

Department of Transportation Hours of Service Laws Needs Adequate Revision

Dr. Andrea L. Sitler PhD

UPDATE - According to Transport Topics on July 16, 2006 "Appeals Court Throws Out New Hours-of-Service Rules

The U.S. Circuit Court of Appeals in Washington, D.C., threw out the federal government's new hours of service rules on Friday and sent the case back to the Federal Motor Carrier Safety Administration for review." [Read more](#)

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ABSTRACT

The DOT hours of service are ineffectual, impractical and need adequate revision. The DOT has failed to keep up with progress and is still enforcing antiquated laws that only serve to harm the industry. Their attempt at revision falls short because the DOT refuses to address all the issues. Furthermore, the cost of compliance is estimated to increase cost in the industry by billions of dollars while lessening highway safety. This is in direct contrast of the intended purpose of the DOT regulations. New, adequate and properly addressed laws need to be written. This can only be accomplished through the involvement of the professionals in the industry.

Department of Transportation Hours of Service Laws Needs Adequate Revision

The DOT hours of service (HOS) are ineffectual, impractical and need adequate revision. This set of rules, which govern the transportation industry, are out of date and serve to only hinder the modern truck driver. Rules written nearly 70 years ago in regards to highway safety have no place in today's modern society.

Our highway infrastructure has changed greatly in this time span. Methods of transport have evolved as well. However, the DOT has failed to keep up with progress and is still enforcing antiquated laws that only serve to harm the industry. A failed attempt in 2000 to update the HOS only further proves the futility of these rules as well as the current method of revision.

President Bush claims to have given top priority to the revision of the DOT HOS ^[1] [1].

Upon testimony at a hearing before Congress, Honorable Clyde J. Hart, Jr., Acting Deputy Administrator, Federal Motor

Carrier Safety Administration, U.S. Department of Transportation stated ^[2] [2]:

The FMCSA's hours of service proposal would make three major changes to regulations that were first adopted in 1937 and which have changed very little. First, the new rules would put all drivers on a more natural and regular 24-hour daily cycle. Current rules permit an artificial cycle that can be as short as 18 hours and does not produce quality sleep.

Second, the rules would reduce the maximum number of hours as drivers could drive from 16 to 12 in a given 24-hour cycle. Even with this change, drivers could be behind the wheel 50 percent longer than the average citizen's normal work day.

Third, long haul and regional drivers would be required to use electronic on-board recording devices, ending the use of paper log books. One of the consistent complaints we have heard about the existing rules is that they are widely violated. Enforceability has been a key consideration in the development of the NPRM. The proposed rules would also establish different requirements for five types of bus and truck drivers to accommodate the differences in their work schedules.

The American Trucking Associations submitted its own hours of service proposal, and the FMCSA's proposal is quite close to the ATA's recommendations on some key points.

Realizing that something needed to be done, hearings were held in June of 2000 when the government finally decided to look into revising these rules. In one of those hearings, the stage was set and an explanation was given that helps us all see where the rules originated. This lets us compare the pulse of the Nation past and present ^[3] [3].

"... the year was 1937. The Social Security Act had just been enacted 2 years earlier. The country was in the midst of the Great Depression. The New Deal was at work. And in an action that would dictate American life for years to come, Hitler's annexation of Austria was still a year away. It was during 1937 when the Interstate Commerce Commission adopted the hours of service regulations governing truck drivers which are still essentially in place today."

From the standpoint of transportation, America was a much different place then, obviously. Authorization of the interstate highway system was still almost 20 years in the future. It would not be until the next year when the Federal Aid Highway Act of 1938 directed the Bureau of Public Roads to study—I still want to say "public works"—directed the Bureau of Public Roads—not to build, but to study, mind you, to study the feasibility of a six-route toll network. The average larger truck of the day was run by a 50 or 80 horsepower engine, compared to the 450 horsepower engine of today's trucks. [There are much higher horsepower trucks available but 450 is the average.]

The question is whether the hours of service regulations devised during that era 68 years ago are still valid today in terms of protecting the American traveling public and the health and welfare of the Nation's truck drivers. And it is a very important question. Trucks move nearly 3/4 of the value and just over the half of the weight of all shipments in this country. That translates into a great deal of time that truck drivers spend plying the country's roads and highways.

These Congressional hearings addressed many issues from local drivers to long haul drivers. The government classified each driver type to better discuss their particular job requirements and thereby more adequately address their needs and concerns. Each driver type serves a unique function and has a work schedule suited to his type of classification. A local driver is one who reports to the same location each day, performs his duties and returns home at night. The regional driver generally reports to the same location for each run but is gone 3-4 days before returning home. Over the road (OTR) drivers are gone from home anywhere from 1-8 weeks or longer. The terminal is generally centrally located to the routes run. Therefore the OTR driver is recruited via phone, email or internet and bussed to the assigned terminal hundreds of miles from home.

