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October 9, 2018

Raymond Martinez, Administrator
Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE. West Bldg. Ground Floor, Rm: W-12-140
Washington D.C. 20590

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

Dear Administrator Martinez,

The *Western States Trucking Association (WSTA)*¹ submits these comments in response to an Advance Notice of Proposed Rulemaking (ANPRM) and request for public comment published in the Federal Register on August 23, 2018 (FR Vol. 83, No. 164) by the *Federal Motor Carrier Safety Administration (FMCSA or Agency)* seeking input on possible changes in the hours-of-service (HOS) regulations.

The WSTA appreciates that the Agency is considering whether select changes may be warranted to the federal HOS regulations. We participated in the public listening session held on September 22nd in Reno, NV as well as having previously filed numerous comments related to the HOS rules including numerous requests for exemptions from current rules which we have supported.

Truck involved crashes have increased. While there are many factors such as an increase in the overall number of trucks on the highway, distracted driving and increasingly the prevalence of recreational marijuana use to name a few, the industry has faced an onslaught of increased regulatory burdens all couched as necessary to improve highway safety. All the new rules (including HOS related) have not lived up to their hypothesized safety benefits at time of adoption yet have saddled the industry with increased compliance costs and inefficiencies.

Improving commercial motor vehicle (CMV) safety is a shared goal of all responsible parties within the industry. However, all the regulatory changes made during the previous administration have failed to live up to their promises; it's time to take a different approach. The WSTA believes this is an opportunity for the Agency to propose meaningful changes to the HOS rules that would give the industry more flexibility and we believe improve overall CMV safety.

FMCSA has asked for comments on specific areas of HOS regulations and the following are our selected responses.

(1) SHORT-HAUL OPERATIONS

¹ The *Western States Trucking Association* is the oldest, independent, nonprofit trucking association in the U.S. originally founded in 1941. We are headquartered in Upland, CA. Our nearly 6,000 member and affiliated motor carriers are engaged in virtually every mode of trucking including construction, port drayage, cross-border, general freight, heavy-haul and agricultural trucking with most carrier operations focused in the western U.S.

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The WSTA supports expanding both the hours and mileage limitations for short haul operations found under §395.1. The current limitation is 100 air-miles/12 hour day and we believe should be amended to 150 air-miles/14 hour day.

The Federal Motor Carrier Safety Regulation's (FMCSR's) already allow states to exercise a variance from the federal 100 air mile limitation not to exceed 150 air miles (§350.341) and many states have chosen to allow their "intrastate" trucking operations this flexibility.

Allowing short-haul operations a radius of 150 air-miles would bring uniformity between federal and many state short-haul allowances easing the enforcement burden.

Expanding the short-haul to allow for a 14-hour day would likely make enforcement easier and place less of a paper-work burden on motor carriers and drivers. It is not illegal for a short-haul operator to continue to work beyond the 12th on-duty hour – they simply need to complete a paper log for the day they exceed 12 hours on-duty. This is precisely why any attempt at making a negative safety argument against expanding the short-haul limitations fails since going beyond the current limitation only requires a different recording method of the drivers HOS.

FMCSA has had to field request for exemption from the current limitations for short-haul operations and it could be expected with an expansion of what is allowable for short-haul operators those requests would cease.

(2) ADVERSE DRIVING CONDITIONS

The WSTA believes that FMCSA should make an explicit allowance that a driver can use this exemption beyond the 14th on-duty hour, certainly at least to the 16th hour even if the Agency choose to limit this availability to once a week as found in the exemption for a property-carrying driver in §395.1(o).

Road conditions cannot always be predicted nor "pre-planned" for. The current inflexibility in HOS rules place all drivers in a regulatory "Catch-22" when they encounter these types of unforeseen circumstances and they must choose between parking in an unsafe location (assuming one is even available) or continuing their trip until getting to the nearest safe parking spot.

(3) 30-MINUTE BREAK

The WSTA supports eliminating this requirement. Since the adoption of this requirement it has not had a demonstrable or positive effect on CMV safety. The number of truck involved crashes has actually increased.

As FMCSA acknowledged in the ANPRM summary, since the introduction of the electronic logging device (ELD) mandate there have been many calls for the Agency to revisit HOS rules. This is simply because the rules themselves are rigid and cannot take into account every possible scenario a driver may face in their workday. The 30-minute break requirement may have been adopted with good intentions by the Agency but the reality is this particular rule is almost universally viewed as the most obnoxious of all the HOS rules.

