

My name is Ed Nagle, President and CEO of our small second generation family owned temperature-controlled trucking company outside of Toledo Ohio. I have been employed in the trucking industry over 33 years and grew up in trucking as my late grandfather drove immediately following World War II, who then ran several trucking companies, including his own until retirement. For more than 30 years we have been servicing most of the 10 largest food manufacturers: Kraft, Nestle, Sara Lee, Campbell Soup, Heinz, Unilever, Del Monte, Dole, along with two of the largest foodservice distributors; Sysco and U.S. Foods.

There are two elements of FMCSA's proposed HOS changes that will critically affect the industry: They are a reduction in allowable driving hours from 11 hours a day to 10 hours a day, combined with a dramatically revised restart provision requiring two consecutive midnight to 6am off-duty periods. For our company, this effectively reduces our ability to generate revenue by 17 percent as drivers would be limited to working 50 hours a week from the current 60. For every truck, we need to generate \$4,500.00 per week plus fuel to meet fixed overhead. The cost per truck is \$75.00 per hour currently. With the proposed change to 50 hours a week, the \$4,500.00 per week stays the same, but now our fixed cost becomes \$90.00 per hour with nothing more than the stroke of a pen.

FMCSA states, "*We note as well, that the proposed rule...without significantly compromising drivers' ability to do their jobs and earn a living*". May I ask what Secretary LaHood's definition of significant is? This one statement alone admits that driver's ability to perform their duties and earn a living will be compromised. A driver needs to earn \$50,000 plus a year whether he is working 60 hours or 50 hours per week. Our truck payments, building payments, office payroll, license plates, insurance and a host of other costs don't go down just because we are further restricted in our ability to produce revenue.

Horribly egregious is the requirement of the proposed HOS changes mandating two consecutive midnight to 6am off-duty periods if the restart is used. With very little predictability in what drivers encounter every day, they are rarely assured of being home by midnight. The consequence of this would have the drivers waiting up to 54 hours before they could return to driving. Many drivers would get stuck away from home during these periods and, as will be discussed later, more than likely at a location that has no services, comforts, restrooms, or hot prepared meals. Not only will this destroy many families, but it will have severe consequences on a driver's physical and mental health.

Additionally, many drivers will refuse work toward the end of their week fearing a possibility of returning home Friday after midnight where he would be penalized and lose an additional day of work as a result of the restart period. Not only does this further erode our ability to generate revenue (increasing that fixed cost per hour even more), but it will reduce the drivers wages and put substantially greater pressure on an industry already suffering from a shortage of qualified and motivated workforce.

This current proposal is predominantly influenced by Teamster union LTL daytime-only drivers that represent less than 10 percent of the industry. Placing such great emphasis on statistics and studies based on an irrelevant percentage of the entire trucking industry is a smokescreen. It is an illusion that what is being proposed will be the one-fit-for-all, the panacea of solutions for an industry that is safer than at any time in recorded history. In order for our company just to break even with the proposed constraints, we would need to raise the rates we charge shippers 20 percent, which in turn will have serious hyper-inflationary consequences on our economy with households suffering the most.

This approach towards an entire industry completely flies in the face of reason when attempting to improve efficiencies and reduce costs. It is going absolutely in the wrong direction. There is a saying in the trucking industry, "If you got it, a truck brought it." Everything that you see here today, what you have at home, what you are wearing, what you have to eat, the fuel for your vehicle, the gifts you will be giving friends and family this holiday season were on a truck, in some form probably several times before you acquired it. When you consider we are competing in a global economy, you cannot increase the cost of doing business, unjustifiably so if the United States is going to survive and thrive in today's world.

The cost/benefit of this proposal is skewed in the wrong direction. Prior to 2003, there had been no substantive changes in the HOS since 1938. Since 2003, this will be the fifth proposed change (2003, 2005, 2007 [interim final rule], 2008, and now the current proposal. What has changed so drastically in the last 8 years that is requiring consistently changing regulations? Sadly, those of us who eat, sleep, bleed, and live transportation and logistics feel that politics is becoming the pulse of our industry and not pragmatic supply chain solutions.

Since 2003 there has been a 33% reduction in truck involved fatalities and a 40% drop in truck-related injuries. We are the safest with the lowest number of accidents in recorded history. However, without ANY basis in fact, Secretary LaHood is "*cautious about inferring causal relationships between the HOS requirements and trends in improved motor carrier safety.*" That would be no different than saying "I would be cautious of any causal relationship between how drunk a person may become and how much liquor they have just consumed." I hope you can depict how ridiculous both of those statements are.

