



The National Association of Small Trucking Companies

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Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FMCSA-2018-0248

To whom it may concern:

The National Association of Small Trucking Companies (NASTC), which represents more than 9,000 small-business commercial motor carriers, is pleased to comment on the Federal Motor Carrier Safety Administration's (FMCSA) August 24, 2018, Advance Notice of Proposed Rulemaking (ANPRM) (Docket No. FMCSA-2018-0248) regarding potential measures to provide greater flexibility in the Hours of Service (HOS) regulations.

NASTC is a member-based association whose member companies range from one or a few power units to more than 100 power units; however, our members average 16 power units. These companies mostly operate in the long-haul, over-the-road, full-truckload, for-hire sector of interstate trucking. NASTC's members come from the largest segment of America's long-haul trucking — small motor carrier businesses. Thus, they are more representative of the vast majority of our nation's commercial motor carriers, the almost 440,000 having fewer than 100 power units, in contrast to the 1,441 megafleet carriers. NASTC and its members are committed to safely and efficiently performing the hauling and delivery of freight.

NASTC commends FMCSA for responding with this ANPRM to the many industry and congressional outcries over HOS rules that have become overly restrictive, inflexible, and onerous, to the point where these regulations are counterproductive. As HOS rules stand today, they amount to unfunded mandates whose burdens fall most heavily on small businesses. We further appreciate this action pursuant to the President's laudable, regulatory relief-oriented Executive Orders 13771 and 13777, ordering the systematic review and repeal of regulatory burdens exactly like those

imposed by HOS rules that cost jobs, diminish competition, and do very little to advance safety — if not actually risking safety.

We associate ourselves with the comments filed by Dr. Ronald R. Knipling, president of Safety for the Long Haul.¹ Dr. Knipling’s extensive analysis of the methods and data that underlie the HOS rules raises serious questions about the basis for the inflexible HOS rules currently imposed on commercial vehicle drivers and motor carriers. Notably, Dr. Knipling shows how a key data set FMCSA has employed mischaracterizes “success” — instances of crash avoidance maneuvers being executed such that they prevent a crash — as “failure” — though only 0.2% of data points in the data set involve actual vehicle crashes.²

He further exposes the errant methodological treatment of instances of truck driver alertness — the 99.8% of avoided crashes classified as “safety-critical events” in the data set — as supposedly involving driver fatigue. Indeed, Dr. Knipling observes, “All SCEs, regardless of their characteristics, were treated as fatigue-related events.”³ The agency’s reliance upon such gross misinterpretation of data creates a Kafkaesque set of HOS rules that are overly complex and counterproductive. The HOS rules in force today have little connection with detecting or preventing commercial driver fatigue.

Moreover, Dr. Knipling shows that the underlying 1950s-era theory FMCSA continues to base 21st century HOS rules on, “Heinrich’s Law,” has been debunked.⁴ Therefore, the research cited and the analysis provided by Dr. Knipling in his filing expose the lack of a foundation for the current HOS rules. NASTC finds Dr. Knipling’s analysis and his conclusions compelling and urges FMCSA to increase flexibility in HOS rules to the great extent warranted, in light of Dr. Knipling’s findings.

This research is complemented by a recent survey of truck drivers conducted by Trucker Path. The survey found drivers experience stress stemming, directly and indirectly, from current HOS rules. Difficulty finding truck parking and the hours of service rules, unforgivingly enforced by electronic logging devices (ELDs), were named the top causes of stress for truck drivers (85% and 63%, respectively).⁵

1. SHORT-HAUL OPERATIONS

Because NASTC members are long-haul carriers, we do not take a position and will not comment on the contemplated changes to short-haul HOS rules.

2. ADVERSE DRIVING CONDITIONS

¹ Ronald R. Knipling, Ph.D., President, Safety for the Long Haul, Comments filed to this ANPRM, September 7, 2018.

² Knipling, p. 3.

³ Knipling, p. 6.

⁴ Knipling, p. 9.

⁵ Trucker Path, Truck Parking Report, July 2018.

For long-haul carriers, unforeseeable adverse driving conditions, including bad weather and traffic, are fairly routine. These arise even outside of urban areas, due to such things as road construction zones, barriers on highway shoulders, and long stretches between exits on certain highways. Such delays cost time which, in trucking, means money. The current exception to the HOS 11-hour rule allowing two additional hours helps mitigate the compounding of even more lost time and revenue due to the tyranny of the HOS clock reaching its arbitrary limit. Both drivers and carriers benefit from the operational make-up this extra time enables, economically by recovering otherwise lost revenue and safetywise by easing the temptation to take undue driving risks because of the fleeting HOS time limits.⁶

The allowable extra two hours to a driver's 11 hours of driving time is therefore helpful. However, in certain instances beyond driver's and carrier's control that exceed two hours of intractable delays, this rule could allow even more HOS flexibility by adding the time necessary to complete the job or reach a logical, practical stopping point, as appropriate to a given situation. Such a common-sense amendment to this rule, along with extending the 14-hour window accordingly, would follow the same reasonable principles underlying the recently revised guidance on personal conveyance. This change would allow carriers to adjust their scheduling and usage of resources to accommodate the unexpected delay, as well as manage their customer relationships.

