



October 21, 2019

U.S. Department of Transportation
Docket Operations
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Submitted via www.regulations.gov

Re: Hours of Service of Drivers
Docket No. FMCSA-2018-0248-5454

Dear Docket Clerk:

Pursuant to the Federal Motor Carrier Safety Administration (FMCSA) request for comments published in the August 22, 2019 Federal Register regarding Hours of Service of Drivers, Docket No. FMCSA-2018-0248-5454, the Truckload Carriers Association (TCA) hereby submits these comments.

TCA, with offices at 555 East Braddock Road, Alexandria, VA, 22314, is the only national trade association whose collective sole focus is the truckload segment of the trucking industry. The association represents dry van, refrigerated, flatbed, and rail intermodal carriers operating in the 48 contiguous U.S. states, as well as Alaska, Mexico, and Canada. As a major part of an industry that has over 524,000 companies within the United States operating millions of power units, TCA and its trucking company members regularly comment on matters affecting the national trucking industry's common interests and the potential impacts these matters could have on our operations. With that in mind, TCA and its members are vitally interested in the FMCSA's objectives and strategies to improve highway safety, particularly as they relate to compliance with the hours-of-service (HOS) regulations.

In accordance with the Agency's request for comments corresponding with the Notice of Proposed Rulemaking's (NPRM) questions, TCA's responses can be found below.

A. Short-haul operations.

While TCA's membership is mostly comprised of long-haul carriers, TCA believes that a 14-hour workday should be standardized for all drivers, both long-haul and short-haul. Granting more HOS flexibility for drivers within the workday is paramount, and that flexibility can only be applied fairly when all drivers fall under the same standards. A

standardized 14-hour work window would lessen the opportunity for confusion and misrepresentation within the trucking community as a whole.

However, TCA is concerned about the impact of this proposal on the electronic logging device (ELD) mandate. TCA and our members are in complete support of the mandate as a way to improve compliance with HOS regulations and, as a result, lead to improved compliance with safety regulations on our nation's highways. Many drivers who are currently required to log their HOS with an ELD could be exempted from this obligation under the proposed rule change. TCA is opposed to any proposal which would weaken the ELD mandate.

In order for the short-haul exemption revision as proposed in FMCSA's NPRM to have a minimal impact on the ELD mandate, TCA recommends that the Agency require all drivers log their HOS electronically, regardless of distance traveled. This will ensure that the ability for short-haul drivers to falsify their logs is minimized and that compliance with HOS will improve overall. If FMCSA does not move forward with removing the short-haul exemption from the ELD mandate, at the very least, TCA believes the drivers who would switch from long-haul to short-haul under this proposal must be grandfathered into the ELD mandate. FMCSA should not pursue regulatory changes that would take ELDs out of trucks.

B. Adverse driving conditions.

TCA believes that the adverse driving conditions exception is an important tool for drivers to safely avoid dangerous weather conditions. We agree with FMCSA's proposal that drivers should be able to extend the 14-hour work day window, not just the 11-hour driving limit, by two hours when they are utilizing the adverse driving exception. Due to various factors outside the driver's control which contribute to the 14-hour work day, such as loading and unloading time, drivers may be pushed over the 14-hour limit if they claim adverse driving conditions.

Merely extending the 11-hour driving limit does provide some flexibility to drivers, but they may be forced to violate the HOS rules when the exception allows them to drive for 13 hours but not extend their work day. Keeping the 2-hour exception flexibility consistent for both the driving limit and the work day window would provide the drivers with a sense of security as they proceed with their trip, knowing they will likely not violate either window when utilizing the exception. As such, we do believe that the proposed change will result in more drivers utilizing the adverse driving exception when encountering dangerous conditions because they will now have a longer window in which to complete their daily work.

