

**Written Statement of
The American Trucking Associations, Inc.**

Before the

**COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
U.S. HOUSE OF REPRESENTATIVES**

HEARING

***The Impacts of the DOT's
Commercial Driver Hours of Service Regulations***

June 18, 2013



Driving Trucking's Success

Introduction

Chairman Petri, Ranking Member DeFazio, 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 37,000 members covering every type of motor carrier in the United States.

I am Steve Williams, Chairman and CEO of Maverick USA, a nationwide truckload carrier based in Little Rock, Arkansas. Our more than 1,600 employees use our 1,400 trucks to provide service coast-to-coast, in Canada and Mexico, to some of the nation's largest and finest corporations. The very foundation of our company is safety, as evidenced by the many progressive safety initiatives we have undertaken and the many safety awards we have earned over the past 30 years of being in business. We take great pride in the fact that many carriers attempt to emulate our safety standards and strive to live by our philosophy of "doing the right thing."

I am also a past Chairman of the Board of the American Trucking Associations, and currently serve as Chairman of the American Transportation Research Institute (ATRI). ATRI, part of the ATA federation, is a 501(c)(3) not-for-profit research organization based in Arlington, VA. ATRI's primary mission is to conduct transportation research with an emphasis on the trucking industry's essential role in a safe, efficient and viable transportation system.

I am here today to express ATA's concerns about the impending changes to the hours of service rules for drivers and describe how these rules will impact my company, safety and the economy. In particular, I will explain why these changes are unnecessary and can best be described as '*a solution in search of a problem*.' Though the resulting impacts to the industry and the economy are difficult to measure at this stage, it is clear to me that productivity losses are inevitable and that operating costs will rise.

I want to begin by thanking the many Members of the Committee who have supported the trucking industry on this issue. Many of you wrote Secretary LaHood in 2011 to support keeping the current hours of service regulations in place. And more recently, Mr. Chairman, you and the Ranking Member, joined by full Committee Chairman Shuster and Ranking Member Rahall asked the Secretary to stay the new rule until 90 days after the court rules in the pending litigation. Your support means a great deal to all trucking companies, large and small alike.

FMCSA has predicted that health benefits, and some very modest safety benefits, will offset these industry and societal costs. However, I am confident they will not. A recent examination and replication of FMCSA's regulatory impact analysis (i.e., its cost-benefit analysis) conducted by ATRI found the agency's assessment to be fundamentally flawed and unreliable. Because changes to the rules are not justified, ATA initiated litigation and, as you may know, a decision in this case is pending in the U.S. Court of Appeals for the D.C. Circuit. In the interim, Congress has an opportunity to intervene and we encourage it to do so.

The December 2011 Changes Are Unnecessary

The December 2011 changes to the hours of service rules, due to go into effect on July 1, are simply unnecessary. The trucking industry has dramatically improved its safety record while operating under the current HOS rules. Since 2003 when the basic framework for the current hours of service regulations was first published, truck involved fatalities have dropped by 25 percent.¹ In addition, a 2006 ATRI analysis of safety data on 100,000 drivers and a subsequent 2010 follow-up report found statistically significant crash reductions occurred after the new rules went into effect. For instance, from 2004 to 2009, ATRI identified an 11.7% drop in collisions and a 30.6% drop in preventable collisions.² These improvements beg the question: *Why was a change necessary?*

One thing is clear—FMCSA's motivation was not based on evidence or analyses demonstrating a problem. In fact, FMCSA did not undertake its own analysis on the effectiveness of the 2003 changes to the hours of service, 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 years leading up to FMCSA's publication of the latest changes in December 2011. And, FMCSA's 3 paragraph statement in the rulemaking called "The Purpose and Need for Regulatory Action" did not cite any research or data analysis showing a problem. That speaks volumes.

It is important to acknowledge that a small percentage of crashes that occur each year are attributable to driver fatigue. Indeed, these crashes are tragic and we must take appropriate steps to prevent them. We must all acknowledge, however, that tweaking the limits on working and driving hours is not the only option and certainly is not the most effective one. In fact, it's a 1930's band-aid approach to a complex human problem. People become fatigued for a variety of reasons – the most critical one being how they choose to use their time off-duty. Those who do not use that time responsibly to get rest will continue to be fatigued. Adjustments to the limits on working and driving time will not change this behavior. Further, modifying the rules will do nothing to prevent people from breaking them.

