Before the Subcommittee on Surface Transportation and Merchant Marine Safety, Security and Infrastructure

Committee on Commerce, Science and Transportation

United States Senate

Testimony of

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On

Hours of Service and Truck Safety

December 19, 2007

Chairman Lautenberg, Ranking Member Smith and Members of the Subcommittee My name is Lamont Byrd, Director of Safety and Health, for the International Brotherhood of Teamsters. Thank you for the invitation to testify here today on this critical issue of hours of service for truck drivers.

Introduction

The International Brotherhood of Teamsters (IBT) is a labor organization whose members include hundreds of thousands of persons, mostly drivers, employed by motor carriers. Because of the large number of its members that are involved in motor transportation, the IBT has a strong interest in ensuring that any changes to the hours of service regulations do not adversely affect the health, safety, or economic well-being of its members or the safety of the driving public.

The IBT has been an active participant in the Department of Transportation's attempts to revise the hours of service regulations, first under the Federal Highway Agency and then under the Federal Motor Carrier Safety Administration (FMCSA, the Agency) and will remain so. Since the membership of the IBT is protected by collective bargaining agreements that provide them with excellent compensation and benefits packages, it is logical that the IBT should be considered the "voice of reason" in this rulemaking procedure. Its members are not willing to sacrifice their

health or safety for the opportunity to make more money. Teamster members have no incentive to violate the law. The collective bargaining agreements provide sufficient protections from employer coercion to violate safety regulations by making such actions a violation of the contract and subject to the grievance process. This is why the IBT has asserted in all previous comments on this matter, that better enforcement is a critical component in any revision to the hours of service.

The Court Decisions

The IBT has been a party to the legal actions embarked upon by Public Citizen and other stakeholders with respect to the 2003 and 2005 Hours of Service Regulations promulgated by the Federal Motor Carrier Safety Administration. Twice now the U.S. Court of Appeals for the District of Columbia has vacated those rulemakings. The July 2004 ruling cited the FMCSA's failure to consider the health of the driver and characterized the rule as "arbitrary and capricious". (Public Citizen et al. v. Federal Motor Carrier Safety Administration. 374 F.3d 1209) The Court was correct in vacating the rule because the FMCSA is statutorily required to "ensure that… the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators." 49 U.S.C. Section 31136(a)(4). Based on the court's decision, it is clear that the FMCSA failed to comply with this

requirement. This did not stop the agency, however, from issuing a nearly identical rule in 2005.

The July 2005 Court of Appeals decision vacated the 2005 rule, based on the fact that the FMCSA failed to disclose critical information the agency used in its cost-benefit analysis for public comment. The agency did not explain how its operator-fatigue model failed to account for cumulative fatigue due to increased weekly driving hours permitted by the 34-hour restart. The FMCSA did not provide any opportunity for notice and comment on its new model or explain the methodology and assumptions from which it was derived. While the FMCSA claims that the court ruled on procedural grounds, the fact is that the court stated that the agency's analysis was flawed. The court expressed concerns about the increase in the daily driving limit to 11 hours, while the agency conceded that studies showed that performance began to degrade after the 8th hour on duty and increased geometrically during the 10th and 11th hour. This is hardly a procedural issue. We continue to support the motions filed by Public Citizen relative to the Interim Final Rule.

The Interim Final Rule (IFR)

The IBT conducted a brief review of the IFR and several of the supporting documents in preparation for the hearing. However, it should be noted that due to the limited interval between the time from which the IFR was released and the

hearing, our review and analysis is incomplete. It is anticipated that the IBT will provide a more comprehensive review of these materials in preparation of our comments that will be submitted to FMCSA's Rulemaking Docket.

11 Hour Driving Issue

In response to the Court's ruling, the agency goes into some detail regarding the rationale used in developing the model used to justify increasing the maximum daily driving time from 10 hours to 11 hours. FMCSA states that new safety data that the agency reviewed suggests that the 11-hour driving limit has not resulted in any "upward trend in the number of fatal crashes as a whole or fatigue-related crashes in particular." In our review of the information provided by FMCSA in the IFR, we have found no such data to support the Agency's conclusion.

