



October 16, 2019

BY ELECTRONIC SUBMISSION

The Honorable Raymond P. Martinez
Administrator, Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
Electronic Address: <http://www.regulations.gov> (Docket No. FMCSA-2018-0248)

Re: Comments on FMCSA's Proposed Hours of Service of Drivers Amendments Rule

Dear Administrator Martinez:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments on the Federal Motor Carrier Safety Administration's (FMCSA) *Proposed Hours of Service of Drivers Amendments Rule* that was published in the Federal Register on August 22, 2019.¹ The proposed rule would provide greater flexibility for drivers subject to the Hours of Service (HOS) rules without, according to FMCSA, affecting safety.² The proposed rule would make five specific changes to the current HOS rules, affecting the provisions related to short-haul drivers, adverse driving conditions, the 30-minute break, split-sleeper berth, and split-duty time provisions. Other aspects of the current HOS rules would remain unchanged. Advocacy commends FMCSA for its retrospective review of the current HOS regulations and supports the proposed changes that will result increased flexibility and cost savings for small carriers without diminishing safety or the health of drivers.

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration. The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory

¹ 84 Fed. Reg. 44190 (August 22, 2019). (See, <https://www.govinfo.gov/content/pkg/FR-2019-08-22/pdf/2019-17810.pdf>)

² *Id.*

³ 5 U.S.C. § 601 et seq.



Enforcement Fairness Act (SBREFA),⁴ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, the Small Business Jobs Act of 2010 requires federal agencies to give every appropriate consideration to comments provided by Advocacy.⁵ Specifically, the agency must include, in any explanation or discussion of a final rule published in the Federal Register, the agency's response to comments submitted by Advocacy and a detailed statement of any changes made to the final rule as a result of those comments, unless the agency certifies that the public interest is not served by doing so.⁶

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁷

Background

On February 3, 2017 and March 1, 2017, respectively, the President issued two Executive Orders concerning regulatory review and reform. The first, Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs,⁸ requires federal agencies to review existing regulations and eliminate two existing regulations for each new one it promulgates. The second, Executive Order 13777, Enforcing the Regulatory Agenda,⁹ requires agencies to appoint a Regulatory Reform Officer (RRO) and a Regulatory Reform Task Force (RRTF) to review existing regulations and make recommendations of regulations that are priorities for review and reform.¹⁰

In furtherance of these Executive Orders, and as part of its core mission to represent the views of small entities within the federal government, Advocacy has hosted a series of Regional Regulatory Reform Roundtables around the country to hear directly from small businesses about which regulations are most burdensome and should be prioritized for review and reform.¹¹ Many trucking and transportation issues have been raised at these roundtable meetings, including the need for greater flexibility under FMCSA's HOS regulations, particularly for drivers that experience unforeseeable driving conditions or wait times or that transport sensitive items such as livestock, perishable agricultural and aquaculture products, explosives, fireworks, and hazardous materials and waste.¹² These carriers and drivers – the vast majority of whom are

⁴ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁵ Small Business Jobs Act of 2010 (P.L. 111-240) §1601.

⁶ *Id.*, codified at 5 U.S.C. 604(a)(3).

⁷ 5 U.S.C. Sec. 601 note.

⁸ 82 Fed. Reg. 9339 (February 3, 2017)

⁹ 82 Fed. Reg. 12285 (March 1, 2017)

¹⁰ Section 610 of the Regulatory Flexibility Act of 1980 has required retrospective review of existing regulations since 1980. See, 5 U.S.C. Sec. 610.

¹¹ An initial report of Advocacy's activities and finding can be found at <https://s3.amazonaws.com/advocacy-prod.sba.fun/wp-content/uploads/2018/12/20091536/What-Small-Businesses-Are-Saying-What-Advocacy-Is-Doing.pdf>.