A driver should be allowed to choose when they think it is the best time to take a rest break. The 30-minute break actually represents one of the most inflexible aspects to the HOS rules and adds unneeded stress to a drivers workday where they have to play "beat the clock" instead of scheduling their breaks according to their situational needs. Stress is readily acknowledged in academic literature as being

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unhealthy with many side-effects and eliminating this requirement would certainly take away a major aggravation for drivers and we believe actually improve CMV safety.

The Agency asked should the requirement be maintained whether it could be either “off-duty” or curiously “on-duty.” We can only presume that the Agency is suggesting that if a driver is using “on-duty, not driving” time such as fueling or loading/unloading the Agency is suggesting that time could count towards complying with the break requirement. If that is correct, we think that is a very poor idea. Maintaining the requirement of complying with the rule, even relaxed, will still result in motor carriers and drivers being cited for non-compliance with a regulation with no corroborating safety benefit. Those types of violations are being used by insurance companies as justification to either increase premiums or cancel coverage.

FMCSA has fielded many meaningful requests for exemption from the 30-minute break requirement. Eliminating this regulatory burden would allow the Agency to use its time more productively that dealing with a continued flow of exemption requests.

(4) SPLIT SLEEPER BERTH

We are aware that the Agency is in the midst of a Pilot Program designed to test the efficacy of a driver being able to use different splits of their time in order to meet off-duty requirements. The final report from the Pilot Program is estimated to be published at the earliest mid-2019.

We “suspect” the Pilot Program will likely show a similar finding to that of the recent study performed by the American Transportation Research Institute.

WSTA believes drivers should be able to utilize more options in splitting their sleeper berth time. It is just common sense that a driver should be allowed to rest when they are tired and not be concerned about “beating the clock.” Allowing more options for splitting sleeper berth time will allow drivers to avoid rush hour traffic by getting rest instead.

(5) PETITIONS

Many believe the 14-hour rule is too rigid. We are concerned that expanding the workday would be utilized almost exclusively to cover for loading and unloading delays totally for the benefit of shippers and receivers. It is undeniable that the ELD mandate coupled with the 14-hour rule is placing much more pressure on the shipping community to become more responsible in how they detain drivers.

Having expressed our concern, FMCSA does allow states to adopt significant variances from federal HOS rules. Those variances allowed include up to 12 hours driving in a maximum 16-hour on-duty window as well as 80 hours in 8 days versus 70.

To the extent FMCSA considers changes to allow a longer work day we suggest aligning HOS requirements with what states are allowed to adopt.

Absent proposing any future changes to the 14-hour rule we do think FMCSA should consider revising who is allowed to use the exemption in §395.1(o). The exemption reads as follows:

(o) Property-carrying driver. A property-carrying driver is exempt from the requirements of §395.3(a)(2) if:

(1) The driver has returned to the driver's normal work reporting location and the carrier released the driver from duty at that location for the previous five duty tours the driver has worked;

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- (2) The driver has returned to the normal work reporting location and the carrier releases the driver from duty within 16 hours after coming on duty following 10 consecutive hours off duty; and
- (3) The driver has not taken this exemption within the previous 6 consecutive days, except when the driver has begun a new 7- or 8-consecutive day period with the beginning of any off-duty period of 34 or more consecutive hours as allowed by §395.3(c).

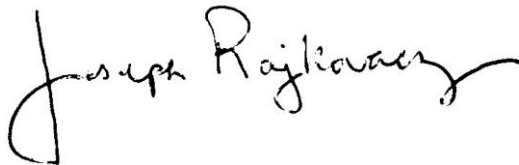
By simply removing the requirement for using this exemption that a driver must return to their home terminal and instead allow all drivers to use this provision regardless of whether they return to a home terminal would add needed flexibility to the current HOS rules for everyone.

CONCLUSION

To the extent FMCSA ultimately moves to formal rulemaking and proposed changes in the HOS rules, each one of the five identified issues presents the Agency a meaningful opportunity to grant both regulatory relief and increase flexibility for both drivers and motor carriers.

CMV crashes and fatalities have been on steep increase since the Great Recession despite an era of hitting the industry with ever more rules under the belief they'd lead to safety improvements. Albert Einstein is widely credited with originating the quote, "The definition of insanity is doing the same thing over and over again, but expecting different results." The answer for improving CMV safety isn't just more regulations; it can be to grant the industry regulatory relief in the form of HOS flexibility where drivers exert more control over their schedules instead of having to play "beat the clock."

Respectfully,



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