Over the road drivers have many features that are unique to their situation especially solo OTR drivers. The OTR driver is assigned a truck which he moves all his gear into and begins the run. Usually after 3-4 weeks of driving across the United States and possibly Canada, the driver is allowed 3-4 days home time. The general rule is one day off for each 7 days out. Some companies, like J.B. Hunt and Schneider, are so tight that they actually count you hour for hour. Hirschbach and Central Refrigerated are more lenient. If you are a good driver, your home time is much more flexible. In other words, if you were out 6 weeks before going home, your home time could total 7-10 days without issue. However, this is the exception not the rule.

Some companies require you to park the truck at their terminal and then provide your own transportation for home time. This discourages the driver from taking time off. More progressive companies encourage the taking of the unit home and try to accommodate the driver with “pass throughs” during his weeks on the road.

Another driver type is the LTL (less than truck load) driver. You would know these as the UPS man, Roadway drivers and most pup trailer drivers. Pups are those little trailers ranging from 20-26 feet that are generally pulled in a double or triple formation. These drivers have to make many stops on their delivery route much like a local driver. The difference being their route may cover several states and require them to be gone 3-4 days or more. Many larger companies are taking on LTL work for their full size (48 - 62 foot) trailers. This is raising much concern among drivers. It changes the whole way the system works.

Companies run LTL freight due to higher payloads. Some drivers say they make more on LTL freight. Personally, I have never seen it. If the company is primarily an LTL company, then it is profitable for all. However, in mixed companies, I find it otherwise. Generally LTL work in a truck load company just ties up equipment and drains a driver's available drive hours.

Another driver issue addressed is one in which the driver is required to aid in unloading. Drivers should be just that – drivers not lumpers (unloaders). This presents it own unique problems in terms of DOT hour of service compliance.

The other driver type is the passenger bus driver. This is a unique category all to itself. The DOT HOS apply to this classification but due to its uniqueness, this driver class is not discussed in detail in this paper.

For clarity, let us review the old HOS rules ^[4] [4].

49 C.F.R. § 395.3 (2002) OLD The [old] rule permits drivers to be behind the wheel for 10 hours and then rest for eight hours, or 16 hours in a 24-hour day. The rule was written in 1935, modified in 1937 and revised in 1962 by the now-defunct Interstate Commerce

Commission. Little has been done to update it since. In the meantime, the number of trucks and the miles traveled has soared.

The major change is the reset rule which is a brand new feature. In effect, this shortens the work day and lessens the driver's ability to generate revenue. Trucking companies are realizing this and estimating the cost in billions of dollars to ensure the same level of customer service.

[5]

The NEW DOT HOS regulations [5]:

49 C.F.R. § 395.3 (2004) REVISED Compliance began January 4, 2004

§ 395.3 Maximum driving time for property-carrying vehicles.

Subject to the exceptions and exemptions in § 395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle:

(1) More than 11 cumulative hours following 10 consecutive hours off duty; or

(2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty, except when a property-carrying driver complies with the provisions of § 395.1(o).

(b) No motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after --

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

(c)(1) Any period of 7 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours; or

(2) Any period of 8 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours.

[6]

In summary [6]:

On January 4th, 2004 the new HOS rules went into effect. Here's some info on how those new rules will work, Please note these comments relate primarily to OTR drivers. The current rules allow you to drive 10 hours in a 15 hour work day. The new rules now allow you to drive 11 hours in a 14 hour work day, so you've gained another hour driving time, but have lost an hour of OnDuty time. Another important change is that once you report for duty the 14 hour clock starts. It then runs continuously except for sleeper berth time - and even that counts towards the 15 hours if you take more than 2 sleeper berth sessions to make your 10 hours break. The last significant change is that after 34 hours off duty your 70 or 60 hour clock will reset.

Congress made several attempts in updates. None hit the mark. In January 2004, despite the short comings, the

federal government put into play the “new” DOT hours of service. Even with the new regulations, the DOT and local law enforcement have called for a 60 days grace period to acclimate drivers as well as law enforcement with the new regulations. VA State Policemen, LT. Herb Bridges, told Transport Topics on March 15 that VA would not enforce the new regulations until Mid-April. They are currently noting discrepancies but no enforcement has taken place at this time. Dale Bennett, executive vice president of the Virginia Trucking Association, said, “We agree with the decision they made because we feel they weren’t ready [7] [7].”

These new rules did not address the issues. In fact, they only serve to worsen the problems already faced by today’s truck drivers. The new rules will require companies to hire more drivers and purchase more equipment to be able to provide a level of service equal to what is already occurring. These increased costs are only going to hurt everyone.

Drivers run in non-compliance mainly due to financial issues. Raising the operating costs of trucking companies will only lead to declining paychecks for the drivers. This in turn will force more drivers to run illegally in order to support their families and meet their financial obligations.

The new rules hurt the solo OTR driver the most. Instead of home time with his family, this driver will be imprisoned in a highway truck stop or motel. The new rules make it impractical for a solo long haul driver to make it home and be in compliance. Therefore home time, which is so precious and rare, will no longer be obtainable. This driver’s time off will be on the highway and it is foreseen that most companies will not be able to afford to compensate the driver with additional time for going home. You must also remember that all time off is at the driver’s cost. There is no compensation provided by the company for these days. Having to spend money on a motel, in lieu of family, only adds to the hardship experienced as a solo OTR driver. A new system is needed to address this and many other trucking issues. Safety is a concern for us all. The DOT is making a poor attempt at addressing this issue. The DOT laws of today, revised or old, force drivers to run tired. The way the current laws are written, you are forced to drive when you are sleepy and sleep when you are finally awake. This is unsafe to say the least.

