

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

COMMENTS OF THE
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

IN RESPONSE TO NOTICE; AVAILABILITY OF SUPPLEMENTAL
DOCUMENTS; REOPENING OF COMMENT PERIOD

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INTRODUCTION

The Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) submits these comments in response to the notice at 76 Fed. Reg. 26681 (May 9, 2011) (“Notice”), published by the Department of Transportation, Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”), seeking comments on supplemental documents pertaining to the Agency’s proposed revisions to the hours-of-service (“HOS”) regulations.

By a notice of proposed rulemaking at 75 Fed. Reg. 82170 (Dec. 29, 2010), FMCSA proposed seven significant changes to the HOS rules adopted in 2003. In OOIDA’s comments responsive to that original notice, the Association pointed out that FMCSA’s Regulatory Impact Analysis (RIA) and proposed revisions were flawed to the extent that they were based largely upon outdated studies and data collected before the current HOS rules took effect. FMCSA has now supplemented the record with four current studies that appear on their face to provide timely support for several of the proposed changes.

As discussed below, when analyzed more carefully, those studies add little to the HOS debate. Two of the studies are irrelevant because they involve drivers in transit bus systems who operate under conditions that are significantly differently than those prevalent in the trucking industry. The other two studies, which do involve the interstate commercial trucking industry, are inconsistent in important respects with each other and with other relevant studies. Further, as the authors themselves often recognize, more testing and study is needed to support the conclusions reached. This is due, in large part, to the failure in both studies to control for variables, other than

fatigue, that have been found to cause accidents.

Accordingly, these newer studies do not defeat OOIDA's arguments presented in their original comments that favor retention of the 11-hour daily driving limit and the unconditional use of the 34-hour restart provision, because both of these provisions provide drivers with needed flexibility without jeopardizing driver health or highway safety. Nor do the studies raise any serious doubts about the need for a driving window that is at least 14 hours long and can be extended to 16 hours up to two times per week. In fact, they do not add to the HOS debate in any meaningful way.

DISCUSSION

I. The bus driver studies cannot be applied to fatigue in long-haul truck drivers.

Two of the four new studies – Sando, T. et al., “Potential Causes of Driver Fatigue: A Study On Transit Bus Operators In Florida” (“Potential Causes Study”) and Sando, T., et al. “Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions” (“Cumulative Hours Study”) – address fatigue in the specific context of Florida's transit bus operations. Those studies are not helpful in developing the federal HOS regulations for several reasons.

First, the bus operations being studied are subject to a regulatory scheme that is very different from and more lenient than the federal HOS rules. Under Florida's operational standards for bus transit systems, a driver may drive up to 12 hours in any 24-hour period and may be on-duty for 16 hours in any 24-hour period. Fl. Ad. Code, Rule 14-90.006(3). Also, the Florida rules require only 8 consecutive hours off-duty before a driver may return to duty. *Id.* This is similar to the federal rules as they existed prior to 2003. As FMCSA knows, the federal rules in effect since that time allow only 11 hours of driving during a 14-hour on-duty window, after which the driver must take

10 hours off-duty before returning to work.

Second, as the authors themselves noted, there are significant operational differences between Florida's transit bus systems and the interstate commercial trucking industry. Cumulative Hours Study, p.4. As indicated in the Potential Causes Study (at lines 226 & 487), nearly two-thirds of surveyed bus drivers (61%) operate on a split shift. This type of schedule most often results in drivers starting work very early in the morning and ending late in the day after driving in both the early morning and evening rush hours, with an extended break in the middle of the day that is often used to drive to/from home or to run errands. *Id.* at lines 217-219. Further, transit bus drivers operate primarily in stop-and-go city traffic and make frequent stops to pick up and drop off passengers, a very different operational model than that most common for long-haul, regional, or line-haul truck drivers. Cumulative Hours Study, p. 4. Finally, transit bus drivers regularly collect fares, issue bus transfers, and validate identification cards in addition to driving. *Id.* Consequently, extrapolating any meaningful comparisons from the Florida bus studies to HOS rules for interstate commercial truck drivers would be like comparing apples to oranges.