¹² Advocacy notes that two related issues with respect to FMCSA regulations have been widely raised by motor carriers and commercial drivers at these roundtables, including: 1) Complaints from small motor carriers and

small businesses – seek regulatory relief to provide greater flexibility due to traffic, adverse driving conditions, and unforeseen delays and because it is often not feasible to stop if they reach their HOS ceiling because of the special nature of their loads. They have stated that stopping is not practicable because there are not enough safe and secure rest areas or other places to stop and it is essential that their loads be properly delivered in an expeditious fashion.¹³

Currently, commercial drivers are permitted to drive a maximum of eleven hours in a fourteen-hour period (or ten hours in a fifteen-hour window for passenger-carrying vehicles). The proposed rule would make five specific changes to the current HOS rules, including:

1. Short-Haul Drivers - Extending the maximum “duty period” under the short-haul exception from 12 hours to 14 hours and extend the maximum distance qualified short-haul drivers may operate from a 100 to a 150 air-mile radius. The existing “driving-time” limits would remain unchanged.
2. Adverse Driving Conditions - Allowing drivers to use the “adverse driving conditions” (e.g., weather, road conditions, etc.) exception to extend the maximum driving windows by up to 2 hours (i.e., 13 hours in a 16-hour window for property-carrying operators and 12 hours in a 17-hour window for passenger-carrying operators).
3. 30-Minute Break - Making the 30-minute break requirement for property-carrying commercial motor vehicle drivers applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute interruption. If required, a 30-minute break could be satisfied with a non-driving period, either off duty, in the sleeper berth, or on-duty not-driving.
4. Split-Sleeper Berth - Modifying the sleeper-berth requirements to allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth. Neither time period would count against the maximum 14-hour driving window.
5. Split Duty Provision - Adding a new option for one off duty break of at least 30 minutes, but not more than 3 hours, during the course of a driver's 14-hour “driving window” to extend that period for the length of the break, provided that drivers take at least 10 consecutive hours off duty at the end of the work shift.

commercial drivers that the FMCSA’s Compliance Safety Accountability (CSA) program and its Safety Measurement System (SMS) methodology is arbitrary and does not accurately evaluate motor carrier and driver performance or predict the likelihood of a commercial driver being involved in an accident; and, 2) Significant small motor carrier and commercial driver opposition to the FMCSA’s regulations that mandate the installation and use of Electronic Logging Devices (ELDs).

¹³ On March 4, 2019, Advocacy submitted public comments on FMCSA’s *Request for Comments on Notice of Application for Exemption from Certain Provisions of Hours of Service of Drivers Rule by Livestock and Related Drivers* supporting greater flexibility for livestock and related drivers if it will achieve an equivalent or greater level of safety. A copy of Advocacy’s earlier letter is available at <http://advocacy.sba.gov>.

Other aspects of the current HOS rules would remain unchanged.

Advocacy commends FMCSA for its retrospective review of the current HOS regulations and supports the proposed changes that will result, according to FMSCA, in increased flexibility and cost savings for small carriers without diminishing safety or the health of drivers. Advocacy encourages the agency to carefully consider the data and views it receives on the proposed rule from small carriers and drivers. Further, Advocacy recommends that FMCSA consider related HOS issues that have been raised at Advocacy's roundtables and consider additional changes that would provide maximum flexibilities for additional small carriers and drivers consistent with the agency's statutory safety objectives.

Conclusion

Thank you for the opportunity to comment on FMCSA's *Proposed Hours of Service of Drivers Amendments Rule*. One of the primary functions of the Office of Advocacy is to assist federal agencies in understanding the impact of their regulatory programs on small entities. To that end, Advocacy hopes these comments are helpful and constructive. Please feel free to contact me or Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov if you have any questions or require additional information.

Sincerely,

/s/

Major L. Clark, III
Acting Chief Counsel for Advocacy

/s/

Bruce E. Lundegren
Assistant Chief Counsel for Advocacy

Copy to: Paul J. Ray, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget