



334 N. Euclid Avenue • Upland, CA 91786
(909) 982-9898 • Fax (909) 985-2348
www.westrk.org

October 21, 2019

The Honorable Raymond Martinez
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Hours of Service of Drivers (HOS), Notice of proposed rulemaking (NPRM). Docket No. FMCSA-2018-0248

Dear Administrator Martinez,

The *Western States Trucking Association* (WSTA)¹ submits these comments in response to a request for comments published in the Federal Register (FR Vol. 84, No. 163) on Thursday August 22, 2019 by the *Federal Motor Carrier Safety Administration* (FMCSA or Agency). The request for comments is related to proposed changes in federal hours-of-service regulations.

The WSTA supports all the proposed changes within the NPRM. We will comment on three specific changes as they are of greater interest to our members. Those three areas involve the proposals related to short-haul, adverse driving conditions and the 30-minute break requirement.

Short Haul Exception

FMCSA is proposing to extend the maximum duty period allowed under the short-haul exception available to certain CMV drivers from 12 hours to 14 hours and from a 100 to a 150 air-mile radius. WSTA fully supports this long over-due proposal.

By expanding the short-haul exception FMCSA will standardize nationally the short-haul exception to that which states are allowed to opt in under Title 49 after applying for a variance from the current federal standard. It also aligns the short-haul exception with the 11 and 14 hour rule simplifying enforcement at roadside.

Some commenters have claimed falsely that this proposal would increase the hours worked by any driver who utilizes the short-haul exception. This is patently false as any driver using the current short-haul exception can exceed either the mileage or hours limitation by simply preparing a written (paper) record-of duty status (RODs) for the day they don't meet the limitations under the current rule. All this proposal is addressing in our opinion is the manner in which HOS are recorded by allowing short-haul drivers continue using time sheets or time cards to record their HOS.

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 allied 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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FMCSA asked for responses to four specific inquiries. Below are our responses:

- **How will this change impact motor carrier's ability to enforce HOS rules? What enforcement difficulties may arise from expanding both the time and distance requirements?**

For motor carriers who mostly or exclusively utilize the short-haul exception this will impose no additional burden beyond what already exists, in actuality it will reduce burdens associated with monitoring drivers who exceed the current exemption from using electronic logging devices (ELD) because they exceeded the exemptions limitation from using an ELD because they may have used paper ROD's more than 8 days in any rolling 30-day time period.

Uniformity is the catch-phrase always used in terms of enforcement and this proposed change would actually aid law enforcement by standardizing the HOS rules – including in those states which are already allowed to have a short-haul of 150 air miles.

- **Will drivers drive further or longer in the driving window under the short haul exception? Would this be different then these loads being hauled by drivers complying with the ELD requirements?**

Drivers who work short-haul, at least in California are paid primarily by the hour – not by the mile. Payment methodology doesn't encourage exceeding HOS limitations on the part of the driver. We are unaware of any type of operation where the driver is either cumulatively or continuously driving for 11 hours even under the current scheme. That type of driving which is common in long-haul applications simply doesn't fit the short-haul business model that is predicated on multiple stops within a work day.

Drivers would obviously be allowed to operate further, but as explained in our comments thus far, there is nothing illegal about a current short-haul driver exceeding the current limitations. Carrier and drivers would have greater flexibility with the proposed changes especially in a metropolitan region such as Los Angeles where one can easily exceed 100 air miles radius and still be within the metropolitan region which covers 33,954 square miles.

- **Will the elimination of the 30- minute break requirement for drivers that are potentially driving later in their duty period impact safety?**

As previously stated, short-haul drivers generally are not engaged in continuous driving duties. With FMCSA's proposal to allow on-duty not driving time to count towards meeting the break requirements we don't believe there will be any safety impact.

We'd also point out that in specific states, such as California, there is an ongoing issue of drivers being required to comply with state meal and rest break requirements. While FMCSA has pre-empted California from enforcing its unique meal and rest break rules (which is pending an appeal in the Court of Appeals for the Ninth Circuit), the practical reality is that motor carriers require their drivers to comply with the California rules regardless. This happens because drivers can often switch between state and federal HOS regulations and motor carriers find it easier to manage their operations with one set of rules for their drivers.