Companies, shippers, receivers and the DOT need to come to an understanding and write rules that are much more “trucker friendly”. The true needs of the driver need to be considered instead of all the influence from the lobbying groups. Many organizations including: Mothers against drunk drivers, Mothers against tired truckers and insurance

companies who are uneducated in the field of trucking voice their opinions without any real concept for what the driver faces on a daily basis. In fact, no one can begin to understand what a truck driver goes through in a day until they sit in that cab.

The Congressional committees talk of sleep rhythms but yet fail to understand that while doing business as usual, sleep rhythms are not accounted for in the driver's daily life style. "According to FMCSA, the science-based HOS final rule will improve highway safety and help reduce the number of truck crashes and related fatalities and injuries by

addressing commercial motor vehicle driver fatigue. ^[8] "The administration estimates that the new rule will save up to

75 lives and prevent as many as 1,326 fatigue-related crashes annually. ^[9]"

The hours-of-service proposed rule is based on a large body of sound research dealing with work, fatigue, alertness, sleep cycles and related matters. The FMCSA reviewed nearly 150 research studies and other documents, many of which were submitted or referred to by docket commenters. Many of the reviewed documents reported on research conducted on motor carriers and CMV [commercial motor vehicles] drivers. Others, such as studies on shift work, sleep and performance, and the physiological nature of sleep, was

relevant to the issue of CMV driver safety. ^[10]

During testimony before Congress, Mr. Rahall and Mr. Hart discuss the need for adequate rest and proof of receiving down time for the commercial driver. The main idea behind the new HOS is the ability for drivers to now operate on a 24 hour clock. It is hoped that the driver will take a 2 hour break within his allowed 12 hours of driving; however this is not a requirement to be in compliance with the DOT HOS. On board recorders are called for to verify the on and off duty times.

Concerns are being raised from the motor coach operators and their unions because of the 14 hour cap placed on a work day under these new rules. Congress believes this will make for safer roads and happier drivers. I disagree. This opinion is shared by the President of one of our nation's largest truck load carriers, Donald J. Schneider. In his testimony before Congress, he remarked:

The fundamental issue is that the quality of life of the driver out there has a big impact. When you treat a driver in a way that he has got to lay over some place for 36 to 48 hours away from home, eventually the good people are not going to stay in the industry, they will leave.... I would also advocate very strongly that the DOT approach this on the basis that individual drivers have individual fatigue issues. ...Ultimately, some drivers just have such a fatigue issue they shouldn't be driving. ...That is the way to approach it

rather than a standardized way, trying to deal with things in exactly the same way. You need more flexibility. ^[11] [11]

A valid point raised by Mr. Hart is that “the biggest problem is that employees are allowed [forced] to work far beyond what the human body can properly handle. A normal trucking day is one that wreaks havoc on employees’ circadian rhythm.” Examining a typical day, it is seen that the average driver receives less than 5 hours of sleep a shift which is “not enough for the demanding environment of the road.” Mr. Hart claims to have spent a day with a driver and terms it fatiguing.

Both gentlemen realize that the trucking industry feels that the new HOS have gone too far but on the other hand safety advocates claim it has not gone far enough. They interpret that to mean the DOT has it just about right. They could not be farther from the truth. I think Mr. Hart gets it just about right when he says, “I want to finally observe this. Sounds like a solution where we are now trying to define the problem. This is a dangerous way for government to proceed. It runs the risk of imposing a cure that could be worse than the cancer.”

Many of these statements are true. This is wonderful in theory but application in the real world is a whole other area to be examined. Mr. Hart hit the nail on the head when he said trucking companies need to treat their drivers properly. Driver retention has been and remains to be a major issue.

No, the Department does not have it “just about right.” They have it “far from right”. Increasing the number of trucks adds to havoc in many aspects of the industry. The trucking industry, Mr. Hart noted, does not operate under any type of business normalcy. The day of a professional driver is a fatiguing day.

Customers do not care what a driver’s sleep rhythm is but only how soon that product will get to the destination. Cliff

^[12] Harvison ^[12], president of the National Tank Truck Carriers, articulated this issue in his speech as keynote speaker at the January 13, 2004 meeting of the Transportation Club of Houston, Texas. He said, “We’re going to have to cooperate as carriers and shippers to work out these problems.” For a driver’s sleep rhythms to truly be accounted for, shippers and receivers would have to change the way they do business. Trailers need to be preloaded or truly be loaded within

two hours of the dock appointment instead of two days. The worse part is that most of these facilities do not allow the driver to sleep. Currently, the driver has to be alert for this entire time listening to the CB or doing hourly check-ins with the facility in order to obtain a (un)loading slot. This issue was best addressed at the Transportation Club Conference when it was stated that customers will have to comply to dock times or be dropped. Should this suggestion be followed to fruition, it will be a major step for the trucking industry.

