
Senator Ron Wyden
Senator Jeff Merkley
Representative Peter DeFazio
Representative Kurt Schrader
Representative Earl Blumenauer
Representative David Wu
Representative Greg Walden

February 16, 2011

Re: Urgent Appeal For Congressional Hearings on Federal Motor Carrier Safety Administration's Proposed Hours of Service Rule Changes

Dear Sir:

Two weeks ago more than fifty representatives from the motor carrier industry met in Portland to review and comment on proposed hours of service rule changes announced by the Federal Motor Carrier Safety Administration ("FMCSA") the end of December. The FMCSA state Administrator had to excuse himself from the room during the discussions, explaining that the FMCSA's attorney's forbade the agency's representatives from participating in any way in discussions of the proposed rule changes. As you may or may not be aware, the rule change is the result of a settlement agreement against the FMCSA arising out of a lawsuit by several interest groups following rule changes that were made in 2003.

The consensus of those gathered in Portland January 27 was that the proposed rule changes would be a blow to the motor carrier industry – and by extension, to our state and national economies as well – and that the FMCSA is not being responsive to the input of the industry it regulates. It was agreed that unless Congress takes **immediate action** to hold hearings and fully investigate the impact of the rule changes, our country will experience sharp increases in the cost of virtually all our commodities by the end of this year as motor carriers are forced to pass on the increased cost of operations the rule changes will require.

Through this letter, I respectfully request that as our voice in Congress, you exert every influence at your disposal to see that Congress fully investigates this matter before it is too late. I will present here background information and informed opinion that will in the end, I believe, raise questions in your own mind that must be answered. I thank you in advance for giving this matter your attention.

Respectfully yours,

"Skip" Nash, Director of Operations - Standard & Best of Oregon LLC
Michael Hitchcock, Corporate Director Driver Development – Knight Transportation
Tom Swarts, Traffic Manager - Bi-Mart Corporation
Phil Martin, PNW Vehicle Safety – Foster Farms
Michael Meredith, Training and Development Manager – Haney Truck Line

Rocky Buckles, General Manager – Thomas & Sons, Inc.
Steven Taylor, Logistics Manager - Fred Meyer
Randy Perryman, Transportation Manager – Interstate Wood Products
Kathy Fruitt, Owner - Jim Fruitt Trucking
Terry Leavitt, President – Leavitts Freight Services
Jana Corder, General Manager – Specialized Transport Services
Alan McNew, Transportation Manager – Oregon Food Bank
Dennese Murray, Safety & HR – The Jerry Brown Company
Bob Howard, General Manager – System Services of America, Gresham
Lisa Lathrop, Owner – Alpine Transportation, Inc.
Dave Gray, President – GloStone Trucking Solutions
John Anderson, Partner – Anderson & Yamada, Attorneys at Law
Larry Davidson, Attorney at Law
Steve Caldwell, Oregon Operations Manager – Bettendorf Trucking
Jim McKinney, Director of Education – IITR Truck Schools
Bill Lundin, Safety & Risk Manager – Independent Dispatch, Inc.
Mike Knight, Director of Safety – Blue Line Transportation, Cascade Petroleum
Kevin Dunn, Director of Safety – Mitchell Brothers Truck Line, Inc.
Stephen L. Day, President – American Fast Freight, Inc.
Herb Bickle, President – HBE, Inc.
Richard Fazio, President – Fazio Brothers Sand Company
James R. Helser, President – Helser Bros. Transfer Company

Enc. Federal Register Vol. 75, No. 249, Proposed Rules
Oregon 10-year Crash Statistics
Arguments for immediate hearings and review of proposed hours of service rules

Standard & Best of Oregon LLC

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Canby, OR 97013

Request for Congressional Hearings on Proposed Hours of Service Rule Changes

The Department of Transportation, Federal Motor Carrier Safety Administration's proposed rules fail to satisfy that Agency's objectives and ignore relevant crash safety data.

Request for Congressional Hearings on Proposed Hours of Service Rule Changes

Proposed rules fail to satisfy the DOT's objectives and ignore relevant industry economic and safety data.

Why you are receiving this request

About two years ago the Federal Motor Carrier Administration ("FMCSA") was sued by several interest groups, challenging the FMCSA's hours of service rules.¹ This was only one of a continuing barrage by various groups to reshape the FMCSA's rules.