Third, these studies introduce the concept of "preventable collisions" as determined by an employer as the measure for crash accountability. *Id.* at pp. 1, 5-11. Based on information provided by members, it is OOIDA's understanding that some employers hold the driver accountable for accidents for a variety of biased reasons, including the desire to get rid of a particular driver, while others insist that every incident was preventable. The studies also treat internally generated "incident reports" as the equivalent of state-filed accident reports, even though an incident may not reach the level of a DOT reportable crash. *Id.* at pp. 1, 5. The use of "incident reports" with their subjective criteria to make determinations about the relationship between fatigue and crashes likely results in

an over-representation of the correlation between on-duty hours and crashes.

Finally, these transit bus studies seem to be more in the nature of preliminary studies that might guide future research rather than the type of well thought-out and controlled studies that could support the adoption of any particular regulations. The authors themselves recognize that the studies are too simplistic because they do not consider all the factors that might lead to collisions. In the Cumulative Hours Study, at p.12, for example, it is noted that the study looked only at the total number of driving hours and “did not consider other variables that in combination with long driving hours might influence the occurrence of bus collisions,” factors such as traffic level, length of routes, type of shift, driver experience, and driving hours.” Thus, a further study investigating all of these real-world causative factors is suggested. *Id.* The authors also suggest “a within study” that compares the schedules of drivers prior to a collision with the schedules of the same drivers at other times to control for differences between individual drivers is needed. *Id.* The tentative nature of the Potential Causes Study is evidenced by the use of the term “**Potential**” in its title. As the authors recognize, the relationship between work hours and fatigue is not definitively proven, but can only “fairly be surmised” from the results. Potential Causes Study, lines 485-491. Thus, additional research is required on these issues as well.

For these many reasons, the results of these two studies on fatigue in Florida’s transit bus drivers cannot reasonably be used to guide the development of the federal HOS rules for commercial truck drivers.

II. The studies involving truck drivers produce inconsistent results.

The study by Blanco, M., et al., "The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations" (“Blanco Study”) to a large

extent supports OOIDA's positions. Indeed, based upon naturalistic observations of truck drivers operating on their normal runs, the authors found that most drivers do not use the 11th hour, but concluded that when they do the likelihood of safety-critical events (“SCEs”, including crashes, near-crashes, crash-relevant conflicts, and unintentional lane deviations) is not statistically greater when compared to the 10th driving hour. Blanco Study, pp. xvi, xx, 34, 38. In fact, the Blanco Study does not find a statistically significant difference between the 8th through 10th and the 11th hour. *See id.* & pp. 36, 43. Further, while this study finds that driving later in the workday might create a greater risk of SCEs – i.e., that driving the 11th hour at the end of a 14-hour workday is more problematic than driving after fewer on-duty hours – the authors also emphasize that, because this is the first study to investigate the interrelationship between work hours and SCEs, independent of and in combination with driving hours, additional research is needed to accurately evaluate this understudied relationship. *Id.* at pp. xxi, 9.

The authors also point out other defects in the study. First, they note that a number of factors other than fatigue that might influence SCE occurrence later in the work day need to be studied to create a complete picture. *Id.* Sleep quality/quantity, individual differences in drowsiness and sleep response, and off-duty activities are all mentioned as factors that could not but should be controlled for and considered. *Id.* Time of day is, of course, another factor, other than time on task, that has been shown to affect alertness and that might therefore be at play here.

Finally, the authors raise doubts about any conclusion that driving in the 11th hour is more risky than driving in the 8th through 10th hour by noting that 4 drivers account for 36 percent of the SCEs in those later hours. *Id.* at p. 39. This result is consistent with other studies that have found risk to be distributed unevenly; there are always some drivers in a group that are much more likely

to be involved in accidents. When these few outliers who artificially inflate SCE rates are removed from the data, any differential in the likelihood of SCEs in the 11th hour is even further reduced. *Id.* at pp. 39,40.

The Jovanis, J.P., et al., “Hours of Service and Driver Fatigue: Driver Characteristics Research” study (“Jovanis Study”), arrived at a very different, inconsistent conclusion regarding the 11th driving hour. Specifically, the study found that crash odds increased in a statistically significant manner with driving time, especially in the 11th hour for less-than-truckload (“LTL”) drivers. Jovanis Study, pp. ix-x, 63. Less significant associations were also found with longer driving hours for truckload (“TL”) drivers who drive during the day, although the authors noted that this may be because those driving hours occurred “in the late afternoon and early evening when higher traffic levels are possible.” *Id.* at pp. x, 64. For inexplicable reasons, the authors did not look at the time of day in connection with LTL drivers, nor did they provide any explanation as to why the same time of day/traffic level issues would not apply to those LTL drivers. Surely, time of day factors would play a role for the large percentage of LTL drivers studied who were on overnight trips that ended in the early morning when risks from lower circadian rhythms and high traffic levels could well induce fatigue.

