. It must be achieved with a mix of effective programs and enforcement that sets a level playing field where companies that put safety first are not competing against folk that are cutting corners or pushing limits.

Saving lives is FMCSA's fundamental mission. It is our solemn obligation to the public, and again, I thank you for inviting me to speak on this topic today and look forward to your questions.

Chairman HANNA. Thank you. Thank you very much.

I am going to ask Mr. Rice to——

Mr. RICE. Yes, Ms. Ferro, thank you again for meeting with us a couple weeks ago, and thank you for being here today. I know that it is not the easiest position to be faced with all these questions, but you know, there are a lot of concerns. We want to make sure that we do this right. Everybody is concerned with safety. Everybody is also concerned with efficiency and we do not want to take people—their ability to do business away from them. So we do not want to insert the government into their lives any more than we need to.

The rule that was in effect before, you say it was put into effect in 2003?

Ms. FERRO. That is correct.

Mr. RICE. And what is the short version difference between what is proposed today and the 2003 rule?

Ms. FERRO. Sure. Three key differences.

The 34-hour restart is retained. Its use is limited to once in a week or once in 168 hours. That restart needs to include two periods between 1 AM and 5 AM, two periods of off-duty time in order to ensure the driver gets that kind of recovery sleep they need. And it incorporates a 30-minute break during the driver's workday, sometime before any driving occurs after the eighth hour on duty, time anywhere within that eight.

Mr. RICE. What was the experience, the actual effect of the 2003 rule on injuries, fatalities, accidents, so forth?

Ms. FERRO. I would say that that question is still under analysis. We generally gauge the impact of our rules and the impact of our work within the mix of strategies that really goes into achieving safety on our highways. And while the fatal crash rate was I think collectively and with the economy we successfully lowered it to its lowest point in history in 2009, it has steadily climbed a few percent each year, and that is really the fatal and injury crash rate relating to truck and bus crashes.

Mr. RICE. Now, today, is it not 20, 30 percent below what it was 15 years ago?

Ms. FERRO. That is correct. That is correct.

Mr. RICE. Okay. So it is way down?

Ms. FERRO. We are very pleased. And we continue to drive it. Drive it, drive it, drive it lower to the extent feasible.

Mr. RICE. All right. And in this study that was done, how many people participated in that?

Ms. FERRO. Are you referring to the current study or the——

Mr. RICE. The one that has been done but it is not completed. How many people were in that?

Ms. FERRO. Oh, on our field study we have got 106 drivers participating. Yeah, a good mix of industry types.

Mr. RICE. And in the Washington study, how many were in that?

Ms. FERRO. Well, I will need to provide the detail for the record, but there were at least, I believe, 9 to 12 in the first round and perhaps 15. It is a two-phase study. So combined I think it was close to 18 or 20 subjects.

Mr. RICE. All right. Today, how many trucking fatalities from trucking accidents are there average in America today?

Ms. FERRO. Again, NHTSA just released its most recent data, what they call the FARS report, and that identified just about 4,000 fatalities related to truck-related crashes. That excludes the bus piece.

Mr. RICE. And your best estimate of the effect on that if these new rules—as these new rules are implemented, what is your best estimate?

Ms. FERRO. The analysis we incorporated into the rule development is 19 lives per year are expected to be saved from this rule.

Mr. RICE. Which is, you know, less than a half percent.

Ms. FERRO. Nineteen lives. Each life, each one of those lives is very significant.

Mr. RICE. Actually, it is such a small percentage that we will not even know if these rules are having any effect, will we?

Ms. FERRO. The individuals whose lives are saved will know every day. I know it is tough to prove a negative.

Mr. RICE. It is nice to say that and it tugs at heartstrings, but the truth is that that sample is so small that you will not know whether this rule has any effect or not.

Ms. FERRO. I disagree. Every life is precious. One life lost is—you may think that sounds trifle, but I disagree.

Mr. RICE. My point is we do not know if it is going to save any lives.

Ms. FERRO. Well, we have got 1,400 crashes that are expected to be reduced, 450 injuries that are expected to be avoided, 19 lives saved every year. It adds up.

Mr. RICE. The same is so small that we will not know that this rule has any effect.

Ms. FERRO. Well, it is not a sample. Those are actual lives. And I will absolutely continue to disagree vehemently on that point with you. I think you also uphold the preciousness of each life.

Mr. RICE. Oh, I do, but where I disagree with you is I do not think that you know, and you cannot tell from your study which is not complete, whether it is going to save one life or not. But we do know that it is going to have a tremendous economic effect on the trucking industry.

Did your study in its analysis of these 19 lives that could be saved, did it take into account the fact that truckers are now going to be moved into rush hour traffic? That the driving hours are going to be forced into rush hour traffic because you are taking them off of the highway at the times when they can drive with no traffic?

Ms. FERRO. You know, it is so interesting, and I think that is part of the——

Mr. RICE. Just a yes or no. Did it——

Ms. FERRO. Let me say no. This rule does not put trucks in traffic any more than they already are in traffic.

Mr. RICE. Okay.

Ms. FERRO. Trucks are——

Mr. RICE. So you are saying your study did not take that into account?

Ms. FERRO. The study accounted for the impact and the cost on industry of this rule upwards of half a billion dollars. We absolutely identified it.

Mr. RICE. I am not talking about the cost. What I am asking you is did your study take into account the fact that under this rule truckers are going to be taken off the road in early morning hours when they want to drive when there is no traffic and it is safer and forced to drive in hours—in rush hour where it is going to be slower and it is going to be more dangerous? Did it take that into account?

Ms. FERRO. Absolutely. The reg eval identified that roughly 7 percent of the 3 million drivers out there operating that are affected by this rule are impacted by that one-time a week use, 1 AM to 5 AM inclusion, 34-hour restart, 7 percent.

Mr. RICE. You still have not answered my question.

Ms. FERRO. Yes, but what my point is, 93 percent of all operations do not change. They continue to operate. Trucks continue to operate overnight schedules.

Mr. RICE. Mr. Chairman, are we going to do another round of questions? I see am over my time, but are we going to do another round?

Chairman HANNA. Yes.

Mr. RICE. Okay, thank you.

Chairman HANNA. Ms. Clarke.

Ms. CLARKE. Thank you, Mr. Chairman. And thank you, Ranking Member.

I have no questions at this time. Thank you.

Chairman HANNA. Mr. Tipton.

Mr. TIPTON. Thanks for taking the time to be here. I appreciate, and I think everyone on this panel shares your patience. It is something as Americans that we all value every life. But I was curious. In the opening part of your statement you said the purpose of this is actually safety, and you attributed 4,000 people have been killed in crashes involving trucks. Does your data show that all 4,000 crashes were caused by the truck or was it caused by the other driver in the crash?

Ms. FERRO. Our data does not include an analysis of crash causation. The last time we were able to do that was——

Mr. TIPTON. So you are taking the leap that it was the truck driver's fault. You do not know.

Ms. FERRO. Out of 4,000 crashes, we certainly know that——

Mr. TIPTON. You do?

Ms. FERRO. Absolutely.

Mr. TIPTON. It is the truck driver's fault?

Ms. FERRO. I was about to complete the response. In 2003, we carried out a thing called the Large Truck Crash Causation Study, a very important study where we analyzed individual crashes to determine causation factors, and that analysis results in data that demonstrates up to 40 percent of fatal crashes are in the hands of the truck driver. Actually, I am afraid that is closer to 35 percent, and 45 percent injury crashes are related to actions by the truck driver. So that is the most recent——

Mr. TIPTON. Far less than half. I just wanted to kind of clarify because——

Ms. FERRO. Yeah. Yeah, absolutely. That is the most——

Mr. TIPTON.—you were intimating in your testimony that this was caused by trucks. You are now stating less than 50 percent of this was actually caused by the truck drivers.

Ms. FERRO. No, no, no. I am always very careful to say 4,000 crahses—4,000 deaths in crashes relating or involving trucks and buses. It does not attribute fault. And in this case, the rule estimates 19 lives saved relating to truck-caused crashes.

Mr. TIPTON. I think that is just where we want to be very cautious that you do not overreach in terms of trying to put in a regulatory process that when we talk about families, some of these truck drivers are trying to provide for their families. They are paid by the mile, and when you are shutting them down and they are not able to actually produce and generate revenue for those families, there are going to be some real impacts.

I am curious, how many logs did you look at in terms of what drivers in terms of trying to develop a rule?

Ms. FERRO. Well, I will provide that for the record. We certainly included a log survey, driver surveys, as well as logbook analysis in our rulebook development.

Mr. TIPTON. Okay. So you do not have any idea of how many logs you actually looked at.

Ms. FERRO. We look at logs every day across the country.

Mr. TIPTON. You look at logs——

Ms. FERRO. But in terms of an actual study, unbiased study and a very clear study, that is actually documented in the reg eval.

Mr. TIPTON. I believe by your estimation, 15 percent of truck drivers operate at the maximum weekly. Is that correct?

Ms. FERRO. Yes. In our estimation, it was 15 percent of the driving population impacted by this rule because of the nature of their operations being overnight and on the road.

Mr. TIPTON. How is this going to impact the other 85 percent?

Ms. FERRO. Actually, insignificant to none.

Mr. TIPTON. Insignificant to none?

Ms. FERRO. That is correct.

Mr. TIPTON. So are they going to be allowed to use the same 34-hour restart?

Ms. FERRO. They may. It is voluntary. A driver operating 60 hours or less does not need the restart.

Mr. TIPTON. Does the rule imply that?

Ms. FERRO. Oh, that has been a longstanding rule.

Mr. TIPTON. That is a longstanding rule.

Ms. FERRO. That did not require anything new.

Mr. TIPTON. Okay.

Ms. FERRO. Yeah.

Mr. TIPTON. Okay, Administrator, you say in past research you have found 240,000 drivers work an average of 70 hours or more per week. Can you tell me how your 2007 field study shows that drivers work that much time on average each week?

Ms. FERRO. I will certainly follow that up with—on the record with that analysis. Yes.

Mr. TIPTON. Okay. If you can follow up and give us some written testimony——

Ms. FERRO. Absolutely.

Mr. TIPTON.—we would certainly appreciate that.

And you stated that your restart study will be delayed until next spring. I assume that is in part due to your peer review process?

Ms. FERRO. It is under review as we speak. That is correct.

Mr. TIPTON. Okay. Did you have your 2011 Hours-of-Service Regulatory Impact Study peer reviewed?

Ms. FERRO. Generally, it receives extensive review through the Notice and Comment Rulemaking Process.

Mr. TIPTON. Generally, is it going to have peer review is my question?

Ms. FERRO. Well, that is completed. The studies that are incorporated and used in that analysis are peer reviewed studies.

Mr. TIPTON. And that is completed?

Ms. FERRO. That is correct. Yes.

Mr. TIPTON. Good.

You know, I would like to shift a little bit, if I may, and this is going to go over actually into some oil field work. Was this rule a restatement or a revision?

Ms. FERRO. Which rule is that, sir?

Mr. TIPTON. Okay, this in regards to the FMCSA 1962 guidance in regards to off-duty for the Statement of Guidance on CMV truck drivers subject to the OHS exemptions under 40 CFR.

Ms. FERRO. Yes, Congressman, what we refer to generally as the oil field exemption is something that the ICC put in place over 50 years ago, and there are two pieces to it. The first provides any trucking operation or driver servicing an oil field has certain special treatment under the hours-of-service rule. They are allowed a 24-hour restart regardless, and that is longstanding. That guidance has not been in dispute.

Mr. TIPTON. And I just want to clarify for me was this a revision of the rule——

Ms. FERRO. No.

Mr. TIPTON.—or was it a restatement of the rule?

Ms. FERRO. No, the second piece relates to specialized equipment and those eligible for certain off-duty time accounting. It was not a change. It was a restatement of the guidance that has been in place for 50 years.

Mr. TIPTON. That is a restatement. Did that go through the formal rulemaking process?

Ms. FERRO. It went through the formal notice and comment process. It is not a rulemaking.

Mr. TIPTON. It is not a rulemaking.

Ms. FERRO. It is not a rulemaking. No.

Mr. TIPTON. Is it having the impact of a rule?

Ms. FERRO. I believe it is not having the impact of a rule. It is guidance that has been on the books for 50 years. The origins of the restatement were the various ways, the differences in the manner in which it was being enforced across the country as our country's energy independence has really expanded and the development and exploration has expanded. Companies who were operating in four or five regions at a time noticed that it was being enforced by local officers differently, and they said can you please get some clarification out there. That is what we did. It prompted some real concerns about those who interpreted it differently. But again, we restated the guidance, and we have worked very intensely with industry to ensure that they understand there is an exemption request for that specialized equipment that fits in a gray area and that they need to go ahead and submit their requests for consideration and for public notice. And that process has begun in some cases.

Mr. TIPTON. Okay. I am out of time but I think we are going to have a second round. We will follow up a little bit on that. Thank you.

Ms. FERRO. Okay. Okay. You are welcome.

Chairman HANNA. Mr. Huelskamp.

Mr. HUELSKAMP. Thank you, Mr. Chairman. I appreciate having this hearing today. This is an important issue to a number of my constituents. I receive certainly complaints about this and a couple questions. And I am sorry, I came late. To pronounce your last name, Ms. Ferro?

Ms. FERRO. Ferro, that is correct.

Mr. HUELSKAMP. Okay. Well, thank you, Ms. Ferro. I appreciate that.

Ms. FERRO. Certainly.

Mr. HUELSKAMP. And I appreciate your comment "all life is precious." That is actually not the official line of the administration, and I would love to visit with you further about that on a number of life issues. But I want to ask a little more follow-up questions of my colleague from Colorado as far as the MAP study is required under the law.

Was that required before you could finalize the restart rule or was that just something you could do whenever you decided it needed to be complete?

Ms. FERRO. The MAP-21 field study of our 34-hour restart provisions was something that Congress said complete. It did not connect it to the effective date of the rule. And the rule, of course at the time, was already—had already been finalized for over a year and published for just about a year.

Mr. HUELSKAMP. And it was being enforced at the time?

Ms. FERRO. Well, it took effect July 1 of last year. Of this year, pardon me, July 1 of this year. Time flies. We are already in December.

Mr. HUELSKAMP. And there is no way you could get it done in 12 months to have it completed?

Ms. FERRO. No, no, no. The mandate, the MAP–21 mandate was something that we took on immediately as soon as that bill was signed to begin identifying volunteers, companies that would volunteer to participate in this kind of a field study.

Mr. HUELSKAMP. I understand. But that is 16 months later and you are telling me it is still not complete.

Ms. FERRO. Yeah. Our data collection was completed this summer and the report itself is now under peer review.

Mr. HUELSKAMP. So when do you actually expect to complete that study and so folks outside the agency can actually review the study? There are some questions about previous studies from your agency.

Ms. FERRO. Yeah. Well, I would like to say the upcoming months. I know one of the members just said in spring. Ideally, we will have it to you in the first quarter of the next calendar year.

Mr. HUELSKAMP. Do you think it is effective to start the rule and then proceed with a study to determine whether it is really needed or not?

Ms. FERRO. Well, again, the lab study on which the rule provision that is in question today is based is a very solid study, a two-faced study, again, based on over a decade of sleep science analysis and discussion on this topic.

Mr. HUELSKAMP. But the data on the truck crashes, how old is the data that is being used as the basis for this?

Ms. FERRO. Well, we certainly used the Large Truck Crash Causation data.

Mr. HUELSKAMP. And when is that from? Is that not a decade old?

Ms. FERRO. Yes, that is correct.

Mr. HUELSKAMP. Ten year old data and you still take 16 months, still do not have this study done using 10-year-old data. Now, in that 10-year-old data from, again 2003, did it not presume—the baseline was I think 434,000 crashes per year. Is that correct?

Ms. FERRO. Yes. And let us separate two separate things. The field study is not relying on any old data. The field study is relying on the conditions established in the congressional mandate under MAP–21. The 450,000 is a number that we used in some of the earlier research on the hours-of-service rule. That is correct.

Mr. HUELSKAMP. And so the crash data you are using though is 10 years old?

Ms. FERRO. Yes, and you know, we have carried out an analysis moving forward using more current numbers that were not in existence at the time we were developing——

Mr. HUELSKAMP. And is this analysis public?

Ms. FERRO. Actually, we just completed it based on the criticism that came out I think this week from one of the trade associations.

Mr. HUELSKAMP. The analysis, is it public? Is it published, ma'am, or is it still internal?

Ms. FERRO. I will certainly make it public for the record.

Mr. HUELSKAMP. So in answer it has not been public as of today?

Ms. FERRO. No, again, we just got the claim yesterday from one of the——

Mr. HUELSKAMP. Well, no, it has taken you 10 years to update. I understand that takes time. You are using 10-year-old data. We have a 40 percent decrease in the crashes as part of this, and then it has taken you 16 months. You are still not done with the study. You still have not released it at all. It is still internal. You do not know whether it is even—well, you are saying it is not even going to be released this year, sometime in the spring, and then you come here and tell us you know exactly what the impact is when you do not have the study, it has not been peer reviewed, obviously. It has not been made public. I mean, this is actually what upsets my constituents. They understand the desire for safety, but they want it to be based on science.

Ms. FERRO. That is right.

Mr. HUELSKAMP. And ability to actually work with folks that are in the field that do it every day. That drive a truck every day. And they are telling me this is not working and it is not making sense. There have been independent studies that have confirmed that in my opinion. It is costing us money and I think it is hurting particularly our independents that are out there driving.

And one last thing, I see another issue, a National Pork Producers Council had proposed an exemption. Where is that at?

Ms. FERRO. That is under consideration. And let us put that in two pieces but I want to quickly back up and remind you again you are combining data in two separate studies. The Washington State University Lab Study on which the 34-hour restart is based is a two-phase substantive lab study peer reviewed and absolutely solid outcome based on decades of sleep science research, unrelated to the crash data that you were referring to which was also part of the reg analysis, not part of the sleep science analysis.

With regard to the exemption request by the Pork Producer Council, yes, they in fact did submit a request for an exemption from the 30-minute break, having nothing to do with the restart. The agency, recognizing that last year's summer heat were extreme, I granted a one-time 90-day waiver. I have the authority to do that so over the summer, from the time—July 1 of this year, the pork producers and the other livestock industries they were representing, were operating, had a break from the 30-minute requirement. They also submitted an exemption request for a full two-year exemption from the 30-minute break. That is under review today.

Mr. HUELSKAMP. And do you anticipate granting that or what is your estimation?

Ms. FERRO. I will wait until, again, I agree with you. We are very focused on research data-driven decisions in a very open process, and so I will let the data and the research——

Mr. HUELSKAMP. But the exemption request that you did grant, that was based on data?

Ms. FERRO. That was a waiver request. That was not an exemption request. It was a 90-day waiver recognizing the impact that

heat has on livestock and the extreme heats we had the summer before.

Mr. HUELSKAMP. Well, there are extreme heats every summer I will note as well, ma'am. There is extreme cold as well. And as far as animal welfare, that is a very serious issue. And so I appreciate you continuing to look at that. And I would ask you to extend that as well.

And I yield back, Mr. Chairman.

Ms. FERRO. Understood. Thank you.

Chairman HANNA. Thank you.

What is clear to me is that this is a philosophy, an ideology, but not a solution to a problem. If you are indeed a data-driven organization, why is it that the study simply—what was the rush to this? And I agree that the 19 lives, that percentage is conjecture. And there is no one here, and I find it disquieting that you would even think anybody here would not consider each life important. That is not the point. The point is the cost-benefit analysis associated with this.

In your testimony you identified the economic benefit of the restart study rather than a benefit. A recent study found that the new restart rules have no net benefit. It will cost the industry up to 376 million, which you have heard. Additionally, a report compiled by the American Transportation Research Institute identified the changes to the HOS rule will have an operational impact on drivers' wages over the road totaling $1.6 billion to $3.9 billion in annualized losses. And what do you say to somebody actually in the business who did not spend two days in a truck but spent a lifetime in a truck when she says the 1 AM to 5 AM is taking away the quality of life, reduced productivity, as well as disruption of the drivers' normal sleep schedules, circadian rhythm, et cetera? And yet, you are supposed to be a data-driven organization. You know, a lot of this conversation is not about the 34-hour rule. Nobody is objecting to that, but everyone, myself and most people, I think, are objecting to the process and the arrogance associated with it. And I do not mean that personally, I mean that in general, that it is inflicting pain on people and yet all we are really asking is that you prove your point.

So why did you rush to this, if you agree that you did?

Ms. FERRO. We absolutely did not. So I certainly do not agree to that last point. There is no rushing involved. I think as the ranking member indicated in her opening statement, the hours-of-service conditions under which drivers operate are, and will continue to be, hotly discussed because it impacts, absolutely, that driver's quality of life, that individual's ability to derive strong and successful and life-sustaining income, and it impacts small businesses. We recognize the impact on small business and on full aspects of the trucking industry of this rule and our analysis. It absolutely is data-based, research-based, fully vetted, unprecedented level of transparency throughout the development of this rule process which we started in 2010. So in terms of being either theory-based or philosophy or arrogant——

Chairman HANNA. But how can you——

Ms. FERRO.—we have been as open——

Chairman HANNA. Well, how can you say that when you do not take into consideration the change in the nature of the drivers' workload, that you have actually through this process pushed someone into hours that are more convenient, less capable of moving around traffic because it is more congested, and yet you said yourself earlier you did not take that into consideration. So how is that a holistic study in any way when that very thing is something that everybody is talking about? And why is the agency so numb to the industry whose number one concern is safety? There is not a person I have spoken to about this issue that does not agree that safety is the most important issue, especially in our very litigious society and the cost of workman's comp, et cetera. And yet here we sit, fighting back on a rule that the administration did not even see fit to finish a study to at least patronize us? That is where I come up with the term arrogance.

Ms. FERRO. Well, yeah. And I would deny both arrogance and numbness. We are as sensitized to this industry and drivers' conditions as any time in history when it comes to oversight of the truck industry. The fact, you know, when you start a rule and start a reg analysis, you look at the full population. Who is affected by it? Who comes under the oversight of this rule development itself and the hours-of-service rules? It is about three million drivers. And again, the hours-of-service rule itself that was put in place in 2003 has been litigated twice and a third time almost, so we really have only had uncertainty about this rule until today now that the Circuit Court has upheld the rule that we put in place and we finally got some certainty going forward. Again, it is a research- and data-driven rule.

Looking at, and part of that analysis in the rule development includes who is affected by what changes, and what is the cost of that and what are the safety benefits. And we weigh all of that together.

Congressman Rice earlier said, you know, "Who is not affected by it?" Well, again, almost 85 percent of the driving population continues to operate because the vast majority in ATA's own submittal during the rulemaking process, the vast majority of their members' drivers and drivers across the country run between 45 and 50 hours a week on average. They never need the restart.

Chairman HANNA. No, but that does not necessarily justify the restart for the other percentage.

Ms. FERRO. You know, there are always tradeoffs and there are people impacted by this rule. There are people who were impacted by an 80-hour week, week after week after week. That is double time. That is what could be averaged under the prior rule without this restart. That has a level of health impact on drivers. Chronic fatigue has an impact on blood pressure, has an impact on diabetes.

Chairman HANNA. But then how do you respond to Prospect Transportation, the lady whose letter I read. What do you say to her when she is telling you just the opposite and she actually sees these people every day.

Ms. FERRO. Yeah.

Chairman HANNA. And I do not want to sit here and say she is being disingenuous. I believe these people. And frankly, they are

okay with the 34-hour rule from 2003. They are comfortable. They have learned to live with it, and you said yourself, it has been litigated a couple of times. But they find this excessive, unproven, and Congress under MAP–21 did ask to have a study completed. It was supposed to be done—the last time we met it was supposed to be done I think September 30th. Now we are saying it is spring. I mean, how do you expect people to be comfortable, respectfully, with a decision that looks so—just the nature of it looks frankly sloppy?

Ms. FERRO. Yeah, I would like, with your agreement, of course, I would like to follow up with your constituent and talk with her about how they are applying the rules. It is clear from the work, again, we have been on the radio several times every month since long before the enactment of this rule to, again, listen to drivers' questions. We are all across the country talking. We have got logbook examples on our website. I would very much like to follow up and find out how she is applying it because in many cases we are finding that there is a misunderstanding in this restart. So many drivers do not need it. They are telling their own safety managers they do not need it and safety managers saying, "Yes, you do." Because, again, it is a voluntary tool to reset a clock, but if the clock does not need resetting, you do not need to get into that condition.

Chairman HANNA. But a lot of people find themselves there.

I will yield to Ranking Member Meng. Thank you.

Ms. MENG. Thank you.

The number of people killed in large truck- and bus-related crashes has declined by about 29 percent between 2000 and 2011. What do you think was the main reason for this decline?

Ms. FERRO. It is a combination—again, safety comes about through very intense effort by a wide range of folks—by industry, by government—state, local, federal—by enforcement, by safety advocates, by the businesses that purchase the services of that trucking sector, and generally a recognition, again, that safety is a very solid bottom-line number when you have got safety as a top priority. And so together, technology investment, improved analysis of the carriers that are operating unsafely, and actions against them, tougher authorities that Congress has given us over the past few years, all of those efforts combined continue, and we will continue to work together to drive that number down and save lives.

Ms. MENG. How significant of a problem is driver fatigue amongst truckers today and what role does it continue to play in car crash, bus crash fatalities?

Ms. FERRO. Our analysis, both that we used in the rule, as well as what we have spoken to in many ways, comes about through several different datasets, including in a Large Truck Crash Causation Study. In our rule development and evaluation, we used a range from 7 percent to 13 percent and analyzed the costs and benefits using both pieces of data.

Ms. MENG. What research and data has FMCSA used to support this conclusion of, I am sorry, truck crash—this conclusion?

