

A Law of Unintended Consequences



BY KAREN CAPLAN

The DOT Revised Hours of Service Regulations proposes challenges for the produce industry.

Reform of the Hours of Service regulations has been under consideration by the Federal Motor Carrier Safety administration since 1995.

Effective January 4, 2004, the Hours of Service regulations were changed. The brochure issued by the U.S. Department of Transportation (DOT) makes it clear that the regulations were revised based on years of extensive, expert analysis — revisions were not done in a hasty manner. The motivation was clearly to make our highways safer by reducing highway deaths due to fatigued, overworked drivers.

And the changes made were, at first glance, reasonable — mostly involving changes in the number of hours a driver must rest and the number of hours a driver may drive or be on duty.

However, like most laws and regulations, the devil is in the details. We need to look at what this revision now classifies as “on duty”.

The new regulations no longer allow drivers to count as “off duty” the following non-driving activities: eating, showering, pre- and post-trip inspections, counting freight, loading, unloading, breakdowns, and weather delays.

Let me relate this to the fresh produce industry. At least 95 percent of all fresh produce is transported from growing areas, cross-country to retail distribution centers, and eventually to supermarkets.

As you can well imagine, truck drivers, as Rodney Dangerfield would say, “get no respect.” However, they have one of the most critical roles in agriculture.

Many times the produce is harvested just hours before it is loaded on a truck. Many times drivers will wait hours and sometimes days at a packing shed for lettuce to be harvested, precooled and then packed, before they can get on the road to their ultimate destination — many times all the way cross-country — a trip that in 2003 would be from four to six days long.

Many of the truck drivers are owner-operators who get between \$1500 and \$5000 a load (depending on time of year, destination, and supply and demand) to haul produce. This includes not only the cost of their truck, fuel, repairs, and insurance — but also what they live on and what they use to support their families.

Since this new regulation went into effect, the produce industry has lost tremendous flexibility. Drivers used to be able to count their waiting time at packing sheds as rest time, along with the other non-driving activities mentioned above.

Because of the new regulations, a load set to leave California on Monday to arrive in St. Louis on Wednesday, in many cases, will not arrive until Thursday. So in addition to the driver being out \$300 to \$400 in lost daily drive time, he must try to negotiate higher prices to his customer (the retail chain store) to maintain the same total revenue.

I say *try* because there will still be pressure on these drivers to find a way to make the customary delivery dates.

Let's not forget we are talking about perishable products. Another day bouncing around the inside of a truck will age the product unnecessarily. That means more rejections of produce at its destination. That means lower returns to the farmer. That means poorer quality produce at retail. And that means higher costs for retailers... and thus, higher food costs for consumers.

So what choice does a trucker have?

Over 20,000 carriers have closed their doors in the last three years. Many of those are owner-operators. These entrepreneurs have been victims of a struggling economy, higher fuel prices and hefty insurance increases. The survivors who service the fresh produce industry have now been dealt a blow that has forced several large national produce carriers to sell out and get out.

No one would argue we don't need safer roads. Those of us on the supply side (growers, shippers and distributors) are working to streamline our systems and processes so

we do not unnecessarily delay drivers.

However, the economic impact on this critical piece of the economic puzzle is yet to be calculated. Consider this:

- Seasoned drivers may look for other more profitable lines of work leaving only poorly qualified replacements whose inexperience in big rigs may result in increased accidents.

- Quality claims on produce caused by longer transit times to the end receiver will increase claims against carriers and farmers who are already barely making ends meet.

- USDA may need to consider rewriting the tolerances for good arrival standards to allow for longer cross-country drive time to receivers.

Randall Wills, president of Mid-Western Car Carriers, based in Kansas City, MO, sums up the situation this way: “Washington, D.C. goes home every night without a thought of the real nuts-and-bolts people who deliver the very things that all of us require and enjoy. I wonder if [the people in government] realize how this affects all our lives and pocketbooks” **pb**

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