Hours of service rules can be better enforced, however. In 2009, ATA and the law enforcement community pressed FMCSA and the Department of Transportation to first mandate electronic logging devices to improve compliance with the existing rules. This approach also would have allowed FMCSA to collect data on the true level of non-compliance. Good data drives good decision making. This is true for business leaders, and it's equally true for government policy decision makers. If FMCSA would have moved forward with an electronic logging mandate first, it would have better data on which to make hours of service policy decisions.

¹ Large Truck and Bus Crash Facts 2010: Trends Table 4 & 7
<http://ai.fmcsa.dot.gov/CarrierResearchResults/PDFs/LargeTruckandBusCrashFacts2010.pdf>

² American Transportation Research Institute. *Hours-of-Service Rules Safety Impacts 2010 Analysis*. Arlington, VA. May, 2010.

Real Industry Impacts

There has been much discussion over the impact that these changes will have on the industry, the economy, and society. Because the changes have not yet been implemented, though, the true impact is difficult to quantify. Nonetheless, I can confidently tell you that the impacts *will* be felt and *will* result in increased costs and productivity losses in the supply chain. Conversely, it is very unlikely that the safety and health benefits FMCSA contends will actually materialize.

Though the impacts of the rules are difficult to fully understand and quantify, no one is disputing the fact that the industry will lose some degree of operating flexibility and productivity. Initial information and data gathered by ATA reflects the industry's likely average productivity loss will range between 2 and 3 percent. Though this estimate was developed in 2012 from a relatively small sample of member fleets, it is consistent with estimates from other organizations. For instance, a recent Wells Fargo Securities analysis predicts that the productivity loss will likely be between 1.5 and 4 percent, depending on the type of trucking operation, with certain fleets likely to experience larger productivity losses.

Specifically, the Wells-Fargo Securities report said:

In particular, we think expected changes to Hours of Service (HOS) rules will reduce productivity by 1.5-4.0% (beginning in H2 2013), depending on the nature of the trucking operation. As we discuss later, this is a very rough estimate given the complexity of the issue. That being said, we cannot envision a scenario where it would be positive for productivity. On an annualized basis, we think each 1% decrease in productivity (miles per tractor) can equate to a 2-3% reduction in operating income. Perceived benefits from reduced driver fatigue may prove allusive, in our view, and is not something we considered in our estimate revisions.³

Maverick USA conducted an informal analysis on our own fleet's operations and discovered the following facts based on electronic logging data generated between February and July, 2012:

- Maverick drivers utilized 25,230 restarts in this time period; 13,761 (54%) met the new two consecutive 1-5 am rest period requirement, while **46%** did not meet these new requirements;
- An additional analysis of 148,037 days of electronic logs showed that 44,106 (**30%**) of the logs would be in violation of the new 'working more than 8 hours without a consecutive 30 minute break' requirement. These electronic logs showed there were 93,157 times that the drivers worked more than 8 hours in the day, and 44,106 (47%) of these possible days would have resulted in violation. *[Important note: This does not mean these drivers did not take any break, it simply means they didn't take at least 30 consecutive minutes off-duty as the new rule specifies.]*

Maverick USA does not believe, however, that these findings indicate its productivity losses from these rules will be substantial. One reason is that Maverick's drivers use the restart not because they have exhausted their maximum weekly hours, but rather to ensure they have a full

³ *Equity Research: Regulatory Matters--Trimming Estimates*, Wells Fargo Securities, January 8, 2013.

set of weekly hours available to them for future working schedules that can be unpredictable in the irregular route trucking business. In fact, Maverick believes it will experience an overall loss of productivity in the range estimated by ATA and Wells Fargo Securities. This range may seem small but it is not insignificant. Government estimates suggest that each percentage point loss in productivity amounts to an industry wide cost of at least \$356 million per year.⁴ In other words, a productivity loss of 2.5% equates to an \$890 million annual cost.

Though the changes to the rules have not yet gone into effect, the industry is already bearing costs to prepare for them. Some of the more significant costs stem from the need for driver training on the rule changes. The new rules will affect each of the more than 3 million professional drivers the trucking industry employs. Though ATA has not attempted to quantify the industry-wide training costs, Maverick USA, has already trained its drivers, operations personnel and customer service representatives, and has spent more than \$57,000 doing so. This figure includes only direct training costs, and does not include substantial preparation time spent by my Vice President of Safety and his safety leadership team. As such, it is a very conservative training cost estimate. Thousands upon thousands of fleets like mine and their industry suppliers are also enduring costs relating to re-programming of the software running the hundreds of thousands of electronic logging systems already in use, as well as routing and route optimization systems used by fleets. In fact, FMCSA estimated that training, re-programming and transition costs would total at least \$320 million which is likely to be a conservative estimate. Because FMCSA declined your request for a short delay of the effective date of the rule, the industry will spend this considerable sum even though the rule may be vacated or altered by the Court.