In October 2009, the DOT, FMCSA, and the HOS petitioners reached a settlement agreement, which required a new rulemaking and final rule by July 26, 2011. The FMCSA held several listening sessions to obtain input from the industry and published an announcement of proposed rulemaking ("ANPRM") in the Federal Register December 29, 2010.²

While the motor carrier industry and allied stakeholders were consistent and by all reasonable standards, unified in their input, the FMCSA's ANPRM for all intents and purposes ignored that input. A 60-day comment period followed the ANPRM. To further compound industry frustration, when motor carriers and other interested parties approached the FMCSA to explain the proposed rules and answer questions, they were told that the FMCSA was prohibited from answering questions or even making basic presentations, explaining what was to all concerned a very confusing set of rules.

There are at least three reasons why Congress should investigate.

- The proposed rules contradict the FMCSA's stated objectives during early phases of the rulemaking, and fail to satisfy many of the FMCSA's stated objectives.
- The proposed rules ignore available crash data.
- The proposed rules will impose an economic hardship on an industry and nation that is struggling fiscally.

For these reasons, and probably many more, Standard & Best of Oregon and those who have added their names as signors to this letter, respectively and with hope for your favorable response, request that you

¹ "Hours of service" (aka 'HOS') refers to how many hours a regulated commercial driver can drive.

² FR 75, No. 245. See attached copy of proposed rule.

exert every influence at your disposal to convene hearings into the merit and methods of the proposed hours of service rules.

Why is Standard & Best making this request?

Standard & Best of Oregon LLC is a motor carrier regulatory compliance consulting firm serving clients in 28 states and 2 Canadian provinces. A list of its clients include many of the household names in Oregon and Washington: Kroger Distribution, Golden State Foods, Food Services of America, Winco Foods, Darigold, Oroweat, Knight Transportation and many more. Our involvement with motor carriers provides the advantage of understanding what keeps goods and services moving safely and what does not.

During Standard & Best's 2011 Annual Safety Issues Update held at the Monarch Hotel in Clackamas last month, more than 50 representatives from Oregon and Washington motor carriers were present to provide comments and try to understand what the proposed rules will mean to their businesses. They were frustrated. While it is safe to say that probably all industries resist new rules that require significant changes, it is also fair to say that in this case at least, they are justified.

It was suggested at that meeting that the only real hope for bringing some common sense to the present rule making situation would be to bring it under the spotlight of congressional review. Standard & Best is therefore taking the initiative to do so.

This report will not attempt to repeat everything that has already been said in the docket³, but will instead endeavor to focus on the three stated reasons why Congress should investigate. It is fair to say that if one were to take even a casual review of the more-than-7000 comments now in the docket, they would find a general assortment of 'cookie cutter' replies that do very little to promote serious consideration. The sameness of these many comments, however, should not demean the seriousness of the present situation.

By all estimates, if the proposed rules are implemented as proposed, the cost of goods sold will increase. And in some cases, increase dramatically. Many small business will instantly become uncompetitive. And not a few of them will go out of business, placing an even greater strain on our state's frustrated economy. Please read the enclosed material thoughtfully and with a sense of urgency. Anything less will be costly to all Oregonians and our nation at large.

³ Docket No. FMCSA-2004-19608

The proposed rules contradict the FMCSA’s stated objectives during early phases of the rulemaking, and fail to satisfy many of the FMCSA’s stated objectives.

When the FMCSA announced that there would be listening sessions to obtain industry input for the proposed rulemaking, it asked for comment on specific areas of driver’s hours of service.⁴ The Administration added that:

“The scenarios are merely set forth for discussion. The FMCSA will not necessarily include them in a Notice of Proposed Rulemaking.”

In the face of overwhelming testimony to the contrary, the FMCSA has proposed precisely what it said was “merely set forth for discussion.” The Administration asked commenters to address:

1. Whether mandatory breaks would improve safety and should they be included
2. How many hours per day/week would be safe and healthy for a driver to work
3. Should drivers who drive at night time drive less
4. Is a 34-hr restart sufficient for restorative rest
5. Do drivers who drive at night have special considerations
6. How do drivers currently use the 34-hr restart
7. Should the sleeper berth provisions be revised
8. How do delays while loading/unloading affect driver productivity
9. Have shippers/receivers revised their practices to reduce delays
10. Are there aspects of the current rule that do not increase safety risks or adversely impact driver health and that should be preserved

Commenters were very clear in their testimony – Current rules work well and accidents have been significantly reduced. There is no evidence that any major changes are needed.⁵

The proposed rules would change virtually every area that the industry was asked to comment on. They would:

⁴ See attached announcement.

⁵ See “Hours of Service Special Briefing”

1. Include mandatory off-duty time "breaks" in order for a driver to continuing driving
2. Revise the number of hours per day/week a driver can work/drive
3. Reduce available working hours for drivers who drive during split shifts or evening routes
4. Extend the number of hours to obtain a restart
5. Limit the frequency of a restart
6. Leave the sleeper berth provisions unchanged
7. Reduce the available hours to work
8. Change aspects of the current rules that have contributed to a reduction in CMV crashes over the past 5 years

I submit that in so doing the FMCSA was disingenuous and contradicted its stated objective for the listening session.