This uncompensated downtime is a time of sleep deprivation. After this long interval of hurry up and wait, the driver is now required to drive 10 and under the new laws, 11 hours. Most companies figure this to equal about 650 miles under the new speed limit laws. Even if 10 hours are up and 650 miles are not completed, the company does not want to hear about any reasons why the driver did not cover the required miles. Many times the driver has no control over the situation. Normal instances of such delays are heavy / gridlock traffic or adverse weather conditions. The driver is to find a way to cover those required miles while “properly coloring in your book” (drivers refer to their log books as coloring books due to the “erronicy” (errors and irony) of the laws governing them and the irony of filling out such a book in order to comply with the written law of DOT even though erroneous; much like an oxymoron) and the company wishes to hear nothing else of the issue. A seasoned driver learns to exist on less than 4 hours of rest a day while staying calm in the mist of traffic, 4-wheeler’s gross misjudgments, cell phone drivers, distracted drivers, roadside DOT checks, weigh stations, tourists, motorcyclists, new Homeland Security regulations and hostile customers. What a wonderful life! Special interest groups have time to lobby congress, truckers do not. The professional over the road truck driver spends most of his life on the highway serving the American public. He does without family time and a ‘real’ home in order to supply the American people with all the goods and service that they have come to expect. In return, truck drivers get looked upon as crude, ignorant, unsafe, dirty and adulterous. How can the American trucker be so judged without that same person walking in their shoes or in this case riding in that cab? How can the US government create rules that they deem safe unless they have been there to see what actually occurs? The wrong voices are being heard. The DOT hours of service have not been properly resolved because at current they create revenue for states and the federal government. Congress has no clue as how to properly handle this situation and therefore does not address it until forced to do so by outside influence. Again, this influence is that of the wrong parties.

Insurance companies run America whether we wish to acknowledge this or not. Only two insurance companies write

policies for the trucking industry. These insurance company's rules dictate what the industry can and cannot do as well as who they may hire. This is too close to a monopoly for comfort. Yet the government and the industry allow these practices.

Why is this allowed? Union drivers are not affected by these rules. Union drivers do not unload their trucks, they work set hours and are home every night. Most union drivers do not even fuel their own trucks or do their own pre and post trips inspections. Right there is a direct violation of the DOT rules. However, this is a hard and true fact. Because Union drivers are immune to these laws, no support is offered for the owner operator or the road driver. In fact, this immunity does just the opposite, it harms all other drivers.

Unions have a voice in Congress as well as influence. If the unions choose to do nothing or worse, support these inapt laws, then they are imposing damage onto the industry. Unions and non-union companies need to come to the table and work out a viable solution for all. This one voice of unity then needs to go to Washington and speak for all of America's commercial drivers.

The owner operator association (OOIDA) has called for drivers to rally on DC and address Congress ^[13]. Some drivers made their voices heard. Letters, emails and personal testimony was given on the floor of Congress.

Unfortunately, most drivers did not have the time or ability for such a luxury, despite the importance and the need.

The senior driver at Baltimore Tank Lines and a close personal friend received a personal invitation from Senator Barbara Mikulski - (D - MD) to testify before committee due to his years of experience and extraordinary safety record.

He has been consulted on many transportation matters. Billy Burnett ^[14] has over 50 years of driving experience, hauls hazardous chemicals on a daily basis and has logged over 9 million accident free miles. He is a forerunner in the field. My driving experience of 20 years and 2.5 million logged safe miles fails in comparison.

OOIDA partitioned Congress and acted as a voice for the Owner Operator and the trucking industry as a whole. Landline, the owner operators' magazine, reported that "OOIDA [testified] before the Ground Transportation Subcommittee in the House of Representatives, meeting with general counsel to the House Transportation and Infrastructure Committee on fuel surcharge issues, and hashing legislation with Rep. James Oberstar, the committee's ranking minority member." March 16, 2000 was the day that truckers rallied on Washington. This was a cross country convey that included both US and Canadian truckers that concluded in DC.

OOIDA initiated this call to action “in response to the recent fuel price increases and lack of government action to alleviate the plight of truckers.” It was past time for the voice of the trucker to be heard in DC. DOT hour of service rules, raising fuel prices, increased toll roads, road conditions, and general driver issues were addressed. The OOIDA continued the work of that day so that the trucker’s voice would not be lost, but continue to be heard in Washington.

Solutions only come when you address the real issues. Lawmakers like to dance around the “hot spots”. They tend to assign blame where it is least costly to their back pocket. A prime example; the budget presented to Congress and estimated accident reductions projected from the passing of the new DOT HOS missed the mark. Federal Motor Carriers, Comdata, American Trucking Association and other agencies offered fact based and projected studies with regards to the proposed DOT HOS. Independent studies looked at the impact of the new rules before the enforcement date.

The findings, these new rules were bad for solo OTR drivers despite the fact that many studies claim that these new rules were tailored for the solo OTR driver and consideration for the local driver was ignored. To be in compliance with the new rules, they effectively force regional or team operations. The OTR solo driver will be shut down out of town for long layovers. The impact and cost on the trucking industry is figured in the billions to compensate for driver time lost and the need for more drives and equipment to handle the same amount of work currently being done. In short, these new rules are going to hurt everyone’s bottom line.