The Agency takes this position after taking a contrary position during previous HOS rulemaking where the FMCSA acknowledged that the relative risk of a crash dramatically increases after about 8 hours of driving, as driving continues through the 9th, 10th, 11th, and 12th hours. The Agency used its expertise and judgment based on the research literature to show that the relative risk of a crash effectively doubles from the 8th to the 9th hour of driving, and doubles again from the 10th to the 11th hour of driving, even before the twelfth hour of driving is completed.[1]. It

[1] 65 FR 25544 Relative Risk of Fatigue Crash by Hours Driving (Chart 5)

is our opinion that in the IFR, the Agency has chosen to "cherry pick" from studies that support their new position on this matter. In particular, the agency relies too heavily on a study conducted by the Virginia Tech Transportation Institute regarding Time-on- Task related fatigue and its contribution to crash risk. In our cursory review of the Virginia Tech Transportation Institute study, we have no reason to challenge the validity of the methodology used by the researchers, however, we agree with comments in their conclusion which concede that interpretation of the conclusions reached in the study must be used cautiously due to the small sample size of drivers in the study population. We would also conclude that the results may have limited relevance to certain sectors of the trucking industry that were not included in the study. Further, we are of the opinion that the VTTI study does nothing to invalidate other studies cited regarding this matter, e.g., Mackie and Miller[2] ; Jovanis, et al[3]; and Park, et al[4], that conclude that there is an increased crash risk associated with hours driving.

In addition, according to Public Citizen[5], a 1996 study found a strong relationship between single-vehicle truck crashes and the length of consecutive hours spent

[2] Mackie, R.R. and Miller, J.C. 1978. Effects of hours of service, regularity of schedules, and cargo loading on truck and bus driver fatigue (DOT HS-803-799). Washington, DC: National Highway Traffic Safety Administration.

[3] Jovanis, P., Park, SW., Gross, F., and Chen, K. On the Relationship of Crash Risk and Driver Hours of Service, 2005 International Truck & Bus Safety Security Symposium, Alexandria, VA

[4] Park, S., Mukherjee, A., Gross, F., and Jovanis, P.P. "Safety implications of multi-day driving schedules for truck drivers: Comparison of field experiments and crash data analysis." Transportation Research Board 2005 Annual Meeting.

[5] Public Citizen, Comments on Notice of Proposed Rulemaking; Request for Comments; Hours of Service of Drivers; 70 FR 3339, Jan. 24, 2005; Docket No. FMCSA-2004-19608; formerly FMCSA-1997-2350. Page 19.

driving.[6] The risk of a crash actually doubled after 9 hours of continuous driving.[7] Another study of truck driving found that "[a]ccident risk increases significantly after the fourth hour, by approximately 65 percent until the seventh hour, and approximately *80 percent and 150 percent in the eighth and ninth hours,*" respectively [emphasis added].[8]

We are of the opinion that because of the diverging opinions of the researchers who investigated this matter, there is a need to conduct additional research regarding this issue prior to considering any driving time increases for commercial drivers.

34-HOUR RESTART PROVISION

In the 2003 NPRM, the FMCSA introduced the concept of weekly off-duty periods to provide drivers with the opportunity to compensate for sleep debt accumulated during the work week. This concept is similar to work rules that were negotiated into some of the union's collective bargaining agreements to allow for minimum rest periods between work weeks, so of course, in theory, the union could agree with this concept. It seems as though this idea has since evolved into a restart provision of which, according to the language in the preamble of the 2005 final

