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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

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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 averaging 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 periods 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 more 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 appropriate 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 with 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 violation 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 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 is 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 provision 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 to 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 broadcasts over the past year have included extensive discussions about the HOS requirements. We provided numerous clarifications of the new rule and frequent reminders of the 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 partners 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.