Ms. FERRO. The conclusion on the fatigue-rated research? Again, it goes back to the very individualized analysis of each of the crashes in that Large Truck Crash Causation Study. We have also carried out surveys of drivers. In the past, in one survey in

particular, a significant number and percentage of drivers, certainly better than 30 percent, identified that they did, in fact, drive tired and had had an experience of, you know, sort of a brief moment of sleep at the wheel. And that was through surveys. That was not pre-crash, but that was absolutely more than anecdotal.

Ms. MENG. Besides fatigue, are there any other factors that contribute to these types of crashes?

Ms. FERRO. There are a wide range of factors that contribute to crashes—speeding, aggressive lane changing, unsafe braking or other equipment, inadequate visibility, the actions of the passenger vehicle or other vehicle operating around and the need for that driver, the professional driver to take evasive action. There are a whole series. Weather. There are many contributors. But again, the more significant contributors, the highest contributor is going to be speed. And any other action that could contribute to the inability to respond quickly, such as fatigue, if someone is going too fast for conditions and they come across a line of traffic, is going to compound the result of that crash.

Ms. MENG. Thank you, I yield back.

Ms. FERRO. Thank you.

Chairman HANNA. How do you respond to the truckers in the room? I mean, basically, you are saying they are wrong and you are right; that the rule will help them. They do not think it does. According to a recent study survey of the CMV operations and carriers, more than 80 percent of the carriers report significant impact on their operations as a result of changes the agency has made to the 34-hour restart. You say it is 15 percent. You know, and how do you respond to criticisms from small business trucking operators, the new Hours-of-Service regulations actually increase fatigue? I am just——

Ms. FERRO. What do I say?

Chairman HANNA. Yeah, what do you say?

Ms. FERRO. Well, first I start by separating those two data points that you talked about—the 80 percent and the impact on income. The survey—there are two things that ATRI released this week which was part of the American Trucking Association. It included a logbook analysis that identified that less than a third of 1 percent of the drivers' logbooks showed any change in hours of operation pre-rule and post-July 1 of this year. So that was the sort of hard, just clear and cut data from logbooks. A separate piece that derived that 80 percent is a survey that is sort of one of those kind of vote early, vote often concepts, an online survey that they solicited their members to respond to. I would be happy to understand what is behind that survey. That is what I have not seen from them yet, but again, we take this very seriously. It is important to recognize that this rule and the prior hours-of-service rule does impact some drivers' pay, and it absolutely impacts small businesses. And in some cases, large businesses.

Detention time, inadequate compensation, 36 cents a mile for a driver running 70 miles a week is just unconscionable. That is the average pay.

Chairman HANNA. Well, you are not proposing—you are not sitting here telling people—I mean, that is the market. You know, that has got nothing to do with this issue. Why do you even men-

tion that? I mean, if you are going to criticize people for what they are paying, I can appreciate that, but that is not the point. We are saying that you are actually making it worse for the very people that you are saying you want to help.

Ms. FERRO. No, I mention it because the survey in question asked drivers about their pay and had it been impacted pre or post. So again, the logbook analysis says no change. Drivers being solicited, or whoever responded to the survey is saying big change in my income. So, and in terms of loss, so absolutely, it is very important to understand what is behind that data. We would be happy to look at it more closely and discuss it and provide our analysis for the record.

Chairman HANNA. Are you open to rolling this rule back and waiting till the survey?

Ms. FERRO. No, absolutely not. This rule is a solid rule. It has been upheld by the court. It is based on sound research. However, there continue to be and should continue to be a discussion about the hours of service and continued sensitivity to the challenges that a lack of predictability imposes on a driver in the context of a set of hours. And so we are pursuing a pilot project that combines the results of some split sleep research we did that we finished after this rule went into effect and the electronic logging device rule that we were all so eager to press forward on, but take advantage of those two pieces. We do not have to wait for the ELD rule to be complete—to analyze the benefits of trying to get towards this question of improved flexibility while maintaining our effective safety oversight.

Chairman HANNA. So if you find out you are wrong you are saying that you are open to changing it because if you are studying things but you have already enacted a rule, so I guess I find that a little odd.

Ms. FERRO. Well, I hope I can continue to explain to you how in fact it is absolutely to be expected and a solid approach that an agency drives a very transparent discussion on a rule that has this level of an effect on folks, on at least 15 percent of the driving population but not the other 85. Yeah.

Chairman HANNA. Mr. Rice.

Mr. RICE. Thank you, sir.

I have got information here in front of me. I guess this survey you are talking about is from the American Transportation Research Institute?

Ms. FERRO. Right.

Mr. RICE. So is it more than 80 percent of motor carriers surveyed had experienced productivity loss since the new rules went into effect, 67 percent of drivers report decreases in pay since the rules took effect, drivers' wages for all over-the-road drivers fell by a total of 1.6 billion to 3.9 billion in annualized loss? Do these findings concern you at all?

Ms. FERRO. Yeah, in fact, I was just speaking with the chairman about that. That is correct. And when you separate that data, again, as part of ATRI's work on this issue—they also analyzed drivers' logs and found that the drivers' logs, the hours they worked pre-July 1 and the hours they worked post-July 1 changed nary a bit, but a third of 1 percent.

Mr. RICE. So you are saying that you do not necessarily agree with the results of this study?

Ms. FERRO. Their survey, again, I would describe until I can see what the basis of it is, is sort of a vote early, vote often type of survey. I have no idea who actually was contributing that survey information.

Mr. RICE. All right. Now, this rule, does it apply to short-haul drivers?

Ms. FERRO. The 30-minute break requirement does not. The remainder of the rule certainly does.

Mr. RICE. Why does it not?

Ms. FERRO. The 30-minute break requirement?

Mr. RICE. Yeah.

Ms. FERRO. Again, the D.C. Circuit Court, as I said, upheld the majority of the substance of this rule but did strike down the element of the 30-minute break requirement on the short-haul industry.

Mr. RICE. Okay. So the court found that this rule was over-expansive at least in that respect?

Ms. FERRO. That is correct, on the 30-minute piece. For short-haul, yes.

Mr. RICE. And so people like, you know, people driving bread trucks in the morning, people driving cement trucks, and these people that they are in and out of their truck all day long, it is not like they have got driving fatigue; right?

Ms. FERRO. And that would appear to be the nature certainly of why we have special conditions for short-haul to begin with, in that 100–150 mile radius as well as the court's decision on the 30-minute break.

Mr. RICE. So you are saying these overnight rules do not apply to the short-haul drivers?

Ms. FERRO. No, the 30-minute break is the only piece that the court struck down. The remainder of the rule absolutely does apply.

Mr. RICE. The overnight rules do apply to short-haul drivers.

Ms. FERRO. Absolutely. And again, they generally do not need them because they do not work beyond a 60-hour week.

Mr. RICE. Then why do they apply to them at all? I mean, it is ridiculous in my mind. These people are not suffering from driving fatigue. They are in and out of their trucks all day long. These people driving concrete trucks, they cannot drive very far. The concrete will get hard. Asphalt drivers, they cannot drive very far. And then when they get to where they are going they sit and wait till they can dump their load and then they drive for 30 minutes more. The idea that this rule would apply to them is just absurd. This idea from the federal bureaucracy that you are going to throw a wet blanket over everybody and wait till a lawsuit comes and tells you who it can apply to is just absolutely absurd. And particularly with a half-baked thing. The study is not even complete. And you cannot even tell if you are right whether or not it is going to have any effect because the result is so small in terms of the benefit but the cost is so great.

Ms. FERRO. Yes. And it is interesting you say that. The hours-of-service rule that applies to the short-haul industry is virtually identical to the rule that has been in place since 2003. And again,

because those operators very rarely exceed 60 hours a week, and they already under the short-haul conditions have the ability to extend the workday, that driving window to 16 hours from the normal 14 during certain times of the week or a couple times a week, they already operate under conditions that have not changed under this rule.

Again, hours of service for the trucking industry is the purview of the Secretary of Transportation. It is not subject to the Fair Labor Standards Act. So anybody that is operating a commercial vehicle that comes under the oversight of the DOT is going to be subject to some sort of an hours-of-service requirement, and that set of requirements on short-haul operators is virtually unchanged.

Mr. RICE. Well, I think that what we have got here is we had a rule in place that had reduced traffic deaths, fatalities, accidents by truckers by 29 percent I think is what Ms. Meng said and that we have done a study with 27 graduate students in Washington and determined that maybe possibly we might be able to save 18 people. We are not going to know because the sample is so small. And we are willing to impose the Federal government on all these small businesses across the country and have them incur this loss where we have got 60 percent of drivers report pay decreases, 80 percent of motor carriers providing productivity loss and we have not even finished the study. I do think it is arrogance. I absolutely think it is arrogance. I think we need to rethink. We need to reset. We need to at least finish our study and figure out if we are basing this on the right conclusions.

So I thank you for appearing today. I hope you will reconsider. Thank you.

Ms. FERRO. Thank you.

Chairman HANNA. Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman.

I think I would like to follow up on a couple of the comments that you had made, Administrator. In your response to the Chairman you said that you were sensitized to the industry concerns.

Ms. FERRO. Absolutely.

Mr. TIPTON. And Mr. Rice was just noting 80 percent of the motor carriers surveyed experienced productivity loss. A majority of drivers, 67 percent report decreases in pay since the rule took effect. And I think it is important to note these are not oftentimes big businesses. The big company owner is the guy driving the truck or the woman driving the truck, so you are sensitized to that. Do you understand the frustration of "one size fits all" being thrown over an industry?

Ms. FERRO. Absolutely. I think that has been a frustration that has prevailed for the hours-of-service rules for many, many years. It absolutely predates this rule. It is the——

Mr. TIPTON. So we are adding another rule that is "one size fits all"?

Ms. FERRO. No, no, no. The same rule is virtually intact. It is the 14-hour driving window and 11-hour drive time. It provides for a restart for those that need to reset their clock, and the vast majority do not.

The survey in question I think surveyed about 3,000 drivers. Again, we do not know who they were or the integrity behind that

process. I am happy to provide our analysis of that survey for the record. But again——

Mr. TIPTON. You mentioned 3,000.

Ms. FERRO. Yeah.

Mr. TIPTON. I am just curious, how many drivers are there in the country?

Ms. FERRO. Roughly three million affected by this rule.

Mr. TIPTON. Three million.

Ms. FERRO. But more than that certainly operating on intrastate operations or smaller vehicle operations that are not keeping records of duty.

Mr. TIPTON. Right. And just for my clarification, of these 3,000, was this nationwide in the sample survey?

Ms. FERRO. I do not know. I think whoever is responsible for that survey, it was an industry survey, could be able to answer that I hope.

Mr. TIPTON. Okay. And I think this begs back to the Chairman's point, that we are implementing a rule. It is not completed. We do not know if it was broad-reaching in terms of different regions by your own admission right now, but we are forging ahead with a rule that is going to impact real lives, real businesses, and could have some very dramatic effects.

I appreciate your being here. I understand, and we all, again, share the compassion of wanting to make sure that we are safe. I happen to know some of the guys driving the trucks. They want to be safe, too.

Ms. FERRO. Yeah, they do.

Mr. TIPTON. But they want to earn a living, too. And they are seeing the Federal government stepping in with a broad-based "one size fits all" across the nation policy on an incomplete study with a small sample size that can really impact them. And I hope you can understand that frustration that is there.

Mr. Chairman, if I may, I think this speaks broadly to a bill that we passed through the House of Representatives called the Rains Act to where we can actually get Congress involved back into the rulemaking process because I have to tell you, as a member of Congress, it came from the state of Colorado, we have sunset legislation where we can review rulemaking, and to be able to actually bring in those real-life stories and those real-life impact. I think this Rains Act is something I would encourage the United States Senate to take up because as well-intentioned as you are, I think there are some real impacts that are not really being taken into consideration here. When I was in business, before we made a decision, we had the final product to be able to make the best decision.

Ms. FERRO. Well, look, the safety of the American people is something we take into consideration utmost. That is why this agency was created. Safety of the industry, health of the driver, ultimately safety of the American people. The number of fatalities, even taking your earlier example of what if it is something closer to 25 percent or 30 percent that are caused by the truck driver, you are talking two to three 747s. Two to three 747s crashing every year. You would not tolerate it. The American people would not tolerate it. We continue to press forward with balanced rulemaking, research-driven, data-based. The study you asked me about in

terms of its nationwide impact is an ATRI study. That is not a FMCSA study. The numbers you quote were something that was just released this week. The data and research behind this rule were fully vetted, fully peer reviewed, fully available to stakeholders to comment on. This has been a more transparent process than ever before. This is a rule that has been upheld by the court. We now have certainty in the hours of service, which we have not had since the ICC Termination Act directed the agency to revisit truck drivers' hours-of-service rule because of fatigue and its impact on crash likelihood and safety.

Chairman HANNA. Sure. And Congress has still asked to have a study completed for——

Ms. FERRO. And we will complete it.

Chairman HANNA. Well, I do not know. The intent is clearly that the study be completed before the rule is enacted.

And I would like to note for the record that the agency, unless I am mistaken, has not made your methodology of its economic analysis public.

Ms. FERRO. Oh, well——

Chairman HANNA. Is that out there?

Ms. FERRO. Absolutely it is out there.

Chairman HANNA. All right.

Ms. FERRO. Yep. I have got a full docket with lots of explanation.

Chairman HANNA. Can you send that along then?

Ms. FERRO. I will be pleased to send that along.

Chairman HANNA. Thank you.

I want to thank you for being here today.

Ms. FERRO. Yes, sir.

Chairman HANNA. And members of Congress may have additional questions, so if you do, I just ask that you submit them in writing.

As you can tell by the TV, we have votes so we are going to adjourn to go to the floor. I would guess that we will be back here by noon. And I invite you to stay if you like.

Ms. FERRO. Thank you.

Chairman HANNA. If you feel so inclined, and hear from the industry themselves and get the counterpoint. But I also understand that you may have to go.

Ms. FERRO. Thank you, Mr. Ch airman.

Chairman HANNA. Thank you. We will see you around noon.

[Recess]

Chairman HANNA. Ms. Meng is coming back, so hopefully she will be here shortly, but I am going to in the interest of time just proceed.

Thank you all for appearing today. I would like now to introduce the first witness of the second panel, Mr. Duane Long. Mr. Long is chairman of Longistics, a small business, freight-hauling operation located in Raleigh, North Carolina. Mr. Long started his business with one truck in 1984. Since then he has built his business into 45 truck operations employing over 105 people. He is testifying on behalf of the American Trucking Association.

Mr. Long, thank you, and thank your wife for being here today. You may proceed, sir.

STATEMENTS OF DUANE LONG, CHAIRMAN, LONGISTICS, TESTIFYING ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATION; TILDEN CURL, JR., TECCO TRUCKING, TESTIFYING ON BEHALF OF THE OWNER–OPERATOR INDEPENDENT DRIVERS ASSOCIATION; BRIAN EVANS, PRESIDENT–OWNER, L&L FREIGHT SERVICES, INC., TESTIFYING ON BEHALF OF THE TRUCKING INTERMEDIARIES ASSOCIATION; PAUL P. JOVANIS, PROFESSOR, CIVIL AND ENVIRONMENTAL ENGINEERING; DIRECTOR, TRANSPORTATION OPERATIONS PROGRAM, LARSON TRANSPORTATION INSTITUTE, THE PENNSYLVANIA STATE UNIVERSITY

STATEMENT OF DUANE LONG

Mr. LONG. Chairman Hanna, and members of the Subcommittee, thank you for this opportunity.

ATA is the largest trade association for the trucking industry. Through its affiliated associations, the ATA Federation represents more than 30,000 members covering every type of carrier.

I am Duane Long, chairman of Longistics, a trucking and logistics company in North Carolina that my wife and I started in 1984. We operate on average 45 trucks and employ an average of 105 drivers who provide service for pharmaceutical customers throughout the United States. We take pride in our outstanding safety performance.

Mr. Chairman and Representative Rice, thank you for introducing H.R. 3413. ATA full supports the bill. Simply put, the hours-of-service changes were unnecessary. FMCSA's action, while perhaps well intentioned, was not based on evidence or analyses demonstrating a problem with the prior set of rules. These new rules are having real-world impacts on thousands of small trucking companies and the million-plus drivers that work for them. Keep in mind, 97 percent of trucking companies are small business with 20 trucks or less.

This past Monday, the 18th, the American Transportation Research Institute issued a new report on the impacts of these rules based on two separate surveys conducted in September and October. The first collected data from more than 2,300 professional truck drivers, and the second survey yielded responses from more than 400 truck fleets, 70 percent of which were small fleets. ATRI also analyzed electronic logbook data from more than 40,000 drivers over a 93-day period after July 1.

ATRI's findings are groundbreaking, and remarkably timely for this hearing. ATRI found that 67.4 percent of surveyed drivers reported a drop in their income since July 1st. The aggregate annual loss is between $1.6 billion and $3.9 billion spread across a million-plus over-the-road truck drivers; 82–1/2 percent of drivers indicated a somewhat negative or very negative impact on their quality of life. Ironically, 66 percent perceived increases in fatigue since these rules went into effect. More than 80 percent of fleets surveyed indicated a loss of productivity, and counter to FMCSA's claims, electronic logbook data does not support the agency's claims of drivers consistently working excessive hours. I can confirm these findings. My drivers work reasonable hours yet they have lost productivity.

Bottom line, these rules are having a widespread negative impact on productivity for drivers and fleets.

A few specifics about my company. We employ team drivers, typically husbands and wives, who take turns driving the truck and one resting in the truck's sleeper berth. Their weekly routine often keeps them on the road until around 2 AM early Saturday morning. Under the previous restart rule, they could depart on their next trip Sunday evening after being off more than a day and a half in order to make a Monday morning delivery required by our customers. Now, when taking the restart, they cannot depart until after 5 AM on Monday and are unable to meet the customer's expectations and the demands of just in time delivery. Other small fleets have shared similar concerns with ATA. Because restarts must now include this 1 AM to 5 AM period, many trucks are entering the traffic flow at about the same time just as rush hour begins. A regional food transporter based in Minnesota that ATA has heard from experienced a loss in productivity per truck of between 4 and 6 percent. Their drivers are frustrated and so are the customers as late deliveries have doubled over the past three months. ATA has heard similar problems and concerns from many companies, both small and large. More importantly, ATRI has documented the widespread nature of these problems and their huge cost. More troubling is these new rules are not likely to result in any kind of meaningful benefit. Not surprisingly, FMCSA has announced no plans to collect data in an effort to determine if the benefits are possible. We did not hear any plans to that effect today. We encourage Congress to pass H.R. 3413 to stay the restart provision until GAO completes an assessment of FMCSA's cost-benefit work and its restart field study.

This is not just a trucking issue. The rule changes are having negative impacts throughout the supply chain and explains why the National Association of Manufacturers, National Federal of Small Businesses, and more than 50 other organizations are supporting H.R. 3413.

Again, thank you for this opportunity, and I look forward to any questions.

Chairman HANNA. Thank you.

Our next witness is Mr. Tilden Curl. Mr. Curl is a single-unit owner-operator from Olympia, Washington. He has more than 20 years of experience in the industry. In addition, Mr. Curl was recently recognized as the 28th annual Good Year Highway Hero. He received this distinction for risking his own life to save a motorist whose disabled vehicle was almost hit by a train. He is testifying today on behalf of the Owner-Operator Independent Drivers Association.

Mr. Curl, thank you for being here. And I want to tell you, I am a 35-year member of the Operating Engineers. So we share a similar history.

Mr. CURL. We do. Thank you very much.

Chairman HANNA. You may begin, sir.

STATEMENT OF TILDEN CURL

Mr. CURL. Good morning.

My name is Tilden Curl. I am from Olympia, Washington, and I have been a professional driver for over 20 years. I currently operate throughout seven western states and appreciate the opportunity to testify on behalf of the Owner-Operator Independent Drivers Association. OOIDA represents the small business truckers that are the majority of the U.S. trucking industry. More than 90 percent of carriers own 20 trucks or less. Half of all trucking companies are one-truck operations.

Small business truckers are committed to highway safety. For us, accidents have an adverse impact on our businesses and our livelihoods. OOIDA's average member has a quarter century of experience and more than two million miles of accident-free driving.

I want to thank Administrator Ferro, who recently saw our commitment to safety and some of the challenges truckers face every day as she joined an OOIDA board member on a two-day ride-along from D.C. to St. Louis. As professional drivers, we need flexibility to balance countless demands. Loss of flexibility has an economic impact for small business truckers and over time changes to the Hours-of-Service regulations have reduced that flexibility. Less flexibility makes it more difficult to stop for rest, avoid traffic, and keep a schedule after being delayed by a shipper or receiver.

The recent Hours-of-Service rulemaking, which was the result of a court settlement, was an opportunity to help truckers balance these countless demands. Unfortunately, the changes went in the opposite direction, adding new restrictions to the 34-hour restart, requiring an arbitrary 30-minute break, and retaining the unstoppable 14-hour duty clock. The impacts of these changes are borne out in a recent survey of OOIDA's membership. While only 3 percent said they felt less fatigued, 46 percent of respondents felt more fatigued after the changes; 79 percent have seen impacts in their ability to use the restart; 65 percent responded that they have lost some income, and more than half experienced reduced loads and mileage. My own experience has mirrored these responses, especially with the two 1 AM to 5 AM periods during the restart. This often puts me in the middle of Seattle's rush hour and much like D.C.'s beltway traffic, this means more time on the road at a greater risk of accidents.

For these reasons, OOIDA supports H.R. 3413, Mr. Hanna and Mr. Rice's legislation that will ensure a full examination of the 34-hour restart restrictions. As it is now, the restart restrictions could reduce my potential workweek by as much as one day, possibly costing me as much as $4,000 to $5,000 a month. While some would argue technology is the safety solution, OOIDA's members see this as a false premise and a way to ignore larger issues. This rings true when accident data shows that carriers who depend on technologies, such as onboard recorders and speed limiters crash twice as frequently as carriers who use experienced and safe owner-operators.

With this in mind, what should be done? FMCSA itself can act by returning flexibility to the hours of service, including allowing truckers to pause the duty clock with rest breaks. Trucking, government, and most importantly shippers and receivers, must address the detention issue. Professional truckers, will still considered unskilled labor, deserve to have their time fully, fairly com-

pensated. We must stop placing more rigid requirements on the driver while allowing carriers and customers to make demands beyond the allowances of regulations and safety. FMCSA must act on an entry-level driver training and driver trainer requirements as the foundation of a healthy safety program. Advancing this policy first called for by Congress in 1991 is OOIDA's top safety priority. Our comprehensive driver training proposal forms the keystone of our truckers for safety agenda. You can learn more about this at truckersforsafety.com.

In closing, bringing our complete supply chain in as partners to address the regulatory responsibilities of truckers is the right direction to take. Further, FMCSA should prioritize providing additional flexibility while addressing core needs, like entry-level driver training. The wrong direction is to rely on further restrictions and unproven technology.

Thank you for the opportunity to testify and for holding today's hearing.

Chairman HANNA. Thank you, Mr. Curl.

Our next witness is Mr. Brian Evans. Mr. Evans is president and CEO of L&L Freight Services, a 12-employee transportation brokerage located in Cabot, Kansas—Arkansas. Prior to joining the freight brokerage business, Mr. Cabot (sic) was an over-the-road trucker. He is testifying today on behalf of the Transportation Intermediaries Association.

Mr. Evans, you may deliver your testimony.

STATEMENT OF BRIAN EVANS

Mr. EVANS. Thank you, sir. Chairman Hanna, Ranking Member Meng, members of the House Small Business Committee, thank you for this opportunity to speak with you today regarding concerns affecting small businesses arising from the FMCSA Hours-of-Service rules.

As mentioned, my name is Brian Evans. I am the owner of a small transportation brokerage company. I serve as the president and CEO of L&L Freight Services out of Cabot, Arkansas. I am a 20-year veteran of the transportation, freight brokerage, and supply chain management sector. I do come from a family-owned, blue-collar, small business. Prior to working in the brokerage industry, I drove over-the-road for almost one million accident-free miles. Additionally, I currently serve on the TIA Board of Directors. TIA represents 1,400 member companies, 70 percent of which are small family-owned businesses. Like the FMCSA, one of our primary missions is promoting safe practices. As an organization, we seek to work with FMCSA to make the Hours-of-Service regulations the best possible tool to improve safety for the motoring public by reducing truck driver fatigue.

Unfortunately, the new Hours-of-Service regulations were a solution in search of a problem. No one wants unsafe trucks or drivers on the road. To that end, we have a standing committee that has published and regularly updates a carrier selection framework. The TIA recommends that every broker and every shipper have in place a written carrier selection policy for hiring carriers. Safety improvements by the industry under the previous Hours-of-Service rules reduced accidents. It allowed the market to become more effi-

cient and allowed American business to be more competitive. The new rules, however, are overly complicated, will reduce productivity, and have no effect on reducing accidents beyond the previous level.

In the 24th annual State of Logistics report authored by Rosalyn Wilson, she estimates that a loss of productivity close to 6 percent for the transportation industry. This is a significant amount in loss of productivity that could lead companies to expand their near-shoring ventures into neighboring countries, thus relegating valued American transportation jobs to foreign nations.

I have spoken with many of my carrier customers who are experiencing a major loss of productivity due to the new restart provision. This rule is resulting in around five fewer loads per week or a reduction of 3 percent in capacity for their fleets. The cost of this loss of efficiency is felt by the business and ultimately will be passed on to each of us, the consumer. We are not suggesting that increased safety be traded for increased efficiency. We are stating that safety improvement was achieved under the old rules and that the new rules will not result in dramatically increased carrier safety.

As you know, there is a pressing shortage of drivers across America. The new Hours-of-Service rules will have a twofold effect. First, it will chase out qualified drivers and deter future motor carriers from entering the industry because the rules limit the number of loads that a carrier can handle each week. The rule will also likely require drivers to operate during peak hours of operations, thereby increasing congestion, and as a result, reducing safety.