For drivers, expanding the adverse driving conditions exception as suggested here, including extending the 14-hour window, would provide additional opportunity to make up a portion of lost time and miles. These reasonable changes to the HOS rules would mean drivers do not lose income and could operate more safely, with the knowledge that the agnostic clock will not force them to shut down a few miles short of their destination or at an unsafe location.

We believe extending the 11- and 14-hour windows as discussed here would benefit drivers in terms of promoting safety and reducing fatigue. Unexpected adverse driving conditions impose stress on commercial drivers. Such stress contributes to fatigue. These unmanageable conditions, coupled with growing stress and tension, join with the pressure of the ticking HOS clock of 11- and 14-hour windows. The closer the driver is to the end of the 13 hours under this exception and the unextendable 14-hour HOS, the greater the likelihood of fatigue or risk-taking. With the flexibility to adjust the HOS windows to account for the adverse driving conditions, however long they might delay, drivers would be able to relieve their stress, tension, and concern about lost time and income, instead dealing with the circumstances at hand in a safe manner. Expanding this exception as suggested would guard against yielding to the temptation to take risks and make dangerous maneuvers on our highways.

⁶ See the testimony of Marty DiGiacomo, Owner True Blue Transportation, on behalf of the National Association of Small Trucking Companies, at a hearing of U.S. House Small Business Committee, "Highway to Headache: Federal Regulations on the Small Trucking Industry," November 29, 2017.

3. 30-MINUTE BREAK

Of all the aspects of HOS rules' inflexibility and counterproductive effects on commercial drivers and motor carriers, the 30-minute break mandate is likely the most egregious — and the rest are pretty bad themselves. Getting rid of this onerous, arbitrary mandate would be a major step toward appropriately relaxing HOS rules.

NASTC is confident, based on our members' ongoing input, that, with or without a mandated rest break, professional, experienced truck drivers would get the rest needed to alleviate fatigue. The reason they from time to time may not is because of the inflexibility of existing HOS rules, the dictatorship of the electronic logging device, and constraints such as insufficient truck parking availability and uncontrollable adverse driving circumstances.

The 30-minute required rest break under the hours of service rule has proven unworkable and should be repealed. Indeed, Dr. Knipling exhorts FMCSA to scrap the mandatory rest break due to its basis in "junk science."⁷ The mandate effectively compresses the 14-hour window into a 13-hour window, generally costing truck drivers more than a half hour. Additional time is spent meeting the daily mandate in finding available parking, preparing and securing the vehicle before beginning the 30 minutes and more time preparing to take the vehicle back on the road following the 30 minutes. In other words, the "rest" break is anything but restful to the truck drivers who must comply. As our witness testified before the House Small Business Committee, "There are times we need to take a nap for however long we decide we should take it — until we feel like driving again. But, with the HOS clock ticking against us, we often drive when we would be better off taking a nap (or two) during our day (or night). This is not conducive to safety at all."⁸ Such common-sense, experience-based assessment comports perfectly with the scientific, empirical evidence Dr. Knipling supplies.

What effectively costs drivers an hour or more a day can thereby prove disruptive to the total available hours for the day. The added layer of complexity the 30-minute break mandate imposes is not easily accommodated in real-world situations that over-the-road truckers encounter. The costs of lost time and inefficiency of operations harm both drivers and carriers, as well as add to the costs of the shipping public. Lost time equals lost earnings and lost efficiencies. Further, these strictures can result in mere form-and-manner violations of the HOS rule.

In the long-haul sector, drivers encounter varying circumstances and contingencies for which the 30-minute break mandate only makes things less workable, more stressful, and even more dangerous. Enabling drivers additional HOS flexibility from elimination of the mandatory rest break, they could actually get more rest and reinvigoration from naturally arising stops and downtime.

⁷ Knipling, p. 10.

⁸ DiGiacomo testimony, p. 4.

4. SPLIT-SLEEPER BERTH

NASTC commends the agency for taking our suggestion and proceeding with a pilot study of splitting sleeper berth time.⁹ NASTC urges the agency to grant additional sleeper-berth flexibility under the HOS rules, without delay. Split sleeper-berth time would be the single-best flexibility measure to adopt because it would empower commercial drivers to respond to fatigue, detention at shippers' facilities, drowsiness, road and weather circumstances, and other contingencies as they are and as they vary each day.