Bill Webb President and CEO of the Texas Motor Transportation Association expressed his opinion by remarking, “In order to keep the bottom line in the black, carriers must take steps to counter the repercussions of new HOS regulations that mandate more rest for drivers and orient them toward a 24-hour work/rest cycle.” A bleak picture was painted by Mr. Webb in regards to the regulations and the demands placed on carriers and drivers under these new regulations. He said, “The driver is stuck in the middle of this deal.”

These new HOS are simply bad business for our economy and the environment. DOT missed the mark by over 500 percent. These new rules will cost the trucking industry \$19.1 billion over the next ten years--five times more than the government's official estimate. An additional 50,000 new trucks and drivers totaling \$8.7 billion over ten years will

be entering our already over crowded highways. A newer study claims that these estimates may be off by 300 percent. Therefore over 212,000 inexperienced drivers, instead of 50,000, will be added to America's roadways during peak traffic hours. A report by ATA supports these findings and further criticized the FMCSA analysis for ignoring critical factors ^[15] [15].

A leading international firm of consulting economists today strongly criticized the U.S. Department of Transportation's (DOT) proposed "Hours of Service" reform as a costly overstatement of safety benefits and a significant understatement of compliance costs based on "a range of methodological and mathematical errors" that ill serve the driving public, the trucking industry, and the U.S. economy.

"The trucking industry has consistently asked for-and will support-real Hours of Service reform that is based on sound science, promotes highway safety, and allows us to continue to economically and efficiently meet the needs of the U.S. economy," McCormick said. This report verifies that DOT's proposed rule is 0-for-3.

Comdata further supports these findings and speaks of the decrease in truck related crashes. However, these new rules will place inexperienced drivers onto already crowded highways thereby increasing the risk of accidents. The new regulations inaccurately assume that these new rules will allow for a 20 percent reduction of drivers. What Congress failed to take into account is the economic reality that goods have to be moved. Under these new rules, that will require the addition, not the reduction of drivers ^[16] [16].

Industries across our Nation are spending millions of dollars trying to figure out ways to alleviate congestion, and our own Federal Government proposes a rule that forces more trucks on the road, probably at peak times." This increase of trucks adds to pollution, green house gases and fossil fuel consumption.

So, in short, this rule fails to promote the one thing that it ostensibly says it will promote, and that is safety. This proposed hours of service rule jeopardizes safety and, in turn, impacts rather significantly our economy. If one thing is risky in affecting our economy, it is this type of regulation.

Mr. Robert Delaney, Senior Vice President for Cass Information Systems ^[17] [17], voices his opinion on the hours of service reform. This "will cost the Nation's shippers \$175 billion over the next 3 years. This breaks out into \$50 billion

in additional trucking expenditures, \$100 billion in unneeded inventory investment and \$25 billion in inventory carrying costs. In addition to dollars lost, the trucking industry will lose 586,000 hours in its first year. This is a number so large it is difficult to comprehend the true impact on our economy.”

The real issues involve insurance companies, trucking company CEOs and the shippers as well as the receivers.

Our economy is by design, a just-in-time or on demand economy system. The main reason for running illegally is the pressure put on the driver by the company and their customers to uphold these standards.

Shippers and receivers force drivers to sit for hours and sometimes days before loading or unloading their products.

The drivers schedule does not change. Companies do not adjust for the inadequacy of these customers. Instead, they taunt the driver and threaten financial harm through reduction of miles, loss of bonus or termination if they do meet the original schedule of the run. The only way to do so is in direct violation of the DOT HOS regulations.

Shippers and receivers must be held accountable for their actions. Trucking companies need to back their drivers and just say no to these unrealistic and unsafe demands of their customers. In today’s just-in-time society, the demands placed upon the trucker are totally unrealistic. Traffic, DOT laws and the need to sleep do not coincide with customer demands in today’s fast pace world. Trucking companies need to step up to the plate and say, “No, my drivers are not going to run illegal because you detained them.”

However, companies are afraid of losing a customer and therefore choose to put the pressure on the driver thereby making him assume all the risk. Drivers receive fines, lose their licenses and go to jail because of these demands. Only in recent history has the government had the foresight to impose fines upon the company who instigates these actions. Now the companies are in fear. In return they have drivers sign multiple forms upon hire so as to keep their own hands clean and immune in such cases. Again, the blame is all shifted back upon the driver.

The one with the least control faces the most risk and strongest punishments. This is not a fair system. If a driver has no voice in the regulations and shipping schedules, how can it all be the driver’s fault? Yet look at any situation and who always get the blame – the driver!

Many different organizations are pressuring the government to require trucking companies to install a paperless log

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system much like Werner Enterprises and Fleet Transit operate. If not a paperless log, then onboard recorders much like the “black box” on an airplane. The concept is that such a device can ensure compliance with the HOS. Trucking companies as well as drivers find either device highly objectionable. The cost of such equipment is significant, the reduction in production will greatly increase and it is a general violation of privacy.