One major concern that surrounds the use of the adverse driving exception, with or without the proposed change, is the potential for fraud. The possibility exists for drivers to log adverse driving when those conditions are not truly present. In order to correct for this loophole, a clear stream of communication must be developed between the driver and the dispatcher. We do not believe that the knowledge of adverse conditions should rest solely with either the driver or the dispatcher, but rather that both should have responsibility for

making the call on adverse conditions. If the driver claims to encounter weather conditions on the roads for which he or she would need to pull over and wait, the dispatcher can confirm that the weather disruption exists and jointly the two can make the decision. We do not feel the dispatcher should have sole responsibility in order to preserve the driver's ability to make the decision for themselves. Instead, the dispatcher must be made aware of the driver's concerns and confirm that the weather disruption exists.

Additionally, we do not feel that the definition of "adverse driving conditions" should be modified to address any other circumstances. There is currently adequate flexibility in the existing definition of adverse driving conditions under 49 CFR § 395.2, which includes "snow, sleet, fog, or other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun." This list is exhaustive and encompasses both weather and other types of roadway conditions, none of which are controllable by the driver. Because of this, TCA fears that expanding the definition of adverse driving conditions could lead to the abuse of this exception, resulting in increased unsafe driving practices.

We also believe that providing law enforcement officials with updated systems to verify the true nature of the adverse conditions would improve drivers' comfort with utilizing this exception. When it becomes easier for law enforcement to go back and verify the true weather, road, or traffic conditions during which the driver logged the adverse driving hours, more integrity will be added into the process. Not only would this verification system empower drivers to use the adverse driving conditions exception when necessary, but it would also effectively minimize the ability of bad actors to unfairly take advantage of the flexibility when they are not actually facing dangerous conditions.

C. 30-minute break.

TCA is pleased to see that FMCSA is moving forward with flexibility on the 30-minute break by providing drivers the ability to satisfy the requirement by an on-duty break as opposed to an off-duty break. As commenters noted at the FMCSA public listening session held on August 24, 2018 in Dallas, TX, drivers will voluntarily rest during the day to reset their minds and eyes, use the restroom, or purchase food.¹ While we would like to see the regulatory change extend to fulfilling the rest break requirement with any combination of breaks totaling 30 minutes, we appreciate the FMCSA's efforts at this time and encourage the Agency to investigate further regulatory changes in the future.

Additionally, it has repeatedly been demonstrated that, on average, truckload drivers only utilize 6.5-7 hours of drive time out of their 11-hour daily driving window.² With this data

¹ Brian Straight, "Trucking industry to FMCSA: We just want flexibility with HOS," *FreightWaves*, August 25, 2018, <https://www.freightwaves.com/news/driver-issues/industry-seeks-flexibility-in-driving-hours-changes>.

² Dave Heller and Kathryn Sanner, "Detention time math class: Drivers lose over 20,000 miles per year," January 30, 2019, <https://www.truckloadindexes.com/data-commentary/detention-time-math-drivers-lose-over-20000-miles-per-year>.

point in mind, it is highly unlikely that a truckload driver would drive for 8 hours straight without taking another break equivalent to 30 minutes. As such, TCA feels that a complete removal of the 30-minute break requirement would be the best course of action by the Agency. Because this requirement would still be on the books under FMCSA's current proposal, even though most drivers would no longer need the break due to the new flexibility, the regulation is overbearing and unnecessary. Reducing the regulatory burden would save enforcement dollars for the government and compliance time and money for drivers and carriers.

In conjunction with full split-sleeper berth flexibility, drivers will be able to obtain adequate rest breaks through a 24-hour daily driving period if the 30-minute rest break rule is eliminated. Allowing drivers to stop and rest when they feel tired, and not at a time that is predetermined by the Agency, is key to alleviating fatigue-related safety issues for drivers. Split-sleeper berth flexibility, allowing drivers to take their mandated 10 hours of off-duty rest time in various intervals over a 24-hour period, would effectively achieve the safety benefits goal of the current 30-minute break.

Additional benefits would be gained from removing the 30-minute break rule from the federal regulations. This can already be seen by the multiple exemptions granted to drivers of various types of CMVs, proving both the ambiguous nature of the rule and its narrow relevance for only a small number of fleet types.³ If the 30-minute rest break does not work for every type of driver, fails to provide a one-size-fits-all solution, and can only be remedied by relaxing the regulatory burden, the costs of the requirement clearly outweigh the benefits and it should be repealed.

