Statement of

Frank E. Miller

Of

W.S. Badcock Corporation

On Behalf of the

National Retail Federation

Submitted to the

United States House Committee on Oversight and Government Reform Senate Committee Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

For its hearing on

The Price of Uncertainty: How Much Could DOT's Proposed Billion Dollar Service Rule Cost Consumers This Holiday Season?

Held on

November 30, 2011

Liberty Place
325 7th Street NW, Suite 1100
Washington, DC 20004
800.NRF.HOW2 (800.673.4692)
202.783.7971 fax 202.737.2849
www.nrf.com

Chairman Jordan, Ranking Member Kucinich, Members of the Subcommittee, my name is Frank Miller and I am the Director of Logistics for **W.S. Badcock Corporation.** Thank you very much for the opportunity to come here today to testify on the Department of Transportation's proposed changes to the Driver's Hours of Service Regulations (HOS). Today I will be testifying on behalf of W.S. Badcock Corporation and the National Retail Federation (NRF).

Badcock, NRF and its members strongly support the current HOS regulations and question the need to make changes. If changes to the current HOS regulations are necessary, they should be based on sound science and studies of safety and driver health. In addition, the FMCSA must consider the significant economic impact that changes to the current HOS will have across the industry, including the impact to retail operations at both the store and distribution center level. Unfortunately we do not believe the proposed changes meet any of these requirements and will have a significant negative impact on industry, the economy and potentially driver safety.

To give you some background, W.S. Badcock Corporation is one of the largest privately-owned home furniture retailers in the United States. Founded in 1904, Badcock has been operating for more than 100 years. Badcock is headquartered in Mulberry, Florida, and employs more than 1,200 corporate employees. There are more than 300 Badcock stores in eight states which offer customers a full range of furniture, bedding, appliances, electronics, accessories and floor coverings. More than 80 percent of our stores are individually owned through our unique dealership business model. Because we consign all of our merchandise to the dealers and do not require a franchise fee, our model offers the benefits of business ownership and allows for a quicker start-up than the traditional franchise model.

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing $2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's Retail Means Jobs campaign emphasizes the economic importance of retail and encourages policymakers to support a Jobs, Innovation and Consumer Value Agenda aimed at boosting economic growth and job creation.

Background

Safe and efficient supply chains are critical to the success of a retailer's operations. The ability to transport products to distribution centers and retail stores in a timely, efficient and safe manner is critical to ensure products will be on store shelves for consumers. This is a fundamental requirement for the continued health of the retail sector. The efficient movement of goods not only benefits the retailer, but their vendor partners, their consumers and the U.S. economy as a whole.

While many in industry were concerned about the impact of the HOS regulations when they first went into effect in January 2004, U.S. industry, including retailers, have adapted their operations to comply with these requirements. However, removing the current rules and reverting back to the old rules or some variation thereof, would result in significant cost increases for the industry as a whole and would adversely impact the U.S. economy across all sectors.

Badcock's transportation network consists of more than 45 tractor trailers which run more than four million miles annually in eight southeastern states and a fleet of delivery trucks operating from the Badcock stores to the customer's home. In addition, Badcock tenders more than $3,000,000 in freight annually with U.S. based common carriers. We estimate that the impact of the proposed change in hours of service rules could increase transportation costs by 10 to 20 percent annually depending on the specific retailer's network and operation. For Badcock this would result in an estimated increase of approximately $2.8 million annually.

We are also concerned about the possibility for adverse unintended consequences as a result of the proposed changes that could lead to further cost increases. The reduction in transportation productivity and driver capacity owing to the rule change could substantially undermine supply chain performance in the retail sector. The proposed changes will also exacerbate the current driver shortage and may lead some companies to put less qualified drivers on the road.

Enhanced Driver Safety

In the Notice of Proposed Rulemaking issued by FMCSA, the agency discussed numerous studies that have measured the results of the existing HOS regulations and the impact on driver safety. As pointed out both by the DOT studies and those conducted by industry, including the American Trucking Associations (ATA), there is significant evidence that the 11-hour on-duty rule has resulted in enhanced driver safety, not less as some have claimed. All of the studies have pointed to fewer fatalities due to accidents involving large trucks.

The latest statistics from the FMCSA's "Large Truck and Bus Crash Facts 2009, states that "in 2009, 3,215 large trucks were involved in fatal crashes, a 21 percent decrease from 2008 and the largest annual decline since records have been kept. Combined with the 12 percent decline from 2007 to 2008 (the second-largest decline), the number of large trucks involved in fatal crashes declined by 31 percent from 2007 to 2009. The number of passenger vehicles involved in fatal crashes declined by 19 percent over the same period."

