
Testimony of
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Before the
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION & MERCHANT
MARINE SAFETY, SECURITY & INFRASTRUCTURE

Regarding
FEDERAL HOURS-OF-SERVICE REGULATIONS
GOVERNING TRUCK DRIVERS

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On behalf of



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Good morning Chairman Lautenberg, Senator Smith and distinguished members of the Subcommittee. It is my privilege to be here today on behalf of the Owner-Operator Independent Drivers Association (OOIDA). Thank you for inviting me to testify on a subject that is of great significance to the men and women who make a living behind the wheel of commercial motor vehicles. It is by no means a stretch to say that the hours-of-service regulations (HOS) that are being discussed today steer the daily lives of owner-operators and professional truck drivers whether they are engaged in activities related to their livelihood or at home with their families.

My name is Walter Krupski Jr. I am the owner of W. Krup Trucking in Stewartsville, New Jersey. I have been involved with the trucking industry for more than 30 years. Over the past 30 years I have driven truck as a company employee and as an independent owner-operator, have worked as a solo driver as well as in a team driving operation and have logged well over 3 million miles without a chargeable accident. I have also owned and managed a small fleet of trucks and trailers as well as contracted the services of up to 25 owner-operators. I currently own 3 trucks and 6 trailers, driving one of the units myself and hiring out the others.

OOIDA is the national trade association representing the interests of small business trucking professionals and professional drivers on matters that affect their industry. The Association actively promotes the views of small business truckers through its interaction with state and federal regulatory agencies, legislatures, the courts, other trade associations and private entities to advance an equitable business environment, and safe and secure working conditions for commercial drivers. OOIDA currently has more than 159,000 members who collectively own and operate more than 250,000 individual heavy-duty trucks.

On December 17, 2007 the Federal Motor Carrier Safety Administration (FMCSA) published in the Federal Register an Interim Final Rule (IFR) amending the Federal Motor Carrier Safety Regulations to allow commercial motor vehicle (CMV) drivers up to 11 hours of driving time within a 14-hour, non-extendable window from the start of the workday, following 10 consecutive hours off duty (11-hour limit). In addition the interim rule allows drivers to restart calculations of the weekly on-duty time limits after the driver has at least 34 consecutive hours off duty (34 hour restart). We applaud the response of FMCSA in keeping both the 11-hour option and allowing the more widely used 34-hour restart. This IFR and the hearing today offer a unique opportunity to address not only the courts concerns on the regulations but the more pervasive underlying causes of hours-of-service violations. We cannot continue to treat the symptoms and expect healing; we must examine the causes that permeate the industry. It is not a time for band aids but major surgery to heal the years of neglect from FMCSA and DOT.

Under the current hours-of-service rule, drivers must give up work and compensation if they pull off the road to rest during the work day. Once a driver's daily 14 hour on-duty clock begins, it keeps running, even if the driver pulls over to sleep for any amount of time less than 8 consecutive hours. Drivers are compensated only for driving. They are expected, however, to perform non-driving, uncompensated work that can consume unpredictable and significant amounts of their on-duty time. Drivers must keep driving, therefore, even when tired, because they do not know how much of their on-duty time will be available to them for driving during the day, and they must drive enough miles to maintain a minimal level of compensation.

The hours-of-service rule must be more flexible to allow drivers to sleep when tired and to work when rested. The rules must *encourage* truck drivers to get off the road when they are tired and must not penalize them for doing so.

Professional Truck Driver's Perspective

To fully comprehend a truck driver's standpoint on the hours-of-service regulations it is necessary to acknowledge how the majority of drivers in the trucking industry are compensated. Drivers are normally paid by how many miles they drive, therefore, the fewer miles driven the lower their compensation.

Under the HOS regulations the 14-hour running clock begins whenever a driver performs any on-duty activity after taking a compliant minimum rest period. The remaining 10 hours of a 24-hour day is supposed to be reserved for resting. For the vast majority of drivers the time spent on-duty, not driving is often, or sometimes always, uncompensated. There are general and administrative functions that are required of drivers such as completing paperwork, fueling, performing or undergoing safety inspections, and general maintenance that require daily on-duty uncompensated time that counts against their 14-hour on-duty clock. To some extent drivers can predict and control those administrative duties, but there are many other activities that occur regularly that are also uncompensated yet highly unpredictable.

Waiting to load or unload, physically loading or unloading, manually sorting and stacking freight and taking care of mechanical breakdowns are a few examples of these unpredictable, uncompensated activities that count against the 14-hour clock. In addition there are the delays from congestion, work zones, detours and inclement weather which reduce earnings potential because drivers paid by the mile must count this time against their 14-hour running clock. The 14-hour clock can only be stopped by spending either a minimum of 10 consecutive hours off-duty, or 8 consecutive hours in the sleeper berth of the vehicle and at least 2 more hours off later in the day. Even though the driver must take the additional 2 hours off-duty, those hours do not stop the 14-hour clock.

In light of the forgoing realities it is easy to understand that drivers want to get in as much compensated driving time as possible each day. In a survey done by OOIDA of its members, 66% reported that they forego short rest breaks, naps and meals under the 14-hour rule in order to perform as much compensated driving time as they can. In fact most drivers report that they seldom drive more than 10 hours per day, but still feel compelled to continue driving when they would like to take a break to compensate for either planned duties or unpredictable delays.