Werner Enterprises has proven this by the number of drivers that are sitting due to lack of hours to complete a run. To

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date, no such device is required by law. However, many larger companies have implemented the use of Qualcomm or Road Ranger satellite tracking systems. These systems, depending on the level of service purchased, can track a driver to within 100 yards of his location, confirm log books, track tolls and fuel purchases, provide communications between drivers and dispatch / terminal personal, provide e-mail services, transmit directions, monitor the temperature of a refrigerated trailer, tell if the trailer and tractor are hooked together, transmit distress signals (i.e. driver having heart attack or being robbed) and break down information as well as many other functions. The systems are costly to install, about \$2000 for a used set with approximately \$50/month monitoring and satellite fee. A fleet with 500 units, which is a small company, is looking at a costly investment.

Trucks of yester-year had similar devices to track the actions of the driver. The tachometer was much less sophisticated and operated simply off the transmission. A circular piece of paper was placed in a box with a pen-like instrument that recorded the driving time of the driver. This device operated much like a seismograph in that it recorded when the truck moved and when it sat still. It was useful in its simplicity. However, in the high tech age of today, we now have a much more complex computer operated system that works off of satellites.

The Federal Motor Carrier Safety Association also plans to expand its research on electronic onboard recorders and other technologies, including evaluating alternatives for encouraging or providing incentives for their use to ensure HOS recordkeeping and compliance. The final rule is available at www.fmcsa.dot.gov and under Docket No. FMCSA-97-2350 at www.dms.dot.gov.

Currently, the jury is still out on whether the government should require such a device in every commercial vehicle or simply rely upon the trucker and his company to remain in compliance with the Hours of Service. Despite the invasion of privacy, these devices will prove the down time incurred at shippers and receivers. Being the case, this would force compensation and put these variables on a different playing field with real proof on the side of the driver. This is something no company or customer wants due to increased costs on their behalf. This proof will force accountability for delay time.

Not only do shippers and receivers need to be held accountable for delays, drivers need to receive just compensation for time spent. If a driver makes \$.30 a mile and averages 50 miles per hour, then similar compensation must be provided for delay time. The driver only makes money when the wheels turn.

Delay time hurts. Trucking companies are often compensated for this time; however that compensation does not trickle down to the driver. When it does, the rules of the company are so complex that many drivers do not receive their compensation. The paperwork involved is so labor intense that many drivers can not or will not make the effort to comply in hopes of gaining compensation in the future.

If one reads the driver manuals of most companies, it is not clear how to obtain these funds or even if these funds will ever be obtainable. This is done to dismay a driver from attempting to claim compensation. This all needs to change. Drivers need to receive fair pay for fair work.

At the January Conference in Houston, TX; Cliff Harvison ^[20] [20] voiced his concern of guaranteeing drivers enough hours so they don't lose money. Carriers have began increasing wages and considering other options due to driver shortages of early 2004. He remarked, "Carriers will have to do something if they want to retain those individuals (drivers)."

Driver retention has always been a major issue and these new regulations only add to an already impossible situation. Even at \$.30/mile and the industry average, per new HOS, of 2500 miles per week, the average OTR truck driver only makes \$750 before taxes. The average road cost for food, showers, and general expenses is \$200 week. Add to this the fact that most drivers work in excess of 100 hours a week. This produces an average net pay of \$4/hour. The general public all comment on the high wages of the trucker. A fast food worker nets more hourly income than the average trucker.

The driver wage scale received a major increase about 5 years ago. It was raised from an industry average of \$.18 per mile to the current industry average of \$.30 per mile. It can be clearly seen that this is still far from adequate. A local worker, one who does not spend \$200 a week just to survive, and works 100 hours even at minimum wage would make approximately \$670/week.

This is an individual who sees their family, sleeps in their own bed at night and is unskilled. Really makes a truck driver want to serve the American people after analysis of this pay structure. I think not and that is exactly why most truck drivers do not figure this break down. It is depressing that a professional truck driver gives so much and receives so little in return. In addition, the average truck driving school today costs \$4800 plus an additional \$143 in license and fees according to America's Driving Force ^[21]. Truck drivers are a skilled profession. The average license cost is \$100 in comparison to \$20 for Class C (car) drivers.

Our personal vehicle insurance rises because the CDL record and the personal vehicle driving record are one in the same. This hurts us both at work and home. It is not fair to hold one in comparison with the other. No other profession does such a thing.

Insurance agents comment on how bad the average truck driver's record appears. However, no one takes into consideration that the average car driver drives 10,000 miles a year in comparison to the average trucker who logs 125,000 miles a year. I say logs, because log miles and actual miles generally vary by +10 percent. This is comparing apples to oranges but yet no one except the driver themselves even appear to care. Moreover, the professional CDL driver, as a group, is statistically the safest and highest trained group of drivers on the highway. The highway is our workplace and essentially our home.

The average weekly mileage is just that; average. Many drivers are lucky to get 1500 miles while other companies push a solo to the limit of 4500+ miles per week. New drivers still receive \$.19/mile at many companies. Senior drivers, at a few companies receive wages in the \$.40+/mile category. This is rare. Even the sign posted on JB Hunt trailers that advertises \$.43/mile is unattainable.

Much of a driver's pay is based on bonuses. These bonuses, at most companies, are unattainable. The honest industry average is \$.30/mile. Owner operators are lucky to get compensated at \$.89/mile. A tractor averages 6 mpg

and costs in excess of \$85,000. Before deregulation the average o/o was making well over \$2/mile.

The 1970's was the end of trucking regulation by the government ^[22]. Through deregulation, the industry saw truckload shipping fees fall by over 40 percent. Pre-deregulation the cost of living was lower than today. Diesel fuel was \$.25/gallon or less until after the so called gas crisis in 1973. Compare this with today's diesel fuel average of \$1.70/gallon ^[23]. With all these financial variables to consider, it is clear why the DOT hours of service are frequently violated and need in depth consideration for their revision.

A truck driver is a skilled professional who has been trained to handle the operation of 80,000 lbs. of machinery traveling at highway speed. Potential commercial drivers ^[24] must pass a criminal background and credit check at most trucking schools and companies before obtaining an employment offer as well as a 10 year employment history in contrast to the usual 3-5 year history of most professions. Before being accepted into truck driving school, the perspective candidate must be physically qualified. Such qualifications are located in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 C.F.R. § 391.41.

Current regulations reflect absolute driver medical qualifications in four primary areas in medical fitness (vision, diabetes, hearing, epilepsy), as well as standards and guidelines that address non-absolute requirements (e.g., high blood pressure, neuromuscular disease, psychiatric disorders). Driver physical qualifications research involves projects to define "fitness for duty" qualifications based on the latest medical and behavioral research ^[25].

A driver, be it a he or she, is trained to observe traffic and spot potential dangers so that they can be avoided.

Defensive driving classes are taught at most larger trucking companies as well as at truck driving schools. I personally, have taken advance driving courses that teach skid recovery by putting the semi-combination vehicle into a skid and forcing the driver to recover from the skid. This teaches the driver how to handle the vehicle under extreme weather conditions.

The Smith System ^[26], a defensive driving course recognized ^[26] by most insurance companies, was taught at several companies for which I was contracted. These programs are supplemented with yearly or semi-annual updates and retraining. Safety is the main concern of the truck driver. Many different awards are given to recognize the safe driver

and encourage him lead by example in the industry. A few of these will be discussed later in this paper.

Drivers face another issue. This is the loading or unloading of their trailer when the customer does not provide such services. Lumper is a term given to a person who loads or unloads a trailer. Drivers are not lumpers. Drivers are just that – drivers. Companies are beginning to realize this as their workman compensation rates climb due to (un)loading accidents. With this training and ability, why would anyone require a driver to be a warehouse worker? Even Congress is beginning to address this issue.

Warehouse workers have their own training and requirements. They are persons certified in the usage of hand jacks, forklifts and other unloading equipment. Some truck companies force their drivers to take these classes but most do not. Drivers do not need to invade the profession of the warehouse worker and subject themselves to injury and unrest in order to fulfill the needs of the customer.

Customers, again, need to take responsibility and hire adequate personal to provide such services. Lumping, counts against the available hours for a driver. This lessens the driver's ability to run miles which in turn lessen the driver's pay check. Many facilities do not allow the driver to (un)load and provide no warehouse employees. Instead they force the driver to hire onsite driver paid lumpers to do this task.

These lumpers are generally expensive. The cost seems to increase in relativity with the facility's location to the ocean and from north to south. Lumpers receive \$30 to unload a truck in Alabama but \$300 for the same load in NYC. This excess cost affects the driver's bottom line. Performing the duties of a Lumper affects the driver's ability to drive safely by lessening his available hours and tiring the driver through such strenuous activities. Both are major factors in maintaining or braking the DOT hours of service. This is one of the many variables that Congress did not fully consider when writing or revising the DOT HOS.

OOICA realizes that “without trucks America stops”. Therefore they called for all drivers to run compliant ^[27] [27]. This is a mass effort to demonstrate how inadequate the DOT hours of service truly are in full context of the industry. Drivers running in compliance with the law cannot make scheduled delivery times. Drivers running in compliance with the law over crowd the truck stops and rest areas with many finding “no room in the inn” when it comes time to take the mandatory 8 hour which was currently increased in January 2004 to 10 hour rest break.

Large cities that receive the most truck traffic refuse to construct truck stops or provide adequate parking for these breaks. With this being the case, a driver must know the area (difficult for new drivers) and stop short in order to be in compliance. Many times a trucker will “run a load in” if he only had to “bend” the rules a little; like an hour or two. Under this run compliant rule, if he is 15 minutes out and run out of hours, he is to shut down until once again compliant even if it means being late for his delivery / pickup appointment. Sometimes midnight allows for compliance due to it being a new log day while other times a driver is down 2-3 days in order to become DOT compliant. This is especially true under the new DOT hours of service which call for 34 hours off duty once the 60/70 hour week is reached.

The theory behind this stand is to prove to the American public the ridiculousness of these regulations thereby raising awareness of the US government so that adequate regulations can finally be written and implemented. The bottom line; empty shelves equal awareness. It is these drastic measures that are needed to rectify a long over due rehaul of adequate DOT hours of service regulations.