If the 11-hour drive time limit were to be reduced to the previous 10-hour limit, we anticipate there will be a need for significantly more trucks and drivers on the road to fulfill the demands of what is currently being accomplished under the 11-hour on-duty time. While there will be a greater need for more truckers, that need will go unfilled as there already exists a significant shortage of properly trained and qualified truck drivers in the U.S or it could result in some companies utilizing less qualified drivers.

We also have similar concerns over the proposed change to the 34 hour restart rule that would include two consecutive nights (midnight – 6:00 am) of rest. These changes could reduce road safety resulting from the need for additional trucks on the road during peak commuter hours. Other impacts could include increased diesel emissions, additional congestion and more wear and tear on infrastructure. This change will also force drivers to take their breaks at government mandated times rather than when the driver's body determines that it needs sleep. Under the current regulations the drivers have some flexibility in this area.

In addition, these changes will have an economic impact on current drivers by limiting the time they are able to drive, which could potentially reduce their take home pay since they are typically paid by the number of miles they drive. Both of these changes will reduce the number of hours and miles that drivers will be able to drive.

11-Hour Daily Driving Limit

Badcock, along with NRF's members, operate intricate supply chains, which include an interwoven network of distribution centers and retail stores which are serviced by both private and contract motor carrier fleets. We all rely on significant on-time delivery rates to get our merchandise onto the store floor for retail sale. This is critical in the scheduling of labor for both distribution centers and retail stores. Greater on-time deliveries allow for the seamless flow of products through the distribution system with delivery of the right products to the right place at the right time. The existing 11-hour daily driving limit is critical to accomplishing this goal.

As a result of the current 11-hour daily driving limit, U.S. retailers have been able to achieve significant efficiencies within their supply chains and distribution networks. They have been able to work with their transportation providers to appropriately plan for the safe and efficient delivery of goods to their distribution centers and retail stores with a significantly high on-time delivery rate. Any change to this daily driving limit will upset the careful balance and efficiencies that have been achieved and require changes to current systems and processes. In addition, such changes could result in significantly higher transportation costs and could lead to less safety as additional drivers and trucks will be required to make up for the shortfall. These changes would impact retailer costs—increases that would ultimately be passed on to the consumer.

For Badcock, a reduction in driving time from 11 hours to 10 would affect an estimated 11 percent of loads resulting in an approximate cost of $1.5 million, forcing the company to increase its fleet size and pay higher rates for trucking.

34 Hour Restart Provision

In addition to the change to the maximum allowable drive time, Badcock, along with others in the retail sector, are concerned about proposed changes to the 34 hour restart provision that includes two consecutive nights (midnight to 6 am) of rest. Many retailers with stores located in urban areas use nighttime hours to efficiently reach stores and restock shelves during less congested hours. The use of nighttime hours provides many retailers greater reliability over their supply chain by reducing congestion related delays. The deployment of more trucks during the night also separates truck and automobile interactions contributing to increased safety. The proposed change to the 34 hour restart provision to include two consecutive nights of rest reduces the ability to schedule deliveries at night placing more trucks on the road during normal commuting hours. This adversely impacts a retailer's supply chain performance, potentially increasing congestion related delays and increasing the likelihood of accidents as a result of greater truck and automobile interactions.

For Badcock, the changes to the 34 hour restart could affect an estimated 6.6 percent of Badcock loads a year resulting in an estimated additional annual cost of $940,000. Those common carriers utilized by Badcock would most certainly also be impacted by the change. We feel the change will result in more lost carrier productivity that would be passed directly to the consumers as millions of dollars in rate increases.

Other Impacts

In addition, it is important to note that distribution networks are experiencing increased demand, which is expected to grow substantially. This is significant as the economy continues to recover from one of the worst recessions in history. Additional trucks and drivers will be necessary to meet this growing demand regardless of changes to the HOS requirements. Unfortunately, adding new capacity to the network will be extremely difficult as there is currently a shortage of available qualified drivers that is anticipated to continue. The capacity shortfall will be further exacerbated as we expect an increase in the number of bankruptcies of smaller trucking companies due to an inability to make the necessary investments to meet new clean engine emissions laws.

A change in the current HOS regulations will not only lead to further capacity reductions because of less driving time, but could also increase congestion on the roads and require retailers to carry additional inventory, at additional costs, in order to ensure that they have products on their store shelves, since reliability of service could be interrupted. The proposed changes to the existing hours of service rules that limit drive time and the hours retailers may dispatch drivers may reduce take home pay of drivers as well since they are typically paid by the miles they drive. Reducing driving time by one hour could potentially represent a ten percent reduction in a drivers take home pay. Increased transportation costs will result from the need to hire additional drivers and purchase additional equipment to make up for the expected capacity shortfall. Again, both will be difficult because of the current driver shortage. We fear that a reduction in driver pay, due to a reduction in driving time, may contribute to the expected capacity shortfall by making truck driving less attractive and more burdensome to potential new drivers.