In addition, the proposed rules are not needed to support the Administration's stated core values.

In a 2010 statement FMCSA Administrator Anne Ferro outlined the Agency's "core" values –

1. Raise the bar to entry to the motor [carrier] industry;
2. Maintain high [safety] standards to stay in the industry; and
3. Remove high- risk operators from our roads and highways.

"Those three core priorities really frame what we are doing," said Administrator Ferro⁶. If these are the Administration's "core values," then the proposed rule isn't needed.

The proposed rule in no way changes what it takes to enter the motor carrier industry. Motor carriers will still be able to obtain an operating authority, pass the New Entrant Safety Audit, and operate unimpeded until something in their safety performance singles them out.

The proposed rule in no way raises the standard to stay in the industry. While it is true that the proposed rule provides for increased fines for "egregious violators" of the new rules, the proposed rules only make it more difficult to operate profitably and will more than likely increase the rate of violation.

⁶ Fleet Owner Magazine, January 20,2010

The proposed rule in no way adds to the Administration's effectiveness at removing high-risk operators. Under the Administration's newly implemented CSA safety initiative, high-risk operators are easily identified and impacted by interventions.

Besides the above obvious examples, the proposed rule is replete with admissions that the means and methods used to arrive at the new rules are incomplete, if not altogether contradictory.

Consider the following. In the Overview under the "Goals" heading,

The proposed rule also would provide drivers with the flexibility to obtain rest when they need it and to adjust their schedules to account for unanticipated delays. FMCSA has also attempted to make the proposed rule easy to understand and readily enforceable.⁷

The proposed rules **reduce flexibility** to obtain rest, **add delays** to the driver's day, are **complicated** to understand, and **difficult to enforce**.⁸

Also in the Overview, the FMCSA admits that even though accidents have declined since the rules were revised in 2003, "the source of the decline in crashes is unclear." In the case of Oregon's safety performance, the source of decline is quite clear and available data makes it possible to compare crash data against proposed rules.

Nearing the conclusion of the Overview, the Agency believes that:

Because the drivers who work very extensive hours are a relatively small minority, FMCSA does not anticipate that this rule would have significant adverse impact on the industry.⁹

If those who work "very extensive hours are a relatively small minority," one must ask why the rules that have worked so well for the rest of the industry must be changed.

The number of inconsistencies contained in the proposed rule are numerous. It is not the intent of this document to recite them all; rather, it is hoped that you will work as a force for action to see that Congress gets straight answers and not convoluted solutions. While there is no immediate evidence to support the claim, it is suspected by some that the real reason for many of the proposed changes is to favor one segment of our economy at a cost to another. If that is true, then it is wrong and will only impose a heavy cost to our country as a whole.

⁷ FR 75, No.249, p.82171

⁸ See Oregon Department of Transportation's comments to Docket.

⁹ FR 75, No.249, p.82172

The proposed rules ignore available crash data.

In its comments to the docket, the Oregon Department of Transportation, Motor Carrier Transportation Division points out that "Oregon collects more useful data on truck at fault crashes than any other state ... and has one of the lowest large truck crash fatality rates anywhere."¹⁰

It is not my purpose to repeat what can easily be deduced from ODOT Administrator Gregg Dal Ponte's comments to the docket. It is helpful, though, to point out noteworthy insights from the data Mr. Dal Ponte refers to.¹¹

Oregon's crash data collection is unique, obtaining hours driving and hours on-duty data at the time of the crash for each reportable crash. Analysis of data for the past 10 years suggests key changes in the **proposed HOS rule** are unlikely to address critical driving safety variables in truck at fault crashes:

- **75.7% of crashes occur between 6AM-6PM** - Challenging the benefit of forcing drivers who normally do their driving during night time hours to now drive during the hours where the greatest number of crashes occur. (34-hr restart provision would require 2 periods midnight - 6AM off-duty)
- **12% of crashes occur midnight-6AM** - A significantly lower number than daytime crashes.
- **7.3% of crashes occur 8PM-midnight** - The latest a driver can go off-duty and still complete a 34-hr restart that includes 2 periods midnight - 6AM off-duty. Drivers who miss this 'window' will forfeit a less-crash-intensive driving opportunity.
- **21.1% of crashes occur within the 1st hour of driving & 12.5% occur within the 2nd hour** - Challenging the causal relationship between mandatory breaks by the 7th hour to promote safety.
- **3.25% of crashes occur after 10 hours driving & 1.03% after 11 hours driving** - Challenging the basis for limiting driving time to 10 hours.
- **In 2009 only 1 crash occurred after the 70th hour on-duty** - Arguing strongly for the effectiveness of the current 34-hr restart rule.