It is difficult, bordering on impossible, to accept FMCSA's suggestion that corresponding benefits will result from these changes and, even if they do, that they will somehow offset these costs. Even FMCSA's own analysis found that the proposed **safety** benefits would not outweigh the costs related to industry productivity losses. In fact, the costs to society and the economy would outweigh the alleged safety benefits by \$144 million annually.⁵

Challenged to justify the changes to the rules and pass required cost-benefit tests, FMCSA applied a unique and creative two part theory to claim so-called driver health benefits. In part one, the agency contended that if given additional time off, such as a 30 minute break and a longer restart period, drivers would use that additional time to sleep and would become healthier as a result. In part two, FMCSA contended that these drivers would then enjoy greater longevity (i.e. they would live longer) which could then be monetized to offset the economic costs. It is these theoretical health benefits which allowed FMCSA to claim its rule changes passed the cost-benefit test.

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 Federal Motor Carrier Safety Administration (FMCSA) 2010-2011 Hours of Service Rule Regulatory Impact Analysis (RIA) RIN 2126-AB26, FMCSA Analysis Division, December 2011.

ATRI's June 2013 HOS Restart Analysis

It is appropriate that this hearing is focused on the "impacts" of these HOS changes. It is also fortunate that just yesterday, June 17, 2013, the American Transportation Research Institute published a new 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.⁶

In their June 2013 study, ATRI summarized results of their 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 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 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, 71% of drivers in the ATRI logbook analysis had recently completed a restart that would not qualify under the new rules. In addition, 74% characterized the expected impact of the pending 1 a.m. to 5 a.m. restart restriction as either "major" or "moderate." The drivers and carriers surveyed enumerated a variety of anticipated impacts, some of which had not been considered by FMCSA, including greater exposure to accidents as a result of increased congestion due to daytime driving, unproductive time waiting for (just prior to 5 a.m.) in order to begin a shift, loss of schedule flexibility, increased stress, and decreased income.⁷

In ATRI's data, drivers also explained how their use of the restart is largely misunderstood. Most do not use the restart because they have already achieved the maximum weekly hours allowable under the rules. Instead, they use the restart to hedge running out of time in the coming days or to prepare for future schedules and freight demands that can be unpredictable. These restart uses, and the unpredictable nature of freight movements resulting in variable work weeks, were entirely discounted by FMCSA in its analysis.

⁶ Federal Motor Carrier Safety Administration (FMCSA) 2010-2011 Hours of Service Rule Regulatory Impact Analysis (RIA) RIN 2126-AB26, FMCSA Analysis Division, December 2011.

⁷ *Assessing the Impacts of the 34-Hour Restart Provision*, American Transportation Research Institute, June 2013.

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 clearly pointed out that FMCSA's percentages and assumptions were based on poor and unrepresentative data gathered during targeted agency enforcement and compliance activities. ATRI applied the model and methodology FMCSA's used in its own cost/benefit analysis to the aforementioned large and representative data set (1.4 million driver logs) to provide a more meaningful understanding of the impact of the pending restart changes. After correcting for FMCSA's assumptions with respect to the percentage of drivers who work 65 or more hours per week, ATRI discovered the pending restart changes would have a net annual cost (not a benefit) to the industry. ATRI also discovered FMCSA's model and analysis did not capture many additional costs particularly those related to the expected shift of some nighttime driver to daytime operations.

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 \$228 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.

ATRI's results call into question the use of FMCSA's Regulatory Impact Analysis to justify the new restart provisions.

An Executive Summary of the new ATRI report can be found at Appendix A. The full report can also be found at <http://atri-online.org/>

ATA's Ongoing HOS Litigation

Our many concerns with the rule changes, and how they were developed and justified, led ATA to challenge the new rules in U.S. Court of Appeals for the D.C. Circuit. ATA is hopeful the Court will issue a decision prior to the scheduled July 1 effective date. A one-page summary of ATA's case can be found at Appendix B. ATA's complete litigation briefing documents will be provided upon request.