FMCSA did point to an IIHS study claiming higher crash rates for drivers utilizing the short-haul exception. WSTA would like to point out that comparing crash rates between motor carriers operating in long-haul operations and those mostly operating in congested urban regions on the short-haul exception is

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similar to comparing apples and oranges - it's a statistical sleight of hand. Of course motor carriers operating exclusively in congested urban areas would logically be expected to have a higher crash risk; they are exposed to more car-truck interactions than a carrier operating the majority of their miles interstate. Concluding (indirectly) those operating in short-haul operations are less safe is disingenuous.

- **What cost savings are expected from not having to comply with the ELD requirements?**

Simply, savings can be significant depending on the size of a carrier's fleet. Besides upfront costs, there are monthly fees with many providers.

Adverse Driving Conditions Exception

FMCSA is proposing to allow drivers using the adverse driving conditions exception to use the exception to extend the maximum "driving windows" by up to two hours. WSTA supports this proposal.

- **Will this change cause drivers to travel further in adverse conditions?**

We cannot perceive how this exception would be utilized to "travel further." The practical reality in the west is that winter driving conditions in the mountains often require truckers to chain-up. When entering these types of road conditions, it is not the storm that is unpredictable, it is the actions of other vehicle drivers that can slow travel times down to where truck drivers actually can and do run out of legal time to operate with absolutely no-place to pull over. It is not uncommon for a driver from the east to hit the California line on I-80 at the Nevada state line and 8, 9 or 10 hours later arrive in Sacramento (a distance of only 120 miles) during winter weather events. While in the mountains one cannot simply "pull over" to comply with HOS rules without creating a traffic hazard for themselves and other highway users.

Drivers also encounter road closures as a result of vehicle crashes that cannot be "trip planned" for. One can easily be 50 miles from the end of their trip with plenty of time to spare and it gets completely eaten up by a road closure resulting from a serious crash.

- **Will this change drivers' behavior when encountering adverse conditions? How so?**

Utilizing the example of winter weather conditions, we don't believe behaviors will alter. Many drivers refuse to chain-up when required for many reasons- this change won't impact those particular drivers. For those who do choose chaining up, this change will simply aid them in completing their duties without causing additional stress because they "timed out" on their driving time.

- **Understanding adverse conditions cannot be predicted, will drivers utilize this provision more often after this change?**

Drivers are between the proverbial "rock and a hard place" under the current HOS rules. The reality is whether it is weather related or a road closure, a driver can't just park their truck at the side of the road to comply with HOS constraints that don't reflect realities faced in a dynamic environment.

What we believe will happen isn't necessarily more utilization of this exception but less HOS violations being flagged for events beyond a drivers control.

30- Minute Break Requirement

FMCSA is proposing that a driver could meet the 30-minute break requirement with a non-driving period, either off duty, in the sleeper berth, or on-duty not-driving. WSTA supports this change. We no longer support eliminating the break requirement entirely as was our previous position.

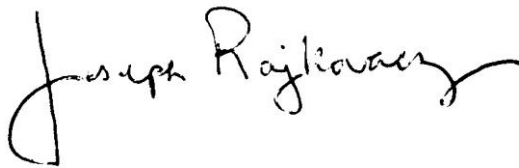
Without a break requirement, states such as California would use that as justification to impose their own, more onerous meal and rest break requirements on the trucking industry. The industry cannot have a patchwork of 50 separate state requirements and we now prefer one single federal solution.

Conclusion

The WSTA supports all the proposed changes to HOS within the NPRM. We believe it brings much needed flexibility and rationality to the HOS regulations benefiting both motor carriers and drivers while at the same time not affecting highway safety.

Highway safety is everyone's goal and under the current requirements crash involvement is up. FMCSA's proposals are a refreshing in that they acknowledge difficulties faced by the industry and attempt to moderately craft rule changes that we believe can actually enhance overall highway safety by giving drivers the tools they need to achieve that goal.

Respectfully submitted,



Joe Rajkovacz
Director of Governmental Affairs & Communications
Western States Trucking Association

334 N. Euclid Avenue
Upland, California 91786
Phone: (909) 982-9898
Email: joe@westrk.org