

BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

DOCKET NO. FMCSA-2004-19608

HOURS OF SERVICE OF DRIVERS

SUPPLEMENTAL COMMENTS OF NATIONAL SHIPPERS STRATEGIC
TRANSPORTATION COUNCIL, INC. AND THE HEALTH AND PERSONAL CARE
LOGISTICS CONFERENCE, INC.

National Shippers Strategic Transportation Council, Inc. (“NASSTRAC”) and The Health and Personal Care Logistics Conference, Inc. (“H&PCLC”) (collectively, the “Shipper Associations”), previously filed comments in this proceeding on March 4, 2011. In those comments the Shipper Associations joined thousands of other commenting parties, including drivers, trucking companies and other shippers and shipper organizations, in calling on FMCSA to maintain the current Hours of Service rules.

The Shipper Associations have reviewed the four additional studies posted by FMCSA in this proceeding on May 6, 2011. Those studies do not change our opposition to the modifications FMCSA has proposed. Two of the studies involved bus transportation, and acknowledge that conclusions reached as to bus drivers do not apply to truck drivers.¹

¹ This is fortunate, since one of those studies calls for limiting bus drivers to a maximum of 8 hours work per daily duty shift.

The other two new studies, conducted at Penn State and Virginia Tech, involved trucking companies, but suffer from some of the same defects identified by the Shipper Associations in their March 4 comments. For example, neither of the two studies acknowledges that FMCSA is implementing its CSA (Compliance Safety Accountability) program or that FMCSA is dramatically increasing the use of EOBRs (electronic on board recorders). Both of these initiatives, along with other safety programs at the federal and state levels, as well as programs implemented by trucking companies and their shipper customers, are certain to have significant positive impacts on highway and truck driver safety. Safety is an extremely important issue for drivers, trucking companies and shippers, and enormous efforts and investments go into programs of continuous safety improvement. Ignoring these considerations makes an already weak case for reducing driving time even weaker.

Moreover, the new studies focus on small samples of drivers but ignore the clear trend toward fewer crashes and fatalities shown by DOT's own statistics as to the larger universe of truck drivers operating nationwide since 2004, when the current Hours of Service rules become effective.

It has been noted frequently that, when FMCSA first allowed an 11th hour of driving time, certain parties predicted dramatic increases in crashes and fatalities, using reasoning much like that in the two new FMCSA-sponsored truck driver studies. Surely, it was claimed, drivers would be most fatigued and most likely to be involved in crashes during the 11th hour.

What certain academic studies said should happen has not happened. When theories and facts conflict, the rational reaction is to suspect flaws in the theories.² Of course, the explanation

² If the studies' theories were to be adopted in disregard of contrary facts, FMCSA should apparently dispense with restarts altogether, since drivers are said to be more likely to have accidents after 34 hours off than after a single day or night off. See the Penn State study at page 63.

might be as simple as that drivers reaching the end of their duty shifts are more careful than in earlier hours, offsetting risks of accidents. An analogy might be drawn to research indicating that traffic circles, despite the apparently greater risk of collisions, are actually safer due to heightened driver care. Or the new studies' data sets may be unrepresentative of the larger national population of drivers.

The Virginia Tech study acknowledges and cites data from the American Transportation Research Institute ("ATRI") showing significant declines in crash and fatality rates under the current rules, as well as data indicating that most crashes occur in the first 8 driving hours, with declining crash rates thereafter. Study at pp. 5-7. The Virginia Tech study then proceeds to ignore these data, making no effort to show that ATRI's figures are incorrect. The Penn State study ignores ATRI's data, and both studies ignore DOT's own nationwide crash and fatality data, apparently reflecting an academic preference for samples, modeling and reliance on other similar academic studies.

It remains questionable why readily available national data produced by DOT and ATRI which were widely reported in the trade press and mainstream media should be given no weight whatsoever in these studies. The Penn State study's objective is said to be "to study the effect of the new HOS rules on road safety using crash data. The focus is on effect, if any, of aspects of the HOS rules that changed in 2003, particularly maximum driving time after 10 hours or more off duty." Study at 2. Data gathered by ATRI and DOT are plainly relevant to any such inquiry, and if the authors' findings conflict with the ATRI and DOT data (which they do), the authors should have acknowledged and addressed the conflict.

The new studies also do nothing to address the primary flaw in FMCSA's proposed rule changes – the fact that the costs of FMCSA's proposed changes far outweigh any realistic benefits that might be achieved by significant reductions in truck driver duty hours.

As the Shipper Associations have previously explained, FMCSA must not analyze the costs of its proposals using tunnel vision that ignores trucking's role in the U.S. economy. Trucking companies transport some 70% or more, by weight and value, of goods moving between vendors, manufacturers, wholesalers and retailers, and also have a growing role in deliveries to consumers.

The safety benefit of FMCSA's proposals to reduce driving time by an hour, to mandate breaks (as opposed to trusting drivers to schedule their own breaks), and to modify the restart, are speculative, at best. The additional costs of these changes for drivers, trucking companies and shippers are very real, and substantial.

Drivers are likely to make less money if their hours are cut, and likely to face, and contribute to, increased congestion if the restart rules are changed. In addition, more drivers are likely to be stranded short of their destinations and homes.

Trucking companies will face greater difficulty attracting and retaining good drivers, and will have more trouble dispatching loads in an efficient manner, due to reduced flexibility in operating their networks.

Shippers will have a harder time scheduling their production and distribution operations, and shippers with just-in-time supply chains may need to increase inventories, inventory carrying costs, warehouse operations, etc., in order to avoid shortages and downtime.

All of these adverse impacts will be imposed at a time when the economy is struggling to recover, and the White House has called for a reduction in inefficient regulation. These adverse

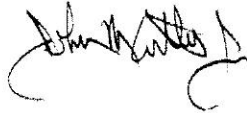
impacts are also unnecessary, compounding the arbitrariness and capriciousness of FMCSA's proposals. The current rules have done a good job of reducing crashes and fatalities, and do not need to be changed.

Shifting freight from trucks to trains is a non-starter for most shippers, for reasons explained in the Shipper Associations' March 4 opening comments. FMCSA has apparently begun to consider expanding its regulation to cover detention time at consignor and consignee facilities, i.e., asserting that it has jurisdiction to regulate not just motor carriers, but also the operations of shippers and receivers of freight. The Shipper Associations strongly assert that FMCSA jurisdiction does not and should not extend so far. Indeed, given the economic activity that takes place upstream and downstream of the yards in which trailers are loaded and unloaded, regulation of detention could expand into regulation by FMCSA of large segments of U.S. manufacturing.

Even without such misguided and unlawful regulatory overreach, the costs of FMCSA's proposed changes are far too high, given the steady improvement in highway safety under the current rules. As DOT recently announced, the rate of highway fatalities from accidents involving large trucks has declined to the lowest level since 1975, when DOT began keeping record.

For the foregoing reasons, FMCSA should retain the current Hours of Service rules, modifying them, if at all, only to allow greater flexibility for team drivers with sleeper berth-equipped cabs.

Respectfully submitted,



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S:\mcd\Supplemental HOS Comments