The problem is getting everyone to participate. If this is not truly a mass effort, the message will not be heard. The trucking industry must stand as a unit of solidarity and not continue business as usual. Trucking company practices of backstabbing, under bidding and general dissention among the companies needs to end in order to provide better and safer working conditions for all involved parties.

Drivers need to take a stand and become involved. It is no longer “someone else’s” problem. It is everyone’s problem; everyone from the driver to his children to the consumer to the federal government and all in-between.

The professional CDL driver needs new laws that work. These new laws need to properly promote safety and driver awareness.

Writing new laws that work will require that all these issues and variables come into focus. Congress has only seen fit to address the issues most comfortable to them and most easily addressed. A driver’s day encompasses all these issues and more. Therefore the entire picture must be fully considered before a law can be enacted that will effect the completion of a driver’s work day.

This is a complex process. As I have shown, there are many different categories of truck drivers. The main driver to be affected, which is the majority of the drivers, is the solo OTR driver. These laws are the most encompassing and inhibiting when it comes to addressing the complexities of this classification of driver. Much has to be factored into a set

of regulation if it is to be all inclusive and address the situation in a fair and objective manner.

Business as usual needs to come to an end and shippers, receivers and truck companies need to be factored into and held accountable for DOT compliance. Pressure needs to come off the driver. The government needs to offer true protection for drivers who stand against their company and comply with the law. This is not the case today. Drivers get fired for not performing when they run in compliance. Major changes in all aspects of the industry are needed before new DOT hours of service laws can truly be addressed.

The trucking force of America is a very diverse group of people. The industry as a whole is truly an equal opportunity employer. It is the one profession where you are hired on merit, skill and qualifications and very little else. Title VII regulations, the Disabilities Act and Age Discrimination Laws appear to always be in compliance in this industry. All races, creeds, colors, affinity orientations, religions, nationalities and ages from 18 to 80 and beyond make up the men and women who keep America moving. Even owner / operators with disabilities ^[28] are seen and handicapped parking, shower accommodations and other services provided at some larger truck stops.

Community awareness, public awareness and a band of unity is needed in order to achieve these objectives. The public needs to be educated through the eyes of a trucker. Trucker Buddies ^[29] and other programs are helping carry the voices and lives of the trucker to the classroom. This places the trucker in front of the public through new eyes.

The image of the trucker needs to be revised. CDL licensed drivers are professionals that have passed many driving, health and background checks before being employed and that needs to be seen through the pride taken in their work. Stop blaming the trucker because he is an easy escape goat. A trucker's work and lifestyle greatly alter his ability for proper representation in any court proceedings. The driver can rarely attend a court date and even when he can, he is the "outsider." Most drivers today have to dig into their pockets and join organizations like TVC (Trucker's Voice in Court) or Pre-paid Legal in an attempt to protect themselves through representation in court matters.

The general public sees dollar signs when they think of truck drivers, trucking companies and injury cases. The law requires the average trucking company to carry a minimum of a \$1,000,000 insurance policy. Attorneys promote the money, damages and benefits one can obtain should their client sustain injuries in truck related accidents. Some of these

[30]

ads [30] are so intense, they appear to incite such actions and promote the deliberate involvement of car / truck accidents as a means for a large payoff.

Anti-trucker attorneys and lawmakers, such as those in CA and Ohio, go to great extents to promote the negative side of the trucking profession. They influence the people and make the general public live in fear of large trucks. The goal of these parties is to promote the perceptions of truckers as highway demons, law breakers and drug users with no regards for themselves or those around them. The average truck driver just wants to do his job and return safely home to his loved ones. He is no demon. These deep pocket cases have caused many a company to go bankrupt and drivers to go to jail. On the flip side, awards are given for “Knights of the Highway” or “Highway Angels” when a trucker performs an exceptional act of kindness such as saving the life of a passing motorist. These awards and actions need to become more public. This will greater increase the public awareness and foster the status of the trucker as a “King of the

[31]

Highway” due to the kindness and safety of the driver’s actions [31].

Through a professional image and community awareness, the trucker’s message will always be in the foreground.

When working as a professional with respect for yourself and others, these actions and feelings will foster others to act similarly. Through such unity, professional drivers can aid in the writing and implementation of new DOT hours of service regulations that truly place safety first. These will be the new Department of Transportation Hours of Service that will better serve everyone.

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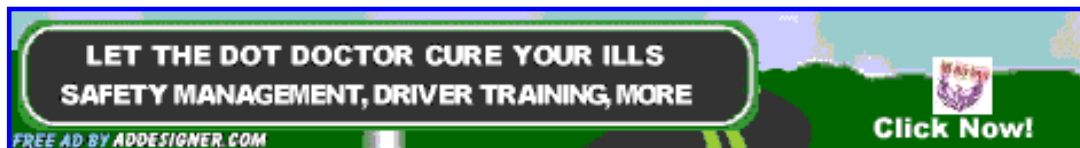
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Comments: DrAndreaLSitlerPhD@yahoo.com

Andrea Leigh Sitler - Owner

Ramblin' Rose Enterprises

and [The DOT Doctor](#) USA



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[com/friendofru/hero.html](http://www.geocities.com/friendofru/hero.html)