[6] Saccomano, F., *et al.*, "Truck Safety: Perceptions and Reality," (Ontario: Institute for Risk Reduction, 1996) at 157-174.
[7] Saccomano, F., *et al.*, "Truck Safety: Perceptions and Reality," (Ontario: Institute for Risk Reduction, 1996) at 157-174.
[8] Lin, T., *et al.*, "Modeling the Safety of Truck Driver Service Hours Using Time-Dependent Logistic Regression," *Transportation Research Record* 1467 (Washington, D.C.: Transportation Research Board, 1994), at 1-10.

rule, “The only reason for a restart provision is to allow increased productive time, notwithstanding the general regulatory requirements”.[9] The trucking industry has pushed for a restart provision dating back to 1992. The FMCSA admits that the 34-hour restart provision allows an extra 14 hour shift every 7 days. So in a revised rule that is supposed to reduce driver fatigue, reduce crashes and fatalities, and make roads safer for the motoring public, FMCSA decided to allow drivers to work for an additional 14 hours per week, bringing the total weekly hours worked to 84.

The IBT opposes the restart provision and we have taken the position that Teamster drivers in the LTL sector will not use this regulatory provision. We negotiated language into our collective bargaining agreements that prohibits the use of restart, except in rare situations, and those runs are negotiated with the employer on a case-by-case basis. By not using the restart provision, our members are afforded the opportunity to obtain nearly two times the hours off as compared to a driver who uses restart. Allowing drivers who already work extremely long hours to work even more is not a good decision for the safety and health of the driver or the safety of the motoring public. Again, this is an example of the FMCSA favoring the economic concerns of the industry.

[9] 70 FR 50017

The IBT opposes the use of the 34-hour restart because of the negative effect it has on a driver's ability to get restorative rest. Those companies affected by this language have not seen a negative economic impact resulting from the labor agreement. They have not lost a competitive advantage. The IBT contends that this voluntary provision has become mandatory to most drivers not protected by collective bargaining agreements. The FMCSA is naïve to think that a company would not push its drivers to drive the maximum allowed by law, by utilizing every provision, or special exception provided in the rules. This will be discussed in greater detail below.

The IBT understands that the FMCSA must carefully weigh the economic impact of any regulation and carefully balance that with the safety benefits to drivers and the public. However, the IBT believes that the Agency is more concerned about the economic viability of the industry than about the health and safety of the drivers in this rulemaking. This is evidenced by the obvious similarities between the industry proposal described in the April 2003 preamble to the final rule [68 Fed. Reg. 22491 – 22501], and the final rule published by the Agency in 2005, and now the IFR.

In the IFR, the Agency cites 5 studies in which it claims address cumulative fatigue caused by sleep debt, however, copies of the studies were not placed in the docket in time to be adequately reviewed and evaluated by the public in time to comment

on them in preparation for this testimony. However, in reviewing the abstracts for these studies, none looked at the effect that the 34-hour restart provision, and the subsequent increase in cumulative driving hours, had on commercial drivers. The FMCSA admits that there is a lack of scientific evidence with respect to the cumulative fatigue caused by the implementation of the 34-hour restart provision. The Court concluded that FMCSA had not adequately considered the "cumulative fatigue" raised by Public Citizen in its final rule. On page 34 of the IFR, the Agency makes the following statement:

> "The Agency found in 2005 that few studies address the effect of recovery periods between work periods spanning multiple days, such as a workweek. After reviewing the studies relevant to the 34-hour recovery period, as cited in the 2003 rule and those submitted by commenters to the 2005 NPRM, the Agency determined that current scientific evidence is limited with respect to the type of cumulative fatigue raised by Public Citizen and the Court."