We are also concerned about the potential adverse impact on road and highway safety and on many environmental investments in the supply chain and transportation industry. The proposed changes to the hours of service rule may increase the number of trucks deployed to move the same freight while restricting the ability to move a portion of this freight during non-peak commuting hours. This increases vehicle interactions with motorists and reduces safety, and also complicates many environmental initiatives implemented by retailers. In the transportation sector, many retailers are actively pursuing strategies to greatly reduce the carbon footprint of the supply chain. Many of these initiatives involve efforts to reduce hauls and deploy trucks and drivers as productively as possible including during nighttime.

HOS Investments

The transportation industry as a whole has invested millions of dollars on compliance with current HOS regulations. This includes considerable investments by U.S. retailers in their systems and operations, including training, to ensure compliance with the current regulations. Many carriers such as Badcock are investing thousands of dollars in training, internal auditing and electronic log systems for compliance. Badcock's training and log auditing costs currently exceed $17,830 per year and are soon to exceed $40,880 per year once the implementation of an electronic log system is complete.

Any changes to the current HOS regulations will once again require substantial investment to enable companies to readjust and retrain an entire workforce, including a large number of new drivers, to be able to comply with new rules. This will result in significant increases in transportation costs, which could be millions of dollars per company. In addition, this could result in increased costs for other services, including a potential requirement to carry additional inventory to ensure products are on the store shelves. These increased costs will be passed from the transportation provider to their customer and ultimately to the end consumer.

CSA 2010

The Federal Motor Carrier Safety Administration and the trucking community are in the midst of one of the most sweeping changes to motor carrier compliance enforcement the industry has experienced; Compliance, Safety, Accountability 2010, better known as "CSA 2010". This program dramatically changes the way carriers are monitored by both the Federal Motor Carrier Safety Administration and their compliance partners at the state level. The program also provides less technically proficient carriers with an exceptional tool to monitor their fleet's safety and compliance performance.

We strongly support CSA 2010. However, there does not appear to be any validated public data available at this time to judge the improvement that CSA 2010 has made on the trucking industry's safety record. The question needs to be asked if many of the goals and objectives that are being touted by the proposed hours of service changes will in fact be accomplished through the improved compliance monitoring provided by CSA 2010.

Regulatory Impact Analysis

In addition to the issues that NRF and others within the transportation industry have raised about the operational impact the proposed HOS changes will have on the industry, we are extremely concerned that these factors were not considered in the regulatory impact analysis that was conducted by the agency. According to the agency, they do not believe the proposed changes will have an impact on short haul trucking, so that segment of the industry was not included in the agency's calculations. We fully believe this is an inaccurate statement, as evidenced by my testimony today and the impact the proposed changes will have on Badcock. We support the findings from the study conducted by Edgeworth Economics released on February 15, 2011 which questions the results of the FMCSA regulatory impact analysis.

Conclusion

On behalf of W.S. Badcock Corporation and the National Retail Federation, I would like to thank you again for the opportunity to testify during today's hearing. On behalf of America's retailers we urge the FMCSA to maintain the current HOS regulations. The current rules are working as shown by the continued decline in large truck accidents. We believe this decrease will only continue with the progression of CSA 2010. We fully support efforts to continue to improve the safety of trucks on America's roads. However, we must ensure the rules are enacted in a prudent way, and not in a manner that will negatively impact the nation's recovering economy without providing the desired safety improvements. I look forward to answering questions members of the Committee may have.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Frank E. Miller

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

To the best of my knowledge neither I nor my employer have recieved any federal grants or contracts in the period noted.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

I am testifying on behalf of the National Retail Federation and my employer W.S. Badcock Corporation. As a retailer W.S. Badcock supports many of the stances that the National Retail Federation takes relating to the retail industry.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

2) W.S Badcock Corporation: No grants or contracts that I am aware of.

2.) National Retail Federation: No grants or contracts are received from the Federal gov't that I am aware of.

I certify that the above information is true and correct.
Signature:

Date: 11/28/2011

Frank E. Miller

Director of Logistics
Badcock Furniture
December, 2005 to Present

Manage all modes of inbound and outbound domestic transportation for four U.S. distributions centers that service 320 retail locations in the United States. Responsible for a 50 unit private truck fleet, LTL, intermodal and common carrier relationships. Oversee international import compliance, Asian freight consolidation, freight forwarders, freight claims, freight payment, and customs brokers.

- Generated more than $1,000,000 in logistics related savings.
- On time integration of a new freight forwarder with full EDI interfaces.
- Developed a national logistics program to support the company's ecommerce efforts including web based parcel tracking.
- Developed a fleet safety program that reduced annual fleet accident costs to less than $50,000 for more than 4,500,000 miles traveled.
- Developed a comprehensive maintenance program for the company's 300 trailer fleet.

