

December 2, 2011

The Honorable Cass Sunstein
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Sunstein,

This letter responds to two erroneous and misleading arguments raised by Mr. Bill Graves, President and Chief Executive Officer of the American Trucking Associations, on behalf of the ATA in his letter to you of November 15, 2011.

The ATA contends that the recent decline in overall national data on truck involvement in crashes and fatalities demonstrates that there is no evidence of a safety problem with the current hours of service (HOS) rule. The letter implies that there is a link between the current HOS rule, which we believe to be seriously flawed from a safety standpoint, and the recent downturn in truck crashes and truck-related deaths and injuries. Nothing could be further from the truth.

First, there are no facts or evidence whatsoever that indicate any causal link between the current HOS rule and the recent experience with improved overall truck crash and fatality data. Any claim to the contrary has been directly laid to rest by the Federal Motor Carrier Safety Administration (FMCSA), which unequivocally stated in the 2010 notice of proposed rulemaking that the recent decline in crashes cannot be attributed to any single factor affecting crashes, including implementation of the 2003 HOS rule.

Rather, the FMCSA, relying on agency studies and the full record, has identified driver fatigue as a causal factor in as many as 13 percent of truck crashes and truck related fatalities and injuries. This translates into about 500 deaths each year, which is a conservative estimate since there are a number of studies that indicate a higher percentage of fatal truck crashes may be fatigue related. This is why the agency has concluded that previous, lower estimates of fatigue involvement in truck crashes understated the safety problem posed by driver fatigue. Regardless of the total number of overall truck crashes, fatalities and injuries, the problem of driver fatigue has not been abated in recent years.

In fact, fatalities in truck-involved crashes actually increased in the first two years, 2004 and 2005, after the current HOS rule was adopted allowing drivers to drive and work for more hours every shift and each week. More damning is the fact that since the current HOS rule took effect, large percentages of truck drivers consistently admit to falling asleep and driving while tired. Field Surveys in the administrative record reveal that since the current HOS rule took effect in 2004, nearly *48 percent* of drivers admitted that they had fallen asleep while driving in the previous year. About *45 percent* of the drivers said they sometimes or often had trouble staying awake while driving and about *13 percent* reported that they often or sometimes (more than once) fell asleep while driving. Nearly two-thirds of drivers, *65 percent*, reported that they often or sometimes felt drowsy while driving. *A third* of the drivers reported that they became fatigued on a half or more of their trips. These statistics clearly indicate that driver fatigue remains a major and pervasive safety problem that needs to be immediately addressed and rectified by reform of the current HOS rule.

In addition, historical data from the Trucks in Fatal Accidents (TIFA) database from 2003 through 2008 indicate that the percentage of truck drivers in fatal crashes officially reported as drowsy or asleep at the time of a crash has remained constant with nearly the same percentage reported in 2008 as was recorded in 2003. Even though the TIFA data greatly underestimates fatigue involvement in truck crashes, that database should reflect major trends in crashes from year-to-year. Since the TIFA shows that every year very nearly the same percentage of drivers in collisions are identified as being drowsy or asleep, this is strong evidence that the current HOS rule has done nothing to reduce the relative occurrence of fatigue in truck crash involvement.

The ATA has its logic completely backwards. The FMCSA does need evidence that there is a safety problem with the current HOS rule, even though there is ample evidence in the record to support that proposition. The current rulemaking proceeding and proposed rule were undertaken to cure the inherent flaws in the current HOS

rule that have plagued the rule since its inception in 2003. The 11 consecutive hour driving limit and the 34-hour restart provisions in the current HOS rule were adopted *despite a lack* of supportive scientific evidence and research studies in the rulemaking record. There is, however, ample evidence that adding an additional 11th hour of driving when crash risk is at its highest was unreasonable and unwarranted based on the science and research available in the record at the time the 10 hour limit was first raised to 11 hours, as well as since that limit took effect. Further, allowing a 34-hour restart increased the hours available for driving and work at the expense of off-duty time, without addressing the issue of cumulative fatigue, is another decision that contradicted the body of research evidence in the record.

Moreover, the U.S. Court of Appeals, in its 2004 decision, went out of its way to point out these flaws in the FMCSA's logic and legal position. The Court indicated that the agency decisions to permit 11 consecutive hours of driving and the 34-hour restart directly contradicted the agency's own previous findings of fact. For those reasons the Court made it abundantly clear that beyond the specific holding in the case, the 2003 HOS final rule (and its later versions) constituted arbitrary and capricious agency action.

Returning to the ATA's misleading assertion that the HOS rule is linked to the recent decline in truck crash and fatality statistics, it is clear to most objective observers that the recent decline in truck crashes, deaths and injuries reflects trends in national economic data and not the effectiveness of the current HOS rule. In a 2010 presentation entitled "2009 Historic Truck Crash Declines", Dr. Ralph Craft of the Analysis Division of FMCSA's Office of Analysis, Research and Technology, highlighted the correlation between recessions and periods of fatality declines, specifically noting that the "Economy now is recovering from the worst recession since 1975, and the longest period of consecutive quarterly fatality declines." See attachment. Dr. Craft noted that the decline in freight transportation coupled with an increase in overall transportation safety and enforcement efforts could have contributed to the recent declines. He did not, however, attribute any role in the improved safety situation to the current HOS role.

