

March 4, 2011

Docket Management Facility (M-30)  
U.S. Department of Transportation  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

**RE: Noticed of Proposed Rulemaking – Hours of Service for Drivers (Docket No. FMCSA-2004-19608)**

Dear Administrator Ferro:

The following comments are submitted on behalf of the National Retail Federation (NRF) in response to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) to revise the regulations for hours of service for drivers (HOS) of property-carrying commercial motor vehicles (CMVs).

NRF strongly supports the current HOS regulations and questions the need to make changes. Any changes to the current HOS regulations should be based on sound science and studies of safety and driver health. In addition, the FMCSA must consider the significant economic impact that changes to the current HOS will have across the industry, including the impact to retail operations at both the store and distribution center level. NRF appreciates the opportunity to submit comments in support of the current HOS regulations.

As the world's largest retail trade association, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2010 sales of \$2.4 trillion.

## **BACKGROUND**

As submitted in previous comments to the FMCSA on February 15, 2008 and February 2, 2010, NRF strongly supports the current HOS regulations, including the 11-hour on-duty driving limit and the 34-hour off-duty rest period. NRF encourages FMCSA to maintain the current HOS regulations.

Safe and efficient supply chains are critical to the success of a retailer's operations. The ability to transport products to distribution centers and retail stores in a timely, efficient and safe manner is critical to ensure products will be on store shelves for consumers. This is a fundamental

Liberty Place  
325 7th Street NW, Suite 1100  
Washington, DC 20004  
800.NRF.HOW2 (800.673.4692)  
202.783.7971 fax 202.737.2849  
www.nrf.com

requirement for the continued health of the retail sector. The efficient movement of goods not only benefits the retailer, but their vendor partners, their consumers and the U.S. economy as a whole.

While many in industry were concerned about the impact of the HOS regulations when they first went into effect in January 2004, U.S. industry, including retailers, have adapted their operations to comply with these requirements. However, removing the current rules and reverting back to the old rules or some variation thereof, would result in significant cost increases for the industry as a whole and would adversely impact the U.S. economy. Our members estimate that the impact of the proposed change in hours of service rules could increase transportation costs by 3% to 20% depending on the specific retailer's network and operation. Many of our members also have concerns over the possibility for adverse unintended consequences as a result of the proposed changes that could lead to further cost increases. The reduction in transportation productivity and driver capacity owing to the rule change could substantially undermine supply chain performance in the retail sector.

NRF and its members fully support FMCSA's efforts to improve the health and safety of drivers in the transportation industry. As the FMCSA engages in new rulemaking, it must ensure that new regulations do not make it more difficult for new drivers to enter the market or make it too expensive for current drivers to remain in the industry. Maintaining the current HOS rules would be the best option for the reasons outlined below:

### **Enhanced Driver Safety**

NRF refers FMCSA to December 2010 NPRM seeking comments to the proposed HOS regulations. In the NPRM, FMCSA discussed numerous studies that have measured the results of the existing HOS regulations and the impact on driver safety. As pointed out both by the U.S. Department of Transportation (DOT) studies and those conducted by industry, including the American Trucking Associations (ATA), there is significant evidence that the 11-hour on-duty rule has resulted in enhanced driver safety, not less as some have claimed. All of the studies have pointed to fewer fatalities due to accidents involving trucks. The latest statistics from the DOT National Highway Transportation Safety Administration, which were released in July 2009, show that truck fatalities declined by twelve percent in 2008. Preliminary numbers for the first quarter of 2009 show another decrease. In addition, while not all NRF members directly track accidents involving their transportation providers, those that do have noted lower accident rates since implementation of the existing HOS regulations.

If the 11-hour drive time limit were to be reduced to the previous 10-hour limit, we anticipate there will be a need for significantly more trucks and drivers on the road to fulfill the demands of what is currently being accomplished under the 11-hour on-duty time. We have similar concerns over the proposed change to the 34 hour restart rule that would include two consecutive nights (midnight – 6:00 am) of rest. These changes could reduce road safety resulting from the need for additional trucks on the road during peak commuter hours. Other impacts could include increased diesel emissions, additional congestion and more wear and tear on infrastructure.