Congress Can Help

Congress has been actively engaged in the hours of service issue for some time, and we encourage it to continue to provide direction and oversight to FMCSA. Most recently, in recognition of the unsubstantiated changes to the restart provision, Congress directed FMCSA in MAP-21 to complete a field test of the restart. The study was to have been completed by March 31st of this year, well in advance of the July 1st effective date of the proposed change. In reality, FMCSA is just beginning its field study work. Maverick is one of the 3 companies that is currently participating in the study. Congress should postpone the effective date of the new hours of service rules until the restart study is completed and the results are reported to Congress. Given the fast approaching effective date of the rules, however, we realize that may

not be possible. We certainly hope Congress will require FMCSA to modify the rule based on statistically valid findings from FMCSA's MAP 21 directed field study of the restart changes.

Congress should also consider requiring FMCSA to commission an independent analysis of the impact of the new rules on safety, productivity, and the cost to consumers, and submit a report to Congress and the industry. Without such analysis, we will never know the true actual impacts of these sweeping regulatory changes.

Further, to stave off future attempts to modify rules without appropriate justification, FMCSA should be required, by law, to issue a report to Congress on any anticipated future changes to HOS rules, the specific problem the anticipated changes are trying to address, the likely costs and benefits of these proposed changes, and a specific plan for independently evaluating the resulting impact of the changes, once implemented.

Finally, we encourage you to continue to hold oversight hearings on this and other safety matters before FMCSA

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

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.⁸ 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.

⁸ Federal Motor Carrier Safety Administration (FMCSA). *2010-2011 Hours 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.⁹

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

⁹ 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

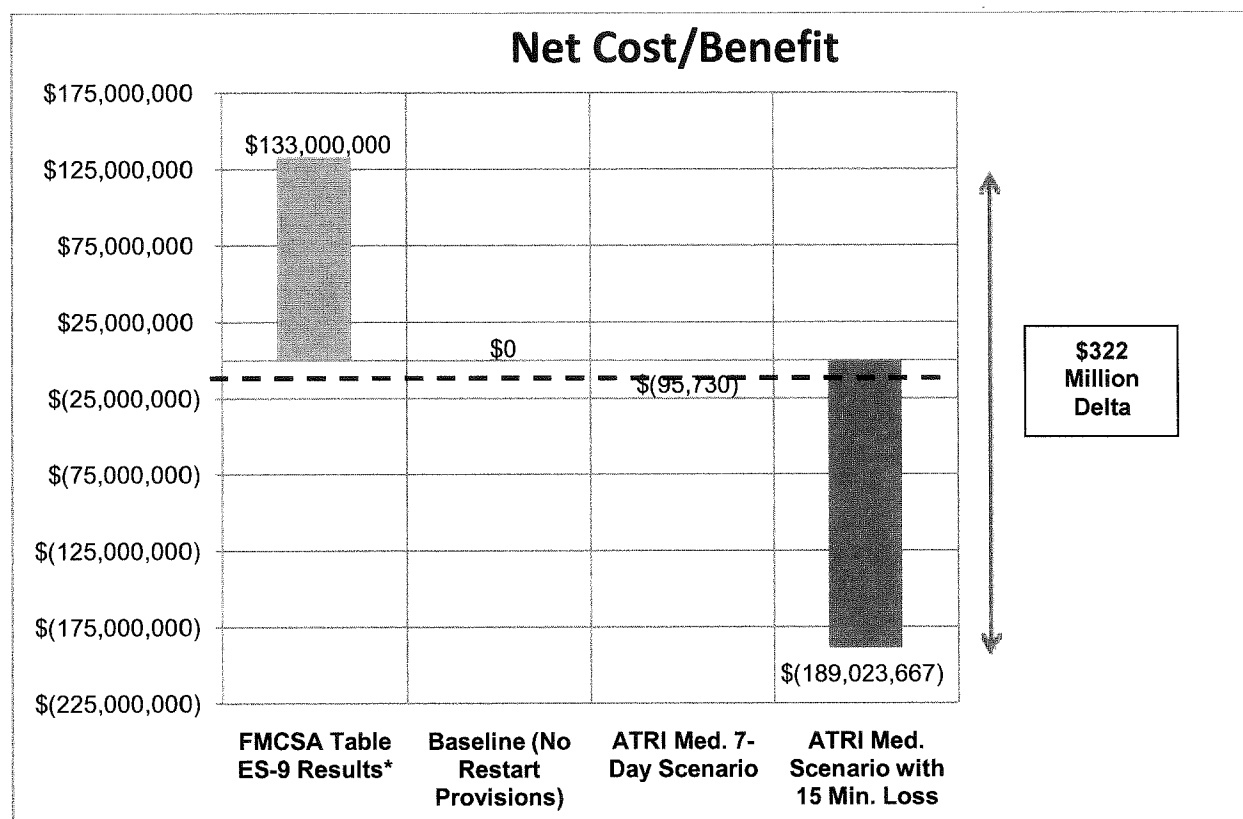
	FMCSA Restart Change Costs	Restart Change Safety Benefits	Restart Change Health Benefits	Additional Restart-Related Productivity Cost	Net Benefits (Costs) ~Restart Only~
FMCSA Table ES-9 Results*	\$331,000,000	\$210,000,000	\$254,000,000	\$ -	\$ 133,000,000
ATRI Medium 7-Day Scenario	\$ 1,005,640	\$ 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.