In contrast to the naturalistic Blanco Study, the Jovanis Study was based entirely upon a review of driver logbooks and electronic on-board recorder (EOBR) records (“logs”), and involved a comparison between the portion of logs of drivers reflecting trips where a crash occurred and the logs of other drivers where no crash occurred. This procedure may well lead to inaccurate results. It is known throughout the industry that all manner of logs (electronic or paper) are sometimes manipulated due to carrier or shipper pressure to hide excessive on-duty hours. The authors,

however, simply dismiss this possibility as “unlikely.” Jovanis Study, p.4. Additionally, the study considered and controlled only those variables (such as driving time and duty status) that could be determined via a review of driver logs. Other factors critical to a true understanding of the relationship of fatigue to crashes, such as the severity and nature of the crash, the number of vehicles involved, where the accident occurred, road conditions, and the condition of the drivers, were not considered. Nor was any attempt made to disaggregate data to reflect these factors. Accordingly, the causal inferences drawn by the authors between fatigue and crashes in the 11th and other later driving hours are questionable.

Second, not all statistical models used by the authors reached this same result. To the contrary, the study found that the logistic regression model for driving time “shows no consistent trend relating crash odds to hours driving,” leading the authors to determine that further analysis of the crash-odds in the last hour was needed. *Id.* at p.31. The authors went on to speculate that “at least a portion of the increase in odds may be attributable to the low sample size of observations in the last hours of driving. . .” *Id.* Determined nevertheless to find a relationship, the authors tried other statistical analyses until they found one that appears to substantiate their preconceived conclusions.

The Jovanis Study also attempts to raise concerns about the safety of the 34-hour restart provision with the paradoxical finding that crash odds increase when a driver returns to work after at least 34 hours off-duty. *Id.* at x, 57. The suggestion that time off is somehow harmful is echoed in another finding, when analyzing driving patterns for TL carriers, that those drivers with the highest proportion of off-duty time in an 8-day period had the highest relative crash odds. *Id.* at p. 25. Taken together, these findings could be interpreted to mean, contrary to the scientifically-

conducted studies that led to the creation of the HOS rules and to common sense, that safety interests are better served if drivers do not take extended time off from driving!

There are flaws in the 34-hour restart analysis that might contribute to this seemingly anomalous result. First, a different modeling framework is used for the 34-hour restart analysis. Specifically, the authors looked only at those drivers who had a crash. Jovanis Study, p. 17, 57. Although they conceded this was a “weakness” and recognized that results might have differed if all surveyed drivers using the 34-hour restart had been considered (at p.17), they did not perform any alternate analysis to see if that would be so.

Second, the primary issue faced by FMCSA in connection with the restart is not whether there should be a restart provision but whether it should be 34 hours or longer. However, this Jovanis Study does not compare crash odds for restarts of varying lengths or for returns to work following breaks taken by drivers who have used their full 60/70 hours. To the contrary, it lumps together all restarts of “at least” 34 hours. *Id.* at x, 64.

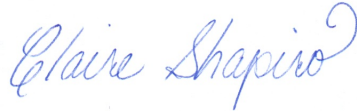
Third, the study did not consider other factors that might lead to and explain this result. Had they done so they might have found, like other studies finding similar increases in crash risks after various extended non-work breaks, that the problem is not a 34-hour or other length recovery time, but is due to the driver’s activities during that break. In short, the problem was the failure of some drivers to get adequate rest or sleep during their recovery period.

CONCLUSION

As FMCSA is well aware, the trucking industry has experienced substantial safety improvements since FMCSA’s adoption of the current HOS rules in 2003. OOIDA believes that the 11-hour daily driving limit and the unrestricted 34-hour restart provision contributed to these

gains and should therefore be retained. The four supplemental studies addressed in these comments, which are either irrelevant or inconsistent, preliminary, and incomplete in important respects, do not provide a solid basis for switching gears at this time.

Respectfully submitted,



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