The American Transportation Research Institute recently released their 2013 edition, Critical Issues in the Trucking Industry. The report places the new Hours-of-Service regulations as this year's top concern for the transportation industry. ATRI estimates that the changes to the restart provision alone would cost the industry $189 million as opposed to the $133 million benefit that is projected by the FMCSA.

The FMCSA's concerns about driver health and safety are to be applauded. The TIA supports the passage of H.R. 3413, the TRUE Safety Act. TIA urges the agency to examine the negative effects of the 34-hour restart provision and to consider amending the rule to give transportation the flexibility that they need to ensure safety.

I appreciate very much this opportunity to testify before the subcommittee today on the concerns of the new HOS rules and the effects that it has on businesses like mine, whether a third-party logistics provider, a motor carrier, or the entire supply chain. I will be happy to answer any questions.

Chairman HANNA. Thank you, Mr. Evans.

Ranking Member Meng will be introducing our next witness.

Ms. MENG. Dr. Paul Jovanis is a professor of Civil Engineering at Penn State University and has over 34 years of experience in highway safety and traffic engineering. At Penn State, he is also the director of the Transportation Operations Program at the Larson Transportation Institute. He has extensive expertise in the area of driver fatigue and motor carrier safety and has published frequently on these subjects. Prior to coming to Penn State in 1997,

he was a professor and associate director of the Institute of Transportation Studies at the University of California Davis. Thank you for being here.

STATEMENT OF PAUL P. JOVANIS

Mr. JOVANIS. Chairman Hanna, Ranking Member Meng, and Committee members, thank you for the privilege of sharing and participating in this hearing.

Understanding the relationship between truck driving hours of service and crashes is a complex and challenging task. Researchers working in this area come from backgrounds as diverse as human factors, psychology, medicine, and road safety. Some of the research in this field has been described by the term "fatigue" even though questions have been raised in the literature about the definition of the term "fatigue" itself. Others have focused on studying the association of crashes to the duration of driving, rest breaks, scheduling of driving over several days, and time of day. All of these approaches contribute in different ways to our accumulation of knowledge about hours of service and crashes. This testimony is not an exhaustive review of this literature as there would likely be hundreds of citations; rather, this is an attempt to summarize the most recent work in the field with a few additional references to well-cited research.

Concerning the effect of hours of service on crashes, I offer the following summary.

Hours of continuous driving. Using data supplied by carriers over a period of more than 20 years, there have been a number of studies that support the basic principle that the longer one drives, the greater the odds of a crash. And you see the references in the testimony. These eight studies estimated the effect of driving time, importantly, when controlling for other factors such as experience, off-duty time, driving pattern over multiple days, and in one case, time of day directly. These studies are among the few that control for multiple factors while seeking to estimate the effect of driving time. A study using fatal truck involved crashes from 1980 to 2002 also indicated an increase in crash risk with hours driving.

Using trucks instrumented with cameras and other vehicle-based sensors, a series of studies have been conducted to connect risky driving maneuvers to hours of service. Using these measures, one study found little connection between the observed events and hours driving. A second study with more extensive data did find an association of driving time with the occurrence of safety-critical events, including a few crashes. This second study, like the first, also showed a close correlation with time on duty. Other studies using regular work conditions have found little association of these metrics with hours driving.

In summary, based on a series of studies using carrier-supplied data and one with fatal truck crashes measured over 20 years, I believe there is evidence that crash risk increases as driving time increases. Concerning hours off duty, the increase in required off-duty time was implemented in 2003. Crash-based research using data from the 1980s indicates that drivers with more than nine hours off duty had a lower crash risk when returning to work than drivers with eight to nine hours off duty. This is a case where the

change in regulations, increasing off duty time from eight to 10 hours, is consistent with the research.

Concerning time of day. The effects of time of day are particularly difficult to identify because trucks share the road with other traffic which has marked peaks in urban areas during the morning and evening rush. In a study using crash data with a baseline of 10 AM to noon, crashes were elevated in the early morning, 4 AM to 6 AM through about 10 AM, and then again from 4 PM to 10 PM. Another study found an increase in the odds of a crash from 11 PM through 6 AM. Using fatigue tests and instrumented vehicle data, others found strong association of declines in performance and fatigue tests linked to time of day. Fatigue, self rated by the drivers, increased more during night than day shifts in a study in Australia. So time of day is associated with crash risk. The question is how to best address this in regulations.

Rest breaks. Breaks are included in the Hours-of-Service rules for the European Union, which require 45 minutes for each four and a half hours of driving. In 2013, the new U.S. rule required a 30-minute rest break before eight hours of driving. Lack of mandatory inclusion in this policy allowed researchers to compare drivers with the break and those without. The presence of two breaks reduced crash odds by 30 percent in a 2011 study. Safety benefits of rest breaks seem overwhelming.

Cumulative driving over several days. The introduction of the 34-hour restart in 2003 has triggered a series of studies of the effect of cumulative driving both with and without a restart. Two laboratory studies have been recently completed that focus on the 34-hour restart. In the first, subjects were split into two groups, one working a daytime schedule for five days, off duty for 34 hours, then working five more 14-hour days. The second group had a similar schedule except the participants worked at night for five days, had a 34-hour day-oriented break, and then another five days of night work. The principal finding is that the day-oriented work group showed no decline in performance, while those with the night work showed a decline when they returned to work after the 34-hour restart. These studies were enhanced in a follow-up experiment in which participants were subjected to night work periods separated by a 58-hour restart aimed at emulating the effect of an additional day on top of the 34-hour regulation. In this case, drivers were compared against each other before and after the restart. The longer restart resulted in no performance degradation after return from a 58-hour off-duty period.

This concludes my oral testimony. I am happy to answer any questions that you may have. Thank you.

Chairman HANNA. Thank you.

Ranking Member Meng.

Ms. MENG. Thank you, Mr. Chairman, for the courtesy.

Question for Dr. Jovanis. The new HOS rule does not restore the allowable driving time to 10 hours. What is the effect of an extra driving time on driver fatigue and truck accident rates?

Mr. JOVANIS. Well, I guess I could answer most directly by saying all the evidence that we have and all the work that we have done for over 20 years are that increasing from 10 to 11 hours increases the likelihood of crashes. The curve goes up. We do not do

work with the word "fatigue" so I will just answer the question in terms of crashes.

Increasing from nine to 10—changing from nine hours to 10 hours increases the risk; going from 10 hours to 11 hours increase the risk of a crash.

Ms. MENG. And question for Mr. Curl.

FMCSA claimed that truck drivers' health will benefit substantially from the new rule. They asserted that more time off results in more sleep. What is your view of this assessment? Does more time off necessarily mean more sleep for drivers?

Mr. CURL. No, it really does not. To address the issue of fatigue you need to take rest or take sleep at times when your body is ready for it. You cannot legislate sleep or rest from anything other than the cab of a truck.

I would like to weigh in a little bit on your recent question regarding fatigue and the difference in the hours of driving. I believe there was an ATRI study that was done once that showed the greatest risk was actually in the first hour of driving rather than in the last hour of driving, which almost mirrored the danger in the 11th hour was almost as high but not quite as high as the first hour. So, also fatigue or asleep truck drivers were a factor in 1.8 percent of all truck-involved fatality accidents, 64 accidents total in 2011.

Ms. MENG. Thank you. Same to Mr. Curl, as a small business owner, most trucking firms are small businesses. As a small business owner, how easy would it be to hire additional drivers and buy new trucks to make up for lost productivity caused by the Hours-of-Service rule?

Mr. CURL. Hiring more trucks is not going to be the solution because each and every truck has to be profitable of itself, in and of itself. So, you know, hiring another truck to make up for it is, I do not know, it is like—it is not going to address the real underlying issue. The real issue. And actually, Hours-of-Service does have a huge impact on what we do. But it is one of several issues that we face in the industry. Truthfully, detention time has a greater impact on what we do than the hours of service.

Ms. MENG. Thank you. I yield back.

Chairman HANNA. Mr. Rice.

Mr. RICE. Mr. Jovanis, do you think that the proposed rule will have a meaningful impact on accidents and injuries? Yes or no?

Mr. JOVANIS. I do not know. I do not know because I have not studied——

Mr. RICE. Thank you, sir.

Mr. Evans, do you think it will?

Mr. EVANS. No, sir, I do not.

Mr. RICE. Mr. Curl?

Mr. CURL. No.

Mr. RICE. Mr. Long?

Mr. LONG. No, sir. I do not.

Mr. RICE. Thank you.

Mr. Curl, you hit on something that I think is important. You said that drivers need flexibility, and it appears to me that the federal bureaucratic framework, not just related to truckers or transportation or anything else, the problem with it is that we try to

write these rules that apply to everybody and you cannot do it in a logical way that it does apply to everybody. When you say flexibility, I mean, if you get held up by a supplier and you have to have your load to a certain place and you were planning on driving the next day but you know now you are going to be thrown to the day after and you have got a restart in the middle, it might force you to drive when you are tired; correct?

Mr. CURL. Absolutely.

Mr. RICE. So actually, these rules could force you into a situation that you would normally thin was unsafe; correct?

Mr. CURL. That is correct.

Mr. RICE. Can you be more descriptive of a situation like that than I could, because I am not a driver. Can you help me with that?

Mr. CURL. Well, I can. But you have to understand that in the trucking industry we are such a diverse industry that of all the types of operations that we have, several of them are alike maybe but the majority of them are individual by nature. So flexibility comes in addressing the issues of each particular operation, you know, and in my particular operation, if I could leave my house at say four in the morning and get through Seattle before the rush hour traffic hits, it would be great. But that violates my 1 AM to 5 AM periods that is required for the 34-hour restart. I mean, that is one example of flexibility.

Mr. RICE. Mr. Long, do you think that these rules could force truck drivers to drive in a fatigued situation when they otherwise would not?

Mr. LONG. I would hope not but Mr. Curl gave an example where I think it could possibly happen. We would not do that at my company. We would make sure our drivers were always safe. But that could happen given the example that Mr. Curl gave.

Mr. RICE. Mr. Jovanis, you mentioned a number of studies that seemed to have differing conclusions. On one hand you said hours of driving did not have a meaningful impact on—what did you say? You said longer drive times did not necessarily increase—give a greater chance of accidents. Is that not what you said?

Mr. JOVANIS. I do not think so.

Mr. RICE. Okay.

Mr. JOVANIS. But let me try to clarify.

Mr. RICE. All right.

Mr. JOVANIS. One of the complicating factors in this area is that different studies have had different findings. So the studies done sponsored by FMCSA in 2003 and 2004 by Virginia Tech did not find an association of driving time with what they called safety critical events.

Mr. RICE. That is almost unbelievable to me. So they are saying you could drive for 48 hours straight and not have a higher chance of an accident?

Mr. JOVANIS. Well, given the data that they collected over say a 14-hour period of work, they saw no difference from the first hour to the 14th hour. It was uniform in terms of the rate at which bad driving or errors were occurring.

Mr. RICE. You also said that the chances of an accident increase in the morning and in the evening.

Mr. JOVANIS. Right.

Mr. RICE. And I presume you are talking about rush-hour times?

Mr. JOVANIS. Right. Right.

Mr. RICE. Okay. Do you know if the study that has been done by the—whatever the acronym is, FMCSA or whatever it is—takes into account—I know they are aimed at fatigue and they think that by keeping people off the road from 1 AM to 5 AM lowers fatigue and that lowers the chance of an accident. Do you know if it takes into account the increased risk that you are talking about of forcing drivers to drive in that rush hour time?

Mr. JOVANIS. Well, they funded some of my work, so the more recent report that you have in the testimony from 2011 is funded by FMCSA and we use crash data. FMCSA chooses a number of different sort of scientific mechanisms to do these things.

Mr. RICE. You do not know whether it takes that into account or not?

Mr. JOVANIS. My studies did. I do not know the extent to which the other studies did.

Mr. RICE. So you did a study that analyzed fatigue and determined that people were less fatigued if they had these two periods of time in the early morning—what did I say, 1 AM to 5 AM. Is that not the time that they are requiring to have off? That they are less fatigued if they do that rather than under the current rule. Is that right?

Mr. JOVANIS. I would not use the word "fatigue." The reference that I gave in the testimony was that if they are driving in the early morning hours, from say 4 AM to about 10 AM, then they have a higher risk of a crash.

Mr. RICE. But under the rule as proposed, are we not forcing drivers into those hours? Yes, clearly we are. Yes, we are.

Mr. JOVANIS. Let me say this. What has surprised me about this particular set of rules is it is the first time that the agency has specified particular times of day when people have to be off duty. If you look at the regulations prior to that, we talked about flexibility on the panel. They have never specified a particular time of day when you had to be off duty. This is the first time that they have done that.

Mr. RICE. But under this current rule, under the proposed rule or whatever—it is in effect already—they are off the road from 1 AM to 5 AM; right?

Mr. JOVANIS. If they want to use the restart, they have to be off the road for two consecutive days.

Mr. RICE. Which increase the likelihood that they are going to be on the road from 5 AM to whenever; correct?

Mr. JOVANIS. Well, I would presume that but I do not know that in fact.

Mr. RICE. And you are saying that your studies show that from 5 AM to 10 AM there is an increased chance of accidents; correct?

Mr. JOVANIS. That is right.

Mr. RICE. So we are forcing them into a time when they are more prone to accidents?

Mr. JOVANIS. Well, like I said, I do not know that for a fact, so I would be uncomfortable saying that as directly as you.

Mr. RICE. Thank you, sir.

Chairman HANNA. Let me say it directly then.

What we heard—Doctor, I really appreciate—I read your testimony in advance. I appreciate the openness with which you presented it here today and the way it is written.

What we know though is that the study, the proposed study and the process that they went through for the rulemaking did not include, and we heard Administrator Ferro say, did not include the consideration of those early morning hours which we know people are forced to work in when traffic is more. So let me just ask you this because it is going to be abstract and we do not have a study about this. We should have but we do not. What is your best guess that telling people—I mean, you can be direct—we are just trying to get to the bottom of this. What is your best guess happens when you do not study the effects or something but yet you tell people when to go to bed and when not to go to bed. And we know that it pushes them into hours that are much busier, makes them perhaps even drive longer because of the congestion. I will just ask it this way. Do you think that should have been part of the study? And if so, do you think that would change the results of the study?

Mr. JOVANIS. I think it would have been a very good idea if they had looked at that very explicitly. And as near as I can tell, they have not prior to the study that is in activity right now.

Chairman HANNA. Well, as near as we have heard they have not.

Mr. JOVANIS. Right. And yet have no intention of doing that.

Chairman HANNA. So, and I do not want to put words in your mouth. I will do this on my own. So if I were to suggest to you that had they included that, they may have come up with actually causing more accidents, more deaths, more fatigue, more stress to the overall system. I mean that is kind of what it feels like to me, especially being a guy who has spent thousands of hours on heavily equipment.

Mr. JOVANIS. It is certainly possible. And then whenever you get into a situation like you are in with the extended hours of driving out to 10 hours or 11 hours, you are left with an assessment that says is the benefit of doing something greater than the cost? And presumably, when they did the benefit assessment on increasing from 10 to 11 hours, they assessed in their regulatory impact assessment that there was a benefit from doing that. Presumably, they would have a similar kind of a benefit assessment. But please do not ask me about that because I do not do benefit assessments.

Chairman HANNA. No, but I mean, the conclusion is that we do not know the truth because we have not—the study not only is not complete but it is not even inclusive enough to come up with a result that is based on science in your industry or in your field.

Mr. JOVANIS. Yeah. I do not know of any study that has looked at that particular restart configuration.

Chairman HANNA. but you would agree that that should potentially be part of it?

Mr. JOVANIS. Yes.

Chairman HANNA. I throw the word "potentially" out there just to make it be a little easier for you to say.

Mr. JOVANIS. Yes. Yes.

Chairman HANNA. Thank you very much.

We are taking up other people's time, but sure, Mr. Rice, I am happy to——

Mr. RICE. I figure you guys came all the way here. You do not mind five more minutes, do you?

You guys, Mr. Evans, Mr. Curl, Mr. Long, do any of you all short-haul or are you all long-haul?

Mr. EVANS. My company does both long and short-haul.

Mr. CURL. I do limited short haul.

Mr. RICE. Do you think these driver fatigued regulations are really applicable to short haul? I mean, it seems to me that what we are aiming at here is somebody that is driving, you know, 10 hours a day continuously and the effect of the highway driving, do you think these are applicable? I am thinking about the guy who delivers the beer to the grocery stores or the bread or the guy who is driving an asphalt truck or a concrete truck. He is not driving for hours on end. They are driving, stopping, waiting, getting out of the truck, delivering a load. Do you think these regulations are really applicable to those people?

Mr. EVANS. I do not.

Mr. CURL. I think to address that directly I would say no, but if I could expand on that a little bit more.

Mr. RICE. Please do, sir.

Mr. CURL. I think when we are talking about fatigue, we are talking about something that I can look up here at this panel and I can see fatigue. You know. So how do you——

Mr. RICE. Wait a minute.

Mr. CURL. So it begs the question how do you quantify fatigue?

Now, I know Mr. Jovanis is involved in a lot of studies that try to identify that, but you know, if you stay up and watch the football game one night and then you come back to work the next day, you may be somewhat fatigued but it does not mean that you cannot conduct your duties safely and efficiently as necessary. So fatigue is a relative factor. Working short-haul, you know, day-to-day, sometimes I am more fatigued by it because it is a lot of work. But again, you have to go back to giving the drivers themselves the control of knowing when they need to rest, you know, given a set of hours to work in. But to have a blanket law that covers everybody, it is going to help a few but it is going to hurt a lot more. So the hours of service as they are—and we do need hours of service, let me throw that in there—and returning to the old hours of service would be an advantage but it is not a solution.

Mr. RICE. Do you think that the old Hours-of-Service rules were effective in reducing injuries and fatalities?

Mr. CURL. To a degree I do.

Mr. RICE. I agree with you. I think they were, too.

Mr. CURL. I believe they needed modification as well. I just happen to believe that the modifications we made were not the right ones.

Mr. RICE. Thank you, sir.

Mr. Long, your opinion on this?

Mr. LONG. Yes. I believe that the older regulations, if you will, the 2003, the statistics prove out that they were safe and that we

had a big reduction in fatalities. And safety is our number one priority in the trucking industry.

Now, from the perspective of long-haul versus short-haul, my company, we provide mainly the longer haul, more miles. And we are, again, we are having the biggest difficulty with our drivers. It has to do with their reduction in their productivity, being able to go out and make a, for example, a trip from Memphis to Chicago, it is about 500 miles. Our customers want the shipment to be delivered at 7 o'clock in the morning, but if the drivers cannot leave until 5 o'clock because they came in at a certain time, the example that I gave, then that team cannot go out on that run. We may have to use another team. So that team loses that day. In fact, we have calculated just using the last quarter of our information that if this continues on the rest of the year, a lot of our teams are going to lose as much as one week's pay per year, which that is a lot of money to our people. For example, about $1,300 where they average about 60,000 per year.

Mr. RICE. How many teams do you have?

Mr. LONG. About 45.

Mr. RICE. Okay. So if each one loses a week, that is 45 weeks; right?

Mr. LONG. That is right.

Mr. RICE. So that means you are going to have to have another team. What does that do to the cost of shipping?

Mr. LONG. It makes it go up.

Mr. RICE. What does that do to our manufacturers when they are shipping stuff around the world?

Mr. LONG. It will make a cost on the products.

Mr. RICE. It makes them less competitive, does it not?

Mr. LONG. Absolutely.

Mr. RICE. So their stuff costs more around the world. They may be laying people off. You might have to hire another team after all. That is what I want to get rid of. The whole thing is American competitiveness.

Mr. LONG. We want to be efficient and productive, and we want our people to be compensated well.

Mr. RICE. I agree.

Mr. LONG. And safe.

Mr. RICE. Mr. Jovanis, you work on statistics, right, sir?

Mr. JOVANIS. Yes, sir.

Mr. RICE. Yes, sir.

The administrator this morning said that this could save as many as 19 lives a year, right? That is what she said.

Mr. JOVANIS. Yes, she did.

Mr. RICE. Okay. How many people are being killed on the road every year by trucks? Or in trucking accidents?

Mr. JOVANIS. In trucking accidents, on the order of 4,000 fatalities or a little more.

Mr. RICE. So if we are talking about 19, we are talking about less than half a percent. If we put this rule in effect, are we going to know that it has had any effect at all? Is there any way to statistically establish whether this rule is going to have any effect at all?

Mr. JOVANIS. I would say there is and you need to be able to fund the research study that uses crash data and determines that

the effect of the restart policy in particular either has an effect one way or the other. I am not real enthusiastic about using the nationwide statistics on fatalities in truck involvement only because there are so many other factors involved that you can never really tell on a national scale whether your particular action is really having the result that you are observing in fatalities. So certainly, you would believe that the downturn in the economy since 2006 has had a big impact on reducing travel, and so fatalities and crashes are down all over the country in all travel modes.

Mr. RICE. They were going down before that.

Mr. JOVANIS. A bit. But we were pretty much stuck on about 40,000, and we took a big nose dive when the economy went down. So there is a study being proposed by the Transportation Research Board to answer just this question of why is it that we had such a big decline? Can we identify the actions that we took to contribute to that? Because right now a lot of people are claiming credit but I would say we really do not know.

Mr. RICE. That graphs that I have seen showed truck injuries and deaths dramatically dropping beginning around 2000.

Mr. JOVANIS. I would have to look at the numbers again to be sure.

Mr. RICE. And then they come back up in the last two or three years, but they are still down 30 percent.

Mr. JOVANIS. But——

Mr. RICE. My point is statistically, I do not know how in the world you are ever going to know whether these things—if we are talking about 19, maybe possibly 19 based on an uncompleted study of 27 graduate students, how in the world are you going to know that costing these people this productivity and affecting American competitiveness the way that the trucking industry certainly does, how are we going to know that that is offset by lives saved with such a small potential reward? I mean, certainly every life is vital and important and precious, but I do not know that we are ever going to know that we saved one life.

Mr. JOVANIS. Well, all I can tell you is on the crash side, in one of the reports that is in my testimony, we are able to do a very limited study of the restart provision, and that is because we had only a limited amount of two-week data in our study. And in that study we showed that drivers had got past the first day of the restart pretty well but it was in the second day of the restart that they had an increase in crash risk. Now, we have not really publicized that widely because we had a very small number of drivers that actually experienced the restart and allowed us to do that comparison, but if we could do it with the data that we had back in 2010, certainly people can do that again and try to quantify that particular effect. So the best answer I can give you is research can help give you the answer on the increase in the probability of a crash or the number of crashes and then somebody has to hand that over to the economists and the regulators and say, well, how does that get balanced against any kind of productivity losses or gains.

Mr. RICE. Well, if I am bouncing between the economists and regulators and the truckers, I am going to take the truckers every time.

Mr. JOVANIS. I like them, too.

Mr. RICE. Do you think it is going to make any difference? And I heard an "I do not know" from you and three nos from these guys. I will take that.

Thank you very much. Thank you all for coming today. Thank you for putting up with us.

Chairman HANNA. Just one last question. Maybe two.

Some drivers say the new rules actually result in them taking breaks when they are alert and forcing them into a situation that they are more tired. Maybe is that true, Mr. Long, Mr. Curl, Mr. Evans?

Mr. LONG. Yes, I am hearing stories like that. One of the effects of this has been also where trucks are having a difficulty finding parking spaces in truck stops. The truck stops are overloaded at times, and that presents a lot of stress trying to get in and park and fuel and so forth. So yes, I am hearing some of those stories like you just described.

Chairman HANNA. Mr. Curl?

Mr. CURL. As for me, it has made quite a difference because a lot of my stuff is planned out to make certain—I have to get in my 11 hours of driving each day to be able to arrive on the proper date for me to deliver and reload. So on some days, when I have 30-minute required breaks, sometimes rather than driving three to four hours and taking a quarter hour break, driving three to four hours, taking a quarter hour break, and each time I take a break I take care of my personal needs, but I also walk around, inspect my truck, and look at my load. And now because of this stipulation, it is going to move me further and further into the end of my day, into the period that Mr. Jovanis referred to earlier as being more dangerous. And that time period is added on to the following day, so I start the following day a little bit later because of that. And so even if the 30-minute breaks could be cumulative, that would be helpful.

Chairman HANNA. Thank you.

Mr. Evans?

Mr. EVANS. Yes, sir. I think there are too many inconsistent circumstances with each driver, with each type of load, with each origin, with each destination, and to put a regulation that says that a driver has to take a 30-minute break at a certain period of time, at a certain period of day really puts a whole kink in the supply chain. And it is not going to make him a more safer driver by any means.

Chairman HANNA. Go ahead, Doctor.

Mr. JOVANIS. Well, I am sure that there are some people somewhere who do not want to stop after eight hours and take a mandatory break, but when you are dealing with large numbers of drivers as we have, the first five hours or so of driving has a relatively constant risk of a crash. After that, the increase of a crash with driving time goes up nonlinearly. So you are looking at 20 percent, 30 percent, 40 percent, 50 percent the farther you go into you drive. So if you are into the eighth hour, you are into an elevated crash risk.

Now, Mr. Curl's suggestion about cumulative off-duty time, if you take a 15-minute break, drive for a while, take another 15-minute

break, I think if you look at the literature on this, that half an hour that you experienced is almost the same as a half an hour single break in terms of its benefit, and the benefit is unmistakable in terms of reducing the risk of a crash. So I am surprised that the regulations do not allow that, exactly what you said, because if you look in the literature at how you should undertake tasks like driving a truck, exactly what Mr. Curl said is exactly how you should from a performance maintenance point of view. You know, you take a periodic break, you take care of whatever you have to do physically, you inspect the truck, you get back in.

Chairman HANNA. So once again the government is overly prescriptive. And telling drivers something they already know that they want to live, live safely, and live to drive another day, and yet here we are telling them that they have to follow our rules rather than their own needs and experience.