## 11-Hour Daily Driving Limit

NRF's members operate complex supply chains, which include an interwoven network of distribution centers and retail stores which are serviced by both private and contract motor carrier fleets. All of these companies rely on significant on-time delivery rates to get their merchandise onto the store shelves for retail sale. This is critical in the scheduling of labor for both distribution centers and retail stores. Greater on-time deliveries allow for the seamless flow of products through the distribution system with delivery of the right products to the right place at the right time. The existing 11-hour daily driving limit is critical to accomplishing this.

As a result of the current 11-hour daily driving limit, U.S. retailers have been able to achieve significant efficiencies within their supply chains and distribution networks. They have been able to work with their transportation providers to appropriately plan for the safe and efficient delivery of goods to their distribution centers and retail stores with a significantly high on-time delivery rate. Most, if not all, of NRF's members have instituted new technology and process solutions in order to comply with the current HOS regulations. Any change to this daily driving limit will upset the careful balance and efficiencies that have been achieved and require changes to those new systems and processes. In addition, such changes could result in significantly higher transportation costs and could lead to less safety as additional drivers and trucks will be required to make up for the shortfall. These changes would impact retailer costs—increases that would ultimately be passed on to the consumer.

NRF surveyed its retail members to find out what the impact of a reduction from the current 11-hour daily driving limit to a 10-hour daily driving limit would be. Below are a couple of examples of the impact:

*Example #1: We average 400 miles per haul to service to service 3 stores in each haul. The haul is scheduled based on 9 hours of total drive time with an additional 4 hours to unload the trailer by hand at each retail store. Under the current 11 hour drive time limit, this retailer averages 350 weekly loads to supply 1,030 stores. A reduction in the maximum allowable drive time to 10 hours would increase average weekly deliveries by 165 deliveries to 515. This represents a 47% reduction in transportation productivity and places more trucks on the road to move the same amount of freight.*

*Example #2: This will lead to increased late deliveries; some lanes may need to be converted from one day transit to two day transit, or from two days in transit to three days in transit.*

*Example #3: We currently estimate the immediate impact to be \$30,000 per year. That is the difference between the cost of a team and the cost of a single driver on lanes that will require teams post implementation of the 10 hour rule. The greater cost is the impact this will have on all other lanes once capacity is tighten due to an insufficient pool of drivers. That cost is unknown, but it could easily be measured in the millions of dollars.*

*Example #4: The productivity loss will require additional capacity to cover the same amount of work. I estimate that the transportation cost impact to the Supply Chain to be in excess of 30% IF we can find the additional capacity to support.*

*Example #5: It will reduce productivity by increasing transit times and layovers. This is part of the estimated 20% increase in transportation costs that we estimate the proposed changes will cause.*

*Example #6: For the Store Delivery network, we would probably have to add 3 drivers and 2 tractors for runs out of Midwest and East Coast DC's for runs that currently can be made with 11 hours of driving but will not be able to if the rule states 10 hours of driving. The DC-DC would only be impacted at one location where they might need to add one additional driver.*

*Example #7: We see the biggest impact in this to driver and route productivity. We will do less multiple-stop truckloads, which could have an impact of 15-20% overall.*

*Example #8: If the maximum driving time is reduced to 10 hours, delivery to 10% of our stores will result in driver layovers. As a result, we would need to hire more drivers. From the standpoint of our truckload carriers, we are anticipating pricing to be increased by around 4 percent.*

*Example #9: Our Company's direct to store delivery operation will be greatly impacted by the change in driving and on-duty hours. It could result in a 7-10% reduction in driver productivity and could require a 4-8% increase in equipment needs. In addition, there seems to be no explanation of the restart policy on team operations. Is there a different restart program, or is a team required to jointly break for the mandated 34 plus 2 midnight to 6am periods. This could have a major impact on our Company's fresh produce distribution needs.*

