



**Testimony of Glen Keysaw**  
Executive Director of Transportation and Logistics  
Associated Food Stores, Inc.  
On Behalf of the Food Marketing Institute

*"The Price of Uncertainty: How Much Could DOT's Proposed  
Billion Dollar Service Rule Cost Consumers this Holiday Season?"*

House Oversight and Government Reform Committee  
Subcommittee on Regulatory Affairs, Stimulus Oversight and  
Government Spending

Wednesday, November 30, 2011 at 10:00 a.m.  
2154 Rayburn House Office Building



## **INTRODUCTION**

Mr. Chairman and Members of the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, my name is Glen Keysaw, and I am Director of Transportation and Logistics for Associated Food Stores, Inc., based in Salt Lake City, Utah.

Associated is a retail cooperative founded in 1940. Associated proudly provides grocery products and services to over 500 independently owned retail supermarkets throughout eight western states from our three warehouse distribution centers.

I want to thank the Chairman for inviting me to today's hearing on the pending rules regarding Hours-of-Service (HOS). The pending rules are a result of a signed settlement agreement between the U. S. Department of Transportation (DOT), Public Citizen and the Teamsters. Under this agreement, DOT agreed to have the Federal Motor Carrier Safety Administration (FMCSA) publish new proposed rules which are likely to be finalized in the very near future. My testimony is presented on behalf of Associated Food Stores and the Food Marketing Institute (FMI), a national trade association which represents retail supermarkets and food wholesalers throughout the United States<sup>1</sup>.

## **INDUSTRY CONCERNS OVER HOS RULEMAKING**

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<sup>1</sup> FMI is a national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets.

Mr. Chairman, our industry is very concerned about the proposed Hours-of-Service rulemaking on a couple of fronts, but clearly the most troubling aspect is a reduction in the number of hours a driver can be on the road in spite of continued annual reductions in accidents and increases in miles traveled at the current 11 hour limit. Virtually every product found on grocery store shelves is delivered by commercial motor vehicles. This universe of products includes dry goods, fresh fruits and vegetables, dairy items, meats, poultry, seafood, bakery, personal care products, household cleaning items, prescription and over-the-counter medications, among others.

With most grocery stores open for business close to 365 days out the year, our challenge at Associated is to provide efficient, cost effective service to our retail customers so that their grocery store shelves remain fully stocked. Additionally, this industry operates on a razor thin margin, around 1% for the each of the past 60 years, so any increase in operating costs will have to be passed on to customers in the form of higher prices.

### **THE CURRENT HOS RULES ARE WORKING EXTREMELY WELL**

In our view, the current Hours-Of-Service rules are working extremely well. These rules are easily straightforward and understood, promoting safety and compliance. Most importantly, during the seven years that the current HOS rules have been in place, fatalities and injuries involving large commercial vehicles have declined by more than one-third. This is a direct result of the current HOS rules along with improved equipment

on trucks, such as antilock brakes, better technology and improved driver training. Fatality and injury statistics are now at their lowest levels ever according to the Department of Transportation (DOT) while the number of miles driven has increased. Since the inception of the current HOS rules Associated has traveled 52 million miles. During this same time period we have had eight (8) preventable DOT recordable accidents. This translates to .15 accidents per million miles, compared to the national average of .47 accidents per million miles. In addition, Associated has not had a single inspection resulting in our equipment or driver being put Out of Service. Clearly, no change is warranted based on this data and instead; a change could negatively impact this impressive accident reduction trend.

### **PROPOSED HOS RULES WILL TRIGGER HIGHER FOOD PRICES**

Mr. Chairman, if the Department of Transportation decides to finalize its proposed HOS rules, it will mean higher prices for food products and all other items sold in grocery stores. This is a given because the proposed changes will hurt productivity and efficiencies in our industry. The HOS proposed rules will not only impact grocery stores and warehouses, but all agriculturally related sectors including farmers, shippers, food manufacturers, and processors in terms of increased transportation costs.

I did a quick economic estimate on the impact the proposed rule would likely have on the operations of our Farr West Warehouse, located in Ogden, Utah. For starters, the rules

will reduce drive hours significantly, by over 100 hours per day, for our Farr West Warehouse truck fleet.