I want to thank you all for being here today. You provided important insights in how decisions are made in Washington, and how they affect small business. I also want to say that there is no one here that I have heard that does not find that the 2003 rule provided benefits and the studies show that. The question here today is does the additional rule provide any benefit? In fact, does it provide a disbenefit? And you have been helpful in that direction.

I ask unanimous consent that members in the public have five legislative days to include supporting material into the hearing record. Hearing no objection, this is now adjourned. And again, thank you very much.

[Whereupon, at 12:00 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF THE HONORABLE ANNE S. FERRO, ADMINISTRATOR

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

THE IMPACT OF THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S

HOURS OF SERVICE REGULATIONS ON SMALL BUSINESSES

NOVEMBER 21, 2013

Mr. Chairman, Ranking Member Meng, and Members of the Subcommittee, thank you for inviting me to testify today on the impact of the Federal Motor Carrier Safety Administration's (FMCSA) December 27, 2011, hours of service (HOS) final rule on small businesses.

Safety is FMCSA's number one priority. Our employees and State partners are committed to preventing crashes and 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 travel data. We have also seen a 26 percent decrease in the number of lives lost in large truck- and bus-related crashes, from 5,620 in 2000 to 4,183 in 2012.

While the numbers represent significant progress, it is clear that much more must be done. Every life is precious and every FMCSA employee and each of our State partners are committed to doing everything we can to save as many lives as possible. The December 2011 HOS final rule made reasonable and common sense changes to the HOS rules while helping to realize important safety benefits for the American public. We estimate the new requirements will prevent 1,400 crashes, 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 previous HOS rules that were in effect until July 1, 2013, drivers operating large trucks could have faced demanding driving schedules that may have included workweeks up to approximately 82 hours. These extreme schedules, week after week, increase both the risk of fatigue-related crashes and long-term health problems for drivers. While the new rule issued on December 27, 2011, still allows for a demanding driving schedule, it reduces a driver's *average* maximum allowable hours of work per week from 82 to 70 hours, ensuring that drivers have more 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 throughout the rulemaking process for the final rule. This unprecedented public engagement contributed to a balanced final rule that provides a net gain in public safety and driver health.

In general, the changes in the 2011 final rule that took effect on July 1, 2013, particularly the changes to the 34-hour restart provision, are designed to help those drivers working the most intense schedules. The changes have the biggest impact on approximately 15 percent of the drivers subject to the HOS requirements. These drivers used to average more than 70 hours of work per week. By contrast, drivers who averaged less than 70 hours per week were not significantly affected by the changes to the rule, including the new restart provision. They are not likely to approach the daily driving time limit, the daily on-duty limit after which driving is prohibited, or weekly on-duty limits after which driving is prohibited.

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 and, thus, does not need to use the voluntary 34-hour restart. Of the remaining 15 percent (240,000 drivers), 160,000 work an average of 70 hours per week and approximately 80,000 drivers worked an average of 80 hours per week prior to July 1, 2013. While the Agency recognizes that the reduction in maximum weekly on-duty hours to 70 hours and 34-hour restart constraint impacts some drivers and companies, the trade-off is improved safety for everyone. This rule is expected to prevent 1,400 crashes and 560 injuries, and save 19 lives each year.

Overview of Changes to HOS Rules

The changes made in the 2011 final rule keep in place many of the regulatory provisions implemented in the 2003 rule. For example, it maintains the 11 hour driving/14 hour daily work allowance and the long-standing weekly maximum working limits of 60 hours in 7 days and 70 hours in 8 days. Additionally, it maintains the option for a driver to use a "restart" if that driver wishes to drive more than the weekly maximum hours.

For those drivers wanting to exceed the maximum weekly working limits, the 2011 HOS rule limits the use of the "34-hour restart" to once a week (168 hours). This change limits a driver's work week to 70 hours on average, compared to the previous rule, which allowed up to approximately 82 hours when the restart was used more than once in a seven-day period. The Agency took this action because 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 for drivers. The new restart provision does not affect drivers average 60 hours or less per week of work time. For 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 requirement that two nighttime period between 1:00 and 5:00 am be included within the restart. It is important to note that the Agency's research as well as information provided by industry representatives documented that a vast majority of drivers of large trucks will rarely, if ever, need to use a "restart."

Under the previous 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 a 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 2010. Only nighttime drivers who work m ore than 60 hours in seven consecutive days, or 70 hours in eight 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 a 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. It is important to note that most drivers were already taking multiple short breaks during the work day. And the rule does not require that drivers take an additional break. The rule only requires that at least one of those breaks consist of at least 30 consecutive minutes off duty.

The Agency acknowledges the concerns about the impact of the 30-minute break requirement on small businesses and took appro-

priate action on July 12, 2013, to align its long-standing regulatory guidance concerning off-duty time with the 30-minute rest break provision of the 2011 final rule. We determined that the guidance, which was originally issued in 1997, could have the unintended consequences of making it difficult for drivers and carriers, including many small businesses, to determine whether certain routine breaks during the workday may fulfill the 30-minute rest break.

A Net Gain for the U.S. Economy

The estimated annual cost of the 2011 final rule is 50 percent less ($530 million less) 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 withy crash injuries and overall improved driver health. The rule will provide an estimated $280 million in savings from fewer crashes and $470 million in savings from improved driver health.

The economic benefits of the rule extend to small businesses through every crash that is avoided. Small trucking companies are the least likely in the industry to withstand the financial impact associated with a fatigue-related crash. The loss of revenues associated with the disabled commercial vehicle and the resulting litigation and settlements for a fatigue-related crash could easily wipe out a small trucking company. Safety is first and foremost about saving lives but it is also good business for the industry.

U.S. Court of Appeals Decision

On August 2, 2013, the DC Circuit Court of Appeals issued its opinion on petitions for review of the 2011 HOS rule filed by the American Trucking Associations, Public Citizen, and others [American Trucking Associations, Inc., v. Federal Motor Carrier Safety Administration, No. 12–1092 (D.C. Cir. Aug. 2, 2013)]. The Court upheld the 2011 HOS regulations in all respects except for the 30-minute break provision as it applies to short-haul drivers.

As a result of the Court decision, the following drivers are no longer subject to the 30-minute break requirement:

- All drivers (whether they hold a commercial driver's license (CDL) or not) that operate within 100 air-miles of their normal work reporting location and satisfy the time limitations and recordkeeping requirements of 49 CFR § 395.1(e)(1).
- All non-CDL drivers that operate within a 150 air-mile radius of the location where the driver reports for duty and satisfy the time limitations and recordkeeping requirements of 49 CFR § 395.1(e)(2).

While the Court's mandate was not scheduled to take effect until 52 days after entry of judgment, the Agency ceased enforcement of the 30-minute rest break provision against short-haul operations effective August 5, 2013, three days after the ruling. The Agency also requested that its State enforcement partners cease enforcement of the State versions of this provision beginning August 5, 2013, with the understanding that they would not be found in vio-

lation of the Motor Carrier Safety Assistance Program (MCSAP) regulations (49 CFR Part 350) for doing so. And, on October 28, FMCSA formally amended the 2011 final rule to provide an exception from the 30-minute rest break requirement for the short-haul drivers who are not required to prepare records of duty status (RODS), consistent with the Court's decision.

Through our quick action following the Court's decision, we worked to ensure that the small businesses affected by the decision were provided with immediate relief from the 30-minute rest break requirement.

Applying the HOS Requirements to a Complex and Diverse Trucking Industry

Over almost 2 decades of HOS controversy, a common concern has been leveled by the trucking industry over what is often referred to as a "one size fits all" HOS rule. The Agency has crafted a rule that provides as much flexibility as possible. Our past experience from the May 2000 HOS notice of proposed rulemaking proves that efforts to put into regulations multiple options for such a complex and diverse industry are more likely to result in a rule that neither the industry nor the enforcement community can understand and apply consistently. With this in mind, FMCSA has maintained an open-door policy with the industry and demonstrated a willingness to have face-to-face meetings with various segments of the trucking industry to explore the feasibility of limited 2-year exemptions, as authorized by Congress in the Transportation Equity Act for the 21st Century (TEA-21).

Exemption Requests to the 30-Minute Off-Duty Break Rule

Our efforts to provide flexibility through the exemption process have enabled the Agency to address in a transparent manner the most pressing concerns of the trucking industry. The transparency involves a Federal Register notice-and-comment process through which all interested parties, including enforcement agencies, safety advocacy groups and other members of the trucking industry, have the opportunity to see all applications for exemptions from the HOS requirements and to submit comments to the Agency for consideration.

To date, the major concern expressed by several segments of the industry has been the 30-minute break requirement. Specifically, certain industries have identified operational challenges with the locations at which the break would be taken and whether certain limitations on drivers' ability to leave the vehicle would prevent them from using their rest breaks to satisfy the new rule.

The Agency included the 30-minute break provision in the final rule to address acute fatigue during the workday, requiring drivers to take a 30-minute off duty 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 the break may include meals, rest stops, and other rest periods.

Several organizations, including two Federal departments, have applied for exemptions to the 30-minute rest break provisions. The Agency has worked quickly to seek public comment on each of these applications and to address industry concerns to the extent that the exemption would achieve a level of safety equal to or greater than the 2011 final rule would provide.

- U.S. Department of Energy (DOE) and the U.S. Department of Defense (DOD), Military Surface Deployment and Distribution Command (SDDC). FMCSA granted exemptions to the 30-minute rest break provision to the DOE and DOD's SDDC to enable their contract driver-employees transporting security-sensitive materials to be treated the same as drivers transporting explosives, allowing these drivers to use 30 minutes or more of "attendance time" to meet the rest break requirement, provided they are performing no other work-related activity during this time.

- National Pork Producers Council (NPPC). FMCSA received an application from the NPPC on behalf of its members and other agricultural organizations for a complete exemption from the 30-minute rest break requirements for commercial motor vehicle (CMV) drivers transporting livestock. The request is based on assertions of risk to livestock being transported during hot and cold weather if the transporting vehicle remains stationary for an extended period of time. The Agency solicited and received public comments and is reviewing the request. Prior to this exemption request, the NPPC requested and was granted a 90-day waiver from the rest break provision from July 11–October 9 to protect the livestock from extreme summer heat that could have proved dangerous to the animals' health.

- National Ready Mixed Concrete Association (NRMCA). FMCSA received an application from the NRMCA for an exemption from the 30-minute rest break provision. The exemption would apply industry-wide to all motor carriers and CMV drivers operating ready-mixed concrete trucks. Although transportation of many ready-mixed concrete loads takes place within the parameters of the Agency's "short haul" provisions and is not subject to the rest break requirement, the NRMCA requested the exemption for those instances when the short-haul requirements cannot be met. The Agency has solicited and received public comments and its reviewing this request.

- National Armored Car Association (NACA). FMCSA received an application from the NACA for an exemption to the 30-minute rest break provision. The exemption would have applied industry-wide to all armored vehicle carriers and drivers and would have enabled drivers engaged in the transportation of currency, coins, precious metals, and other valuables to use any period of 30 minutes or more of "attendance time" to meet the rest break requirements. NACA submitted its application prior to the August 2 D.C. Circuit Court decision that vacated the 30-minute rest break provisions as it applies to short haul drivers. As the requirement would, therefore, no longer apply

to most short-haul transportation by armored cars, NACA withdrew its application for an exemption.

- Oregon Trucking Association (OTA). FMCSA received an application for an exemption from the OTA for a limited exemption from the 30-minute rest-break requirement on behalf of motor carriers and their drivers who transport timber from Oregon forestlands during periods in which fire safety restrictions limit their hours of operation. FMCSA will soon publish a Federal Register notice requesting public comment on the OTA's October 2013 application.

In addition, FMCSA's consideration of the various applications for exemptions, the Agency has fulfilled its commitment to continue to gather additional information and data concerning the HOS requirements. We made a commitment in the preamble of our December 2011 final rule to conduct a comprehensive analysis of the relative crash risk by driving hour and the impacts of the final rule. We look forward to continuing to review new information as it becomes available.

Field Study on the 34-Hour Restart

The Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112–141), enacted on July 6, 2012, mandated that FMCSA conduct a field study on the efficacy of the restart rule. I am pleased to report to you that FMCSA has completed the work mandated by Congress and we are currently in the process of preparing the final rule report.

Researchers worked with three motor carriers to conduct a naturalistic field study with drivers who used the restart provisions. The study ran from January–July 2013 and included 106 CMV drivers aged 24–69 with commercial driving experience ranging from less than one year to more than 39 years. The drivers represented diverse types of trucking operations, including 44 local drivers, 26 regional drivers, and 36 over-the-road drivers. Participating drivers provided a total of 1,260 days of data and drove a total of 414,937 miles during the study.

Using the drivers' official duty logs to identify the periods when they were on duty and when they were driving and to define their duty cycles and restart breaks, the drivers wore wrist activity monitors to monitor their sleep/wake patterns. A Psychomotor Vigilance Test (PVT) measured driver fatigue levels 3 times a day, and drivers also self-reported their own sleepiness. Additionally, a truck-mounted lane tracking system measured lane departures.

Comparisons were made among all these factors preceded by a restart break containing only one nighttime period versus duty cycles preceded by a restart break containing two or more nighttime periods. FMCSA will transmit these findings to Congress by spring 2014.

Assessing the Feasibility of a Split Sleeper Berth Pilot Program

From January 2010 to May 2011, the Agency conducted an in-residence laboratory study that examined three sleep conditions: consolidated nighttime sleep; split sleep; and consolidated daytime sleep. The study found that daytime consolidated sleep resulted in less total sleep time, increased sleepiness, and an increase in blood glucose and testosterone at the end of the workweek. However, the study found that performance was not significantly affected by the period during the day when a driver had the opportunity for sleep. Results of this study suggest that when consolidated nighttime sleep is not possible, split sleep is preferable to consolidated daytime sleep.

At this time, FMCSA is developing a pilot study to demonstrate how split sleep in conjunction with the Fatigue Management Program (FMP) and the use of Electronic Logging Devices (or ELDs) could be used to improve driver rest and alertness. The Agency requests the participation of motor carriers that would benefit from flexibility with regard to the sleeper berth provision, with appropriate constraints on the use of split sleep, and would be willing to measure driver alertness and changes in health metrics. The Agency plans to work with the National Association of Small Trucking Companies, the American Trucking Associations, and the Owner-Operator Independent Drivers Association to recruit drivers and motor carriers for this study.

Opportunities and Challenges to Implementing the New HOS Rules

Throughout the public engagement process we used in developing the new HOS requirements, the Agency heard about the need for flexibility in the HOS rules from the trucking industry. We included two changes to help the industry and drivers with options for recording certain rest breaks as off-duty time. These changes went into effect on February 27, 2012.

Off-Duty in a Parked CMV

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.

Off-Duty in Passenger Seat for Team Drivers

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 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.

Compliance Assistance Materials for the Industry

Knowing the impact the rule has on small businesses, the Agency continues to provide comprehensive compliance assistance information at its website (http://www.fmcsa.dot.gov/HOS) to assist trucking companies that are still training their drivers and dispatchers on the changes to the 34-hour restart and the new 30-minute rest-break requirement.

Prior to the July 1 compliance date, the Agency 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 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 have been updated to cover the Court-imposed changes to the 30-minute break requirement.

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 broadcasters 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 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 provided carriers and drivers a means of learning about the new HOS requirements at minimal cost.

To supplement the HOS regulations, FMCSA partnered with Transport Canada and a consortium of government, motor carriers and researchers to develop the North American Fatigue Management Program (NAFMP). This free online website provides extensive training and educational resources for truck and bus drivers. Based on years of research on fatigue, a series of 10 instructional modules inform drivers, their families, and carrier safety officials on effective ways to prevent driver fatigue. The NAFMP can be found at www.nafmp.org.

Conclusion

Since Congress directed the Department of Transportation to undertake an HOS rulemaking in ICC Termination Act of 1995, the Department has focused on implementing a new rule that will help reduce the number of fatigue-related fatal crashes involving large trucks. FMCSA remains committed to working with its safety part-

ners and stakeholders to provide an HOS regulatory approach that raises the safety bar for the industry and saves lives on our roadways. Additionally, we remain committed to ensuring that this regulation, like all our regulations, takes into account the specific needs of small businesses, which represent so much of the industry we regulate.

Thank you for the opportunity to discuss FMCSA's implementation of the 2011 HOS final rule and its impact on small businesses. I am glad to answer your questions.

Written Statement of

The American Trucking Associations, Inc.

Before the

SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

HEARING

WRONG WAY: The Impact of FMCSA's

Hours of Service Regulation

on Small Businesses

November 21, 2013

Introduction

Chairman Hanna, Ranking Member Meng, 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 30,000 members covering every type of motor carrier in the United States.

I am Duane Long, Chairman of Longistics, a trucking and logistics company based in Raleigh, North Carolina that my wife, Pat, and I started in 1984. We specialize in serving the pharmaceutical industry, and have built one of the industry's best records for on-time delivery, cargo integrity, safety and security. In fact, service, safety and security are obsessions with us. It is our belief that our achievements in these areas yield loyalty - we to our customers and our customers to us - resulting in long-term business relationships. In our business, we operate an average of 45 trucks and employ an average of 105 professional drivers who provide time- and security-sensitive trucking service for several large pharmaceutical customers throughout the U.S. Our drivers operate in teams, where one driver drives while the second driver rests in the truck's sleeper berth. We take great pride in our outstanding safety performance as measured by the Federal Motor Carrier Safety Administration, and by our own company.

I am here today to express my concerns, and ATA's concerns, over the impacts the recent changes to the hours of service rules are having on small motor carriers, and the professional drivers that work for them. I will describe how these rules, and mainly the restart provisions of the new rules, are impacting the industry, my company and my team drivers I will also explain why these changes were unnecessary and why they can best be described as *'a solution in search of a problem.'*

Mr. Chairman and Representative Rice, thank you for introducing H.R. 3413, which would stay the new restart provisions until the Government Accountability Office (GAO) can conduct an independent analysis of FMCSA's 2011 Hours of Service Regulatory Impact Analysis, and review the data and methodology used in FMCSA's restart field study required by Congress in MAP-21. Your support, and that of other Members of Congress, means a great deal to trucking companies, large and small alike.

ATA's Position on the New HOS Rules

Simply put, the July 1st hours of service (HOS) rule changes were unnecessary. The HOS regulations adopted in 2003 were working extremely well, and the Administration offered rhetoric, but little data, to explain why the regulations needed to be changed. Unfortunately, the gap between this rhetoric and the trucking industry's operating reality under these new rules is very wide. The changes are having a negative and very real impact on hundreds of thousands of drivers and motor carriers, as will be shown later in this testimony.

One thing is clear—FMCSA's action, while perhaps well-intentioned, was not based on evidence or analyses demonstrating a problem with the prior set of rules. In fact, FMCSA did not undertake its own analysis on the effectiveness of the 2003 changes to the hours of service rules, 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 2 years leading up to publication of the latest changes in December 2011. And, FMCSA's three paragraph statement in the rulemaking called "*The Purpose and Need for Regulatory Action*" (attached) did not cite any research or data analysis showing a problem. That speaks volumes.

The latest rule changes were driven by politics, not sound policy, and the reason the agency moved so quickly to propose and adopt a modified rule was to meet an arbitrary deadline agreed to as part of FMCSA's agreement to settle litigation of the 2003 rule. Although the new rule has largely been upheld by the D.C. Circuit Court of Appeals does not mean it is sound, only that the court found that the rule was not "arbitrary and capricious". In fact, the court went so far as to note in its decision that, " FMCSA won the day not on the strengths of its rulemaking prowess, but through an artless war of attrition."

FMCSA's justification for the new rule changes was based largely on old data and erroneous assumptions. For example, to calculate the safety benefits of the new rules in preventing crashes, the agency used a baseline assumption of 434,000 crashes per year. However, that was the number of total truck-involved crashes **more than 10 years ago**. Since then, the total number of large-truck crashes has declined both steadily and dramatically, falling to 273,000 in 2011 (the latest year for which complete data are available)—37 percent lower than the rate FMCSA used. In response to this comment by ATA during the latest rulemaking process, FMCSA contended that it assumed the annual number of crashes would rise as the economy improved and exposure (i.e., truck mileage and other vehicle mileage) increased. However, that has not been the case which demonstrates that FMCSA's assumption was incorrect. The total number of truck crashes has continued to drop each year since the end of the recession, even in the presence of economic growth in 2010 and 2011.

This is just one example of ways that FMCSA's costs and benefits assumptions were contrived to justify the new rules. There are numerous others the GAO should evaluate when conducting its independent review. For instance:

- In prior HOS impact analyses (e.g., 2007), FMCSA concluded that driver fatigue was a factor in about 7 percent of crashes. For the purposes of this rule, however, FMCSA's leadership contended that a much larger fraction of crashes are "associated" with driver fatigue—13 percent, almost twice as high as the agency's previous assumption. To arrive at this figure, FMCSA inappropriately assumed that each "associated factor" identified for a particular crash was the "cause" of the crash, even when multiple factors were present. This approach contradicts FMCSA's previously published caveat in its 2006 Large Truck Crash Causation Study which states that "[n]o judgment is made as to whether any [associated] factor is related to the particular crash, just whether it was present.". In other words, FMCSA had previously acknowledged that each "associated

factor" was not necessarily the cause of a crash, but now its latest assumption contradicts its prior, clear statement.

- In prior HOS analyses (e.g., 2007), FMCSA also concluded that existing HOS rules did not have any adverse impact on driver health. In the analysis underpinning this rule, however, FMCSA calculated substantial health-related benefits associated with reducing daily work time. Since the safety benefits of the new rules did not outweigh the costs of imposing them, these purported health benefits gave the agency a way to justify the new rules.

Fatigue does play a role in a small percentage of truck-involved crashes, and we must take appropriate steps to prevent fatigue-related crashes. We must all acknowledge, however, that tweaking the limits on working and driving hours is not going to solve the problem without also addressing other factors that contribute to fatigue, including lifestyle.

We also believe that the key to better enforcing the HOS rules are electronic logging devices. MAP-21 included an ELD mandate, and we have been very disappointed that FMCSA continues to push back the date for issuing a proposed rule. The ELD rule should be a top priority.

Recent Research & Data Analyses

The Latest Research – ATRI's "Operational And Economic Impact of the New Hours of Service" November 2013

On Monday, November 18, 2013, the American Transportation Research Institute (ATRI) issued a new report on the impacts of the July 1st HOS rule changes. The findings of this research report are groundbreaking, and remarkably timely for this important hearing.

In this new research, ATRI performed a number of tasks. First, it conducted a review of the HOS literature between the time of the June 2013 ATRI report and the current report. Publicly available court documents as well as industry trade publications were the focus of this review.

Second, ATRI conducted two separate qualitative surveys. The first survey collected data from more than 2,300 professional truck drivers over a 55-day period during September and October, 2013. The second survey was directed to motor carriers, and yielded responses from more than 400 trucking fleets. The survey instruments were based in large part on those utilized in ATRI's June 2013 HOS impacts study (summarized below). Additions to the surveys, however, included questions related to the rest break requirement, driver pay, fatigue and the enforceability of the new HOS rules. A number of open-ended questions were included as well, allowing respondents to provide additional detail on their answers. ATRI then compiled and analyzed both sets of driver and carrier survey data.

Third, ATRI collected and analyzed electronic logbook data from more than 40,000 drivers over a 93-day period after July 1st. And, finally, ATRI developed a comprehensive report explaining its research findings. ATRI's key findings from this groundbreaking research are immediately below.

Summary of ATRI's November 2013 Driver-Related Findings

- **Driver Compensation Is Lower:** A total of 67.4 percent of the driver survey respondents reported experiencing a decrease in their income since the July 1st HOS changes;

- The range of driver pay impacts resulting from the July 1st HOS rules changes is a conservative $1.6 billion to $3.9 billion annual loss across 1.6 million over the road commercial drivers;

- **Restart Changes Having Large Impact:** In response to the question, "How significantly has the 1 am to 5 am rule impacted you?", nearly 70 percent of drivers indicated the new provision has had a moderate or significant impact.

- In response to the question, "How significantly has the 1 restart per week rule impacted you?", nearly 66 percent of drivers indicated a moderate or significant impact;

- **Quality of Life Negatively Affected:** In response to the question, "Overall, how would you characterize the impact of the rule changes on your quality of life?", nearly half (49%) indicated the July 1st changes have had a "very negative" impact, and a combined 82.5 percent indicated a "somewhat negative" or "very negative" impact;

- **Driver Fatigue Levels Are Perceived To Be Higher:** In response to a question about their relative fatigue levels since the new HOS rules went into effect, 66 percent perceived increases in fatigue.

Summary of ATRI's November 2013 Carrier-Related Findings

- **HOS Rules Are Resulting in Widespread Productivity Losses:** More than 80 percent of the 400+ carrier survey respondents indicated a loss of productivity;

- **More Drivers Now Required to Move the Same Amount of Freight:** To comply with the new HOS rules carriers have shifted driver schedules. Many of these new schedules have resulted in a decrease in the number of weekly miles a driver can log. Due to the decrease in miles, carriers now have a choice of turning down freight or making up the miles by incorporating additional drivers and/or equipment into their operations. These options are less profitable and less efficient than operations prior to the rule, and are a central component of the productivity loss carriers are experiencing;

- **Driver Shortage and Turnover Is Getting Worse:** Prior to the July 1st rules, qualified drivers were scarce with an estimated shortage of 20,000 to 25,000 for-hire truckload drivers. As a result of the changes more drivers are required and the level of scarcity has increased. To attract drivers after the HOS change, some carriers have opted to increase pay, and some may increase rates for shippers.

