



A bold voice for transportation workers

October 21, 2019

Richard Clemente
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

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

Dear Mr. Clemente,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to FMCSA's request for comment on its Notice of Proposed Rulemaking (NPRM) regarding changes to the agency's hours of service regulations. TTD consists of 33 affiliate unions representing workers in all modes of transportation, including thousands of commercial motor vehicle drivers who will be impacted by these proposed changes. We therefore have a vested interest in this rulemaking.¹

In the NPRM, FMCSA proposes five major changes to its current HOS regulations. This includes modifications to current requirements concerning the short haul exemption, drive time limits during adverse driving conditions, the 30-minute rest break, the use of sleeper berths, and a new proposal on split duty.

As TTD has stated in response to several previous FMCSA dockets, including the October 10, 2018 ANPRM to this docket, we are concerned with the slow erosion of the protections against fatigued commercial driving. In considering previous requests, FMCSA has made clear that it is willing to ignore fatigue risks and introduce unnecessary dangers onto the nation's highways if it would be beneficial for a petitioner's bottom line. The publication of this NPRM is an even more

¹ Attached is a complete list of TTD affiliates.
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Larry I. Willis, President / Greg Regan, Secretary-Treasurer



substantial step in placing profit above safety. It is not only TTD which opposes these proposed changes, as noted here in the Overview of Comments to the ANPRM, “[g]enerally, law enforcement and safety advocacy organizations opposed changes to the current HOS rules.” While TTD does not intend to comment on all aspects of the NPRM, we call on FMCSA to withdraw its proposal and give due consideration to the negative impacts the NPRM would have on fatigue among commercial drivers. In particular, we express our opposition to the following items.

Adverse Driving Conditions

FMCSA proposes to modify its existing regulations on adverse driving conditions, which allow for a two-hour extension of drive time in certain scenarios. In the NPRM, FMCSA seeks to allow for a two-hour extension of duty time when the adverse conditions regulations are triggered. In sum, this would permit carriers to require 13 hours of driving over a 16-hour shift for property-carrying drivers and up to 12 hours of driving over a 17-hour shift for passenger-carrying drivers. FMCSA states that this change is needed to best accommodate the two additional drive-time hours currently permitted by regulation. For example, a driver could use the two additional hours of duty time to wait out weather conditions without risking running out of drive time. During such time, a driver is still attending to their responsibilities as dictated by their employer and federal requirements. As we will discuss further below, this is not restful, and is a contributory factor to fatigue. FMCSA has failed to ameliorate concerns about the level of fatigue that would accumulate for drivers over the course of a 17-hour shift. We believe strongly that risks of increased fatigue outweigh the benefits of allowing additional duty time.

Fatigue is a particularly prominent risk in the motorcoach industry. Previously, the NTSB has found that 36 percent of motorcoach crash fatalities can be directly linked to driver fatigue, and FMCSA has convened a number of focus groups that have highlighted the prevalence and dangers of fatigue among motorcoach operators. Given the current state of the industry, allowing for longer shifts for an already deeply fatigued workforce is a fundamentally unsafe proposal.

FMCSA should make no changes to its adverse driving regulations for drivers of any type, and should take no steps to increase drive time limitations in any circumstance.

Short Haul Exemption

FMCSA also proposes to allow more grueling shifts for short haul drivers. The NPRM would expand the workday for both property-carrier and passenger-carrier short-haul drivers from 12-hours to 14-hours, and increase the radius in which they can work from a 100 air-miles to 150 air-miles. Put another way, FMCSA wants short-haul drivers to work longer, and over a greatly expanded territory. While the proposal would more closely align short-haul driver’s workdays with their long-haul peers, FMCSA takes no steps to provide them with the mandated rest breaks that long-haul drivers receive. It is unclear why FMCSA believes that driving the same amount of time within a smaller area plays any role in limiting fatigue.

In fact, it is unclear at all that FMCSA is concerned with fatigue implications for these drivers. The agency fails to make a compelling argument that the change would not reduce safety, and its reliance on information and statutory language concerning ready-mix concrete truck drivers is

inadequate to justify the claims the agency puts forth. Allowing employers to request more demanding shifts from short-haul drivers without a meaningful analysis of the impacts of additional fatigue or the allowance of rest breaks, is a proposal not based in safety and should not be pursued.

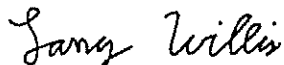
30-Minute Rest Break

Under current regulation, property-carrying drivers must take a 30-minute break every eight hours of duty. In this proposal, FMCSA is attempting to undermine the utility of this break entirely, by allowing on-duty, but non-driving time, to count as a “break”. As TTD mentioned in our October 10, 2018, comments to the ANPRM, FMCSA itself has previously identified compelling research that breaks reduce crash risk, a finding consistent with the impact of breaks on accident risks in other industrial sectors. The merit of these breaks, however, is entirely predicated on the presence of an actual rest.

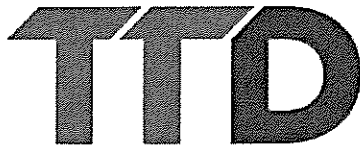
It is a fact that drivers may still be asked to perform tasks during times they are on duty, or even may be required to do so by regulation. When TTD opposed a petition to eliminate the break for tank truck drivers (Docket No. FMCSA–2017–0270), we clearly demonstrated examples of duties that a driver may do during such times. The characterization of any period in which an employee is performing job duties for their employer as “restful” is disingenuous and dangerous. The proposal contained in the NPRM is little more than a roundabout strategy to eliminate the 30-minute rest-break without having to provide justification for doing so. As with the NPRM broadly, this proposal should be withdrawn.

TTD urges FMCSA to reconsider its priorities on fatigue. Chipping away at vital hours of service protections with little justification is incongruent with the agency’s safety mission, and will directly result in additional risks on the road. We call on FMCSA to withdraw its NPRM and to not dilute hours of service requirements. We look forward to working with the agency on future proposals which seek to improve safety and limit fatigue amongst commercial vehicle drivers

Sincerely,



Larry I. Willis
President



Transportation Trades Department, AFL-CIO
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TTD MEMBER UNIONS

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal, Air, Rail and Transportation Workers (SMART)
SMART-Transportation Division
Transportation Communications Union/ IAM (TCU)
Transport Workers Union of America (TWU)
UNITE HERE!
United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)

These 33 labor organizations are members of and represented by the TTD