Oregon crashes were reduced by 25.55% 2008-2009 under present rules while applying other strategies - challenging the basis for any changes.

¹⁰ See ODOT's comments.

¹¹ See Oregon Ten Year Crash Statistics

The proposed rules will impose an economic hardship on an industry and nation that is struggling fiscally.

It would be imprudent of any lawmaker to alter his or her position just because a large group of voices said they should do so. The voice of the masses is not necessarily the voice of reason. The fact that more than 7,000 comments to the docket echo the cry that the proposed rules 'will wreck our economy and put small companies out of business' should be a concern, but is not in and of its self actionable. Facts are needed.

I have met personally with many motor carriers – some of them being large, regional carriers, and some being smaller entities – and after reviewing their present operations in light of the proposed rules, I can state emphatically that our Oregon and national economy will suffer a noticeable negative impact with these rules.

In the case of one Oregon-based company with operations in several western states and 75 drivers, 26% of their current Oregon routes will have to be revised.

In the case of a 7-driver industrial chemicals transporter, 90% of their routes will become unprofitable, which will likely exclude this carrier from the market, even possibly forcing them out of business.

In the case of regional truck driving school, a lead manager points out that even in our present economy is very difficult to attract new drivers to consider a career in commercial driving, and that the proposed rules only exasperate the situation.

In the case of the 350,000 independent owner-operators who form the backbone of many large fleets, one service provider familiar with the industry observed that even now "(U)sing the best case cost scenarios, an Owner Operator will take home to his family \$24,400 to \$53,440 per year, less federal and state income taxes." Any reduction in earning capacity would have obvious detrimental effects.

These are but the tip of the 'tip of the iceberg.' No reasonable person can ignore the fact that when you reduce the operating resources (driver's hours) and increase the cost of goods sold (added drivers, equipment and operating costs), you must pass on those increases to the customer, who will in turn pass on the costs to the consumer.

Conclusion and summary remarks.

In conclusion, may I say thank you for taking this request seriously, which I must assume that you have if you have read this far. As stated earlier, it is not unusual for an industry to resist major changes. But from my vantage point, there is good reason for them to do so in this case.

Please speak about this with your peers from other states. Please reflect upon those signatories included with this request. They do not by any means represent the total number of concerned companies – only the number who could be contacted on very short notice. I believe that if you were to hold meetings in your home district you would find the numbers to be significantly greater.

Respectfully yours,

Gary "Skip" Nash
Standard & Best of Oregon LLC
Director of Operations
SN/jm

Stakeholders joining in the request for Congressional Hearings

Michael Hitchcock, Corporate Director Driver Development – Knight Transportation
Tom Swarts, Traffic Manager - Bi-Mart Corporation
Phil Martin, PNW Vehicle Safety – Foster Farms
Michael Meredith, Training and Development Manager – Haney Truck Line
Rocky Buckles, General Manager – Thomas & Sons, Inc.
Steven Taylor, Logistics Manager - Fred Meyer
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Alan McNew, Transportation Manager – Oregon Food Bank
Dennese Murray, Safety & HR – The Jerry Brown Company
Bob Howard, General Manager – System Services of America, Gresham
Lisa Lathrop, Owner – Alpine Transportation, Inc.
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John Anderson, Partner – Anderson & Yamada, Attorneys at Law
Larry Davidson, Attorney at Law
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Mike Knight, Director of Safety – Blue Line Transportation, Cascade Petroleum
Kevin Dunn, Director of Safety – Mitchell Brothers Truck Line, Inc.
Stephen L. Day, President – American Fast Freight, Inc.
Herb Bickle, President – HBE, Inc.
Richard Fazio, President – Fazio Brothers Sand Company
James R. Helser, President – Helser Bros. Transfer Company

Attachments

Federal Register Vol. 75, No. 249, Proposed Rules (Annotated)

Federal Register Vol. 75, No. 2, Notice of Public Listening Sessions (Annotated)

Hours of Service Special Briefing

Oregon Department of Transportation Comments to the Docket

GloStone Trucking Solutions Comments

Blue Line Transportation Comments

Oregon 2009 Crash Statistics¹²

¹² Oregon 10-year crash data is available upon request. It was not included in this document in the interests of space.

CERTIFICATE OF SERVICE

This is to certify that on this day of February 16, 2011, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Senator Ron Wyden 911 NE 11th Ave Suite 630 Portland, OR 97232	Hand Delivered
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Senator Jeff Merkley 121 SW Salmon St # 1400 Portland, OR 97204-2948	Hand Delivered
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