- **Decreased Flexibility to Meet Customer Requirements:** Meeting customer requirements is more difficult under the new HOS rules. In particular, drivers are limited to one restart per week and must take those restarts across two nighttime periods. Shippers, however, may require delivery at any point on a given day, and with little notice. The data show, particularly those data describing the variability in driver weekly work time, that flexibility has decreased since July 1, 2013. As a result, drivers are less able to accumulate hours for unanticipated shipper requests via the 34-hour restart. In many instances, therefore, carriers must either turn down business or increase driver capacity.

A more comprehensive Executive Summary of this November 2013 ATRI report can be found at Appendix B. The full report can also be found at http://http://atri-online.org/

ATRI's June 2013 HOS Restart Analysis

Research conducted by ATRI just prior to the July 1st effective date also called into question the data and analyses upon which FMCSA justified these changes. In June 2013, ATRI published an 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.[1]

In its June 2013 study, ATRI summarized the results of its 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 prior 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 July 1 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, FMCSA claimed that the restart only impacts 15% of the over-the-road driving population. By contrast, 71% of drivers in the ATRI logbook analysis had recently completed a restart that would not qualify under the new rules.

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

In addition, 74% characterized the expected impact of the pending 1 a.m. to 5 a.m. restart restriction as either "major" or "moderate."[2]

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 also pointed out that FMCSA's percentages and assumptions were based on poor and unrepresentative data gathered during targeted agency enforcement and compliance activities.

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 $322 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. In short, ATRI found that the changes in the restart rule would have a net cost of up to $376 million annually, rather than a benefit, as claimed by FMCSA, of $133 million annually. Keep in mind this estimate was calculated in June 2013, prior to implementation of the new rules. As provided above, ATRI's November 2013 report analyzes industry information and data collected after implementation of the new rules, and the costs resulting from driver and carrier productivity losses are significantly higher than the June 2013 estimate.

An Executive Summary of the June 2013 ATRI report can be found at Appendix C. The full report can also be found at http://http://atri-online.org/

ATRI's results from both June 2013 and November 2013 call into serious question the use of FMCSA's Regulatory Impact Analysis to justify these new rules.

Small Carrier Impacts

The new HOS rules are having real-world impacts on small trucking companies every day. It's important to keep in mind that 97% of trucking companies are small businesses, operating 20 or fewer trucks. As such, these new rules are affecting hundreds of thousands of small fleets, and the millions of drivers working for them.

In general, the new rules are resulting in:

1. Less productive trucking operations and lower company revenue, mainly as a result of longer off-duty restart periods by drivers;
2. Fewer weekly miles by many drivers, and lower company revenue, as a result of working 5 days per week (in order to qualify to take the more restrictive, longer restart on the weekend);
3. Less take home pay by some drivers, as a result of fewer weekly miles and/or work;

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

4. Higher levels of driver stress and frustration, and greater job dissatisfaction, from unnecessary restrictions on their work day and work week;
5. More traffic in the early morning hours, particularly on Mondays, as a result of some drivers using the new restart provision with the 1 to 5 am restrictions over the weekend;
6. Greater complexity in the management of operations—operations and/or safety personnel now have to determine whether it is more efficient and productive for each driver to take a restart meeting the new restrictions, or work under the 70 hour in 8 day rule; and,
7. Longer workdays in some operations as a result of the mandated rest break and, because the start time the next day doesn't shift forward, time off between shifts for rest is somewhat less.

ATA has heard these concerns voiced repeatedly by many small trucking fleets since shortly after the July 1st implementation date. ATRI's November 2013 research report confirms each one of these impacts. It's also important to note that not a single driver or fleet has communicated to ATA their belief that these rules will improve the safety or the health of drivers (as well intended as they might have been).

In addition to the general impacts, below are some specific examples of impacts on small carriers. I will start with my own company example.

My company, Longistics, employs many team operations, typically husbands and wives, who take turns driving the truck and resting in the sleeper berth compartment. Their weekly routine often keeps them out on the road until 2 a.m. on early Saturday morning. Under the previous restart rule, they could depart on their next trip on Sunday evening in order to make a Monday morning delivery as required by our customer. Now, if taking a restart under the new rules, they cannot depart until after 5 a.m. on Monday, and are unable to meet the customer's expectations and the demands of just-in-time delivery needs. It's important to point out that these driver teams are not comprised of inexperienced drivers who are pushed to the limits or who work extreme hours. Many of these drivers have more than ten years of experience and drive trucks that are mechanically speed governed at 65 mph. They know how to manage their routines to accomplish the workload and get needed rest, in addition to allowing time off for meals, fuel and the like. They are efficient; one sleeps while the other drives. In short, they resent the intrusion of the government on their daily work routine, they resent the new restart restrictions, and the effect they are having on their ability to make a living.

Other small fleets have shared similar concerns with me and with ATA. For instance, because restarts must now include a 1 – 5 a.m. period, as mentioned above many trucks are forced to enter the traffic flow at around the same time early in the week, just as rush hour begins. A regional food transporter based in Austin, MN has experienced a loss in productivity per truck of between 4 and 6%. Their drivers are frustrated and so are their customers, as late deliveries have doubled over the past 3 months.

Similarly, another small MN-based carrier found that its drivers are faced with losing $1,000 a month in revenue due to the changes. Another small carrier pointed out that due to the restriction on using the restart only once per week, its drivers must time the placement of their

restarts differently. As a result, instead of being home for a restart every 4 – 7 days, they now only get back every 8 – 14 days and must take a restart while out on a long journey.

Summary & Request for Congress' Help

Summary - FMCSA's recent HOS changes are costly for both drivers and fleets, they are unnecessary, and are not likely to result in any measurable safety or health benefits. Sadly, FMCSA initiated these changes without any research indicating a problem that would be solved by changing the rules. Not surprisingly, FMCSA has announced no plans whatsoever to collect data in an effort to determine if the changes have resulted in some measurable benefit(s).

Further, data and analyses used by FMCSA to justify the July 1st changes were deeply flawed. Among other things, the agency overstated the number of crashes caused by driver fatigue, the number of crashes that would be averted by changing the rules, and the health benefits that would result.

Recent research by ATRI has confirmed many of these problems. ATRI's June 2013 study of 1.4 million driver records found FMCSA's contention that only 15% of long haul drivers would be impacted by the July 1st changes to be wildly incorrect.

More recently, ATRI research has confirmed the industry's fear—the new rules are having an overall negative impact on industry productivity, driver compensation and carrier service levels, while having little or no positive impact on safety.

In short, drivers, motor carriers and researchers have identified and documented a clear and wide disparity between FMCSA's hours of service rhetoric and trucking's new. more costly operating reality.

Congressional Assistance Needed - Congress has taken an active interest in the HOS issue for some time, and we encourage it to continue. Congress directed FMCSA in MAP-21 to complete a field test of the restart. The study was required to have been completed by March 31st of this year, well in advance of the July 1st effective date of these changes, and reported on by the end of September. Our understanding is that the operational study was completed at the end of July. However, the final report has not been submitted to Congress. Congress should postpone the effectiveness of the new restart provisions until GAO can objectively evaluate the data and methodology used by FMCSA in its field restart study.

Congress should enact H.R. 3413 and direct GAO to independently evaluate the data and methodologies used by FMCSA in its Regulation Impact Analysis that accompanied the December 2011 final rule, and submit a report to Congress and the industry.

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

U.S. Department
of Transportation

Federal Motor Carrier
Safety
Administration

2010-2011 Hours of Service Rule

Regulatory Impact Analysis

RIN 2126-AB26

By
Analysis Division
Federal Motor Carrier Safety Administration

December 2011

- Drivers may not be on duty for more than 60 hours in 7 days (if the carrier operates only 6 days a week) or 70 hours in 8 days (if the carrier operates 7 days a week).
- Any period of 7 or 8 consecutive days can begin following a period of at least 34 consecutive hours off duty.

Several categories of motor carriers and drivers are exempt from parts of the HOS regulations or from the entire HOS regulation under the National Highway System (NHS) Designation Act of 1995 (referred to as the NHS Act).

1.1. Purpose and Need for Regulatory Action

The purpose of the HOS limits is to reduce the likelihood of driver fatigue and fatigue-related crashes. Although the rules that existed prior to 2003 allowed less daily driving than the 2003, 2005, and current rules (10 hours versus 11 hours), the driving could occur 15 hours or more after the driver started working, without any intervening rest, and followed a shorter minimum rest period (8 hours versus 10 hours). The change to a 14-hour consecutive duty period and a 10-hour, rather than an 8-hour, rest period was intended to limit the period in which a driver could operate a CMV and move the driver toward working a schedule that was consistent with the 24-hour circadian clock that humans function on normally. The current rule does not limit the number of hours a driver can perform work other than driving, but if a driver works after 14 hours, he or she must take at least 10 hours off after finishing work before driving a CMV again. The change to a 10-hour off-duty requirement also recognized that drivers need to do other things in their off-duty time besides sleeping; the 10-hour break gives them an opportunity to obtain the 7–8 hours of sleep most people need to be rested and to carry out other necessary day-to-day activities. The 34-hour restart provision was intended to provide drivers with an opportunity to obtain two 8-hour rest periods, which research indicates can overcome cumulative sleep deprivation. Similarly, the sleeper berth provisions in the 2005 and current rules eliminated the practice of splitting time in the sleeper berth into increments that were too short to provide a reasonable period of sleep.

One disadvantage of the restart provision is that it allows drivers to accumulate a substantially larger total number of on-duty and driving time in a 7-day period than the pre-2003 HOS rule allowed. The restart provision, combined with allowing 14 hours on duty per day and 11 hours of driving, enables drivers to accumulate 84 hours of on-duty time in a 7-day period, as opposed to the 60 hours allowed under the previous rule. Under the old rule, drivers could be on duty a maximum of 60 hours in 7 days or 70 hours in 8 days. The restart provision in the current rule allows them to re-set their weekly on-duty allowance after taking 34 consecutive hours off duty. Thus, if a driver maximized daily on-duty time for 5 days, he would reach his 70-hour limit of on-duty time, with 40 hours of off-duty time, for a total elapsed time of 110 hours. A 7-day week contains a total of 168 hours, so after taking 34 hours off duty to reset weekly on-duty time, the driver could then work another 14 hours before taking a final 10-hour off-duty period to end the week, thereby accumulating 84 hours on duty in 7 days. Although few drivers use the rule to these extremes, the potential for drivers to work these extended hours has been a main objection voiced by critics of the current HOS rule.

In addition, although 34 hours would enable a daytime driver to obtain 2 full nights rest with an intervening off day, the same cannot be said for nighttime drivers. Nighttime drivers generally

flip their schedules on weekends – going from sleeping during the day and driving at night to sleeping at night and being awake during the day. As a result of flipping schedules, many nighttime drivers would only get one period of consolidated sleep during a 34-hour restart rather than two periods of consolidated sleep. As a result, 34 hours may be inadequate to allow drivers on night schedules to overcome any sleep debt that may have occurred during the work-week. The Agency is concerned that the increase in total maximum allowable work per week allowed by the rule, and the short restart, may result in adverse impacts on driver health and public safety.

1.2. OPTIONS

This analysis considers and assesses the consequences of four potential regulatory options. Option 1 is to retain the current rule, while Options 2, 3, and 4 are to adopt several revisions to that rule. The options and the rationale behind their provisions are described briefly in this section. Based on the estimated net benefits of Options 2 through 4 relative to the no-action alternative of retaining the current rule (Option 1), FMCSA is adopting Option 3.

1.2.1. Option 1

Option 1 is to retain the current HOS rule. The existing exemptions to the current HOS regulations under the NHS Act would remain in effect.

The current HOS rule is divided into daily and multi-day provisions, which can be defined as follows:

- Following 10 consecutive hours off duty, operators can drive up to 11 hours within a period of 14 consecutive hours from the start of the duty tour.
- Short-haul operators of vehicles less than 26,001 lbs. gross vehicle weight/gross vehicle weight rating, remaining within a 150-mile radius of their base, may keep timecards in lieu of logbooks and may be on duty up to 16 consecutive hours for 2 days during a 7-day work week.
- Operators cannot drive after being on duty up to 60 hours during the last 7 days or 70 hours during the last 8 days.
- If a sleeper berth is used, the equivalent of the normal 10-hour off-duty break is an 8-hour period in the sleeper berth and an additional 2-hour period either in the sleeper berth or off duty; provided that the duty periods preceding and following each of these two periods sum to no more than 14 hours.
- Operators who obtain 34 consecutive hours of off-duty time can begin a new period of 60 hours in 7 days or 70 hours in 8 days (i.e., the 7- or 8-day "clock" is restarted by a 34-hour off-duty period).

1.2.2. Option 2

This Option differs from Option 1 as follows:

- Following 10 consecutive hours off duty, operators are limited to 10 (rather than 11) hours of driving within a period of 14 consecutive hours from the start of the duty tour.

Appendix B

AMERICAN TRANSPORTATION RESEARCH INSTITUTE
OPERATIONAL AND ECONOMI IMPACTS OF THE NEW HOURS OF SERVICE
November 2013

EXECUTIVE SUMMARY

In late 2010, the Federal Motor Carrier Safety Administration (FMCSA) commenced a multi-year process to significantly change the Hours-of-Service (HOS) rules. One year later, and after several legal proceedings, a final rule was issued by the agency. That rule, which was implemented July 1, 2013, added the following changes and provisions to the existing HOS rules:

1) **1 a.m. to 5 a.m. Restart Provision:** a valid 34-hour off-duty restart period must include two periods from 1 a.m. to 5 a.m.
2) **One Restart per Week Restart Provision:** use of the restart is limited to one time per week (once every 168 hours from the beginning of the prior restart).
3) **Rest Break Requirement:** a driver may drive only if 8 hours or less has passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes.

This report assesses the impacts of these changes on commercial truck drivers and motor carriers. It closely follows the American Transportation Research Institute (ATRI) June 2013 publication, *Assessing the Impacts of the 34-Hour Restart Provisions*[3], and quantifies operational and economic impacts since the July 1st HOS rules went into effect.

As background, prior to implementation of the rules FMCSA completed a Regulatory Impact Analysis (RIA) which assessed the expected costs and benefits associated with the new regulations.[4] In the RIA, FMCSA estimated a net benefit of $133 million for the restart provisions. In a separate pre-implementation analysis ATRI, using log book data representing normal trucking operations, projected an estimated cost to the industry of $95 million to $376 million annually.

Since the new HOS rules were implemented, a number of carriers have now quantified the actual impact to their operations and the findings are consistent with the pre-July 1st estimates. Werner Enterprises reported decreased productivity of 2 to 3 percent company-wide and 6 percent among team drivers;[5] Schneider National has realized a 3.1 percent decrease in productivity on single-driver shipments and a 4.3 percent decline on team shipments;[6] and the

[3] Short, J. (2013). Assessing the Impacts of the 34-Hour Restart Provisions. American Transportation Research Institute. Arlington, VA.
[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] Watson, R. Truck Drivers Losing Money from Recent HOS Changes, Fleet Leaders Say. Transport Topics. October 22, 2013. Available Online:
http://www.ttnews.com/articles/basetemplate.aspx?storyid=33272&t=Truck-Drivers-Losing-Money-from-Recent-HOS-Changes-Fleet-Leaders-Say
[6] Schneider National Shares Impact, Challenges of Hours of Services Changes. Schneider National Press Release. October 24, 2013. Available online:
http://www.schneider.com/KnowledgeHub/News/PRD_006190

National Transportation Institute's (NTI) survey of 412 carriers found that driver wages have decreased by 3.2 to 5.6 percent.[7]

For its analysis of industry impacts post-rules implementation, the ATRI Research Team conducted two surveys; a driver survey which yielded 2,370 responses and a motor carrier survey which yielded 446 responses. Additionally, ATRI conducted an analysis of logbook data representing more than 40,000 drivers.

Results from the driver survey indicated that 12.4 percent of drivers with prior experience using the restart had discontinued use once the new rules went into effect. Respondents indicated that the benefits of the restart, particularly those related to productivity, have diminished. The majority of respondents indicated that the two new restart provisions have had a moderate or significant negative impact on their operations. The survey also found that many drivers are adjusting to the new restart rules by changing schedules, incorporating a rolling schedule into their operations, changing start/end times and turning down loads.

A majority of the drivers (67.7%) have experienced a moderate or significant negative impact from the rest break requirement, and are adjusting through planning, schedule changes and making use of the rest break time to accomplish other tasks.

The drivers were evenly split in opinions on the enforceability of the new HOS requirements, with many indicating the rules are difficult to enforce without more widespread use of electronic logs. Most drivers, 82.5 percent, indicated that the new HOS rules have had a somewhat negative or very negative impact on their quality of life. More than half have spent more time in congestion as a result of the changes and 66.3 percent perceived an increase in their own level of fatigue. Additionally, more than 66 percent have experienced a decrease in weekly miles and weekly pay. Finally, nearly 20 percent of drivers reported an increase in on-duty hours, which may indicate more time spent on non-revenue generating activities such as searching for available truck parking.

Among responses to the motor carrier survey, 11.7 percent indicated that their company has discontinued use of the restart due to the July 1st HOS change. Among those carriers with a history of restart use, there is evidence that the utility of the restart has diminished. The majority of motor carrier survey respondents indicate that a moderate or significant negative impact to operations has resulted from the restart changes and the rest break requirement.

To adjust to the 1 a.m. to 5 a.m. rules carriers indicated that start times and driver schedules were changed, often including reduced driver work weeks. Some have had to add more drivers and others have adjusted customer service expectations. To adjust for the one restart per week rule, carriers report a return to the use of a rolling schedule, making schedule adjustments, hiring more drivers and turning down loads. Carriers have adjusted to the rest break requirement by reducing customer service expectations and monitoring/training drivers, in addition to changing driver and delivery schedules. More than 80 percent of carriers have indicated a productivity loss, with nearly half stating that they require more drivers to haul the same amount of freight under the new HOS rules. This is consistent with a similar survey conducted by the National Private Truck Council which found among its membership that 80

[7] Solomon, M.B. (2013). HOS Compliance Cutting Driver Wages By As Much As 5.6 Percent, Survey Finds. *DC Velocity*. Available Online:http://www.dcvelocity.com/articles/20131014-hos-compliance-cutting-driver-wages-by-as-much-as-56-percent-survey-finds/

percent of private carriers were experiencing negative productivity impacts from the HOS rules changes.[8]

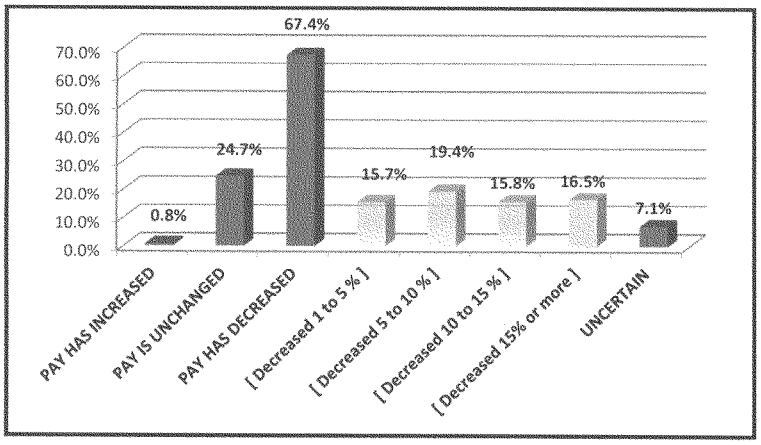
The logbook data analysis indicated a significant increase in restart period length from pre- to post-HOS implementation, with 63 percent fewer restarts that were 34 hours in duration. This increase may have been caused by the 1 a.m. to 5 a.m. rule which has resulted in a "window" that drivers must be off-duty within to achieve a legal restart period of 34 hours. Additionally carriers may have modified schedules by increasing restart length in order to meet all requirements of the new restart rules.

Finally, the logbook analysis showed that while drivers experience variability in their work schedules, a decrease in variability is observed in the new HOS operating patterns suggesting that the new regulations contribute to reduced flexibility in driver work schedules.

To summarize the results, the findings can be applied to three key areas: driver pay impacts, carrier productivity impacts and safety impacts.

For drivers, a total of 67.4 percent reported experiencing a decrease in pay since the July 1st HOS changes (see Figure ES.1).

Figure ES.1. – Driver Pay Impacts



This loss in pay could be attributed to myriad factors related to the July 1st HOS rules, including:

- Schedule changes to meet requirements of the restart provisions
- Increased restart times
- Reverting back to use of a rolling schedule

[8] National Private Truck Council Hours-of-Service Survey. NPTC. August 2013.

- Lost loads due to decreased flexibility
- Rest break requirement increasing unproductive on-duty time (e.g. finding truck parking)

This loss also comes at a time when demand for drivers and freight capacity is at a peak. Conservative estimates for pay decreases across 1.6 million over-the-road (OTR) drivers were developed and are described in detail in the report. A driver pay decrease of 3.2% – 7.7% was identified, which is consistent with industry impacts found through the literature review.

Tables ES.1 and ES.2 apply the range of driver pay impacts to a population of 1.6 million OTR drivers, weighting the calculations based on the survey results. A conservative $1.6 billion to $3.9 billion annualized loss was identified.

Table ES.1. – 3.2% Driver Pay Impacts

Category	Assigned Decrease/ Increase	Percent of Respondents	Number of Drivers	Average Annual 2011 Salary ($48,121) * Number of Drivers	Annual Loss = Total Compensation by Category * Decrease/Increase
Pay has Increased	3.2%	0.8%	12,752	$613,657,811	**$19,637,050**
Pay is Unchanged	0.0%	24.7%	395,324	$19,023,392,136	
Pay has Decreased	-3.2%	67.4%	1,078,002	$51,874,540,276	**($1,659,985,289)**
Uncertain	0.0%	7.1%	113,921	$5,482,009,777	
		100.0%	1,600,000	$76,993,600,000	**($1,640,348,239)**

Table ES.2. – 7.7% Driver Pay Impacts

Category	Assigned Decrease/ Increase	Percent of Respondents	Number of Drivers	Average Annual 2011 Salary ($48,121) * Number of Drivers	Annual Loss = Total Compensation by Category * Decrease/Increase
Pay has Increased	7.7%	0.8%	12,752	$613,657,811	**$47,251,651**
Pay is Unchanged	0.0%	24.7%	395,324	$19,023,392,136	
Pay has Decreased	-7.7%	67.4%	1,078,002	$51,874,540,276	**($3,994,339,601)**
Uncertain	0.0%	7.1%	113,921	$5,482,009,777	
		100.0%	1,600,000	$76,993,600,000	**($3,947,087,950)**

Carriers face several productivity-related challenges as a result of the HOS changes, and 80 percent of carrier respondents indicated that they have experienced a loss in productivity. The

key carrier outcomes that result from the HOS changes, including those related to productivity loss, are as follows:

- **More Drivers are now Required to Move the Same Amount of Freight:** To comply with the HOS rules carriers have shifted driver schedules. Many of these new schedules have resulted in a decrease in the number of weekly miles a driver can log. Due to the decrease in miles, carriers have a choice of turning down freight or making up the miles by incorporating additional drivers and/or equipment into their operations. These options are less efficient than operations prior to the new HOS rules, and are a central component of the productivity loss.

- **Driver Shortage and Turnover:** Prior to the July 1st HOS rules, qualified drivers were scarce with an estimated shortage of 20,000 to 25,000 for-hire truckload drivers.[9] As a result of the changes more drivers are required and the level of scarcity has increased. To attract drivers after the HOS change, some carriers have opted to increase pay[10] and some may increase rates for shippers. Rate hikes are challenging, however, due to strong competition among industry participants. If rate increases do not fully compensate for driver pay increases then carriers raising pay will assume an additional financial burden.

- **Decreased Flexibility to Meet Customer Requirements:** Meeting customer requirements is more difficult under the new HOS rules. In particular, drivers are limited to one restart per week and must take those restarts across two nighttime periods. Shippers, however, may require delivery at any point on a given day, and with little notice. The data show, particularly those data describing the variability in driver weekly work time, that flexibility has decreased. As a result, drivers are less able to accumulate hours for unanticipated shipper requests via the 34-hour restart. In many instances carriers must either turn down business or increase driver capacity.

The central goal of the HOS rules is to create a safe operating environment. The goals of the new July 1st HOS changes were to make the existing HOS rules even safer. Drivers, however, have indicated increases in fatigue since the rules were implemented. Additionally, drivers and carriers remain uncertain about the enforceability of the new rules. Finally, there is evidence that the rules have increased time working and time away from home for many drivers. Some drivers have indicated that due to the rest break requirement, for instance, typical work day lengths have actually increased. Nearly 20 percent indicated an increase in on-duty time, though miles and pay have decreased or remained constant. Still others indicated that due to the changes, off-duty time has been required away from home more often, thus decreasing the restorative benefits of the rest period.

Trucking is not a "one-size-fits-all" industry, and individual trucking operations vary greatly. Even so, there has been a clear, measurable and generally negative impact to a significant portion of the industry resulting from the July 1st HOS rules implementation. This report has demonstrated clear evidence that the rules have created a significant financial consequence for individual drivers as well as motor carriers, the majority of whom are small businesses. The

[9] Costello, Bob. *Truck Driver Shortage Update.* American Trucking Associations, November 2012.
[10] As an example, in October 2013 motor carriers CRST Expedited "announced plans to spend more than $10 million over the next year for pay increases to attract new drivers, compensate drivers for recent productivity losses and provide performance-based bonuses for top drivers." Transport Topics, October 3, 2013.

financial impacts are realized through decreased earnings for drivers, decreased efficiency and productivity for carriers and, as trucking capacity tightens due to an increasing driver shortage, increased rates for businesses that ship goods.

Appendix C

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.[11] 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.