The Rosekind study is one of the few studies cited by the Agency in its argument in the IFR regarding the lack of evidence of cumulative fatigue caused by sleep debt. According to comments submitted by Advocates in response to the 2005 NPRM, Rosekind argues that the 34 hour restart time is sufficient to permit recovery. In prior studies, Rosekind has argued that two

successive *nights* of recovery sleep are needed to restore performance and expunge sleep debt.[10] Advocates argued correctly that "the schedule of a high percentage of truck drivers is either irregular, with backward rotating shifts… or are non-diurnal even when circadian. It is well-known and amply documented that workers on inverted shift work schedules often get both less and poorer quality sleep when they attempt to work during the night and try to sleep during the day."[11] Drivers who use the 34-hour restart provision may encounter great difficulty obtaining two successive nights of 8-hours of sleep during the 34-hour period. In the IFR, the Agency has still not adequately addressed the need for two consecutive *nights* of at least 8-hours of sleep; a concept supported by studies cited by the FMCSA in both the 2005 NPRM and the current IFR.[12,13,14,15,16]

According to Public Citizen, scientific studies clearly show that as drivers log more hours on the road over multiple days, their performance declines. Public Citizen makes the following statement in their comments to the 2005 NPRM:

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[10] M. Rosekind, D. Neri, and D. Dinges, "From Laboratory to Flightdeck: Promoting Operational Alertness, *Fatigue and Duty Limitations – An International Review*, the Royal Aeronautical Society, London, 1997, pp. 7.1-7.14.

[11] Advocates for Highway and Auto Safety, Hours of Service of Drivers, Notice of Proposed Rulemaking; Request for Comments 70 FR 3339, January 24, 2005

[12] 70 FR 3347. *See:* O'Neill *et al.* (1999)

[13] 70 FR 3347.

[14] 70 FR 3347.

[15] 70 FR 3347.

[16] Smiley, A., R. Heslegrave, *A 36-Hour Recovery Period for Truck Drivers: Synopsis of Current Scientific Knowledge*, Prepared by Human Factors North for Transport Canada, Montreal: Transport Canada, Apr. 1997, at iii.

> "A 1992 study found that driving patterns over the previous seven days significantly increased crash risk on the eighth day of driving.[17] And a 1999 study by the American Automobile Association found that working a 60- hour week, as opposed to a 40-hour or 50-hour week, markedly raises a driver's crash risk: "Working the night shift increased the odds of a sleep-related (versus non-sleep-related) crash by nearly 6 times. Working more than 60 hours a week increased the odds by 40 percent."[18] FMCSA's own analysis for the 2000 NPRM convincingly demonstrates that a 34-hour restart is unsafe, as it would only exacerbate drivers' cumulative fatigue, while failing to guarantee even the bare minimum necessary for a truly recuperative weekly recovery period."[19]

In the IFR, the Agency references the O'Neill, TR et al study when making the following statement: "The authors reported that a schedule of 14 hours on duty (with 12 hours of driving) and 10 hours off duty for 5 consecutive day periods did

[17] Kaneko, T., *et al.*, "Multiday Driving Patterns and Motor Carrier Accident Risk: A Disaggregate Analysis," *Accident Analysis and Prevention*, 25:5, 1992, 437-456.

[18] Stutts, J., *et al., Why Do People Have Drowsy Driving Crashes?: Input from Drivers Who Just Did,* AAA Foundation for Traffic Safety, Washington, D.C., Nov. 1999.

[19] 65 FR 25555, 25556

not appear to produce significant cumulative fatigue over the 2-week testing period".[20]

The referenced study was an experiment using 10 truck drivers in simulated long-haul runs over a 15 day period. Limitations of this study included: small number of subjects (n=10); subjects studied in a simulated environment rather than a real-world scenario with scheduled meals, exercise, and other activities; only a straight day schedule was examined-conclusions drawn regarding cumulative fatigue and recovery are restricted to a straight schedule (a schedule of 14 hours on duty/10 hours off duty for a 5-day week); subjects were directed to take breaks and get adequate rest-subjects were not as fatigued as real-world drivers are expected to be; quality and length of sleep was affected by the fact that subjects were staying in an apartment.