The proposed rules will also require more drivers and equipment for my company, which impacts us financially as the average cost of these trucks with trailers is \$190,000, as well as from a safety standpoint. One of the reasons, accident rates are down is the training afforded to our drivers and the benefits offered to them. I am worried that there will not be enough *qualified* drivers to fill our future needs under the new regulations.

Furthermore, the rules are too rigid in terms of when rest breaks must be taken, particularly as the rules make no distinction between short hauls versus long hauls, which are two very different types of trips.

Additionally, the HOS proposal will hurt our ability to turn the equipment for reuse as we currently do and allow our drivers to spend the majority of their week spending the night at home. I have a letter from one of our drivers who traditionally does a route from the Farr West warehouse to stores in the Twin Falls, ID area which takes approximately 10 to 11 hours that I would like to enter into the record. Forget the financial impact or the potential safety impact; there would also be a significant impact on a personal level for our drivers. The reason he likes this job and this route is that he gets to spend the night at home with his family, under the new rules he would have to sleep in the truck 2 to 3 nights a week. The proposal will extend current single layover trips into double layovers when delivering groceries to stores located in remote rural areas. At our Farr West Warehouse, we will need to make a capital investment of \$1.7 million for new tractors

and trailers. A new truck cab with sleeping berth costs about \$116,000 and a new trailer runs about \$75,000. We will incur increased costs, such as salaries and benefits for additional drivers totaling more than \$200,000. We will incur additional fuel and maintenance costs for newly acquired equipment of over \$100,000. There will also be other expenditures relating to insurance, licensing fees and miscellaneous fixed costs. For an industry that operates on a net profit margin of one percent, any new costs resulting from the proposed HOS rules will be felt immediately.

### **CONSUMERS WILL BE PAYING MORE FOR GROCERIES**

What will the proposed HOS rules potentially mean to our customers? In terms of our expected increased costs, my company estimates a 3% increase in freight to all of our grocery stores. We deliver many rural grocery stores that pay \$3 to \$6 on freight for every \$100 spent on groceries. For those stores located closer to one of our distribution centers, they will pay about \$1 more for every \$100. The rural stores pay a higher cost to get groceries to them and would also pay a higher percentage of the increased cost of the proposed HOS rules. Please note our projections do not include USDA projections that the Consumer Price Index (CPI) for food-at-home is expected to increase some 3.5 to 4.5 percent during 2011.

With the current economic recession, we cannot afford an unnecessary and costly regulation such as the HOS proposal. Higher prices for groceries will be devastating to families who are already struggling financially, especially the 14 million Americans who are unemployed, the millions of seniors living on fixed incomes, and for those who depend on domestic feeding programs such as SNAP and WIC whose benefits will not buy as much when food prices go up. Almost all of our stores are authorized to participate in both the SNAP and WIC programs.

As you may know, in order to maintain our authorization, we have to maintain a certain amount of available stock of eligible products or a secret shopper will write the store up. Three of these errors and the store may lose its authorization for the program. In a rural area, this gives customers no options. This is already a challenge for perishable items, such as whole wheat bread in stores where distance and weather conditions often impact deliveries, but it will be compounded by an hour to make the delivery before a mandatory overnight stop.

Mr. Chairman, the proposed HOS rules will result in more trucks on our nation's roads, highways and interstates to maintain the same level of service to retail grocery stores. And these rules with their 34-hour restart provision will acutely affect our industry because many of our trucks do nighttime delivery to retail food stores. If we cannot make nighttime deliveries, this will mean sending our trucks out at peak driving times causing more congestion on our roads.

Reductions in deliveries to retail stores resulting from the HOS proposal will mean shortages of grocery items on store shelves, and in some cases, unavailability of products during the peak shopping days.

In summary, our industry strongly supports the current HOS regulations and they should be retained. Our industry, however, does not support the proposed new HOS rule, and we have formally asked DOT and its Federal Motor Carrier Safety Administration to withdraw it because we have not been shown any compelling research, data or any other reason to justify finalizing this proposed rulemaking.

Mr. Chairman, on behalf of Associated Food Stores and the Food Marketing Institute, thank for the opportunity to participate in this important hearing. I would be happy to answer your questions.



November 24, 2011

CONGRESS

Re: pending regulations at the Department of Transportation proposing a decrease in driving hours of service from 11 to 10 hours.