We have no objection to proceeding with the pilot for the information it will gather; however, there is no reason not to move forward with flexible sleeper berth time-splitting now. As a recent American Transportation Research Institute study found, split sleeper-berth flexibility would alleviate traffic congestion in a single 40-mile stretch in Metro Atlanta, annually save nearly \$4 million in congestion costs and more than 60,000 hours of truck driving time just in that location.¹⁰ This deregulatory move of sleeper berth time-splitting would not only give drivers more flexibility; it should simplify the HOS compliance burden, which ELDs do little to alleviate. Inflexible, complicated HOS regulatory burdens only add stress and contribute to driver fatigue.

NASTC's witness explained the problem to the House Small Business Committee:

"The new HOS rules are very difficult to comply with and penalize us for taking naps. Under the old rules, we could take naps and off-duty time as needed and prolong our time to balance our rest while accomplishing our maximum driving hours. Under the current rules, there is no incentive to take a nap. We have two choices: take 10 full uninterrupted hours off-duty or take two sleeper berth periods of 2 and 8 hours each. The 2-hour nap does not stave off the 14-hour clock. No nap less than 8 hours will stop the clock, either. We have no incentive to take any naps, other than the 8-hour nap. Then we have to take a 2-hour nap minimum to fulfill our 10 hours off, which should give us a full complement of hours available again, but they don't. We have to calculate the driving hours before the last sleeper berth break and subtract that from the available daily drive hours. The two periods cannot exceed the 11 hours, even though we've effectively fulfilled the combined 10 hours off. We should be able to get the full complement to start a new day of driving if we took 10 hours off. Sound complicated?"¹¹

The ELD mandate further constrains commercial operation under the HOS rules, often precluding drivers from exercising sound judgment according to extant circumstances. If battling fatigue and enhancing safe driving is the goal, then splitting

⁹ See NASTC comments on Notice of a Pilot Program regarding flexible sleeper berth hours, FMCSA-2016-0260.

¹⁰ Jeffrey Short, "Technical Memorandum: Hours-of-Service Flexibility," American Transportation Research Institute, August 2018.

¹¹ DiGiacomo testimony, p. 4.

sleeper berth time in ways that make the most sense in a given situation is most conducive to letting truck drivers rest when they are tired and drive when they are alert — which often varies from day to day. They would log that time accordingly and get 10 hours of rest, regardless of how and when they use the sleeper berth in a given day.

There are several approaches to splitting sleeper-berth time, so that this actually gives flexibility and simplifies the HOS regulations. The most important features to include are (1) allowing time splits to vary from day to day, (2) each split should stop the 14-hour HOS clock, (3) log at least 8 hours per 24-hour period as rest time (“sleeper berth” and “off-duty”), and (4) once 10 total hours are accumulated, restart the on-duty clock. For example, each driver could log split sleeper berth time as “sleeper berth” time, counted toward total hours of rest and split as the driver deems appropriate, such as 8/2, 3/5, 4/5, with splits different from day to day. The split sleeper berth hours logged are at least 8 hours in a 24-hour period. The splitting of sleeper berth time would move the 14-hour window accordingly. All sleeper berth and off-duty time would stop the HOS clock. The 10-hour off-duty option, if used, would be logged “off duty.” Any combination of 10 hours off-duty and split sleeper berth would start the full 14-hour clock again.

The benefits of such flexibility in obtaining rest as needed and in light of circumstances would come in the form of highway safety, operational efficiency, and cost savings. In terms of safety, FMCSA’s own assessment of the research literature, including the work of U.S. Army expert Dr. Gregory Belenky, determined, “The majority of sleep studies to date demonstrate that well-timed split sleep has either a positive or no effect on subsequent neurobehavioral performance.”¹² The experience of mission-critical napping by military or aeronautic personnel demonstrates that such split sleep provides sufficient rest for safe operations and necessary levels of alertness.

For efficiency gains, our understanding from NASTC members is that flexible sleeper-berth time-splitting, even as limited as it is today, helps drivers and carriers adjust to traffic and weather conditions at the time, and thus aids in more efficient use of drivers’ time. It works on the same basis as the adverse driving conditions exception and the newly revised personal conveyance guidance and, for the same reasons, enhances safety and efficiency. Cost benefits, as well, would be produced from more flexible splitting of sleeper berth time, due to the ability it provides to adapt schedules and operations in “real time” and “real-world” circumstances. In trucking, this means drivers could rest during times of traffic congestion and log more miles in the time spent driving, which translates into getting paid more than when sitting in stalled traffic. Professional drivers with the ability to manage time and resources according to uncontrollable factors make for more satisfied, rested, efficient drivers.