Also, the authors suggested that a full two nights and one day off would be a minimum safe restart period under the conditions tested. However, the study design considered the effects of a 58-hour off-duty period, not the 34-hour period provided by the restart rule, and the authors cautioned about generalizing the results to operations with different characteristics (for example those that are

[20] O'Neill, T.R., Krueger, G.P., Van Hemel, S.B., and McGowan, A.L. (1999). "Effects of operating practices on commercial driver alertness." Rep. No. FHWA-MC-99-140, Office of Motor Carrier and Highway Safety, Federal Highway Administration, Washington, D.C.

not day shifts).[21] Furthermore, what the Agency fails to include in the IFR is that the authors concluded that "there was a gradual decline in driver response quality over time (hours at the wheel)."[22]

The Wylie et al study[23] cited by the Agency in supporting their argument concluded that "There was some evidence of cumulative fatigue across days of driving. For example, performance on the Simple Response Vigilance Test declined during the last days of all four conditions." Additionally, and perhaps most alarming, is the fact that the authors concluded that "the follow- up study found that based on a small sample of drivers, 36 hr recovery was insufficient for day or night drivers, but especially for night drivers."[24]

A study by Park et al[25] examined the "effect of multi-day driving and continuous driving (time on task) on crash risk. The study uses pre-existing crash data from the 1980s and measurements from the Driver Fatigue and Alertness Study (DFAS)

[21] Insurance Institute for Highway Safety, Comments on Hours of Service of Drivers, Notice of Proposed Rulemaking (NPRM), Docket No. FMCSA-2004-19608; formerly FMCSA-1997-2350, p. 4.

[22] O'Neill, T.R., Krueger, G.P., Van Hemel, S.B., and McGowan, A.L. (1999). "Effects of operating practices on commercial driver alertness." Rep. No. FHWA-MC-99-140, Office of Motor Carrier and Highway Safety, Federal Highway Administration, Washington, D.C.

[23] Wylie, C.D., Shultz, T., Miller, J.C., and Mitler, M.M. (1997). "Commercial motor vehicle driver rest periods and recovery of performance."

[24] Wylie, C.D. "Driver drowsiness, length of prior principal sleep periods, and naps". (1998). Transportation Development Centre. Report No. TP 13237E.(Direct quote taken from CTBSSP Literature Review on Health and Fatigue Issues Associated with Commercial Motor Vehicle Driver Hours of Work; Transportation Research Board)

[25] Park, S., Mukherjee, A., Gross, F., and Jovanis, P.P. "Safety implications of multi-day driving schedules for truck drivers: Comparison of field experiments and crash data analysis." Transportation Research Board 2005 Annual Meeting.

conducted in the mid-1990s. The authors concluded that "there is some evidence, although it is far from persuasive, that there may be risk increases associated with significant off-duty time, in some cases in the range of 24 to 48 hours. The implication is that "restart" programs should be approached with caution."[26] There were also questions raised regarding "the efficacy of a "restart" period (Smiley and Heslegrave, 1997); there appears to be evidence from this analysis that 24 and perhaps 48 hours may be insufficient, particularly for night and early morning driving."[27]

A study performed by Jansen et al[28] examined working hours, patterns, and work schedules of employees in terms of need for recovery from work. The authors concluded that in men, continuous "Need for Recovery" scores were significantly associated with working more than 40 hours per week compared with fewer hours per week (drivers work 60-70+ hours per week), working 9 to 10 hr per day (drivers work 12-14+ hours per day) compared with working fewer hours per day, and working overtime frequently. Need for Recovery (highest quartile vs. lowest quartile) results in men showed significant associations between high need for

[26] Park, S., Mukherjee, A., Gross, F., and Jovanis, P.P. "Safety implications of multi-day driving schedules for truck drivers: Comparison of field experiments and crash data analysis." Transportation Research Board 2005 Annual Meeting.

[27] Park, S., Mukherjee, A., Gross, F., and Jovanis, P.P. "Safety implications of multi-day driving schedules for truck drivers: Comparison of field experiments and crash data analysis." Transportation Research Board 2005 Annual Meeting.