Reliable sources indicate that fatigue is responsible for between 1.5% and 7.5% of all truck crashes. When you take into consideration that approximately 70% truck involved fatal crashes and at least half of all truck-involved crash are initiated or caused by drivers of the other vehicles, this type of regulation is expensive overkill aimed at a relatively small cause of truck crashes. Further, the "*Trucks in Fatal Accidents*" database shows that a large majority of truck crashes occur in the first few hours of driving, not the last.

FMCSA and Congress have been presented with information that demonstrates the proposed HOS changes are not needed, are overly burdensome, and extremely costly. These points have been made without addressing the issue of reduced industry capacity by a minimum of 10%. There is a serious driver shortage that over the next ten years (attrition alone), will be disastrous for the physical distribution component of the supply chain. Reducing that further with this HOS proposal the dynamics of supply-and-demand on pricing will increase costs greatly to manufacturers, distributors, and ultimately the consumer.

We are an irregular route carrier suggesting every day is different and we have no predictable scheduled freight. We represent the majority of the types of carriers that operate today. There are more than 500,000 trucking companies, 95% of which are small businesses operating less than 20 trucks. We do not have the luxury of knowing what each day may bring beforehand. As such, in order for us to operate effectively and efficiently, we need some additional flexibility in an area we had before – the split sleeper berth provision.

In addition to proposing a reduction in number of hours a driver may work, the extremely important split sleeper-berth provision has been eroded away. First defined and limited in 2003, then eliminated entirely in 2005. Honorable friends, in the last 8 years, we have lost the one fundamental and vital log book provision that provided the drivers the flexibility to comply with the HOS rules in situations that are both unpredictable and out of their control. We service the East Coast and frequently get detained past the point of a driver's available on-duty time available. Those receivers will not let our driver shut down on their property for the required 10 hour break thus forcing them to retreat to a safe haven, typically requiring our employees to run illegally for a period of time in and around the big cities till they can find a place that will accommodate them. If we are involved in a not-at-fault accident, we WILL get sued, and we WILL LOSE in court as they can prove if the driver were not there illegally, the accident would not have occurred.

Currently, and for all practical purposes, our drivers are required to take 10 straight hours off duty, which includes the sleeper. Forcing a driver to remain in a space basically the area between the bottom bunk bed and the top bunk is both inhumane and cruel. If we did that to our own children we would have charges filed against us for abuse and the children sent to foster care through Children's Protective Services. However, the Department of Transportation has seen it in their power to require us to do that to our fellow human beings.

Per FMCSA, *"Drivers also raised several issues that affect them, but are outside of FMCSA's statutory authority. The numbers of available areas where truck drivers can safely stop and rest, although never adequate, has been reduced in the last few years as some States have closed rest areas for budgetary reasons. Drivers stated that the lack of rest areas make it difficult for them to find a place to take their 10-hour off-duty period."* Additionally, *"FMCSA acknowledges these complaints; but as explained in previous HOS rulemakings, the Agency does not have the statutory authority to address these issues."*

As an industry, we are asking that while FMCSA acknowledges the lack of available rest areas, to provide us with a rule that gives drivers the ability to remain legal with the flexibility of finding a place that can comfortably provide them the opportunity to get the much needed rest that they require so that we may continue to improve upon our stellar safety record. Returning the split sleeper berth allowance of “6 and 4” for single drivers and “5 and 5” for teams is a huge step in that direction. This does NOT permit additional on-duty or driving hours, just enough flexibility for a driver to do their job in an ever-changing work environment. It does not force a driver to sleep less; in fact it will allow them to get better rest.

Since deregulation in 1980, supply chain efficiency gains have been on the backs of trucking companies. There is essentially no inventory carried. Almost everything is “Just-In-Time” to the extreme. This occurs not just for low inventory carrying costs, but consumers are extremely fickle. The newest “must have” fashions and the hottest toys only stay “must have” for very short periods so it does not make sense to build and carry that inventory. FMCSA’s proposal destroys entire distribution networks that have consistently been improving for years. And, FMCSA’s proposal will have little or no safety and health-related benefits.

I am honestly humbled to address one of the most powerful bodies in the world to testify on behalf of an industry that I love deeply to the core of my existence. In summary, please do not allow FMCSA to change the 11 hour driving rule. Secondly, FMCSA must maintain the current 34 hour restart provision that would NOT require two consecutive midnight to 6am off-duty periods since the Agency does not have sufficient research to make such a change, nor does FMCSA understand the cost, safety and operational implications of such a change. And, lastly, FMCSA must return the split sleeper-berth provision to facilitate better driver rest. These three elements will allow us to continue to improve our safety record, and improve on cost and service efficiencies in supply chains that will make American goods and products more competitive globally. Adopting the HOS proposal as presented will have a completely opposite effect.

Thank you once again and best wishes are extended to you and your families for the holiday season.