[11] 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.[12]

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

[12] 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

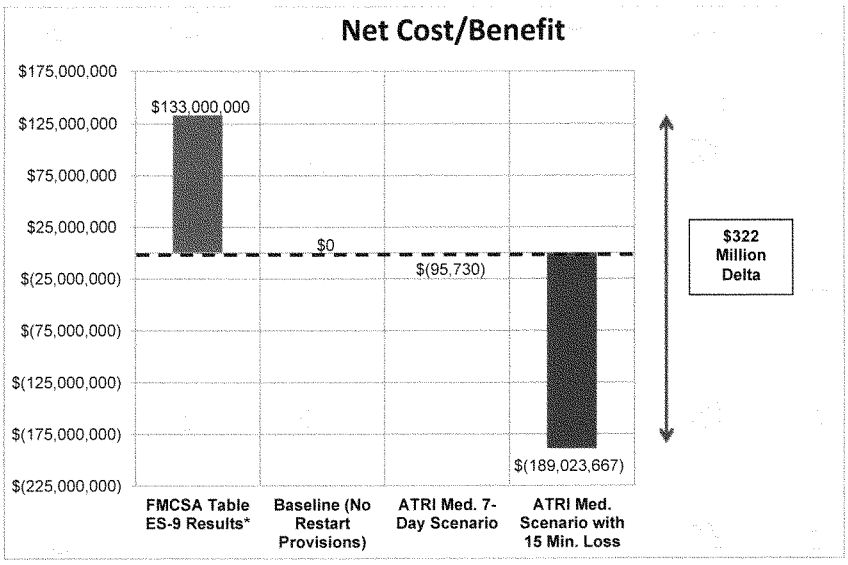
	FMCSA Restart Change Costs	**Restart Change Safety Benefits**	**Restart Change Health Benefits**	**Additional Restart-Related Productivity Cost**	**Net Benefits (Costs) ~Restart Only~**
FMCSA Table ES-9 Results*	$331,000,000	$210,000,000	$254,000,000	$ -	**$ 133,000,000**
ATRI Medium 7-Day Scenario	$ 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.

Statement of

TILDEN E. CURL, JR.
PROFESSIONAL TRUCK DRIVER AND MEMBER,
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Before the

COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON CONTRACTING & WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

Regarding

The Impact of FMCSA's Hours of Service Rule on Small Businesses

NOVEMBER 21, 2013

****

On behalf of

Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029
Phone: (816) 229-5791
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Good morning Chairman Hanna, Ranking Member Meng, 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 Tilden Curl. I am a small business trucker from Olympia, Washington. I have more than 20 years of trucking experience and have been an OOIDA member since 2001. I currently operate a step-deck trailer through seven western states, often hauling specialized freight. I am proud to be here today testifying on behalf of OOIDA and my fellow professional drivers.

As you are likely aware, OOIDA is the national trade association representing the interests of independent owner-operators and professional drives 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 and every Congressional district who collectively own and operate more than 200,000 individual heavy-duty trucks.

The majority of the trucking industry in our 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 trucking companies operating in the United States. It is estimated that OOIDA members and their small business trucking peers collectively haul around 40 percent of the freight moved by truck nationally each year.

Before discussing the hours-of-service (HOS) regulations, I would like to personally thank Administrator Ferro for recently joining an OOIDA Board Member during a two-day, thousand-mile "ride-along" from the Washington, DC area to St. Louis. She is the first Federal Motor Carrier Safety Administration (FMCSA) Administrator to join a trucker out on the road over a multiple day period, and OOIDA appreciates her willingness to experience some of the challenges truckers face on a daily basis.

I also want to highlight OOIDA's commitment to highway safety and discuss a very memorable day in my life as an example of the focus our nation's professional truckers place on safety.

Just after noon on October 27, 2010, I was driving southbound on Highway 99 near Tulare, California in the San Joaquin Valley. A vehicle lost control and crossed traffic, finally coming to rest with its front wheels stuck over the railroad tracks that parallel the highway. After stopping my truck to provide assistance, I saw a train coming up the tracks.

An elderly woman exited the passenger side of the car, and I yelled for her to get clear of the tracks. I then noticed that the driver was unresponsive and trapped inside. At first, the door was locked and could not be opened, but I was able to squeeze my arm through the slightly lowered driver's window and unlock it. Working quickly, I was able to unfasten the man's seatbelt and drag him

out of the car and away from the area just seconds before the train collided with the stranded vehicle.

I was honored as the 28th annual Goodyear Highway Hero for my action that day, but I feel that what I did was what most professional truckers would do if presented with the same situation—intervening to save the life of another motorist on the highway.

Safety is something that truckers must focus on every single day, and as small business owners, OOIDA members have a unique perspective. The vast majority of OOIDA's members own their own truck, so if we are involved in an accident, no matter who is at fault, our businesses and our family incomes are directly impacted. Indeed, many small truckers have had to declare bankruptcy due to the impacts from an accident that was the fault of another motorist.

Safety and economics are inherently linked, and that is reflected in the safety record of OOIDA members out on the road. With a quarter century of truck driving experience, the average OOIDA member has safely driven around two million miles over the course of their career in trucking without a reportable accident.[1] To put that in perspective, the average passenger car driver would need to drive for at least 150 years to reach that level of experience out on the highway.[2] Indeed, Administrator Ferro recently honored several dozen OOIDA Safe Driving Award recipients, with many members having 30 to 40 years of accident-free driving, and one award recognizing an OOIDA Board Member with 62 years of safe driving.

Coming from this viewpoint, OOIDA strongly feels that the key to highway safety above any regulation or technology is ensuring there is a safe, well-trained, 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 facility accidents during 2008 and 2009 when the economy faced significant challenges. This time period saw a significant reduction in the number of new truckers out on the road, while experienced drivers stuck through the rough patch. The result was a drop in accident rates during that period.[3] With the improvement in the economy, we have seen an increase in both entry-level drivers on the road and in truck-involved fatality accidents.

Further, OOIDA's examination of FMCSA-published accident data has shown that the technologies that many vendors, major motor carriers, and government agencies are advancing as highway safety solutions miss the mark by a wide margin, especially when compared to safe and experienced truckers. OOIDA's research arm, the OOIDA Foundation, has compared crash data for major car-

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[1] OOIDA Foundation, "Owner-Operator Independent Drivers Profile 2012," AVAILABLE: http://www.ooida.com/OOIDA%20Foundation/RecentResearch/OOIDP.asp.

[2] Based on the "Average Annual Miles Per Driver" of 13,476 miles driven per year as calculated by the Federal Highway Administration, see http://www.fhwa.dot.gov/ohim/onh00/bar8.htm.

[3] Federal Motor Carrier Safety Administration—Analysis Division, "Large Truck and Bus Crash Facts 2011," Trends Table 1. Large Truck and Bus Fatal Crash Statistics, 1975–2011, page 4, AVAILABLE: http://www.fmcsa.dot.gov/facts-research/LTBCF2011/LargeTruckandBusCrashFacts2011.aspx.

riers who utilize "safety technology" such as electronic on-board recorders, speed limiters, and stability control systems in trucks owned by the carriers and driven by company drivers to crash data for major carriers that utilize owner-operators who own their own trucks that generally do not have this technology. The experienced drivers for large owner-operator carriers drive an average of 1.72 million miles, while technology-focused carriers on average drive 500,000 fewer miles between accidents. Indeed, several of these carriers had half as many miles between accidents as the owner-operators. These statistics, which reflect real on-the-road safety performance, certainly point to a reality where safety technology replacing safe, knowledgeable, and experienced drivers is wishful thinking.

OOIDA's top safety priority is ensuring that long-overdue entry-level driver training requirements are addressed in short order. Earlier this year, OOIDA issued a comprehensive entry-level driver training proposal as part of its "Truckers for Safety" highway safety agenda. You can find more about this proposal online at http://www.truckersforsafety.com. In the view of OOIDA and the professional truckers we are proud to have as members, ensuring that new drivers are well trained will lead to improvements on a long-list of issues facing the industry, including those beyond safety matters.

We appreciate Administrator Ferro's public commitment to move forward on entry-level driver training requirements. OOIDA is hopeful that FMCSA will soon be taking steps toward development these long overdue rules. Instead of focusing on more restrictive regulations and costly technology mandates, the priority should be on the lower cost and more effective approach of ensuring that new long-haul tractor-trailer drivers get the safety skills they need at the beginning of their trucking careers. The most important and most impactful piece of safety equipment on a truck is a properly trained and knowledgeable driver, and actions to make that happen should be supported by the entire industry.

WHY FLEXIBILITY IN HOS RULES IS IMPORTANT FOR PROFESSIONAL TRUCK DRIVERS

From the perspective of many truckers, increasingly restrictive HOS rules combine with industry pressures to put us in a constant Catch-22 situation as we work to operate safely and efficiently.

Trucking is a very diverse industry, with many different types of operations and countless demands. A significant part of our work as professional drivers is balancing all of these demands while ensuring that we operate our vehicle as safely and efficiently as possible. Over time, changes to HOS regulations have reduced the flexibility we depend upon to maintain that balance, putting professional truckers in a situation where they are at risk of being penalized by either enforcement officials or by the economic realities of the industry for stopping to rest, avoiding traffic or another hazard, or being delayed at a shipper or receiver.

Truckers are normally paid by how many miles the drive, hence the saying "if the wheels aren't turning, you aren't earning." While

there is certainly an incentive to drive as many miles as possible during the day, there are also other factors that pressure drivers. Some examples include potential fines from customers for missing a delivery window and constant contact from your carrier's dispatcher insisting you drive just a little further, even if you are fatigued or too tired to safely accommodate a customer's demands. Indeed, most of the challenges within this industry find their root cause in requirements and demands from shippers and receivers who are not subject to the same regulatory restrictions and economic consequences as truckers.

Under current rules, a driver is allowed to drive a maximum of 11 hours while operating within a 14-hour-on-duty window. The driver is then required to be off-duty for 10 consecutive hours, of which 8 hours are to be used as sleeper berth time. The combination of the 14-hour on-duty period and the required 10-hour break period constitutes a 24-hour cycle. The only exception to this is that after 8 hours of sleeper time, a driver may proceed to a location where driver services can be obtained and be off-duty not driving for the remaining 2 hours. This allowance still does not allow the driver to exceed the 11 hours of driving in a 24-hour period without a total of 10 hours off duty.

Because of the industry's pay-by-mile system, the vast majority of truckers are not compensated for any of the time spent not driving or for any non-driving activities. This is the case even if that time is spent doing what the HOS regulations consider "on-duty" because the trucker is working or is required to be ready to work. Activities that fall under the definition of "on-duty/not-driving" include completing paperwork, fueling, performing pre- or post-trip inspections, undergoing random safety inspections, and general maintenance. Loading and unloading the truck and waiting in the truck for the loading dock at the shipper or receiver to open up are also "on-duty/not-driving." Hence the pressure to maximize time driving.

Further, while some of these activities are predictable, being detained by a shipper for multiple hours is not, and even less predictable are challenges like being stuck in traffic due to an accident, congestion, inclement weather, or having to pull into a truck stop for a tire replacement or an engine repair. Predictable or not, these "on-duty/not-driving" activities cut into the trucker's 14-hour day, impacting their ability to spend time driving and earning compensation.

Without flexibility, a few hours of unanticipated delay can have a significant impact on a trucker's schedule across many days. Flexibility does not mean, and I cannot emphasize this enough, that truckers should be given a green light to drive when they are tired or without sufficient rest. Instead, flexibility means giving the professional truck driver the ability to better manage their daily and weekly schedule. To operate safety and efficiently, we need the ability to take rest when we are best able to get the rest we need, to drive when we determine that we are in the best position to do so, and to manage our schedule appropriately.

One of the key reasons why flexibility is important is that we will spend many hours during our week waiting at a shipper or receiver for the opportunity to load or unload. Shippers and receivers, including many Fortune 100 and 500 companies that tout how efficiently their businesses operate and how much attention they pay to ensuring they are "good places to work," have little concern for making more efficient use of the truck driver's time.

Not only is this detention time generally uncompensated, but also this time spent waiting is considered work under HOS rules; as such, it cuts into our available on-duty time. This directly reduces the amount of time we are able to be productive, even though much of this time is often taken in the sleeper berth in preparation for the upcoming on-duty period. The issue of detention time is not endemic to the U.S. trucking industry, as Australia has recently passed legislation recognizing that the entire logistic chain is responsible for the safe and efficient movement of freight and passengers. They have initiated a "chain of responsibility" where all parts of the supply chain are held accountable for safety and security on the roadways.

Flexibility in HOS rules is a key factor in ensuring that professional drivers are able to make other safety-focused decisions. While sitting through congestion, accidents, and construction naturally impact driving time, the majority of experienced truckers understand the benefits of avoiding these situations altogether. 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 our risk of being involved in an accident because there will be fewer passenger cars on the road. Scheduling flexibility is necessary for this to happen.

Most importantly, experienced truckers are able to follow their own bodies 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 or rest during this time. The much-studied circadian rhythms vary widely from person to person, making it difficult for a one-size-fits-all approach.

Certain types of trucking will present unique challenges for the trucker as they work to navigate between regulatory restrictions and shipper demands while driving safely and efficiently. Specialized over-dimensional and over-weight loads are an example. The movement of these loads is not only governed by hours-of-service rules and other federal regulations, but also by state and local restrictions. In many instances, big and heavy loads are restricted 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 can make scheduling extremely difficult. Further, the new 30-minute break requirement has added new difficulties, as drivers for permitted loads face chal-

lenges locating safe parking and the break cuts into the time they are able to drive before the permit's curfew.

Truckers must also deal with customer schedules that do not reflect HOS restrictions. Many shippers demand "just-in-time" deliveries and require that deliveries or pick-ups be made at a certain time of day. Truckers must operate accordingly to meet the demands of these shippers. An example of this in my current operations is one customer only receives between six in the morning and noon. Another usually only has product ready to ship after three in the afternoon.

It's my responsibility to get there on time, and running out of hours is not a valid reason for being late, and we can only plan for what we can control.

One major area of concern for OOIDA, especially when considering the role of HOS rules and highway safety, is the pressure that the continuous on-duty clock places on truckers. The nonstoppable nature of the 14-hour clock, which has been in place since 2005, demands that we constantly push ahead to ensure we maximize our driving time for the day. This discourages drivers from taking short rest breaks throughout their day, with clear safety impacts. Another change from 2005, the elimination of the ability for truckers to split their time in the sleeper berth, adds additional pressure on truckers to push through and drive, even when they may want or need rest because they cannot afford to trade on-duty time for rest.

SUMMARY OF 2011'S CHANGES TO THE HOS REGULATIONS & RECENT ACTIONS

On July 1st of this year, changes to the hours-of-service regulations finalized by FMCSA in 2011 went into effect. It is important to note that these changes were the result of a court settlement between the agency and a number of advocacy groups who sought further restrictions on the HOS regulations. While FMCSA did not initiate these changes, OOIDA feels that they do not advance the goal of improving highway safety, and as you will see, are likely to have a negative impact on safety while focusing on micro-managing a driver's time.

The main provisions of these changes were to place restrictions on the use of the "34-hour restart" and a requirement that drivers take a minimum rest break during their driving period. While many groups argued for a reduction in the 11-hour total driving time period, FMCSA thankfully rejected this proposal.

The restart is a minimum 34-hour off-duty period that allows a trucker to restart their 70-hour "on-duty" cycle. Prior to the most recent change, truckers were able to reset their duty clock more than once a week by taking any consecutive 34-hour period off. Under the current rule, that restart is limited to once per seven day/168 hour period. The 34 hours of off-duty time must include two consecutive periods from 1 AM to 5 AM based on the trucker's "home terminal" time zone and not the time zone where the trucker is currently operating.

The new regulations also require a mandatory break of at least a 30-minute period after eight hours of elapsed on-duty time. Drivers may drive only if less than eight hours has passed since the end of the driver's last off-duty period of at least 30 minutes. However, the break does not pause the 14-hour on-duty clock.

On August 2nd, the U.S. Court of Appeals for the District of Columbia issued a decision in response to a pair of challenges brought against the new regulations. The first challenge was filed by the American Trucking Associations (OOIDA was an intervener on this suit) and the second was filed by the Advocates for Highway and Auto Safety, Public Citizen, and the Truck Safety Coalition. The decision vacated the rule's application of the mandatory 30-minute break to short-haul drivers while not making other changes.

On October 31, Representatives Hanna, Rice, and Michaud introduced H.R. 3403, the True Understanding of the Economy and Safety Act. This legislation, which OOIDA supports, calls for a comprehensive review by the Government Accountability Office of the new restart provision, including a review of a still forthcoming naturalistic driving study of the restart required by Congress in the most recent highway bill. Until that review is completed, H.R. 3404 mandates that the industry resume operating with the previous version of the restart provision that does not include two overnight 1 AM to 5 AM periods and restricts its use to once every seven days.

OOIDA'S "NEW HOS REGULATIONS SURVEY"

In light of these recent changes and the continuing discussion regarding the regulations, OOIDA reached out to its membership in October, four months after the changes went into effect, to gain an understanding of how they were impacting truckers, their operations, and their safety behind the wheel.

The OOIDA Foundation received over four thousand responses to the e-mailed survey request and found, in short, that the "rule changes have had a dramatic effect on the lives and livelihoods of small business truckers and professional drivers."[4] A copy of the survey results has been provided to the Committee, and I will highlight some of the findings below.

The FMCSA announced the purpose of the rule changes was to reduce the possibility of truck driver fatigue; however, feedback from professional truckers shows differently. While 53 percent of the respondents said the new regulations did not decrease nor increase their fatigue, 46 percent stated they actually felt more fatigued following the changes.

Comments from truckers explained how this is the case: "There will be more driver fatigue because of this rule, not less, because drivers will try to maximize as many miles and hours of driving as possible; because of the new rules, they can only get a reset once in a seven day period." Members stated that the new rules caused "more fatigue, less home time, less flexibility, and less money." An-

[4] OOIDA Foundation, "OOIDA New HOS Regulations Survey," November 2013.

other member said, "The new 30-minute rule has had no positive effect on reducing my fatigue."

In addition, the new 34-hour restart provision has impacted the ability of OOIDA members to best schedule their loads and time home with their families. 79 percent of the respondents claimed that the limitation of one restart per week has affected their use of the 34-hour restart to best schedule their time on the road and at home, with 31 percent stating they have been significantly impacted:

- "The restrictive nature of only using the reset once every 168 hours not only has decreased the number of hours and miles I can drive, but [also] when I'd normally be off weekends. Now if I experience a delay in getting home my reset keeps getting pushed back further and throwing off my schedule."

- "I used the 34 hr restart every weekend and it gave me more time to work thru the week, which increased my productivity and gave me more home time. [Now] I sometimes have to take the time off away from home...This has effectively taken Family Time away."

Further, this change has caused 65 percent of respondents to lose income, with more than half of all respondents reporting lost mileage and a reduced number of loads hauled per week. On several occasions, members had long wait periods between loads but were unable to utilize the restart either because the 34 hours did not cover two periods between 1 AM and 5 AM, or because 168 hours had not elapsed since their previous restart. In general, this forced members to lose time at home, which caused them to take on shorter hauls and reduced their income.

- "Where before I could rest due to shipper/receiver delays, weather, or whatever, now its run, run, run till 7 days have passed then get a rest or slow down till hours catch up."

- "Since shippers and receivers control my hours of service, my time is no longer as flexible, I must enter larger cities/more traffic areas in the morning & evening rush hour times instead of regulating my own time and working around traffic.

The mandatory break has impacted 86 percent of the respondents, and over 60 percent stated that their operations were either moderately or significantly affected by the regulation. Frequently, members stated they felt more fatigued because of the mandatory break, and instead of taking a nap, truckers are simply sitting in their truck, waiting for their break to end.

Perhaps one of the biggest concerns was taking the time to find parking just in order to take the 30-minute break: "Most of the time my 30 minutes turns into 60 minutes or more by the time you find parking and get back on the road." One member stated the "half hour break has increased stress, cut down time to drive, cut down on the ability to find a parking spot, and extended my day, increasing fatigue."

The final question proposed, "If you could change one hours-of-service regulation, what and how would you change it." The two

largest responses were changing the 34-hour regulations back to the previous structure (46%) and eliminating the 14-hour running clock provision (30%) and allowing truckers to stop that clock through a rest break or some other off-duty activity.

These opinions are the views of the actual truckers that have to operate under the dual pressures of regulatory constraints and pressures from shippers, carriers, and others in the industry. The comments from truckers responding to the survey focused significantly on the impact these changes are having on their ability to get the rest they need. They also focused on the pressure that has resulted from limiting the flexibility they as truckers have under the regulations. Importantly, they also addressed the impact that the regulations have had on their ability to earn a living. Ensuring that truckers are able to earn a good living has unavoidable ties to highway safety, and these impacts should be considered as part of any regulatory review.

IMPACT OF THE NEW RULES ON MY OPERATIONS

The impacts of these new rules on my operations closely tracks the results of the survey OOIDA conducted of our membership. I have experienced an impact with all of the aforementioned issues. I have less home time, more pressure, and increased fatigue. These rules remove the flexibility that is so badly needed to operate safely and efficiently.

The 30-minute beak rule. - Before this rule was enacted, I would take a break every 2½ to 4 hours. I would stop and attend to my personal needs and walk around my truck to visually inspect my load and equipment, taking about 15 minutes each time. An example of my day would be driving for four hours, a 15-minute break, four more hours of driving, another 15-minute break, and then three hours of driving until I went off-duty. Now, because I no longer have control over my break times and duration, I frequently drive 5–6 hours, take my 30-minute break, and drive the remaining time available under the 11-hour driving window straight through. Instead of having my driving day split out into smaller periods with short breaks in between, my driving day is split into two longer periods with only one break.

Two 1 AM-5 AM periods. - This provision has caused me to delay my start time on many occasions, which often puts me in the middle of Seattle rush-hour traffic or other heavy traffic along my route. When 34 hours without time stipulations was the rule, I could take my 34 hours off and leave early enough to avoid traffic during rush hour in the morning in Seattle and Portland, OR in the afternoon. My inability to avoid traffic now costs me as much as 2 hours of travel time in one day while opening me up to significantly greater risk of accidents due to the larger number of vehicles on the road. This has a domino effect across my trip, as the following day I am forced to drive through Sacramento's rush hour. The third day is my delivery day, and I am now making these deliveries 3 to 6 hours later than they were under the prior regulations.

While I do not generally drive coast-to-coast, if I did, I would feel the impact of another aspect of the rule change. The 1 AM to 5 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 were I to work on the East Coast, my restart periods would need to include two consecutive periods between 4 AM and 8 AM, and a driver based on the East Coast would need to include two periods between 10 PM and 2 AM when they are on the West Coast.

Limiting restarts to once every seven days. - The new provision requiring 168 hours or seven days to have passed before I can take a 34-hour restart has not made me any safer or less fatigued. It has, however, had a dramatic effect on my productivity and has forced me to stay on the road more and away from home. After I have had 70 hours of total on-duty time within a eight day period. the change in the regulations requires me to sit away from home until the 168 hours has accumulated plus an additional 34 or more hours to get in the required two 1 AM to 5 AM periods. This artificial limitation on my use of the restart has caused me to take my 34-hour restart—time that I am supposed to be getting rest—three hours from being at my home several times over the past 4 months. I think common sense will tell you a driver can get much better rest at home than at a noisy truck stop.

Lost revenue. - The impact of these rules effects each trucking operation differently. In my business, I have experienced more pressure to keep moving to maintain revenue. It is easy to lose as much as one day a week of driving due to scheduling conflicts between HOS requirements and demands from shippers and receivers. This equates to $4,000 to $5,000 per month. The only way to avoid this loss is to forget about going home and maximize hours on the road.

STEPS TO ADDRESS HOS INFLEXIBILITY AND TO IMPROVE HIGHWAY SAFETY

Throughout the Department's HOS rulemaking process, OOIDA has held that to meaningfully improve highway safety, any changes to the rules would need to include all aspects of a truckers' workday that affect their ability to drive safety. This includes loading and unloading times, split sleeper berth capabilities, and the ability to interrupt the 14-hour on-duty period for needed rest periods.

Unfortunately, the new rule misses clear opportunities to provide needed flexibility for truckers to address these challenges; instead, it goes in the opposite direction and adds additional restrictions that makes it more difficult for truckers to balance out the dynamic demands of their work day while operating safety and efficiently.

The Department of Transportation can take important steps to improve the HOS rules to help truckers meet those goals of a safe and efficient operation. In addition to returning to the prior rule regarding use of the 34-hour restart, the Department could make the following improvements: 1) allow truckers break up their 14-hour on-duty window with short breaks on their terms that do not count against the driver's available duty time; 2) provide the oppor-

tunity to extend the driving window beyond 14 hours while still ensuring the driver obtains sufficient rest; and 3) return to the pre-2005 split sleeper berth rule.

Further, all of us within the trucking industry, within FMCSA, and most importantly within the community of shippers and receivers, need to take steps to address the detention issue. Truckers are professionals, and their time and their labor should be treated with value by their employers and their customers, because the current situation is having dramatic and negative safety and economic impacts for the men and women who drive our nation's trucks and their families.

Speaking of those men and women, we need to develop and enact long-overdue entry-level driver training requirements. Meeting this goal, which is the keystone of OOIDA's Truckers for Safety agenda, would have countless benefits, from improving highway safety to addressing industry challenges, including trucking's consistently high turnover rate.

More broadly, OOIDA urges Congress and the Department to shift the focus of regulatory and enforcement activities back to the core causes of accidents. All too often, we have seen regulations move based on suppositions from studies of limited basis or arguments made by technology vendors or others within the industry. One clear example of this is the on-going effort to mandate speed limiters on heavy-duty trucks. This effort, which was made at the urging of several mega motor carriers, is continuing despite the fact that the Department does not have real-world data showing that speed limiters would make a difference in highway safety.[5]

The current approach has resulted in costly regulations that simply continue to put added pressure on truckers with little true safety benefit. Focusing on true accident causes and steps that can be taken to reduce accidents would go a long way towards improving highway safety in a way that values the commitment of professional truckers to safe roads.