[28] Jansen, N., Kant, I., van Amelsvoort, L., Nijhuis, F., and van den Brandt, P. "Need for recovery from work: evaluating short-term effects of working hours, patterns and schedules." Ergonomics. 2003 Jun 10; 46(7):664–80.

recovery and working 9 to 10 hr per day, working more than 40 hr per week, and working frequent overtime. The author concluded: "The study showed that high working hours a day and high working hours a week generally went together with a higher need for recovery, confirming our hypothesis that day workers with many working hours a week report more need for recovery from work compared to employees working less hours a week. Extension of the working day, in terms of overtime work, was particularly associated with more need for recovery in both men and women." [29] An industry sector for the workers evaluated in the research was not provided. No information on occupation was a limiting factor in the study. Studies performed by Dingus et al[30] and Klauer, et al[31] examined long-haul sleeper team truck drivers operating heavy trucks for a minimum of 6 continuous days, with the typical run being 7 to 10 working days, on their regularly assigned route. The authors concluded that it "appears that the combination of long driving times and multiple days provides the greatest concern, with several results pointing to the presence of cumulative fatigue."[32]

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[29] Jansen, N., Kant, I., van Amelsvoort, L., Nijhuis, F., and van den Brandt, P. "Need for recovery from work: evaluating short-term effects of working hours, patterns and schedules." Ergonomics. 2003 Jun 10; 46(7):664–80.

[30] Dingus, T., Neale, V., Garness, S., Hanowski, R., Keisler, A., Lee, S., Perez, M., Robinson, G., Belz, S., Casali, J., Pace-Schott, E., Stickgold, R., and Hobson, J.A., The Impact of Sleeper Berth Usage on Driver Fatigue. FMCSA, FMCSA-RT-02-050, Washington, DC, November 2001.

[31] Klauer, S.G., Dingus, T.A., Neale, V.L. and Carroll, R.J. (2003) "The effects of fatigue on driver performance for single and team long-haul truck drivers". Driving Assessment 2003—The Second International Driving Symposium on Human Factors in Driver Assessment, Training and Vehicle Design. Park City, Utah.

[32] Klauer, S.G., Dingus, T.A., Neale, V.L. and Carroll, R.J. (2003) "The effects of fatigue on driver performance for single and team long-haul truck drivers." Driving Assessment2003—The Second International Driving Symposium

According to the Insurance Institute for Highway Safety, the 2005 commentary on the rule change by Rosekind points to a scientific basis for the 34-hour restart rule.[33] However, the studies referenced in the commentary are not based on commercial vehicle drivers. They mostly are experiments that primarily examine the effects on simulated performance of continuous hours of wakefulness, not time on task. The commentary does not consider the range of factors that may affect sleep debts among truck drivers (e.g., split rest time in a sleeper berth) created by long daily work shifts and their ability to get adequate recovery sleep in the real world. For example, for many drivers the 34-hour recovery period occurs on the road rather than at home.[34]

The Agency makes the following statement on pp. 35-36 of the IFR regarding cumulative fatigue: "Although some popular literature discusses "burnout", the Agency does not consider these anecdotal narratives to be evidence that cumulative fatigue is a significant concern under normal driving conditions." However, the Agency relies heavily on anecdotal information provided by the ATA to justify its IFR (Carrier Safety Data Filed with the ATA Motion, pp.56-57; ATA Operational

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on Human Factors in Driver Assessment Training and Vehicle Design. Park City, Utah. (Direct quote taken from CTBSSP Literature Review on Health and Fatigue Issues Associated with Commercial Motor Vehicle Driver Hours of Work; Transportation Research Board)

[33] Insurance Institute for Highway Safety, Comments on Hours of Service of Drivers, Notice of Proposed Rulemaking (NPRM), Docket No. FMCSA-2004-19608; formerly FMCSA-1997-2350, p. 5.