5. OOIDA PETITION

NASTC favors the regulatory relief OOIDA has petitioned: Allowing truck drivers to make adjustments according to real-world circumstances. Truck drivers could

¹² Notice of a Pilot Program regarding flexible sleeper berth hours, FMCSA-2016-0260, Section III, “Previous Research.”

suspend the on-duty clock for up to three hours. And as discussed above, we strongly support eliminating the mandatory 30-minute rest break, which has contributed to truck parking shortages, traffic congestion, and the unnecessary complication of already complex HOS rules.

Extending the 14-hour driving window to account for the time the clock had earlier been suspended the same day would improve carrier and driver operations in a number of ways. And notably, the proposal is practically the same as the contemplated change under the adverse driving conditions rule (number 1, above) and similar to the new personal conveyance guidance. Importantly, in terms of operation, adjusting the window will enable drivers to drive during less congested periods and be more rested. This is like the clock stopping during a football game for time outs or penalties. The effect of the HOS without the extension OOIDA requests is that a driver could stop the clock for a period of rest, but in a manner similar to the game clock continuing to run.

There is greater risk to safety and driver health from not allowing adjustment to the 14-hour window. The NASTC witness testified to the House Small Business Committee on the stress-inducing exigencies that arise daily and that current HOS rules disallow reasonable accommodation on hours: “There are also times where we have any number of issues at the shipper or receiver. . . . If we decide to take a nap or a break during these times, as well as stopping for a few hours to avoid rush-hour traffic, we should be able to stop the [HOS] clock, based on real-world situations.”¹³ This experienced driver said different drivers require different amounts of rest, and how much may vary daily. Variables such as unexpected traffic congestion, bad weather, delays caused by shippers, etc. can induce stress and frustration, which is connected in part to lost time. These stress inducers are more disruptive to circadian rhythms than would be this clock accommodation. Adjusting the 14-hour window for earlier break time would mitigate that stress, making for better rested drivers.

Requiring the time added on account of having stopped the 14-hour clock earlier the same day to be logged “off-duty” would be counterproductive to safety. This would be the same as taking a “time out” earlier in the “game” and the “game clock” still showing time but the team not being allowed to run plays. If you effectively lose total game time by stopping the HOS clock to rest, few drivers will bother to suspend the clock — in effect, the 14-hour clock would continue to tick away time during their rest periods. For carriers, such a short-sighted requirement would leave them in the lurch; they lose productive time for their entire fleets, their drivers remain subject to the rigid, unforgiving 14-hour clock, whether they take the break or not, which costs them on-duty time, which equals lost income. An “off-duty” logging requirement coupled with suspending the on-duty clock in name only would be unhelpful and continue the current high frustration with HOS inflexibility.

6. TRUCKERNATION PETITION

¹³ DiGiacomo testimony, p. 4.

TruckerNation's suggestion of eliminating the 14-hour rule and the 30-minute mandatory break, replacing it with a simple rule of no driving after 14 hours of on-duty time, broken up by three-hour or longer periods off-duty, has a lot of appeal. NASTC regards the present HOS 11-, 13-, and 14-hour rule combination as overly complicated, regulatory micromanagement, and an expensive compliance mandate on both drivers and motor carriers. We commend TruckerNation for thinking outside the confines of the fossilized HOS rules currently in force.

Almost every driver and every industry safety person we have talked to since 2004 has agreed that the 14-hour rule creates a deadline mentality that forces a driver to drive when fatigued and doesn't allow him to stop and take a break when needed.

NASTC does not have data on the costs or benefits of such an approach as petitioned. Nevertheless, we can say with certainty that eliminating the 30-minute mandated break would yield much-needed flexibility and regulatory relief from overly complex HOS rules, as discussed above.

Further, the TruckerNation proposal has the benefits of empowering the 3.5 million American truck drivers with the ability to rest when tired or circumstances lend themselves to taking time off and therefore more well rested and alert drivers, regulatory simplicity and therefore easier to comply with and keep records on, compliance cost reduction, greater safety and efficiency of operation, and in the end, safer highways.

...

In conclusion, NASTC applauds FMCSA for exploring these several regulatory reforms to facilitate both safety and regulatory flexibility. We urge the agency to move ahead on each of the matters on which we have commented with as much flexibility and as quickly as possible. Much more flexibility should be adopted pursuant to this rulemaking, particularly in light of the irrefutable empirical evidence Dr. Knipling's filed comments provide.

Sincerely,

A handwritten signature in black ink that reads "David Owen". The signature is written in a cursive, flowing style.

David Owen
President