D. Sleeper Berth.

TCA applauds FMCSA for moving forward with added flexibility to the split-sleeper berth HOS provision through this NPRM. However, we continue to advocate for full sleeper berth flexibility, including the ability for the driver to take the required 10-hour rest break in any interval he or she chooses. This includes a 5/5 split and a 6/4 split, in addition to the 7/3 and 8/2 options currently being discussed. TCA does not believe that a 7/3 split will go far enough to provide the needed flexibility for improving safety performance and reducing exposure.

FMCSA's proposal has similarities to the "rolling recap" method of HOS, which was used prior to the current system's adoption in 2005. This method relied on true split-sleeper berth flexibility, in which a driver could take his or her rest breaks at any interval. In the NPRM, FMCSA asks commenters to provide any available data to justify the requested additional regulatory flexibility. The data from the previous "rolling recap" system would be 14-years-old at this point, and as that data was collected through paper logs which could easily be falsified, TCA is concerned that FMCSA is relying on industry to provide data that either does not exist or should not be relied upon to construct facts-driven policies.

³ Federal Motor Carrier Safety Administration, "FMCSA Part 381 Exemptions in Effect," May 8, 2018, <https://www.fmcsa.dot.gov/exemptions>.

TCA is also disappointed to see that FMCSA is asking for industry data that likely does not exist when, earlier this year, the Agency canceled its plans for a 12-month split-sleeper berth pilot program which would have collected the very information FMCSA currently seeks.⁴ At the time, TCA saw value in this decision as pilot programs are often very time consuming and costly, and because FMCSA claimed to have received all the data it needed to justify changes to the split-sleeper berth provision through the comments to the HOS Advanced Notice of Proposed Rulemaking. Unfortunately, the Agency has decided not to pursue full flexibility in this NPRM, and as such, TCA sees the canceling of the pilot program as a missed opportunity.

Relying on the existing data available, full split-sleeper berth flexibility would clearly be beneficial to safety. FMCSA's 2010-2011 split-sleep study found that split sleep throughout the workday is preferable to consolidated daytime sleep.⁵ Since many drivers operate at night in order to avoid traffic congestion, particularly around large cities, it is clear that providing the flexibility to sleep at any period throughout the day is preferable from a safety perspective to forcing drivers to take their rest at one interval during the day when they will experience low sleep propensity and obtain less rest than if they had split the rest period into separate parts. A recent study from the American Transportation Research Institute (ATRI) states that, "...there is a range of 53.5 minutes between the best and worst travel times" in the travel corridor studied.⁶ If drivers were able to utilize split-sleeper berth flexibility and rest at the times which make the most sense from both a fatigue and trip optimization standpoint, this nearly hour of potentially wasted time during the worst driving periods could be avoided.

ATRI also points out that use of the current flexibility is not practical to avoid congestion since rush-hour traffic often lasts for several hours. Providing drivers the flexibility to take their rest in the sleeper berth at the interval that works best for them would greatly help alleviate the stress of crowded roadways and lost efficiency in driving times. Fewer trucks on the road during rush hour presents a commonsense goal for the regulatory community. Exposure increases the risk of accidents for truck drivers and the motoring public. Decreasing this risk by allowing drivers to rest during the busiest traffic periods would greatly advance safety.

TCA believes that the distance traveled by trucks will remain constant with additional split-sleeper berth flexibility, but the time and money it takes to complete those trips can be minimized with more flexibility in the regulations.⁷ FMCSA's Office of Inspector General report on detention explains that a 15-minute "increase in average dwell time – the total

⁴ Eric Miller, "FMCSA Drops Plan for Split Sleeper Berth Pilot Program," *Transport Topics*, February 5, 2019, <https://www.ttnews.com/articles/fmcsa-drops-plan-split-sleeper-berth-pilot-program>.