[34] Insurance Institute for Highway Safety, Comments on Hours of Service of Drivers, Notice of Proposed Rulemaking (NPRM), Docket No. FMCSA-2004-19608; formerly FMCSA-1997-2350, p. 5.

Usage Survey of Members, pp. 62-64; Carrier Information Filed with ATA Motion, pp. 65-66).

Agency Assumptions

FMCSA believes the pre-2003 possibilities of "extreme" driving behavior are actually eliminated under the 2003 or 2005 rule. As stated above, the Agency is being naïve if it truly thinks that this is the case.

FMCSA argues that because the 2003 and 2005 rules prohibit driving after the 14th hour of coming on duty, drivers will not utilize "extreme" driving behavior. However, according to the Hours of Service Compliance Rates provided in Table 3 of the IFR, it was determined that HOS violations regarding the 15 or 14 hour rule increased 601% when comparing violations in 2003 with those in 2006. Our understanding of the rule suggests that this violation documents that drivers are operating commercial motor vehicles after the 14 hour period has expired. Further, our experience, based on reports from our driver membership, suggests that as the HOS regulation matures, motor carriers are actively seeking "loopholes" to exploit in an effort to maximize the hours worked by drivers for productivity gains. For example, according to the exemption cited in 395.1(o), a property-carrying driver is exempt from the requirements of section 395.3(a)(2) if:

1. The driver has returned to the driver's normal work reporting location and the carrier released the driver from duty at that location for the previous five duty tours the driver has worked:
2. The driver has returned to the normal work reporting location and the carrier releases the driver from duty within 16 hours after coming on duty following 10 consecutive hours off duty; and
3. The driver has not taken this exemption within the previous 6 consecutive days, except when the driver has begun a new 7- or 8- consecutive day period with the beginning of any off-duty period of 34 or more consecutive hours as allowed by section 395.3(c).

This 16 hour exemption permits a driver to operate after the 14th hour of coming on duty as long as the previous conditions are met. Therefore, the assumption is that in typical operating scenarios, some drivers who meet the above criteria will, at most, use the exemption one time per work week. The IBT has received numerous calls from our members who were seeking guidance on the legality of using the exemption more than one time per week. In these situations, the motor carriers are instructing drivers who have worked for two or three days and used the exemption on one of those days to use the 34 hour restart provision before expiring their available working hours. Upon their return to work, the motor carriers are instructing the drivers to use the 16-hour exemption for a second time that calendar

week, and continue to work until they expire their hours for the remainder of the calendar week. In this scenario, a driver may work upwards of 88 hours in a 7 day period. Therefore, our experience suggests that if motor carriers can exploit the regulations to their advantage, they will do so. One must keep in mind that this is occurring among unionized carriers where the union and the collective bargaining agreements serve to dissuade motor carriers from violating the regulations. If this is happening in this situation, it begs the question of what is occurring in the non-union sector.

Conclusion

The rulemaking process for this important regulation has been unnecessarily lengthy and arduous. The FMCSA could have avoided many of the challenges to promulgating a final rule if the agency had simply taken the time to objectively review the existing scientific literature, commissioned researchers to conduct studies to fill any identified knowledge gaps, and obtained and seriously considered input from all stakeholders. Instead, the agency chose to be the stalking horse for the trucking industry by attempting to circumvent the required rulemaking process and promulgate a final rule that focuses on the priorities of motor carriers, which oftentimes do not emphasize the health and safety of the drivers and the motoring public.

The IBT suggests that the FMCSA focus on its primary mission, which is to reduce crashes, injuries, and fatalities involving large trucks and buses. Increasing daily and weekly driving limits falls far short in attaining this goal. The FMCSA should discard the subjective preconceived notions that guided the creation of the current rule. The FMCSA must objectively re-examine the docket and based on sound science, revise the rule to address the health and safety of commercial motor vehicle drivers and the public. The burden is not the public's to prove that the current rule is inadequate. The court has already made that determination. The FMCSA must address the inadequacies that have been identified by the court.