CONCLUSION

While the HOS rules are intended to make our highways safer and more productive, the results of continued micro-management of drivers' time has shown a very different outcome. Almost half of OOIDA members responding to our recent survey feel more fatigued following the changes, nearly 80 percent have seen impacts to their ability to schedule loads and home time, and nearly two thirds of respondents have lost income, with more than half driving fewer miles and fewer loads.

We at OOIDA support safety first by requiring properly trained truckers as the foundation of all safety programs. Once properly trained, make sure that the trucker has the tools needed to carry out this very unique task as safely and efficiently as possible, including reasonable flexibility under the HOS regulations. Rest is

[5] Tanner, David, "Feds pursuing speed limiters for heavy trucks lack real-world," *Land Line,* November 1, 2013.

something a well-trained driver understands and knows his own personal needs better than any one size fits all rule ever could.

It goes without saying that OOIDA supports the mission of removing bad actors and ending unsafe practices—our members are on the road and exposed to the risk that comes with that environment every single day. However, placing more and more of the responsibility and the punishment on the driver, while not holding accountable the motor carriers and customers who make demands irrespective of regulations and safety, is not the way to move forward.

Addressing the inflexibility of the HOS regulations, including the new limits on the 34-hour restart as well as enabling truckers to pause their on-duty clock, would be a positive step forward, but regulations are only one set of challenges that truckers must navigate as they work to operate safety and efficiently. Demands from customers, keeping drivers waiting countless hours at the dock, the challenge of driver pay, and the pressure from motor carriers to keep operating are elements of the industry that all have negative impacts on truckers and safety. While the Department and Congress are not the best sources for solutions in all of these areas, they certainly deserve attention from all who are concerned about highway safety and the success of small business truckers.

Thank you for the opportunity to testify. I look forward to answering any questions.

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TESTIMONY OF BRIAN EVANS, CTB
PRESIDENT & CEO
L&L FREIGHT SERVICES, INC.

ON BEHALF OF

THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON CONTRACTING AND THE WORKFORCE

NOVEMBER 21, 2013

"WRONG WAY: THE IMPACT OF FMCSA'S HOURS-OF-SERVICE REGULATIONS ON SMALL BUSINESS"

Chairman Hanna, Ranking Member Meng, and members of the House Small Business Committee, thank you for the opportunity to speak with you today regarding concerns affecting small businesses arising from the FMCSA's Hours-of-Service Rules.

My name is Brian Evans; I am the owner of a small business transportation brokerage. I serve as the President, and CEO for L&L Freight Services located in Cabot, Arkansas, and I am a 20-year veteran of the transportation, freight brokerage, and supply chain management sectors. I come from a family owned, blue collar, small business and prior to working in the brokerage industry; I drove over-the-road almost 1,000,000 accident free miles.

Additionally, I serve on the Board of Directors for the Transportation Intermediaries Association (TIA). TIA represents more than 1,400 member companies; of which 70 percent of these companies are small family owned businesses.

TIA is the professional organization of the $162 billion third-party logistics industry. TIA is the only organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce.

Like the FMCSA, one of our primary missions is promoting safe practices. As an organization, TIA has sought to work with FMCSA to make the Hours-of-Service regulations the best possible tool for the Agency to improve safety for the motoring public by reducing truck driver fatigue.

Freight brokers, interchangeably referred to as "transportation intermediaries," third party logistics companies ("3PLs"), and non-asset based logistics companies, are professional businesses that act similarly to "travel agents" for freight. Freight brokers serve tens of thousands of US businesses and manufacturers (shippers) and motor carriers (carriers), bringing together the shippers' need to move cargo, with the corresponding capacity and equipment offered by rail and motor carriers, or, depending on a company's authorities, air and ocean carriers as well.

We are an incredibly "green" industry, and have contributed to U.S. economic growth in innumerable ways. Freight broker businesses are generally growth businesses, finding new ways to serve our manufacturing and distributing customers every year. By matching capacity with available shipments, we dramatically reduce the empty miles trucks drive between shipments, saving fuel and adding money to the bottom lines of carriers and shippers. Our industry has helped lower logistics costs as a percent of GDP by several percentage points since deregulation.

Transportation intermediaries are primarily, non-asset based companies whose expertise is providing mode and carrier neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs. Transportation intermediaries bring a targets expertise to meet the shipper's transportation needs.

Many shippers in recent years have streamlined their acquisition and distribution operations. They have reduced their in-house transportation departments, and have chosen to deal with only a few "core carriers" directly. Increasingly, they have contracted out the function of arranging transportation to intermediaries or third party logistics experts. Every Fortune 100 Company now has at least one third party logistics company (3PL) as one of its core carriers. Since the intermediary or 3PL, in turn, may have relationships with dozens, or even thousands, of underlying carriers, the shipper has many service options available to it from a single source by employing an intermediary.

Shippers count on transportation intermediaries to arrange and report on the smooth and uninterrupted flow of goods from origin to destination. Most carriers rely upon brokers to operate as supplements to their sales force, and in some cases, their entire sales force. Whatever the case, brokers keep carriers' equipment filled and moving. There are more than 15,000 licensed freight brokers in operation, and they range from small, family owned businesses to multi-billion dollar, publicly traded corporations.

Unfortunately, the new HOS regulations were a solution in search of a problem. No one wants unsafe trucks or drivers on the road. There is no one with a greater interest of the security of a driver than his or her employer. To that end, TIA has a standing committee that has published and regularly updates, a carrier selection framework. TIA recommends that every broker and shipper have in place a written carrier selection policy for hiring carriers. Safety improvements by the industry under the previous hours-of-service rules, reduced accidents, allowed the market to become more efficient, and allowed American business to be more competitive.

The new rules are overly complicated, will reduce productivity, and have no effect on reducing accidents beyond the previous level. In the 24th annual State of Logistics report authored by Rosalyn Wilson, she estimates a loss of productivity between 2% and 10% for the transportation industry. This significant amount of loss of productivity could lead companies to expand their near shoring ventures into neighboring countries; thus relocating valued American transportation jobs to foreign nations.

I have spoken with many of my carrier customers who are experiencing a major loss of productivity due to the new restart provision. This rule is resulting in around five fewer loads per week or a reduction of 3% in capacity for their fleets. The cost of this loss of efficiency is felt by the business and ultimately passed on to the consumer.

We are not suggesting that increased safety be traded for increased efficiency. We are stating that safety improvement was achieved under the old rules, and the new rules will not result in dramatically increased carrier safety. According to a report disseminated by the U.S. Department of Transportation in March of

2013[1], police reported commercial motor vehicle traffic crashes actually decreased 3% between the years 2009 and 2011.

As you know, there is a pressing shortage of drivers. The new HOS rule will have a twofold effect. It will chase out qualified drivers and deter future motor carriers from entering the industry, because the rules limit the number of loads a carrier can handle. The rule will likely also require drivers to operate during peak hours of operations, thereby increasing congestion and reducing safety.

The American Transportation Research Institute (ATRI) recently released their 2013 edition of the "Critical Issues in the Trucking Industry." The report places the new HOS regulations as this year's top concern for the trucking industry. It further examines the 34-hour restart provision and states, "Many in the industry believe that these new HOS rules will have a negative impact of productivity. Additionally, there are concerns that the safety benefits that FMCSA expects these changes to generate will not materialize."[2] ATRI estimates that the changes to the restart provision alone would cost the industry $189 million dollars, as opposed to the $133 million benefit projected by the FMCSA.[3]

The FMCSA's concerns about driver health and safety are to be applauded. The new HOS rules, however, fail to demonstrate that further restrictions will lead to any measurable decrease in crashes or injuries beyond that already being achieved with the previous measures. TIA supports the passage of H.R. 3413, the "TRUE Safety Act." TIA urges the Agency to examine the negative effects of the 34-hour restart provision and consider amending the rule to give transportation the flexibility they need to ensure safety.

I appreciate the opportunity to testify before the subcommittee today on the concerns of the new HOS rules and its effects on small business owners whether a third-party logistics provider, motor carriers, or the entire supply chain. I would be happy to answer any questions.

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[1] U.S. Department of Transportation. Federal Motor Carrier Safety Administration. Commercial Motor Vehicle Facts - March 2013.

[2] American Transportation Research Institute. Critical Issues in the Trucking Industry - 2013. October 2013.

[3] American Transportation Research Institute. Assessing the Impacts of the 34-Hour Restart Provisions. June 2013.

Testimony of Paul P. Jovanis Ph.D.
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On

The Effect of Truck Driver Hours of Service on Crash Risk

Before

The House Committee on Small Business
Contracting and Workforce Subcommittee
November 21, 2013

The relationship of crashes to driver hours of service

Submitted by Paul P. Jovanis Ph.D.

Professor, Civil and Environmental Engineering

Director, Transportation Operations Program

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Summary

Understanding the relationship between truck driver hours of service and crashes is a complex and challenging task. Researchers working in this area come from backgrounds as diverse as human factors, psychology, medicine and road safety. Some of the research in this field has been described by the term "fatigue", even though questions have been raised in the literature about the definition of the term fatigue itself (Haworth, et al., 1988). Others (e.g. Jovanis et al., 2012) have focused on studying the association of crashes to the duration of driving, use of rest breaks, schedule of driving over several days and time of day. All approaches contribute in different ways to our accumulation of knowledge about hours of service and crashes. This testimony is not an exhaustive review of this literature as there would likely be hundreds of citations. Rather this is an attempt to summarize the most recent work in the field, with a few additional references to well-cited research.

Concerning the effect of hours of service on crashes, I offer the following summary:

Hours of continuous driving - Using data supplied by carriers over a period of more than 20 years, there are a number of studies that support the basic principle that the longer one drives the greater the odds of a crash (e.g. Jovanis and Chang, 1989; Jovanis et al., 1991; Kaneko and Jovanis, 1992; Lin, et al., 1993; Lin at al., 1994; Jovanis et al., 2011; Jovanis, et al., 2012). These eight studies estimated the effect of driving time, *when controlling for other factors such as experience, off duty time, driving pattern over multiple days and, in one case, time of day directly.* These studies are among the few that control for multiple factors while seeking to estimate the effect of driving time. A study using fatal truck-involved crashes from 1980–2002 (Campbell and Hwang, 2005) also indicated an increase in crash risk with hours driven.

Using trucks instrumented with cameras and other vehicle-based sensors a series of studies have sought to connect risky driving maneuvers to hours of service. Using these measures, one study (Hanowski, et al., 2008) found little connection between the observed events and hours of service. A second study with more extensive data (Blanco, et al., 2011) did find an association of driving time with the occurrence of safety critical events (including a few crashes). This second study, like the first, also showed a close cor-

relation with time on duty. Other studies using instrumented vehicles, physiological or other tests of fatigue for a limited number of drivers during regular work conditions have found little association of these metrics with hours driving (e.g. Wylie, et al., 1996).

In summary, based on a series of studies using carrier-supplied data and one with fatal truck crashes measured over 20 years, I believe there is evidence that crash risk increases as driving time increases.

Hours off duty - the increase is required off-duty time was implemented in 2003. Crash-based research using data from the 1980's (Lin et al., 1993) indicates that drivers with more than 9 hours off duty have a lower crash risk when returning to work than drivers with 8–9 hours off-duty. This is a case where the change in regulations (increasing off-duty time from 8 to 10 hours) is consistent with the research.

Time of day - the effects of time of day are particularly difficult to identify because trucks share the road with other traffic, which has marked peaks in urban areas during the morning and evening rush. In a study using crash data (Lin, et al., 1993), with a baseline of 10am to noon, crash risks were elevated in the early morning (4am to 6am) through to 10am; and then again elevated from 4 to 10pm. Another study (Campbell and Hwang, 2005) found an increase in the odds of a crash from 11pm through 6am. Using fatigue tests and instrumented vehicle data (Wylie, et al., 1996), others found strong association of declines in performance and fatigue tests linked to time of day. Fatigue (self rated) increased more during night than day shifts in a study in Australia (Williamson et al., 2004). Time of day is associated with crash risk; the question is how to address this in regulations.

Rest breaks - Breaks are included in the hours of service rules for the European Union, which require 45 minutes for each 4.5 hours of driving (Wikipedia, 20013). In 2013, the new US rule requires a 30-minute rest break after 8 hours driving. Lack of mandatory inclusion in the policy allowed researchers (Jovanis et al., 2012) to compare drivers with break and those without. The presence of two breaks reduced crash odds by 30% in a 2012 study (Jovanis, et al., 2011). The benefits of rest breaks seem overwhelming.

Cumulative driving over several days - the introduction of the 34-hour restart in 2003 has triggered a series of studies of the effect of cumulative driving both with and without a restart.

Two laboratory studies have been recently completed that focused on the 34-hour restart. In the first study (Van Dongen and Belenky, 2010) subjects were split into two groups: one group worked a daytime schedule for 5 days, was off duty for 34 hours, then worked 5 more days for 14 hours per day. The second group had a similar schedule except the participants worked at night for 5 days, had a 34-hour day-oriented break and then another 5 days of night work. The principal finding is that the day-oriented work group showed no decline in performance, while those with the night work showed a decline when they returned to work after the 34-hour "restart". These studies were enhanced in a follow-up experi-

ment in which participants were subjected to night work periods separated by a 58-hour "restart" aimed to emulate the effect of an additional day required from the 34-hour regulation. In this case drivers were compared against each other before the restart compared to after. This longer restart resulted in no performance degradation after return from the 58-hour off-duty period.

This concludes my oral testimony; I'll be happy to answer any questions you may have.

Brief summary of older research:

Federal hours of service were largely unchanged from the 1940's until 2003. Since then, there have been a series of changes to those regulations including those implemented this year. Federally sponsored research underlying changes in the regulations were conducted in the U.S. in the early 1970's (Harris and Mackie, 1972; Mackie and Miller, 1978) and during a major field study conducted i the 1990's, the Driver Fatigue and Alertness Study, (Wylie, et al., 1996). At the same time, there was research underway outside of federal funding (Jovanis and Chang, 1989, Chang and Jovanis, 1990; Jovanis, et al., 1991; Kaneko and Jovanis, 1992; Lin et al., 1993, and 1994) seeking to associate crash occurrence with driving hours use carrier-supplied data.

Detailed Comments on recent studies:

Recent crash-based analyses:

A study was recently completed using crash data from carriers during 2004–05 and 2010 (Jovanis et al., 2011). The study team used a methodology similar to one used in many previous papers (e.g. Kaneko and Jovanis, 1992), which compared crashes and non-crashes using a method called case-control analysis. Over 500 crashes and 1000 non-crashes were used in the study; all crashes were sufficiently severe to be reportable to FMCSA through state safety organizations (i.e. a person was killed or required medical attention or a vehicle had to be towed from the scene). Factors included in the modeling included driving time along with multiday driving (derived from driving schedules over a seven day period) to estimate crash risk. Central to the modeling is the notion of survival: a driver who has a crash in the 5th hour, for example, *survives,* that is successfully completed the first 4. The statistical modeling used by the team represents this survival process. Findings in the report and a recent paper based on the research (Jovanis et al., 2012) include an increase in crash risk after the 5th hour of driving and an increased risk when returning to work after extended (34 hours or more) off duty. This was not a test of the restart policy, but a test of crash risk immediately after return to work after extended time off. The risk was higher for drivers returning to a night shift compared to a day shift. Because the study was conducted before the currently required rest breaks the research was able to identify a reduction associated with short driving breaks from driving (typically 15 to 60 minutes) reduced crash risk by 20–50% depending on the number of breaks and type of operation.

A limitation of the study was that there were only 66 observations of the 1564 total (4%) that remained in the 11th hour. As a result of this data loss, the estimate of crash risk in the 11th hour is quite large. It is interesting to note how relatively few trucks in the study drove into the 11th hour. Considering non-crash data alone, 50 of 1022 (4.9%) of trucks utilized the 11th hour. Further, data were limited to most cases to 7 days prior to a crash, restricting the ability to assess the effect of the 34-hour restart.

Recent naturalistic driving analyses:

In the naturalistic method, a set of participants are observed while driving "naturally"; in this case during the conduct of their jobs. In addition to any crashes observed, near misses and crash-relevant conflicts (events where evasive maneuvers are needed to avoid a crash) are tracked to assess driving performance. The vehicles are instrumented with cameras, GPS and other sensors to measure vehicle motion. A recent study (Hanowski, et al., 2008) used naturalistic driving methods to measure truck critical event occurrence during vehicle movement. Naturalistic driving means the vehicle is instrumented with a set of cameras, radar, accelerometers, gyroscopes and GPS (among others), to watch and record how people drive. The critical events observed included crashes, near crashes (when extreme braking or driver reaction avoided a collision) and crash-relevant conflicts (where an avoidance maneuver resulted in no collision). In this study, 710 of 819 events observed were crash-relevant conflicts so these events dominated all analyses. Recording of events began when vehicle motion started (speed greater than zero).

This study found little association of event risk and driving time, particularly between the 10th and 11th hour; rather a stronger association was found with hours worked. A follow-on study using a larger data set and more quantitative statistical methods (Blanco et al., 2011) found associations with driving time and hours worked. This second study also found positive safety aspects to rest breaks.

One potential difficulty of this use of naturalistic studies is that events occurring in the first hour may be occurring in the terminal or marshaling areas. This is not necessarily equivalent to occurring on the road and may effect the assessment of driving time effects. The analyses largely assessed one factor at a time; there was no combined assessment of driving time, cumulative driving and rest breaks as in the crash analyses. Further, the process represented by the models is different. When a crash occurs, the truck driver does not typically continue to drive. With the naturalistic approach, drivers involved in near crashes and crash-relevant conflicts continue to operate. It is not known if the occurrence of one of these non-crash events influences subsequent driver behavior, and thus subsequent risks associated with driving time and hours worked.

Lastly, there is a concern about the implied equivalence of crashes and the non-crash events. Research has shown (Wu and Jovanis, 2012; Wu and Jovanis 2013 a, b) that the definition of near crashes and crash-relevant conflicts depends details of the search algorithm used to identify the events. Depending on the method used, some non-crash events may differ from the crash events they are being compared to. This is a potential source of error in the hours of service data used in the naturalistic studies.

Laboratory studies of the 34-hour restart:

The summary of findings concerning the 34-hour restart referenced two recently conducted studies at Washington State University (Van Dongen and Belenky, 2010; Van Dongen et al., 2010). In addition to the description of findings provided on Page 4 of this

testimony, there are a few additional issues in need of discussion. One could raise a question about establishing a policy based primarily on laboratory studies of 39 individuals. However, the studies appear to have been carefully conducted and would, in my view pass scientific scrutiny. The positive results with the 58-hour recovery period lead to wonder if another off-duty period between 34 and 58 would be successful. Further, it would be interesting to test longer work and duty periods with more extended use of the restart, both to increase the sample size of participants and to see better understand the changes in performance that result.

Concluding remarks:

I hope the testimony provided additional understanding of this complex topic. I place greater weight on use of crashes as a performance measure for assessing hours of service effects, primarily because I have worked with these data for over 25 years. In addition, the engineering profession has focused on the use of crashes and their outcomes (fatalities, injuries and property damage) to assess safety; this applies in research (e.g. Hauer, undated) and in education programs (NCHRP 667, 2010). In my view other techniques offer important insights, but crash-based studies should be given priority consideration.

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Statement of

The Associated General Contractors of America

to the

Small Business Subcommittee on Contracting and Workforce
United States House

on the topic of

Federal Motor Carrier Safety Administration's
Hours of Service Regulations
Impact on
Construction Industry Small Businesses

November 20, 2013

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 26,000 firms, including 6,600 of America's leading general contractors, and over 9,300 specialty-contracting firms. More than 10,000 service providers and suppliers are associated with AGC through a nationwide network of chapters. Visit the AGC Web site at www.agc.org.

Statement of the Associated General Contractors of America

to

House Small Business Contracting and Workforce Subcommittee

on

Impact of the Federal Motor Carrier Safety Administration's (FMCSA)

Hours of Service Regulation on Construction Industry Small Businesses

The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 26,000 firms in 94 chapters throughout the United States. Among the association's members are approximately 6,000 of the nation's leading general contractors, more than 9300 specialty contractors, and more than 10,000 material suppliers and service providers to the construction industry. These firms are engaged in the construction of highways, bridges, tunnels, airports, transit, railroad, ports, buildings, factories, warehouses, shopping centers, water treatment plants and other public and privately owned facilities. AGC members perform construction contracts in all 50 states and own and operate fleets of commercial motor vehicles to carry out these construction contracts. AGC members are therefore directly impacted by the Federal Motor Carrier Safety Administration's (FMCSA) Hours of Service regulations and indirectly by how these rules impact their suppliers.

In 1995, Congress recognized that the FMCSA's hours-of-service regulations were too restrictive on several industries, including the construction industry. In the National Highway System Designation Act of 1995 (section 345), Congress modified the regulations for construction industry drivers transporting construction materials and equipment to and from an active construction site within a 50-air-mile radius of the driver's normal work reporting location. These drivers are allowed to restart the on-duty clock after an off-duty period of 24 or more consecutive hours. Congress also directed the Secretary of Transportation to ensure that granting the construction industry exemption would be in the public interest and would not have a significant adverse impact on the safety of commercial motor vehicles. If at any time the Secretary determined that this was not the case, the Secretary could "prevent the exemption from going into effect, modify the exemption, or revoke the exemption." Now, nearly eighteen years after the rules' implementation, FMCSA has found no adverse impact from this exemption.

Congress created the exemption from the construction industry in recognition of the unique circumstances faced by the industry's drivers. These unique circumstances include: seasonal limits on when work can be done, materials that must be put in place within

tight time limits or be lost forever, drivers spending much of their time not actually driving but waiting in lines to pick-up or deliver materials, and drivers being under constant supervision as they return continuously to the job site or the source of the materials. Construction industry drivers generally drive only in good weather conditions. No studies by FMCSA or others have concluded that there is a safety deficiency specific to construction workers driving under these rules.

Because these factors have not changed, FMCSA's July 1, 2013 revisions to the HOS regulations maintain the clock reset provision for construction drivers.

While AGC applauds FMCSA's decision to maintain this exemption in the new HOS regulations, this exemption needs to be updated to address current construction industry realities by expanding its coverage. Most of the material that is being transported for inclusion in construction projects are natural resources such as sand, aggregates, gravel, cement, lime, etc. These products are extracted from the earth and therefore are available only in their natural settings. As sources of these resources are depleted, new sources must be located and these tend to be in more remote locations and further away from the site of the actual construction. Because locations are further away from where much of the construction is being done drivers must cover greater distances. Therefore, AGC recommends that the distance covered be expanded to a radius of 100 miles.

While FMCSA's July 1 revised HOS regulations did not change the construction exemption, the rules establish a new impediment that negatively impacts the construction industry by requiring that drivers take a 30-minute break during an 8 hour on duty time period. While a federal appeals court directed FMCSA to exempt short haul drivers from this requirement, this unfortunately did not resolve the issue for the construction industry. Construction driving often requires short haul drivers to work shifts that may extend beyond 12 hours of on duty service. Even though short haul, these drivers are still required to take the 30 minute break in order to legitimately fulfill their 12 hour shift. A 12 hour shift is often necessary because drivers delivering perishable construction materials, especially concrete and asphalt, will not know in advance how long it will take to complete a delivery. Every day in construction is different and not always predictable. Construction contractors must have the flexibility to deliver concrete, asphalt and other materials when they are needed at the project. Deliveries are not always on a regular schedule and delays can cause the material to be compromised. Therefore it is difficult for drivers to schedule this 30 minute break in a timely fashion that allows for delivery of the perishable material on time and also allows the needed flexibility. Delays in the delivery process can potentially cost a contractor thousands of dollars to repair or replace out of spec concrete or asphalt. Delays in material delivery can also impact the completion of projects such as road improvements which can have negative effects on both the contractor and motorists. While on duty for a 12 hour shift these drivers nevertheless spend much of their time waiting in line to pick up or deliver material

and not driving. Unfortunately this down time does not count towards the 30 minute break requirements. AGC urges Congress to direct FMCSA expand the construction industry exclusion to eliminate the 30 minute rest period requirement for these drivers.

Another reality of highway and bridge construction is that much of this activity involves rebuilding, expanding and in other ways improving existing transportation infrastructure. This requires that much of the work be performed under traffic, and in many cases heavy traffic. So as to not impact traffic flow, and to protect the safety of construction workers and motorists, significant amounts of road construction is required to be performed at night. FMCSA's new HOS requirements that drivers, including construction drivers that operate outside the 50 air-mile-radius, can only restart the weekly on-duty clock following a 34-hour off duty period that includes at least two periods between 1:00 a.m. and 5:00 a.m. will have significant cost impacts on construction contractors and the public agencies for whom they work. It will also significantly impact the wages drivers are able to earn while their companies are working overnight on major infrastructure projects because it will limit the hours they are allowed to work. These time restrictions are a real problem for contractors working night shifts in compliance with contract requirements.

AGC supports H.R. 3413, the "True Understanding of the Economy and Safety Act" or the "TRUE Safety Act", sponsored by Representatives Richard Hanna (R-NY), Michael Michaud (D-ME), and Tom Rice (R-SC). The bill defers implementation of the new restart provisions in the new truck driver hours of service regulations that became effective July 1, 2013, pending completion of Government Accountability Office (GAO) reviews of: (1) the analysis used by the FMCSA to justify the new rules and, (2) the MAP-21 required restart field study. AGC urges that Congress quickly approve this legislation.

Thank you for consideration of this statement.

Statement of the American Road & Transportation Builders Association

"WRONG WAY: The Impact of FMCSA's Hours of Service Regulation on Small Businesses"

House Small Business Committee, Subcommittee on Contracting and Workforce
November 21, 2013

Chairman Hanna and Representative Meng, thank you for convening this important hearing today. The federal hours of service rule is important to the safety of the nation's roadways, and constitutes an equally important area of compliance for commercial motor vehicle operators in the transportation construction industry. The American Road & Transportation Builders Association (ARTBA) appreciates this opportunity to present our views on this issue.