To whom it may concern;

My name is Ed Everhart. I have been driving truck for 20 years. My current employment for the past 10 years has been with Associated Foods in Farr West Utah. I have recently learned of the pending regulations at the Department of Transportation to change the allowed driving hours of service from an 11 hour duration to a 10 hour duration. I strongly disagree with this proposal and ask that the rules NOT pass.

This proposal, while I'm sure proposed in an effort to improve safety, will actually have the opposite effect for me and I'm certain for many others. The loss of 1 hour of drive time on my runs will affect more than half of the runs I have each week. They are tight on drive time anyway, but as it stands, I can make it safely back to the warehouse in time. However, if this new 10 hours of service is implemented, I would have to rush, risking safety, to make it back in time; or I would have to layover. This would cause me to lose out on important and critical family time, which I am sure you can appreciate is sparse for a truck driver anyway. The only other alternative, which is a strong possibility, would for my employer to shorten my routes, which of course would result in a detrimental wage decrease for me of at least \$800.00 (or 13%) a month, which would not allow me to adequately provide for my family.

I'm sure these effects and concerns are shared by most if not all of my fellow drivers and we ask that the rules NOT pass.

Thank you for your consideration.

Sincerely,

Ed Everhart



March 4, 2011

*Submitted Electronically*

The Honorable Ray Lahood  
Secretary of Transportation  
U.S. Department of Transportation  
West Building  
1200 New Jersey Avenue, SE  
9<sup>th</sup> Floor  
Washington, DC 20590

**RE: Hours of Service of Drivers**

**Docket No. FMCSA-2004-19608**

On December 29, 2010, the Federal Motor Carrier Safety Administration (FMCSA) published in the Federal Register for comment a proposed rule which would revise the regulations for hours of service (HOS) for drivers of property-carrying commercial motor vehicles (the “Proposed Rule”).<sup>1</sup> The Proposed Rule changes the restart period and contemplates reducing maximum driving hours among other things.

The Food Marketing Institute (FMI) appreciates the opportunity to respond to the request of FMCSA for comments on the Proposed Rule.

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI’s members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI’s retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI’s associate members include the supplier partners of its retail and wholesale members.

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<sup>1</sup> 75 Fed. Reg. 82170 (December 29, 2010).

## **I. Introduction**

Virtually every product that is found on grocery store shelves is delivered by commercial motor vehicles. The universe of products that are typically found in your neighborhood supermarket includes dry goods, perishables, dairy, soft drinks, juices, deli items, meats, poultry, seafood, bakery, prescription drugs, household cleaning items, personal care products and over-the-counter medications among others.

Grocery stores are open 365 days of the year. Many supermarkets are open 24 hours a day. Truck deliveries occur at all hours as stores continuously receive and restock products. Our customers visit their neighborhood grocery stores 2.1 times a week on average and they expect to find store shelves fully stocked with a wide variety of products, especially fresh fruits and vegetables. The median number of items carried in your neighborhood grocery store is 48,750, up from about 30,000 ten years ago. Transportation logistics have become more important than ever to success in the industry. Our nation has the best system of food distribution in the world, and the Proposed Rule has the potential to significantly disrupt it.

FMI is concerned that the Proposed Rule will have dire consequences, likely resulting in higher prices for food products and other items sold in grocery stores.

## **II. Analysis**

### **Current Rules are Working**

FMI does not believe there is a need to move forward with the Proposed Rule. The current HOS rules are working extremely well. Since the rules were put in place seven years ago, fatalities and injuries involving large trucks have declined by more than one-third. This is the lowest level ever since the Department of Transportation (DOT) began collecting data. Indeed FMCSA has acknowledged that safety has improved by citing that data shows no decline in highway safety since the implementation of the 2003 rule and its re-adoption and the total number of crashes has been declining.

Clearly, no change is needed in the HOS regulations.

### **Maximum Driving Hours**

FMCSA has proposed reducing the maximum driving time limit of 11 hours to 10 hours. However, the Agency extensively cites in the Proposed Rule a study sponsored by Department of Transportation (DOT) and conducted by the Virginia Tech Transportation Institute which found no increase in risk between the 10<sup>th</sup> and 11<sup>th</sup> hours of driving. Eliminating the extra hour of driving

time would impose significant burdens on the supermarket industry. This reduction in drive time would among other things impact driver routes that exceed 250 round trip miles with multiple stops. A number of FMI members have indicated such a reduction would cause increased lay-overs for drivers and increase the number of trucks needed to deliver products to retail stores in order to maintain current levels of service and product availability. As the number of crashes has continued to decline under the current rule which permits 11 hours of driving, FMI does not believe the agency should reduce the maximum amount of driving hours.