Appendix B

SUMMARY OF ATA'S HOURS OF SERVICE LITIGATION

In its case pending before the D.C. Circuit Court of Appeals, ATA has challenged three aspects of FMCSA's 2011 Hours of Service rule changes:

- (1) the new limitations on the use of the restart, limiting its use to once every 168 hours and mandating that it include two 1 a.m. to 5 a.m. periods;
- (2) the requirement that the mandatory 30-minute break exclude not just driving but all on-duty non-driving activity; and
- (3) the previously unanticipated narrowing of an exemption for short-haul delivery drivers that subjects them to the new break requirement.

ATA brought its challenge because the changes were unwarranted and based on a cost-benefit analysis that was a results-driven sham rather than an honest appraisal of the evidence. In reaching its desired outcome, FMCSA relied on assumptions that contradicted the evidence in the record, and ignored—without justification or explanation—numerous contradictory positions it had previously adopted.

The many ways in which FMCSA's rule changes were arbitrary and capricious are difficult to summarize briefly, but its justification for adding new restart restrictions provides a vivid example. FMCSA concluded that the changes would produce net benefits by reducing driver fatigue; but the agency's assessment of purported safety benefits defies all logic and evidence. First, the agency began by relying on a study of pre-2003 large truck crashes—in other words, crashes that predated the 2003 HOS rule changes that themselves addressed fatigue, and which thus could shed no light on the incidence of fatigue under the current HOS regime. The agency then treated every crash in the study in which fatigue was listed as an "associated factor" as though it had been *caused* by driver fatigue—even if the actual cause of the incident was known to be entirely different, and ignoring the express warnings of the study authors that the data could not be used that way. By egregiously misreading data that was in any event obsolete, FMCSA unjustifiably concluded that 13% of large truck crashes are caused by driver fatigue—a figure that dwarfs the agency's own prior reading of the same data, and that of other, more relevant studies. When a fatigue rate consistent with those studies is substituted for FMCSA's inflated number, the rule changes produce net costs, rather than net benefits.

Equally vivid is the agency's unjustifiable approach to driver health benefits. Here, FMCSA began with a study suggesting that, compared to sleeping seven hours per night, sleeping either less than five or more than nine hours per night is correlated with an increased mortality risk. From this, FMCSA drew the unjustifiable inference that *precisely* seven hours of sleep is optimal, and that *any* deviation from seven hours is deleterious (even though the study they

relied on reported no significant risk for individuals sleeping six or eight hours a night). FMCSA also assumes that by reducing the average work day by a few minutes, the new rules will increase the average sleep period by a comparable amount—ignoring the likelihood that drivers who do not currently feel under-rested would use the marginal time for other purposes. Piling these assumptions upon one another, the agency concludes, for example, that the 10% of drivers who currently sleep for an average of 6.28 hours per night will derive \$170 million in annual health benefits from an extra 4.8 minutes of sleep under the changed rules. Even more incredibly, it attributes over \$20 million in annual health benefits to the extra 14.4 *seconds* of sleep for drivers who now sleep 6.66 hours per night.

These representative examples make clear that FMCSA's rule changes did not represent a good-faith, scientific approach to the best evidence available, but on the contrary amount to an agenda-driven attempt to make the evidence fit the desired outcome. Under the relevant legal standards, the court should thus vacate the rule changes as arbitrary and capricious