The more than 5,000 members of ARTBA represent the consensus voice of the U.S. transportation construction industry at the federal level. ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Many of these are small and/or family-owned businesses. About two-thirds of ARTBA members are transportation construction companies of varying size and areas of expertise. These include prime contractors, sub-contractors and suppliers. Overall, our industry generates nearly $354 billion annually in U.S. economic activity and sustains the equivalent of 3.5 million American jobs. ARTBA's membership structure also includes nearly three dozen affiliated chapters.

ARTBA contractor-members who operate in interstate commerce must comply with the hours of service rule for commercial motor vehicle operators (49 CFR Parts 385, 386, 390, and 395). Moreover, many states automatically incorporate the federal hours of service into the state's controlling law for intrastate commercial motor vehicle operators.

Above all else, these contractors are committed to safety—for the traveling public and their own employees. They also seek to build transportation improvement projects with the maximum degree of efficiency, innovation and value to the public.

The purpose of the hours of service rule—as administered by the Federal Motor Carrier Safety Administration (FMCSA)—appears clear. Agency publications note that the main reason for the regulations is to "keep fatigued drivers off the public roadways." The rule limits when, and for how long, operators may drive commercial motor vehicles. The limits include length of drive time and length of on-duty time (even though the driver may be behind the wheel for a small portion of that time), as well as mandated off-duty or rest time. Various other provisions of the rule require drivers to keep log books reflecting these time records.

Throughout various FMCSA comment periods (starting in about 2000) addressing the hours of service rule, ARTBA has argued the revised rule should not apply to drivers in the transportation construction industry. In implementing the latest revisions to the rule, FMCSA has not—to our knowledge—seriously contemplated a comprehensive exemption for this industry's short-haul drivers. As we have expressed over the years in comments submitted to FMCSA and to the U.S. Department of Transportation, ARTBA believes the rationale for this exemption is strong and worthy of the agency's consideration. It would relate to two major federal transportation policy goals: increasing efficiency in the construction of transpor-

tation improvement projects, and preserving the safety of all involved.

Transportation construction industry drivers are not long-haul operators who consistently spend many consecutive hours on the road in a given day. In most cases, they are making drives of less than 50 miles in radius, whether from their normal reporting location or materials plant to the construction job site. Many of our drivers spend substantial amounts of time off the road during the work day, loading and unloading materials or equipment. Others may be responsible for positioning a piece of mobile equipment at the beginning of the work day, but may not be back behind the wheel until day's end, so that their daily drive time is actually minimal. Those who transport construction materials may spend substantial time in a queue to pick up or drop off those products. However, in the indiscriminate eyes of the hours of service rule, these examples of non-driving activities are still considered "on-duty time" and can end up prohibiting industry employees from carrying out their driving duties past 14 hours on a lengthy work day.

Generally, transportation construction industry commercial drivers do not operate in a manner that leads to concerns over fatigue that is the focus of the hours of service rule. Further, we are unaware of any conclusive data to demonstrate that driver fatigue and ancillary health issues are a significant problem in our industry.

Moreover, transportation project owners, the driving public and commercial shippers are expecting more timeliness and efficiency in the construction of transportation improvement projects, as well as less disruption to traffic. Transportation construction firms will often work very long hours to complete these projects expeditiously, especially in regions of the country where seasonal weather is a factor. In other industries, a 14-hour window of on-duty time may seem more than adequate. However, as described above, in the transportation construction industry it can often limit the efficient deployment of professionals and resources on the construction job site, without a demonstrable increase in safety.

Ultimately, this is an example of two areas of federal policy—hours of service as administered by FMCSA and accelerated transportation project delivery as promoted by other agencies at USDOT—that are simply in direct conflict. In recent years, the transportation construction industry and many public-sector transportation agencies have been eager partners in utilizing accelerated construction techniques to increase efficiency, maximize the safety of motorists and workers, and minimize the inconvenience to the traveling public. This often involves total closure of a bridge or stretch of highway so the contractor can undertake an intense effort to replace or renovate it within a very short time frame—sometimes over a single weekend. In recent years, we have seen numerous safe, swift, ingenious and high-profile examples of these techniques, acclaimed by public agencies, elected officials, the media and the general public alike. Similarly, natural or man-made disasters may require contractors to be extremely resourceful within

even more challenging time frames, to repair or replace critical infrastructure assets that have been damaged.

FHWA has used its Every Day Counts program to promote these types of activities. A prominent example was the Massachusetts Department of Transportation's "Fast 14" effort during the summer of 2011, through which contractors replaced fourteen bridges in just ten (10) weekends. The public and media reaction to this innovative effort was extremely positive.

The industry is proud to be at the cutting edge of these emerging techniques. The intensity of the work schedule for these contractors, whether leading up to or during the weekends in question, cannot be overstated—nor can the industry's satisfaction in these accomplishments. However, in these circumstances, the hours of service rule continues to make the job more difficult by limiting the availability of certain key personnel (none of whom are long-haul truck drivers) to discharge job duties relating to commercial motor vehicles. The rule may also disrupt the timely delivery of materials to the construction site. For these reasons, the rule may increase the project's cost (in terms of additional personnel required) without accompanying safety benefits for all concerned.

The revised hours of service rule includes a restart provision for drivers requiring two consecutive nights off duty from 1:00 am to 5:00 am following a work week. The new rule also limits this restart of the clock that tracks a driver's duty time to only once in a given seven-day period. In justifying this requirement, FMCSA cites research regarding fatigue, night-time sleep patterns and long-haul drivers. Again, however, the relevancy to short-haul transportation construction industry drivers is questionable. While short-haul construction-related drivers can utilize a 24-hour restart under certain conditions, this new mandate will still affect many drivers servicing transportation improvement projects. Importantly, much of this work is done at night, so this new provision has the potential to disrupt the efficiency of those construction operations and materials deliveries.

For this reason, ARTBA applauds Chairman Hanna and his bipartisan co-sponsors for recently introducing the True Understanding of the Economy and Safety ("TRUE Safety") Act (H.R. 3413), which would defer further implementation of the new restart mandate until the completion and review of related research.

In looking at the hours of service rule as it currently stands, ARTBA is also concerned about the ability of smaller construction firms to participate in transportation construction projects. We know this committee has an acute interest in identifying overreaching regulations and their effect on small firms. If the hours of service rule limits deployment of industry drivers at certain times, then the effect on smaller construction companies and subcontractors is even more pronounced because they do not necessarily have the resources or personnel to absorb these disruptions. It is unfortunate, then, that conflicting federal policies may limit the ability of small businesses to play a needed role in accelerated and innovative transportation construction activities.

Given all of these reasons, ARTBA reiterates its desire for a full exemption relating to the drive-time and on-duty limits for transportation construction industry drivers. Any standard tailored for the transportation construction industry should be based on clear facts that establish the degree to which—if at all—fatigue for these drivers is a factor that could lead to an increase in deaths and injuries on the nation's roadways.

It should be noted that many other classes of industries are exempt from the general rule, or enjoy certain exceptions. As one example of which we are always reminded in mid-summer, FMCSA exempts members of the American Pyrotechnics Association from the rule so they can transport explosives for Fourth of July fireworks shows. One would think that, as a national public policy goal, the improved efficiency in the delivery of transportation improvement projects would rank at least as high as the successful staging of holiday fireworks displays.

Other partial or full exemptions apply to:

- Agricultural drivers during planting or harvesting season
- Vehicles operated by the federal, state or local government
- Drivers for movie and television productions
- Oilfield operations drivers (through which waiting time at a natural gas or oil well site does not count as on-duty time)
- Drivers transporting propane heating fuel during the winter
- Railroad signal employees
- Retail store deliveries
- Utility service vehicles

A transportation construction industry exemption could be fashioned in a similar manner to those affecting other specific industries, as described. Moreover, the existing rule includes a 24-hour restart provision (as opposed to 34 hours under the general rule) for commercial motor vehicle drivers of construction materials and equipment. So the rule already contemplates a unique place for our industry and it would be possible to carefully craft a wider, viable exemption in a similar vein. Such an exemption could address drive time and on-duty limits for the unique aspects of our sector while preserving safety. Like the rule for oilfield operations, transportation construction supplier drivers waiting in a "queue" should not be considered on duty, nor should the time for workers who drive a commercial vehicle or construction equipment only incidentally to their main duties on a construction project.

ARTBA and its members continue to be concerned about the wholesale application of the hours of service rule to the transportation construction industry. Contractors make every effort to comply, but often to the detriment of efficiency in the project's time and cost. Treating short-haul transportation construction industry drivers the same as long-haul commercial truckers defies common sense. Correcting this misapplication of federal requirements is the type of regulatory reform that all sides claim to support. ARTBA stands ready to work with Congress, FMCSA and other transportation agencies in this important effort.

Thank you for this opportunity to offer the views of ARTBA's members and the transportation construction industry.

November 25, 2013

The Honorable Richard Hanna
Chairman, Subcommittee on Contracting and Workforce
Small Business Committee
U.S. House of Representatives
2361 Rayburn House Office Building
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The Honorable Grace Meng
Ranking Member, Subcommittee on Contracting and Workforce
Small Business Committee
U.S. House of Representatives
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Dear Chairman Hanna and Ranking Member Meng,

On behalf of our Board of Directors and members, the Commercial Vehicle Training Association (CVTA) appreciates the opportunity to submit comments for the November 21, 2013, House Small Business Committee hearing titled, "*WRONG WAY: The Impact of FMCSA's Hours of Service Regulation on Small Businesses*."

CVTA is a not-for-profit corporation which represents commercial driver training institutions, carriers, and other associate members. Our institutions have training facilities at over 180 locations nationwide and train between 40,000 to 50,000 entry-level commercial vehicle operators annually.

CVTA believes the July 1, 2013 Hours of Service (HOS) regulation changes are unwarranted and ineffectual. Unlike the 2003 HOS regulations, the Administration offered little facts to explain why the regulations changed. The new HOS rules are having a very real negative impact on hundreds of thousands of drivers and carriers.

For more than a decade prior to the publication of the 2003 rules, the Federal Motor Carrier Safety Administration (FMCSA) conducted research and collected data on the effectiveness of the then existing rules. FMCSA did not undertake its own analysis on the effectiveness of the 2003 changes to the HOS rules prior to implementation of the July 1st rules, even though the 2003 changes represented the first substantial modification to the rules in more than 60 years. FMCSA's three paragraph statement in the rulemaking called "*The Purpose and Need for Regulatory Action*" did not provide any data that pointed to a problem that the July 1st rules would address.

FMCSA assumed the annual number of crashes would rise as the economy improved and exposure increased. However, that has not been the case which means FMCSA's assumption was incorrect. The total number of

truck crashes, however, has continued to drop each year since the end of the recession, even in the presence of economic growth in 2010 and 2011. Fatigue plays a role in a small percentage of truck-involved crashes, and the industry must take appropriate steps to prevent fatigue-related crashes. However, tweaking the limits on working and driving hours is not going to solve the problem without also addressing other factors that contribute to fatigue, including lifestyle. The key to better enforcing the HOS rules industry wide, in our opinion, is electronic logging devices. We urge FMCSA to issue a proposed rule.

ATRI REPORT

In November 2013, the American Transportation Research Institute (ATRI) recently issued a report on the impacts of the July 1st HOS rule changes. In that report, a total of 67.4 percent of the driver survey respondents reported experiencing a decrease in their income since the July 1st HOS changes.[1] The range of driver pay impacts resulting from the July 1st HOS rules changes is $1.6 billion to $3.9 billion annual loss across 1.6 million over the road commercial drivers.[2] More importantly, nearly 70 percent of drivers indicated the new provision has had a moderate or significant impact on them.[3] Nearly 66 percent of drivers indicated one restart has had a moderate or significant impact.[4]

When asked about whether this regulation has negatively impacted their life, nearly half (49%) indicated the July 1st changes have had a "very negative" impact, and a combined 82.5 percent indicated a "somewhat negative" or "very negative" impact.[5] Additionally, while the HOS sought to curb driver fatigue, 66 percent perceived increases in fatigue as a result of this new regulation.[6]

Even more illuminating, the ATRI study contained an impact analysis the HOS regulation had on carriers. The report contained the following findings:

- **HOS Rules Are Resulting in Widespread Productivity Losses:** More than 80 percent of the 400+ carrier survey respondents indicated a loss of productivity.[7]

- **More Drivers Now Required to Move the Same Amount of Freight:** To comply with the new HOS rules carriers have shifted driver schedules. Many of these new schedules have resulted in a decrease in the number of weekly miles a driver can log. Due to the decrease in miles, carriers now have a choice of turning down freight or making up the miles by incorporating additional drivers and/or equipment into their operations. These options are less profitable and less efficient than operations prior to the rule, and are a central component of the productivity loss carriers are experiencing.[8]

- **Driver Shortage and Turnover Is Getting Worse:** Prior to the July 1st rules, qualified drivers were scarce with an estimated shortage of 30,000 for-hire truckload drivers.[9] As a result of the changes more drivers are required and the level of scarcity has increased. To attract drivers after the HOS change, some carriers have opted to increase pay, and some may increase rates for shippers.

- **Decreased Flexibility to Meet Customer Requirements:** Meeting customer requirements is more difficult under the new HOS rules. In particular, drivers are limited to one restart per week and must take those restarts across two nighttime periods. Shippers, however, may require delivery at any point

[1] Jeffrey Short, *Operational and Economic Impacts of the New Hours-of-Service*, 41 (Am. Transp. Research Inst. 2013).
[2] Id. at 43-44
[3] Id. at 10
[4] Id. at 11
[5] Id. at 15
[6] Id. at 20
[7] Id. at 30
[8] Id. at 44
[9] Trucking Moves America Forward, http://truckingmovesamerica.com/industry (last visited Nov. 25, 2013).

> on a given day, and with little notice. The data show, particularly those data describing the variability in driver weekly work time that flexibility has decreased since July 1, 2013. As a result, drivers are less able to accumulate hours for unanticipated shipper requests via the 34-hour restart. In many instances, therefore, carriers must either turn down business or increase driver capacity.[10]

Recent HOS changes are costly for both drivers and fleets without clear reason of the necessity and not likely to result in any measurable safety or health benefits. According the ATRI study, the agency overstated the number of crashes caused by driver fatigue, the number of crashes that would be averted by changing the rules, and the health benefits that would result. ATRI research confirms these problems. ATRI's June 2013 study of 1.4 million driver records found FMCSA's contention that only 15% of long haul drivers would be impacted by the July 1st changes to be wildly incorrect. Most importantly, the ATRI research has confirmed the industry's fear—the new rules are having an overall negative impact on industry productivity, driver compensation and carrier service levels, while having little or no positive impact on safety.

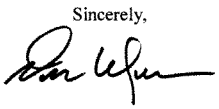
CONCLUSION

The process of attracting and recruiting individuals wishing to benefit from a career as a professional truck driver includes providing the particulars about the industry, the career, and the job. Based on the results of the July 1st HOS changes, the story our members have to tell perceptive drivers is pretty bleak as there is now a decrease in income, productivity is lower, there is a negative impact in quality of life, turnover is getting worse, and there is now a decrease in the flexibility of a driver's working hours.

Our current driver shortage will continue to worsen, unless Congress enacts H.R. 3413 and directs GAO to independently evaluate the data and methodologies used by FMCSA in its Regulation Impact Analysis that accompanied the December 2011 final rule, and to submit a report to Congress and the industry.

Thank you for the opportunity to submit these comments. We look forward to working with the Committee on the many important transportation challenges facing our nation.

Sincerely,



Don Lefeve,
Executive Director

[10] Id. at 44-45

PROSPECT TRANSPORTATION, INC.
ALTERNATIVE FUELS TRANSPORTATION, INC.
630 Industrial Road • Carlstadt, NJ 07072
Main: 201-933-9999 • Fax: 201-933-9985

November 4, 2013

Honorable Richard Hanna:

I read with great interest an article on the Truckinginfo web site in reference to the "True Understanding of the Economy and Safety Act" legislation. I am the President and Owner of Prospect Transportation, Inc. and Alternative Fuels Transportation, Inc. We operate in the Metro New York City area as a local carrier hauling petroleum based products. We have been in business since 1947 and have incorporated safety into the Company's culture. We run a 24/7/365 business and have good CSA scores and safety record. We have always had a low turnover rate and were able to successfully give our drivers a full work schedule while still maintaining a good quality of life. Unfortunately, the 34-hour restart provision, specifically the requirement of two periods off between 1 a.m. and 5 a.m., has taken away this quality of life, reduced productivity as well as disrupted the drivers' normal sleep schedule and has done nothing to show it improves safety.

Prior to July 1st, we worked with our safety consultant to put together several years of our accident and incident data to apply for an exemption to the new HOS regulations and specifically the restart provision. We did not move forward with that request after the courts finalized the ATA suit with basically no action. We would like to work with you and your colleagues to help in any way possible to get your proposed legislation approved. Please let me know what I could do to work with you in this endeavor.

Sincerely,

Melissa Eichholz
President

November 20, 2013

The Honorable Richard Hanna, Chairman
The Honorable Grace Meng, Ranking Member
Committee on Small Business, Subcommittee on
Contracting and Workforce
United States House of Representatives
Washington, DC 20515

Dear Chairman Hanna and Ranking Member Meng:

As family members who have lost loved ones in preventable crashes involving truck driver fatigue and as representatives of organizations working for twenty years to improve truck safety we are writing to provide the following information regarding the safety issues related to the Committee on Small Business, Subcommittee on Contracting and Workforce's hearing, *WRONG WAY: The Impact of FMCSA's Hours of Service Regulation on Small Business.* We respectfully ask that this letter be submitted to the hearing record since our request to testify on this important safety issue was denied.

Our organizations have a long history of involvement and a detailed understanding of the troubled hours of service (HOS) regulation adopted by the U.S. Department of Transportation (DOT). This letter is intended to provide the Subcommittee with factual information regarding the controversial 34-hour restart provision, and the amendments to the restart that were adopted by U.S. DOT in the 2011 HOS final rule. Despite assertions that the current HOS rule is not working well or is inefficient, the HOS rule changes adopted in 2011 were calculated to reduce truck driver fatigue, which remains a serious safety problem for truck drivers as well as the motoring public on our highways. In part due to the adoption of the restart in 2004, allowing an insufficient 34 hours of rest between weekly driving tours of as long as 80 or more hours, studies have found that a substantial percentage of truck drivers admit to high levels of fatigued driving and actually falling asleep behind the wheel.

Just last week the U.S. DOT released 2012 fatality figures showing an increase in deaths and injuries last year. For the third consecutive year, truck crash fatalities increased, representing a 16 percent increase in crash deaths since 2009, and including a 9 percent increase in fatalities to large truck occupants compared to 2011. Truck driving remains one of the most dangerous occupations in the United States today and fatigue is a major safety problem. Reliable estimates indicate that fatigue is a factor in at least 13 percent and as many as 31 percent of large truck crashes.[1] The excessively long driving and working hours allowed have led many to refer to truck driving as "sweatshops on wheels." The restart provision adopted by the FMCSA is a modest but important improvement. Efforts to repeal this provision will only contribute to truck driver fatigue and crashes that result in needless deaths and injuries.

Background

Driver fatigue has been a major safety concern under the HOS rules since they were first adopted in 1937. Even though that rule limited drivers to just 10 consecutive hours of driving without a rest break, and did not permit a "reset" or "restart" during the week, driver fatigue and driving while tired were recognized as serious safety problems that led to countless fatal and injury crashes. The 1995 National Truck and Bus Safety Summit, sponsored by the U.S. 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. That same year, Congress enacted section 408 of the Interstate Commerce Commission Termination Act (ICCTA) which required DOT to deal with fatigue-related issues and adopt necessary "countermeasures for reducing fatigue-related incidents and increasing driver alertness[]."[2]

Despite the congressional directive to reduce fatigue and improve driver alertness, in 2003 the Federal Motor Carrier Safety Administration (FMCSA), the U.S. DOT modal administration with jurisdiction over HOS regulation, adopted a final rule that increased the maximum limit on consecutive driving from 10 to 11 hours and, for the first time, instituted the experimental 34-hour restart that effectively reduces the end-of-week rest and recovery period for drivers who use up their weekly driving hours before the end of the week. Both of these changes to the original rule exacerbate driver fatigue, but the 34-hour restart adds to weekly *cumulative* fatigue, or sleep debt, that drivers suffer from when driving on short sleep from shift-to-shift and from week-to-week.

The danger posed by the 34-hour restart is that it undermines what was previously a hard number weekly driving cap of 60-hours for drivers on a 7-day schedule, or 70 hours for drivers on an 8-day schedule. Instead, the restart 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 34 hours off-duty. 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. While short 34-hour restart permits drivers to drive these extremely long tours of duty and to work over 80 hours per week, the short restart limits a driver to just 24 additional hours off-duty in which the driver is expected to get enough rest to overcome built-up cumulative fatigue. 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 the average American.

As a result, the 34-hour restart is often used to truncate the extended off-duty time that long-haul drivers need to recover from their weekly work cycle. The repeated use of the restart permits truckers to drive and work excessive hours and to get insufficient time off duty to compensate for the build-up of cumulative driver fatigue. Instead of having a full weekend of 48 to 72 hours off-duty for rest and recovery, as was required under the previous HOS rule,[3] the 34-hour restart permits drivers to trade rest time for extra driving hours in order to accommodate freight scheduling at the cost of driver health and safety. Fewer hours of rest and more hours of driving and work dramatically increase truck driver crash risk exposure.

In a 2004 decision, the U.S. Court of Appeals for the District of Columbia Circuit rules against the agency because it found that the 2003 HOS final rule contradicted both the scientific evidence and research regarding fatigue, and the agency's own findings of fact, and because the agency neglected to analyze the effect of the rule on driver health.[4] 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 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."[5]

After the 2003 HOS rule was adopted, larger numbers of truck drivers admitted to driving while tired and to falling asleep at the wheel. 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 and about 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. A third of the drivers reported that they became fatigued on a half or more of their trips.[6]

2011 Amendments to Improve Safety of the Restart

In the 2011 HOS final rule, FMCSA partially addressed safety concerns with the restart provision in two ways. First, it limits use of the restart to once every 168 hours (one calendar week). Thus, the rule limits the number of consecutive weeks with extensive weekly driving hours but only for those drivers operating on a 7-day work schedule. These drivers, if they are pushing the schedule by continually alternating 11 hour driving shifts with 10-hour off-duty periods, are constrained from taking the short, minimum 34-hour restart two weeks in a row. This means that if a driver drives and works as many as 70 or up to 80 hours in one week, the driver will be required to take more than the minimum 34 hours off duty in the following week.

This requirement ensures that drivers operating at or above the legal limits of the HOS, and who have highly fatiguing schedules,

will be required to take an extended period off-duty at the end of every other week. While not optimal from a safety standpoint, at least it ensures that drivers operating on a 7-day schedule who suffer from cumulative fatigue will get an extended off-duty period once every two weeks. While this is not sufficiently safe, which is why our organizations have criticized the restart provision, at least the 168-hour limit of the use of the restart keeps drivers from continually using the short 34-hour restart every week, week-in and week-out.

The FMCSA acknowledged the need to curtail excessive driving and work hours in stating that "[t]he 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." [7]

These findings of fact were based on the agency's review of the applicable scientific research and available studies.

Second, the 2011 final rule improves safety by requiring that the restart rest period include two night-time rest periods between 1 a.m. and 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 human circadian rhythm). In 2000, the FMCSA HOS notice of proposed rulemaking cited the scientific basis for requiring drivers to have two nights off-duty:

> ...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.[8]

In proposing this limitation on the HOS rule in 2010, the FMCSA cited work by Washington State University which identified the fact that the 34-hour restart was effective for daytime workers who obtained two nights of sleep but not for night workers who received only one night of sleep. The agency also cited other works which found that daytime sleep is less restorative than nighttime sleep and that time spent sleeping during the day is less restful than sleep taken at night even when the same amount of time is available for sleep.[9] The research supporting these findings is based on human biology and the need for nocturnal rest. Working drivers long hours and with little and insufficient rest is unsafe and deleterious to the health and medical well-being of truck drivers.

These two changes to the HOS restart requirements provide added safety benefits for the traveling public because they will re-

duce acute and cumulative driver fatigue and will therefore result in fewer truck crashes, including fatal and injury crashes.

Sincerely,

Joan Claybrook
Chair
Citizens for Reliable and Safe Highways

Jacqueline Gillan
President
Advocates for Highway and Auto Safety

Steve Owings
Co-Founder
Road Safe America

John Lannen
Executive Director
Truck Safety Coalition

Daphne Izer
Founder
Parents Against Tired Truckers
Mother of Jeff Izer
Killed in a truck crash 10/10/93

Dawn King
Davisburg, MI
Board Member, CRASH
Daughter of Bill Badger
Killed in a truck crash 12/23/04

Linda Wilburn
Weatherford, OK
Board Member, P.A.T.T.
Mother of Orbie Wilburn
Killed in a truck crash 9/2/02

Jennifer Tierney
Kernersville, NC
Board Member, CRASH
Daughter of James Mooney
Killed in a truck crash 9/20/83

Andrew McGuire
Executive Director
Trauma Foundation

Tami Friedrich Trakh
Corona, CA
Board Member, CRASH
Sister of Kris Mercurio
Sister-in-Law of Alan Mercurio
Aunt of Brandie Rooker &
Anthony Mercurio
Killed in a truck crash 12/27/89

Jane Mathis
St. Augustine, FL
Board Member, P.A.T.T.
Mother of David Mathis
Mother-in-Law of Mary Kathryn Mathis
Killed in a truck crash 3/25/04

Jeff Burns
Kansas City, Missouri
Board Member, CRASH

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