### **Restart Provision**

The Proposed Rule amends the existing 34 hour restart provision to require that any restart include “two periods between midnight and 6:00 AM.” As previously mentioned in our comments, grocery stores are open 365 days of the year, and many supermarkets are open 24 hours a day. Consequently, truck deliveries occur at all hours of the day as stores continuously receive and restock products on store shelves. It should be noted that back in the mid-1960s when HOS regulations limited drivers to 10 hours of driving time, the average size of a grocery store was 4,881 square feet and the typical store carried approximately 6,800 products. In today’s marketplace, the average size of a grocery store has grown to 46,235 square feet and carry some 48,750 items. As such, larger store-formats with greater product selection necessitate more frequent truck deliveries in order to keep store shelves fully stocked.

FMCSA has stated it believes a majority of drivers work a traditional day-time schedule, but this is not necessarily true. In our industry, a number of FMI’s member companies estimate that between 40 and 50 percent of drivers have a day-time work schedule, but a corresponding percentage of drivers do not. The net effect is that those drivers without day-time schedules would need to take more than the 34 hours in order to get to the 2 nighttime periods between midnight and 6:00 AM. To meet this requirement, most drivers who do not have a day-time work schedule would have to extend their restarts to 48 hours or longer. As such, driver time would be reduced by some 16 percent over each one week period. The net effect will be that many FMI member companies with large trucking fleets will need to hire additional drivers and purchase additional trucks and equipment.

### **The Proposed Rule Will Trigger Higher Food Prices**

Should the Proposed Rule be finalized by FMCSA the following will likely happen:

1. Food prices will rise because the Proposed Rule will hurt productivity and efficiency in the supermarket industry. Currently, USDA is projecting the Consumer Price Index (CPI) for food will increase four percent in 2011. At a time when consumers can least afford it, the Proposed Rule will further increase their costs at check out. The Proposed Rule will impact

not only grocery stores but all other agricultural-related sectors including farmers, grocery manufacturers, food processors and wholesalers.

2. Higher prices for groceries will be devastating to families that are already struggling financially, especially the 14 million Americans who are unemployed. The same holds true for seniors living on limited incomes and the most needy who depend on domestic feeding programs, such as SNAP and WIC whose benefits will not buy as much when food prices go up because of the Proposed Rule. Many military families also rely on domestic feeding programs and they will be impacted as well.
3. The Proposed Rule will hit hardest on rural communities where small, independent grocery stores rely on getting their products delivered by wholesalers who are often located hundreds of miles away. Farmers will also be adversely affected because of added costs incurred by wholesalers who backhaul their agricultural commodities.
4. The Proposed Rule will not be the only cost factor that will trigger higher food prices. Diesel fuel prices are also expected to increase in the next two years from the current price of about \$3.35 a gallon to \$5.00 gallon. As transportation costs increase, so will food prices in grocery stores.
5. The Proposed Rule will result in more trucks being on the nation's roads, highways and interstates causing more pollution and congestion. To maintain the same level of service to retail grocery stores, more trucks will be needed and the costs are substantial. A single new 18-wheel commercial motor vehicle can cost well over \$100,000. That figure does not include salary and benefits for additional drivers, insurance, fuel, operating maintenance, registration and licensing fees and other fixed costs.
6. A reduction in deliveries to retail stores resulting from the Proposed Rule will mean shortages of grocery items on store shelves. Shortages and unavailability of product will be particularly acute during the busy holiday season from just before Thanksgiving, through Christmas, New Year's Day and all the way up to the Super Bowl. Unavailability of product will significantly inconvenience consumers.

### **III. Conclusion**

#### **FMI Requests the Proposed Rule Be Withdrawn**

If we want to avoid unnecessary increases in retail food prices, FMI urges FMCSA to abandon the effort to promulgate new HOS rules. The Proposed Rule is not needed as the current regulatory framework governing the amount of time a driver may operate a commercial motor vehicle is working extremely well. On behalf of our retail and wholesaler members, as well as the customers they serve, FMI respectfully requests FMCSA to withdraw the Proposed Rule.

We appreciate the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman  
Regulatory Counsel