### **34 Hour Restart Provision**

In addition to the change to the maximum allowable drive time, other retailers are concerned about proposed changes to the 34 hour restart provision that includes two consecutive nights (midnight to 6 am) of rest. Many retailers with stores located in urban areas use nighttime hours to efficiently reach stores and restock shelves during less congested hours. The use of nighttime hours provides many retailers greater reliability over their supply chain by reducing congestion related delays. The deployment of more trucks during the night also separates truck and automobile interactions contributing to increased safety. The proposed change to the 34 hour restart provision to include two consecutive nights of rest reduces the ability to schedule deliveries at night placing more trucks on the road during normal commuting hours. This adversely impacts a retailer's supply chain performance, potentially increasing congestion related delays and increasing the likelihood of accidents as a result of greater truck and automobile interactions.

As part of the NRF survey we asked about the impact of the proposed 34 hour restart with two consecutive nights off. Below are a couple of examples of the impact:

Example #1: One retailer dispatches drivers at night to beat traffic congestion to arrive and restock store shelves. For nighttime deliveries, the 34 hour restart provision that includes two consecutive nights off, subjects these drivers to an additional 12 to 20 hours off. The proposed change effectively becomes a 46-60 hour restart. A driver completing a week at 12:30 am on Saturday will require a rest ending on 6:01 am on Monday. For nighttime schedules, this driver would miss the Sunday night and roll over to Monday night. In order to incorporate the change, more drivers would need to be deployed operating less hours. This represents a reduction in productivity without providing any increase in service to the customer.

Example #2: Most of our store deliveries are dispatched prior to 5:00am, in order to beat traffic congestion and arrive at the first store by 6:00am. The nighttime requirement will force more trucks into rush hour traffic and make traffic congestion worse for the general public.

Example #3: We currently dispatch many of our loads during those hours, which is cause for concern as capacity will be drastically reduced during these hours. This will require us pay a premium to expedite more freight given our tight delivery windows. We understand that a driver's 34 hour rest period will not always fall on a traditional Sat/Sun weekend. Given the regionalization of the industry over the past few years and the desire to create driver friendly jobs, we believe that our rates will start to reflect a premium associated with this weekend activity.

Example #4: Our current strategy is to migrate toward night time deliveries to try and avoid peak traffic times and allow us to better serve our consumers by having our stores stocked in a presentable condition before we open. If the current proposal is put in place with the 2 night time periods rule, these drivers are subject to an additional 12 to 20 hours off to wait until the next cycle of night deliveries creating a 46 to 60 hour restart break. As an example, if a driver completes a week at 12:30 AM on Saturday morning, the rule will require at a minimum to be off of until at least 6:01 AM on Monday morning. If you have night time deliveries, then the driver would miss the Sunday night shift and roll over until Monday night. To incorporate this rule, it will require additional capacity (that is not available) to either operate the assets (slip seat) to obtain maximum efficiency of the equipment and require higher wages for the driver due to less opportunity for miles driven to keep them attracted to the already struggling industry.

Example #5: The new 34 hour restart will increase the number of layovers, reduce efficiency and increase operating costs. To compensate for this rule we may resort to team operations and or increased transit times. Cost increases for these changes could be as high as 20%.

Example #6: The new restart would possibly require us to add 2 teams and 2 trucks to the DC-DC network with not being able to run the trucks and teams for 6 days as we currently have been.