The fact that the passenger vehicle crash rate, fatalities and injuries has undergone a similar decline over the same time period underscores that the current HOS rule has not been a factor in improving truck safety. Nationally-recognized experts, such as Priya Prasad (formerly with the Ford Motor Company), have also reported the correlation between highway safety data in general and national economic conditions that Dr. Craft cited. Since passenger vehicles that are not subject to the current HOS rule underwent an identical decline in deaths, injuries and crashes as trucks, at the same time, it is evident that broader issues, shared by all drivers, not the HOS rule, are causing the improvements in highway safety metrics.

The FMCSA now estimates that large truck crash deaths for 2010 appear to have risen to around 4,000 fatalities, an increase over the 3,380 reported fatalities in 2009. We believe this reflects a rebound in the economic fortunes of the trucking industry in general, and increases in overall truck freight shipping and vehicle miles traveled (VMT). However, since the ATA claims that the declines in overall fatalities are linked to the HOS rule, then the increase in fatalities for 2010 must mean that the HOS rule is now starting to have a more negative impact on truck crashes and fatalities resulting in a reversal of the previous downward trend. The ATA cannot have it both ways. The ATA analysis is "junk science" at its worst, intended to mislead and confuse the public and public officials by conflating very positive recent and possibly temporary improvements in truck crash data (that are occurring for other reasons) with the organization's political and regulatory agenda.

For all these reasons, we do not believe that the Department of Transportation, FMCSA and your office should use these specious claims to ignore the deadly and dangerous problem of fatigued drivers operating large trucks that can carry 80,000 pound loads or more, especially when the problem is so widespread throughout the industry. Despite the current improvement in overall truck crash statistics, the FMCSA is still obligated to follow the science and the law in reforming the current HOS rule. The agency does not need new justifications to revise the HOS rule, it simply needs to conform the current rule to the prevailing body of scientific knowledge that is already in the rulemaking record and that was ignored in 2003.

The second point raised by Mr. Graves' letter is that the Washington State University study on the restart provision in the current HOS rule was inadequate. The letter states that "An objective read makes clear that this single study is insufficient to justify a policy change."

To begin, FMCSA predicated its adjustment of the restart provision as proposed in the HOS reform rule on a number of reasons, not the Washington State University study alone. The agency states in the notice of proposed rulemaking (NPRM) that the 34-hour restart was not previously amended because the agency had assumed that the minimum restart would not be used extensively. However, in response to the pending rulemaking proposal, drivers, motor carriers and the ATA itself have all indicated that the minimum restart is in fact being used extensively. The agency even highlights ATA's comments noting that:

If carriers have arranged their schedules so that drivers are on duty for the full 14-hour day, as ATA claimed in its 2010 comment to the docket, then the restart allows a driver to work more than 80 hours in 7 days compared with 60 hours in the pre-2003 rule.

In response to this finding, the agency explained its decision to amend the restart provision in the following manner:

FMCSA continues to believe that allowing drivers to spend less idle time on long runs is sensible, but must balance this against the fact that the restart provision may be exacerbating problems with long hours and resulting fatigue. *As discussed above, long weekly hours are associated with sleep loss, fatigue, and serious health impacts.* (Emphasis added).

Furthermore, the agency directly addressed ATA's arguments from their 2010 comments against the changes to the restart provision:

ATA argued in its 2010 comment to the docket that, if confronted with this requirement, these drivers would "flip" to a day-time schedule to maximize work time, which would add to congestion. FMCSA notes that many of the drivers who work a regular nighttime schedule drive for LTL or local carriers and usually take the weekend off. They will not be affected by this change. ATA also argued that 2 nights off were not needed for night drivers because they could get two sleep periods in 34 hours off. Research on shift workers indicates that on their days off they switch to a regular nighttime sleep schedule.

The record contains many sources and research studies indicating that drivers cannot obtain adequate sleep and sufficient rest and recovery during daytime sleep periods within the 34-hour restart off-duty time. This is one of the flaws in logic in the current rule that has been pointed out by safety advocates and was alluded to by the Court of Appeals. The ATA cannot change the debate by arguing that the flawed 34-hour restart provision, that should not have been adopted in the first place, must remain unchanged until further studies are completed.

It is also shocking to see ATA's call for field studies on the 34-hour restart at this late date. ATA's call for research was noticeably absent from the rulemaking and comment process in 2003 when the agency first introduced the concept of the restart. The ATA, at that time, did not call for extensive field research even though there was only a minimum amount of laboratory, not field work, on this issue. Even now, the ATA does not call for a field study to establish a scientific basis for the 34-hour restart, but only for the study of the modification the FMCSA is contemplating to ensure that nighttime drivers have an adequate opportunity to obtain sufficient, restorative rest when they are off-duty for only 34 hours. The Court of Appeals stated in its 2004 decision remanding the HOS rule that:

While the agency's explanation seems sound enough as far as it goes, it does not even acknowledge, much less justify, that the rule . . . dramatically increases the maximum permissible hours drivers may work [i.e., drive] each week.