Corporate Manager of Purchasing and Logistics
Roy O. Martin Lumber
September 2003 – November 2005

Assumed the additional responsibility for the Company's industrial purchasing function which included direct supervision of four purchasing agents in 3 lumber manufacturing facilities. Actively involved in the design and location of the company's newest OSB mill, including the purchase of all rail related equipment, and negotiations with the Union Pacific Railroad.

- Reduced storeroom inventories by more than $1.2 million across 4 manufacturing facilities with no increase in down time.
- Reduced purchasing costs by more than $100,000 annually.
- Responsible for the importation of the largest OSB mill in the United States from Germany to Louisiana with freight costs that exceeded $5,000,000.

Corporate Manager of Transportation and Logistics
Roy O. Martin Lumber
August 2002 – September 2003
Responsible for rail, truck, barge, LTL, and international logistics for four manufacturing facilities as well as for the approval of all sales related credit in the absence of the corporate credit manager.

- Developed a fleet safety program for all company owned vehicles.
- Revised all company bills of lading and logistics contracts to reduce liability and exposure to the family.

Assistant Vice President of Transportation
The Smithfield Packing Company, Inc (a subsidiary of Smithfield Foods, Inc.)
January 2000-July 2002
Responsible for routing, traffic, freight claims, order entry, outside carriers, union relations, billing, driver payroll, fleet safety, and a 125 truck refrigerated private fleet. Reduced transportation costs by more than $0.05 per pound or more than $1,000,000 annually due to improved routing and operational efficiencies. Shipping volumes were more than 2,000 truck loads per week with an annual spend in excess of $50,000,000 annually.

- Project Manager for the implementation of I2's Transportation Management System. Project was delivered on time and under budget. First year savings were more than $1.4 million.
- Member of a three person team that negotiated a multi-year $60,000,000 incentive based driver pay contract for the company's union drivers.

Transportation Analyst
The Smithfield Packing Company, Inc (a subsidiary of Smithfield Foods, Inc.)
November 1998 – January 2000
Provided complex analytical and project management support to the VP of Logistics. Also accountable for freight payment, billing, monthly financial closings, software selection, and implementation and development of seasonal logistics plans to handle surges in volume that exceeded 50% or more than 300 refrigerated loads per day.

- Project Manager for the selection and implementation of a Qualcomm tracking system in the Company's private fleet which included XATA electronic logs.

Assistant Vice President of Customer Service
The Smithfield Packing Company, Inc (a subsidiary of Smithfield Foods, Inc.)
June 1996-November 1998
Responsible for order entry, fresh meat production scheduling, traffic, routing, customer service, billing, third party refrigerated warehousing, and international freight departments.

- Developed a comprehensive customer service department.
- Worked with operations to reduce production overages and unders in fresh meat operations by more than 90%.

Assistant Vice President of Warehousing and Distribution,
The Smithfield Packing Company, Inc (a subsidiary of Smithfield Foods, Inc.)
May 1995-June 1996
Responsible for order entry, load planning, traffic, six temperature controlled distribution points, 45 third party refrigerated warehouse providers, and the international freight department.

- Developed and implemented a color coded tag system that reduced rotational errors by 90% across 4,500 SKU'S.
- Maintained a distribution fill rate in excess of 95%.

General Manager of Distribution,
The Smithfield Packing Company, Inc (a subsidiary of Smithfield Foods, Inc.)
April 1993-May 1995
Responsible for order entry, load planning, traffic, four temperature controlled distribution locations, freight payment, driver payroll, fleet safety, outside cold storage facilities, the international freight department, and outside carrier relations.

- Project Manager for the implementation of TMW'S dispatch software.

Cost Accountant
Gwaltney of Smithfield, LTD, (a subsidiary of Smithfield Foods, Inc.)
January 1993 – April 1993
Selected by the subsidiary president to implement a "standard cost" cost accounting system in an operating company with sales in excess of $300 million and four manufacturing facilities.

Financial Analyst
Smithfield Foods, Inc
January 1991 – January 1993
Prepared and presented complex analysis to senior management and reconciled cost accounting documents to the general ledger. Performed due diligence for acquisitions and contracts; prepared operational audits, and generated financial statements for various business entities; also actively involved in systems setup and design for new facilities and acquisitions. Performed an extensive amount of analysis on the Company's private fleet operations.

Education:
Christopher Newport University
B.S. Business Administration
Major: Accounting
December 1990

Attended numerous seminars and courses in logistics, software systems, accounting, import and export compliance, negotiating, sales, and warehousing.

Systems Experience
System experience includes mainframes, AS 400's, and client server architecture. Software experience includes Microsoft Office, Oracle, JD Edwards, Radcliffe WMS, PC Miler, I2, TMW, and numerous proprietary systems. Implemented I2, Qualcomm and numerous other software packages.

Personal:
College education was self-funded by working in Riyadh, Saudi Arabia; without loans.