⁵ U.S. Department of Transportation Federal Motor Carrier Safety Administration, "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health," December 2012, xviii, <https://rosap.nhtl.bts.gov/view/dot/8>.

⁶ Jeffrey Short, "Technical Memorandum: Hours-of-Service Flexibility," American Transportation Research Institute, August 2018, 6, <http://atri-online.org/wp-content/uploads/2018/08/ATRI-HOS-Flexibility-08-2018.pdf>.

⁷ *Ibid.*, 8.

time spent by a truck at a facility – increases the average expected crash rate by 6.2 percent.”⁸ Using 2013 data, this figure represents an additional 6,509 crashes.⁹ The report also affirms that drivers and motor carriers may earn less if they experience detention time at a shipper.¹⁰

These points are important in terms of safety because the time spent “dwelling” or being detained cannot be used for driver rest, chewing up valuable driver on-duty time and forcing drivers to push through their eventual fatigue later in the day in order to complete their route. Additionally, drivers may speed or engage in other dangerous behaviors to maintain compliance with current HOS regulations or may simply violate those rules when faced with unfair detention time.

TCA is concerned about the ability through additional sleeper berth flexibility for shippers to coerce drivers into using their rest hours for the shippers’ benefit. Detention time at customer facilities is a growing concern throughout the truckload industry, as evidenced by the issue being ranked fourth on ATRI’s 2019 Critical Issues in the Trucking Industry list.¹¹ TCA also recognizes concerns from the driver community about forced dispatch, which could result from irresponsible carriers effectively coercing the drivers to use their hours to drive instead of rest.

We strongly encourage FMCSA to increase its enforcement of shipper and carrier coercion through promotion of the coercion rule, as outlined in the text of the Moving Ahead for Progress in the 21st Century Act (MAP-21).¹² This text prohibits coercion of a commercial motor vehicle operator by a motor carrier, shipper, receiver, or transportation intermediary. TCA believes that, in addition to the coercion rule, FMCSA could promote better education to carriers about the safety benefits of adequate driver rest. We also acknowledge that full split-sleeper berth flexibility, especially granting a 5/5 split, would help eliminate the possibility for forced dispatch from the carrier by giving complete control over a driver’s daily schedule to the driver.

E. Split-Duty Period.

TCA believes that a driver’s HOS should be considered in the holistic context of a full 24-hour day, but we cannot advocate for extending the 14-hour work day. FMCSA’s proposal to allow for one off-duty break of at least 30 minutes but not more than 3 hours that would pause the 14-hour driving window and effectively give drivers up to 17 hours in which to

⁸ U.S. Department of Transportation Office of Inspector General (OIG), “Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis,” FMCSA Report no. ST2018019, January 31, 2018, “Highlights.”

⁹ Ibid., 9.

¹⁰ Ibid., 8.

¹¹ American Transportation Research Institute, “Critical Issues in the Trucking Industry – 2019,” October 2019, 3, <https://truckingresearch.org/wp-content/uploads/2019/10/ATRI-Top-Industry-Issues-2019-FINAL.pdf>.

¹² Moving Ahead for Progress in the 21st Century Act, P.L. 112-141 § 32911, 2012, <https://www.govinfo.gov/content/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>.

complete their work, provided the driver takes 10 consecutive hours off-duty at the end of the work shift. While TCA recognizes that this is another step toward added flexibility in the HOS regulations, we do not believe many truckload over-the-road drivers would utilize this option and fear it could cause additional confusion for the industry and law enforcement. Drivers in the truckload segment of the trucking industry utilize their sleeper berth in order to obtain adequate rest, and it is unlikely that they would take a 3-hour off-duty pause instead of logging that time in the sleeper berth. Therefore, we encourage FMCSA to consider additional flexibility for the split-sleeper berth provision instead of pursuing this split-duty period proposal.

As always, we wish to thank FMCSA for the opportunity to comment on this important issue. We look forward to working with the Agency on adding further flexibility to the HOS regulations in the years ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "John Lyboldt", with a long horizontal flourish extending to the right.

John Lyboldt
President