*Example #7: Currently, we do not do a lot of night time deliveries. However, we had been considering it for more congested areas of the US. The impact to us comes from the opportunity loss. Also, from some of our longer runs where the drivers may utilize nighttime driving on a portion of the routes. Overall, it is important to leverage fixed assets (trucks trailers, and especially the roads themselves) across all day and night times to get the fullest utilization possible. Restricting night driving will cause additional congestion, more idling time, more accidents, increased motorist frustration, and have a direct impact to the carbon footprint of many companies.*

*Example#8: The 34 hour restart rule change would have the greatest impact on our Company's suppliers located further from the applicable distribution center, particularly for product moving from coast to coast. It will most likely result in \$150 to \$300 added layover expense to each turnaround, and will add at least a day to those 2 way moves for such products. Since many of those moves involve fresh produce, the added day will create shelf-life issues for our Company. In addition, that loss of productivity will result in wage changes to keep drivers whole and will mean more equipment and more inexperienced drivers on the road.*

## **Other Impacts**

In addition, it is important to note that distribution networks are experiencing increased demand, which is expected to grow substantially. This is significantly important as the economy recovers from one of the worst recessions in history. Additional trucks and drivers will be necessary to meet this growing demand regardless of the HOS requirements. Adding new capacity will be extremely difficult as there is currently a shortage of available drivers. The capacity shortfall will be further exacerbated as we expect an increase in the number of bankruptcies of smaller trucking companies due to an inability to make necessary investment to meet new clean engine emissions laws. A change in the current HOS regulations will not only lead to further capacity reductions because of less driving time, but will also increase congestion on the roads and require retailers to carry additional inventory, at additional costs, in order to ensure that they have products on their store shelves, since reliability of service could be interrupted. The proposed changes to the existing hours of service rules that limit drive time and the hours retailers may dispatch drivers may reduce take home pay of drivers as well. We fear that reduction in driver pay may contribute to the expected capacity shortfall by making truck driving less attractive and more burdensome to potential new drivers.

We are also concerned about the potential adverse impact on road and highway safety and on many environmental investments in the supply chain and transportation industry. The proposed changes to the hours of service rule may increase the number of trucks deployed to move the same freight while restricting the ability to move a portion of this freight during non-peak commuting hours. This increases vehicle interactions with motorists and reduces safety, and also complicates many environmental initiatives implemented by retailers. In the transportation sector, many retailers are actively pursuing strategies to greatly reduce the carbon footprint of the supply chain. Many of these initiatives involve efforts to reduce hauls and deploy trucks and drivers as productively as possible including during nighttime.

## **HOS Investments**

The transportation industry as a whole has invested millions of dollars on compliance with current HOS regulations. This includes considerable investments by U.S. retailers in their systems and operations, including training, to ensure compliance with the regulations. Any changes to the current HOS regulations will once again require substantial investment to enable companies to readjust and retrain an entire workforce, including a large number of new drivers, to be able to comply with new rules. This will result in significant increases in transportation costs, which could be millions of dollars per company. In addition, this could result in increased costs for other services, including a potential requirement to carry additional inventory to ensure products are on the store shelves. These increased costs will be passed from the transportation provider to their customer and ultimately to the end consumer.

## **Regulatory Impact Analysis**

In addition to the issue that NRF and others within the transportation industry have raised about the operational impact the proposed HOS changes will have on the industry, we are extremely concerned that these impacts were not considered in the regulatory impact analysis that was conducted by the agency. According to the agency, they do not believe the proposed changes will have an impact on short haul trucking, so that segment of the industry was not included in the agency's calculations. We fully believe this is an inaccurate statement, as evidenced by NRF's members concerns with the rule. We support the findings from the recent study by Edgeworth Economics released on February 15, 2011 which questions the results of the FMCSA regulatory impact analysis.

## **Conclusion**

NRF appreciates the opportunity to submit comments to FMCSA's NPRM on hours of service for drivers. On behalf of America's retailers we urge the FMCSA maintain the current HOS to ensure there is no adverse impact to the timely delivery of goods and services, especially for the retail industry. If you have any comments, please contact Jonathan Gold, NRF's Vice President for Supply Chain and Customs Policy.

Sincerely,

A handwritten signature in black ink, appearing to read "David French", with a stylized flourish at the end.

David French  
Senior Vice President  
Government Relations