

BY HENRY E. SEATON

# THE NEW HIGHEST PRICE OF OPERATING

This month's topic is addressing costs from the ground up. Traditionally, spiking fuel costs have been the Achilles heel of truck transportation but with the decreasing cost of fuel for the foreseeable future, energy costs will not be the major limiting factor on the productivity of truck transportation.

I believe the increasing cost of regulatory compliance for some time has been and will continue to largely be responsible for the spike in costs. Let me explain why.

All too frequently, federal and state regulators “don blinders” when it comes to considering the indirect cost of safety, welfare and environmental regulations involving the trucking industry. There are statutes on the books like the Paperwork Reduction Act and the Reg Flex Act which require the federal government to consider the economic impact of new regulations on the industry and small businesses in particular.

As part of the new FAST Act, Congress expressly directed the FMCSA to do an in-depth preliminary study of the effect of any new major rule on all segments of the transportation industry in reaction, at least in part, to the agency's bureaucratic overreach in the past. Yet the agency's analysis in completed and pending rulemaking is largely superficial and confined to directly allocable costs of compliance which ignores the consequential cost of lost productivity.

The hours of service regulations do not regulate or measure driver fatigue, as the Tracy Morgan accident poignantly shows. Wiring a computer up to a truck is no realistic measure of actual driver fatigue. It offers no flexibility to complete the task. Rigid enforcement of the hours of service and ELD rule denies drivers the discretion to rest when tired and the flexibility to plan their schedule to avoid traffic and congestion.

Ironically, the industry was “asleep at the wheel” when they allowed the HOS rule to go in place over a decade ago. They never really questioned the circadian sleep science or forced consideration of the nap studies which the agency's own experts suggested had a more efficacious effect on fatigue than the more rigid 11-14-10 schedule which the current rule imposes.

## Some examples of regulations which have adverse productivity consequences include:

- Hours of service restrictions
- The imminent ELD rule
- Speed limiters
- State imposed workplace and environmental laws which further burden the free and unimpeded flow of interstate commerce.

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With the loss of flexible sleeper berth time and the 34 hour restart a driver's ability to schedule daytime pickups and deliveries around a mandatory 10 consecutive hour rest period has been greatly compromised. While the coming ELD will save drivers time in preparing a paper log, in reality it is little more than a 21st century tachograph which is hard wired to the truck and ignores technology which could measure driver fatigue in real time and permit within limitations more flexibility, and more efficient use of equipment.

State laws which mandate lunch breaks, limit truck idling and require use of certain fuels only further complicate the truck driver's life and restricts his ability to "get miles and get home." In passing regulations which hamstring driver flexibility, additional unforeseen consequential expenses are passed through the supply chain.

With deregulation in the mid 80s the concept of "just in time" supply chain management was implemented utilizing truckload and stop off truckload service which avoided delays and claims which accompanies the cross dock and re-handling of freight formerly necessary when rights were allocated along regular routes and multiple line services was essential.

Shippers, in planning for scheduled deliveries, enjoyed the benefit of flexible driver schedules, including the ability to log off duty not driving in order to rest and not lose on duty time while waiting to load or unload. At the same time, driver flexibility is being suppressed, and the cost of new equipment has doubled with no immediate end in sight. No longer can a driver afford to wait to load and unload or lose productivity while idling sitting on a new \$160,000 tractor/trailer without incurring substantial detention charges.

In the old days, when uncompensated detention of equipment became an issue, the ICC imposed mandatory detention charges to address a consignor's or consignee's inability to load or unload carrier equipment upon arrival. Now shippers expect expedited delivery times and penalize carriers for not making deliveries faster than the law allows.

**In the last week of January 2016 new coercion rules went into effect which are intended to punish shippers, brokers and carriers who knowingly require or economically penalize drivers for failure to make deliveries quicker than the law and the hours of service allow.**

All these regulatory initiatives considered, some things are clear. The jury is out on the agency's required study of the 34 hour restart. And yet, either way that goes, the increasing costs of equipment and the restriction on driver productivity are bound to have a significant effect on supply chain costs.

The shippers who now penalize carriers for not making closely timed appointments must rethink their distribution needs. They must add flexibility and pay for detention as needed, or add extra near-site storage capacity through warehousing or drop and hook facilities near the plant location.

From the carrier's point of view, short haul (less than 250 miles one way) probably must be priced on a roundtrip basis assuming one load per day. With intermediate and long haul traffic, strategically placed trailer pools and local cartage may result in competitive advantages for carriers who can re-engineer the economies of overnight dispatch.

In sum, much of the flexibility of truckload dispatch has been eliminated by regulations which restrict driver productivity. Shippers cannot expect or demand anything more than reasonable dispatch from carriers and unless shippers and carriers work together to ameliorate detention time, the real economic cost of detaining driver power and trailer can be significant. ♦

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