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 <u>your</u> 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]

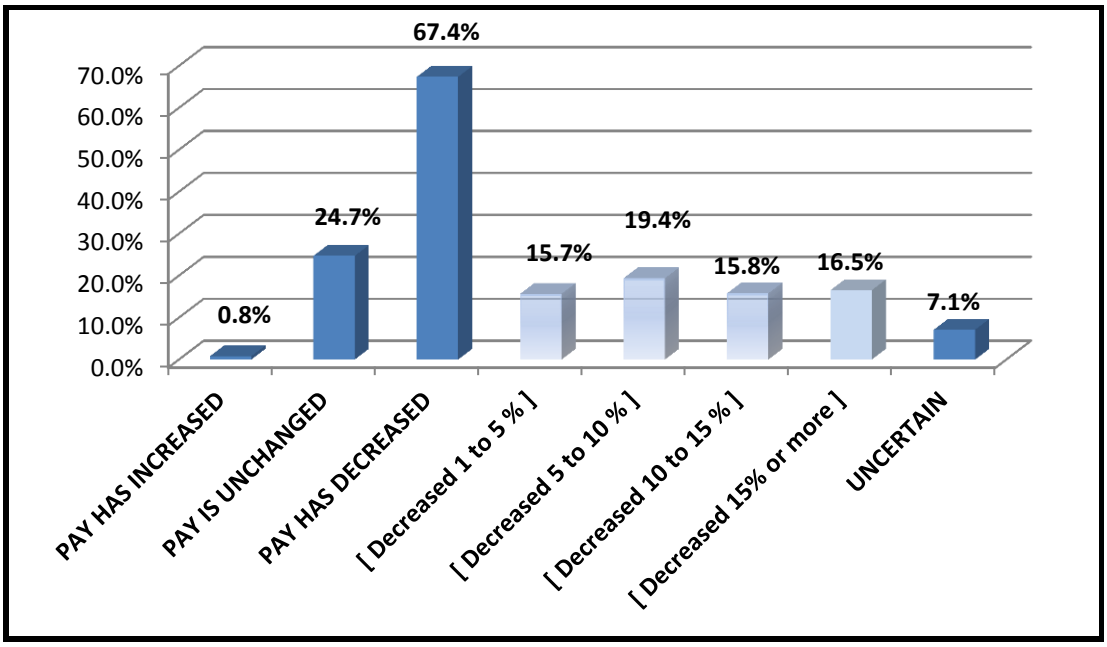
The logbook data analysis indicated a significant increase in restart period length from pre- to post-HOS implementation, with 63 percent fewer restarts that were 34 hours in duration. This increase may have been caused by the 1 a.m. to 5 a.m. rule which has resulted in a "window" that drivers must be 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

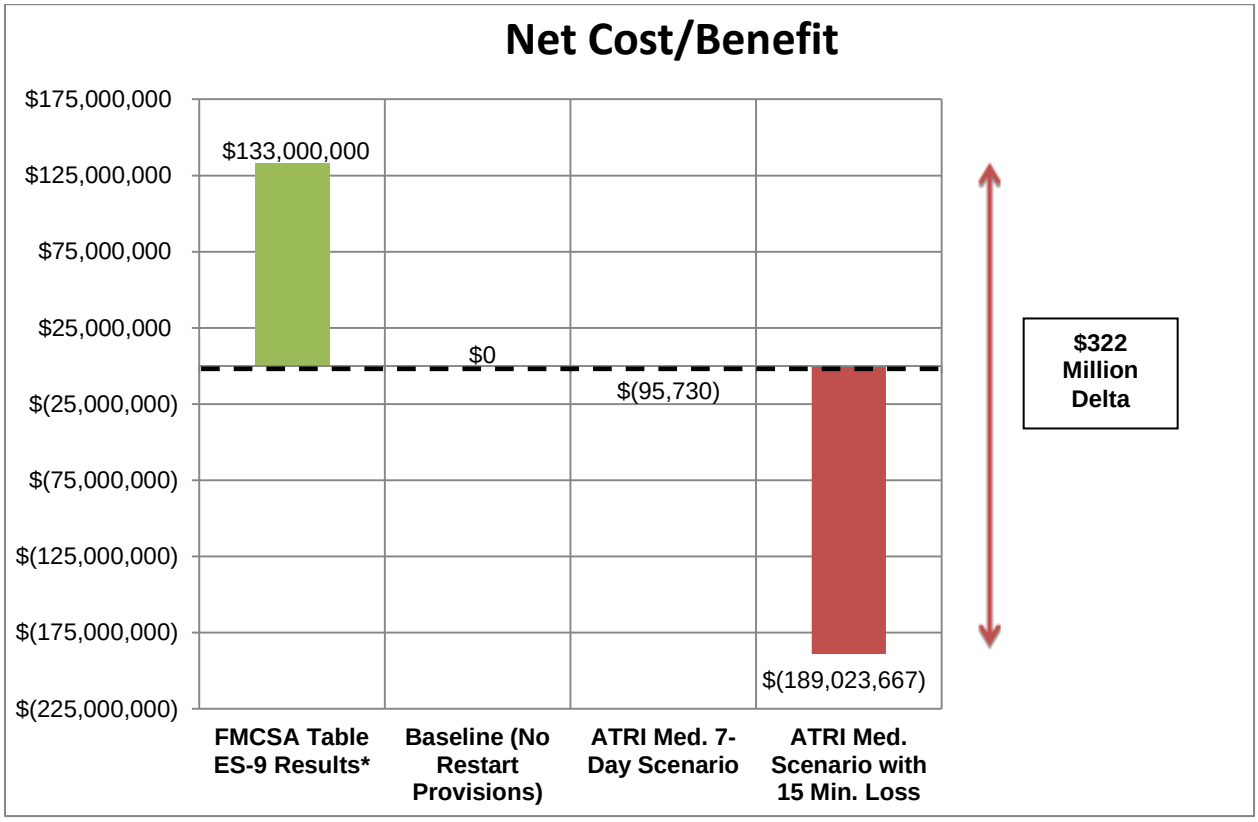
	FMCSA Restart Change Costs	**Restart Change Safety Benefits**	**Restart Change Health Benefits**	**Additional Restart-Related Productivity Cost**	**Net Benefits (Costs) ~Restart Only~**
FMCSA Table ES-9 Results*	$331,000,000	$210,000,000	$254,000,000	$ -	**$ 133,000,000**
ATRI Medium 7-Day Scenario	$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