And the agency's failure to address [the increase in the number of weekly driving hours] . . . makes this aspect of the rule's rationality questionable.

The ATA never called for a field study when the FMCSA first imposed its experiment with shortening the length of end week off duty time to as few as 34 hours. Only now, as the agency contemplates improving the safety of the restart provision does the ATA call for additional studies. The FMCSA, however, has sufficient evidence and is acting in response to the fact that more and more drivers are taking advantage of the short turn around off duty period, far more drivers than ATA asserted would do so and considerably more drivers than the FMCSA estimated would use the provision in its 2003 regulatory analysis. Moreover, drivers are at the same time reporting high levels of fatigue while driving commercial motor vehicles, including half of all drivers surveyed admitting to falling asleep while driving in the prior year.

For these reasons your office should not give any credence to the claims made by Mr. Graves in his recent letter.

Sincerely,

Jacqueline Gillan
President
Advocates for Highway and Auto Safety

John Lannen
Executive Director
Truck Safety Coalition

Joan Claybrook
Chair, Citizens for Reliable
and Safe Highways

Greg Beck
Attorney
Public Citizen

Jack Gillis
Director of Public Affairs
Consumer Federation of America

Andrew McGuire
Executive Director
Trauma Foundation

Daphne Izer, Founder
Parents Against Tired Truckers
Lisbon, ME

Jane Mathis, Board Member
Parents Against Tired Truckers
St. Augustine, FL

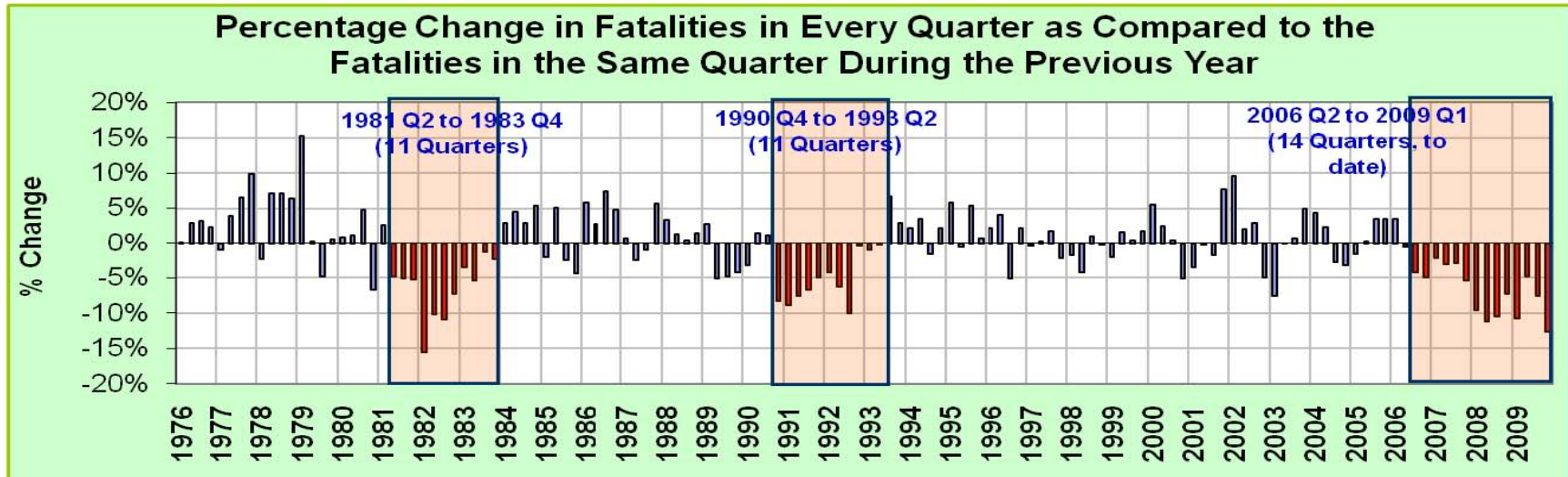
Jennifer Tierney, Board Member
Citizens for Reliable and Safe Highways
Kernersville, NC

Ed Slattery
Truck Safety Coalition
Cockeysville, Maryland

Marchelle and Frank Wood
Truck Safety Coalition
Falls Church, VA

cc: The Hon. Ray LaHood, Secretary of Transportation
The Hon. Anne Ferro, Administrator, Federal Motor Carrier Safety Administration

Long Term Quarter to Quarter Changes in All Fatalities



- ◆ Recessions in each of the three periods of 10 or more quarters of fatality declines
- ◆ Economy now is recovering from the worst recession since 1975, and longest period of consecutive quarterly fatality declines

Source: FARS

13