



AMERICAN TRUCKING ASSOCIATIONS

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Bill Graves
President and Chief Executive Officer

October 21, 2011

The Honorable Ray LaHood
United States Department of Transportation
1200 New Jersey Ave, S.E.
Washington, D.C. 20590

Dear Secretary LaHood:

We are writing to you regarding your October 19, 2011 letter to Senator Ayotte on the truck driver hours of service issue. Your letter communicated three distinct messages to the Senator that we believe deserve some additional, informed commentary. We also hope to meet with you in the very near future to discuss our comments, and ATA's broader concern with the Department's handling of this issue.

Your main message to the Senator was that the Federal Motor Carrier Safety Administration, through the current rulemaking, is applying the "*most comprehensive and up-to-date data and analysis to the issue of driver fatigue and allowable hours of service.*" This very point has been and continues to be ATA's main concern with this rulemaking--that is, there is little or no comprehensive, up-to-date evidence, data or science supporting FMCSA's proposal.

FMCSA readily admitted it did not have sufficient data on which to base a driving time limit change, yet the Agency argued for and stated it "*currently favors*" reducing the limit. This was a clever way of attempting to shift the burden of proof to the industry to justify the current drive time limit. A similar situation is true regarding its restart proposal. FMCSA footnoted five dated journal articles and one book chapter published between 1986 and 1995—which fails by anyone's definition of up-to-date data and analysis--and then based its proposed restart change on a single, two-phase simulator-based lab study from 2010 involving 12 non-CMV drivers. (See footnotes 39 and 45 at 75 Fed. Reg. 82182) This study found a longer 2-night restart "*could be a viable approach*" for nighttime drivers, but also found that anything more than 34 consecutive hours would be "*excessively inefficient*" for daytime drivers. More importantly, a key finding and recommendation of this single study was the following, "*validation of the study findings in a sample of CMV drivers in a real-world field study is important*" in order to evaluate "*real-world driving performance, safety and cost.*" Replicate and evaluate before changing policy was a primary research recommendation from both phases. FMCSA ignored it and proposed unsupported changes.

Good stuff.



A second message in the letter is that approximately 13% of fatal truck-involved crashes involve an “overly tired” commercial driver and, implicitly, that fatigue caused or greatly contributed to these fatalities. It is astounding to us how this percentage could be cited or justified by the Department regarding fatal crashes. There is indeed a 13% “associated factor” figure in FMCSA’s crash causation study, but it in no way suggests that this percentage of fatal crashes are caused by fatigue. The definition of an “associated factor” states that *“No judgment is made as to whether any factor is related to the particular crash, just whether it was present.”* And, perhaps more importantly, the crash data used in this study were collected between 2001 and 2003, a time period prior to the current hours of service rules—another serious ATA concern with the *“up-to-date data and analysis”* point you made.

Lastly, the letter suggested that any disruption in the regulatory process would *“create confusion and uncertainty among State and Federal enforcement officials as well as within the motor carrier industry.”* The record from the 2011 listening sessions and the transparent regulatory process to which you refer in the letter is replete with industry and State law enforcement commentary on how much confusion and uncertainty the proposed changes would cause if finalized. We are hopeful that FMCSA and the Department not only heard but listened to this resounding message and will allow the current, effective rules to continue to facilitate highway safety improvements, as they have since 2004.

Mr. Secretary, your letter closed with a comment that your Department must do all it can to protect the traveling public and save lives. We agree, and will continue to support evidence-based, cost-justified programs and rules such as CSA, the large truck fuel economy standards, the texting ban, the upcoming handheld cell phone ban, and mandatory speed limiters. The opportunity cost of the protracted hours of service process has been too high. Too many other safety-critical opportunities have been lost along the way and we hope your Department will stand behind the current rules and shift resources to other high priority issues that will have a meaningful impact on highway safety--issues such as sleep disorders that are not even currently addressed by FMCSA guidelines much less rules.

We plan to contact you shortly in hopes of finding a mutually convenient time to meet to discuss our comments and concerns.

Sincerely,



Bill P. Graves
ATA President & CEO



Dan England
ATA Chairman