Congress directed the FMCSA to find a way to deal with the problem of shippers and receivers who often consider the vehicle as a rolling warehouse to store their materials until they need them. There is no mandated penalty for receivers who make a driver wait for hours or even days before unloading their trucks. By law receivers must allow drivers the option to unload, but may then require them to sort and stack or re-palletize the loads and at times even stock the shelves of the warehouse. They may require that the driver pay "lumpers" to unload their trailers further compromising their income. If they chose not to pay they may be required to unload the shipment by hand or wait an extended time for someone to unload them. These are the time

consuming, uncompensated on-duty activities that complicate drivers HOS compliance. Unfortunately, some motor carriers encourage these procedures from shippers/receivers by instructing their drivers to only log fifteen minutes for loading/unloading regardless of how long they waited, thus hiding actual on-duty time and saving their hours to "drive."

Many of these same shippers and receivers are now penalizing drivers for showing up late for prearranged appointments. The charges are significant and place undue pressure and stress on a driver trying to comply with the HOS. These charges are assessed regardless of whether a driver has operated legally or was delayed because of an event beyond their control such as weather related road closures, highway accidents or delays at a previous appointment.

FMCSA needs to expand their rules to include penalties on shippers/receivers who practice these rolling warehouse activities. In 1995 Congress asked DOT to examine whether or not it should have the authority over these other parties to more effectively enforce the safety rules. DOT never submitted to Congress or otherwise published an examination of this issue.

The cost of operations for the small trucking companies has increased tremendously in the last two years. The steep and fluctuating cost of fuel, maintenance, equipment, parts and supplies along with the added cost of APU being mandated by the no idling restrictions and the rising cost of engines to meet EPA standards with the accompanying loss of fuel mileage makes a vicious circle of potential bankruptcy for the small carrier. The drivers want to be safe, that is their livelihood and their family's future, so when they state that they feel the rules are not flexible enough to allow for rest breaks when they are tired or to avoid congestion etc. they are the ones who know and should be listened to.

Sleeper Berth Exceptions

Certain specialized segments of the trucking industry have been especially hard hit by the regulations since they were modified to do away with sleeper berth exceptions. Team drivers who have traditionally operated on a 5 or 6-hour on-duty driving cycle followed by a 5 or 6-hours in the sleeper berth now find themselves driving many more consecutive hours than previously. Many of these teams are husband-wife teams where the wife, coming into the driving part of the industry as a late career choice, drives when the husband gets tired and allows him to get a couple hours or more of rest. Now under the new HOS regulations the wife is often compelled to drive 8 consecutive hours or more.

Drivers who haul hazardous materials or loads contracted by the Department of Defense (DOD) also face obstacles to HOS compliance. Under the regulations certain hazardous materials must be under constant supervision and direct control at all times. This is also contractually imposed by the DOD on drivers hauling certain loads. For example, it is impossible to park a truck the required distance from inhabited areas and not have the other team driver be awake to supervise or control the load while the other team driver takes breaks for any number of personal reasons. This effectively "breaks" the 10 hour rest period for the team driver in the sleeper and essentially places them in a regulatory "Catch-22" - comply with constant supervision and control requirements of the shipment and then be unable to properly account for the required off-duty/sleeper berth requirements. This conundrum could be solved by allowing flexibility in the

rules for team drivers to extend the 14-hour clock by taking short rest breaks without penalizing the drivers or by reinstating the sleeper berth exceptions that were once a part of the HOS rules.

Conclusion

If FMCSA and Congress truly wish to reduce fatigue among drivers, several issues need to be addressed that are integral to truck drivers work schedules, but ignored by the HOS rules:

- 1) That most drivers are not paid for the long hours spend waiting at the loading docks. They are paid by the mile or as a percentage of the freight bill.
- 2) When drivers must wait for many uncompensated hours, they have less time under HOS rules to drive their truck and produce an income. This puts them between a rock and a hard place: between potential heavy fines for violations of HOS rules and losing their job.
- 3) Shippers and receivers have no incentive to use truckers' time efficiently. Most of the time they pay no more or less for using any amount of the drivers' time.
- 4) Shippers and receivers have the greatest control of anyone in the transportation chain over a driver's schedule and yet bear no responsibility for requiring that drivers work longer than the HOS rules allow as a condition for receiving work from them.
- 5) Drivers are pushed financially and physically, increasing their fatigue and negatively impacting their safety.

Significant reductions in driver fatigue will not be achieved until drivers are paid for all of their work and drivers face no economic downside for complying with the rules. If drivers were compensated for both their driving and non-driving on-duty work, they would have much less incentive to drive while fatigued. Additionally, they would have every incentive to record all of their on-duty time, and problems with the accuracy of logbooks would disappear.

Additionally, truck drivers should not be required to unload their truck or to pay other others to unload it. Drivers would be better able to manage their fatigue if they were prohibited from performing the physical loading or unloading their own truck. The high unloading fees drivers are charged by receivers to unload their own freight must be eliminated so that drivers are not coerced to perform the unloading.

The demands and expectations of shippers, receivers, brokers and motor carriers on truck drivers for each load they take are far more pervasive than any inspection scheme and schedule of fines that either Congress or FMCSA could devise. Unless these economic issues are addressed, drivers who become disqualified from driving for violating the hours-of-service rules will simply be replaced by a new driver facing the same economic pressures. Only by addressing these issues is there the potential for making significant reductions in driver fatigue.

Chairman Lautenberg, Senator Smith and distinguished members of the Subcommittee, thank you for your consideration of this testimony. I would be pleased to answer any questions that you may have.