



October 10, 2018

U.S. Department of Transportation  
Docket Operations  
Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590  
Submitted via [www.regulations.gov](http://www.regulations.gov)

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

Dear Docket Clerk:

Pursuant to the Federal Motor Carrier Safety Administration (FMCSA) request for comments published in the August 23, 2018 Federal Register regarding Hours of Service of Drivers, Docket No. FMCSA-2018-0248, the Truckload Carriers Association (TCA) hereby submits these comments.

TCA, with offices at 555 East Braddock Road, Alexandria, VA, 22314, is the only national trade association whose sole collective focus is the truckload segment of the trucking industry. The association represents dry van, refrigerated, flatbed, and rail intermodal carriers operating in the 48 contiguous U.S. states, as well as Alaska, Mexico, and Canada. As a major part of an industry that has over 524,000 companies within the United States operating millions of power units, TCA and its trucking company members regularly comment on matters affecting the national trucking industry's common interests and the potential impacts these matters could have on our operations. With that in mind, TCA and its members are vitally interested in the FMCSA's objectives and strategies to improve highway safety, particularly as they relate to compliance with the hours of service (HOS) regulations.

In accordance with the Agency's request for numbered comments corresponding with the ANPRM's enumerated list of issues, TCA's responses can be found below.

*1. Short-haul operations.*

While TCA's membership is mostly comprised of long-haul carriers, TCA believes that a 14-hour workday should be standardized for all drivers, both long-haul and short-haul. Granting more hours of service flexibility for drivers within the workday is paramount, and that flexibility can only be applied fairly when all drivers fall

under the same standards. Additionally, a standardized 14-hour work window would lessen the opportunity for confusion and misrepresentation within the trucking community as a whole.

2. *Adverse driving conditions.*

a. *Is there adequate flexibility in the existing adverse driving conditions exception?*

TCA believes that there is currently adequate flexibility in the existing definition of adverse driving conditions under 49 CFR § 395.2, which includes “snow, sleet, fog, or other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.” This list is exhaustive and encompasses both weather and other types of roadway conditions, none of which are controllable by the driver. Because of this, TCA fears that expanding the definition of adverse driving conditions could lead to the abuse of this exception, resulting in increased unsafe driving practices.

However, in reality, any exception for adverse driving is limited in scope unless the driver’s daily “on duty” time is adjusted and extended to reflect the flexibility. Currently, only a driver’s driving window can be extended from 11 to 13 hours, while the 14-hour on-duty clock remains fixed. This is impractical and does not provide drivers with the proper flexibility when they are facing these conditions. TCA supports adding the 2-hour extension to both the driving limit and the work day window.

We also believe that providing law enforcement officials with updated systems to verify the true nature of the adverse conditions would improve drivers’ comfort with utilizing this exception. When it becomes easier for law enforcement to go back and check the true weather, road, or traffic conditions during which the driver logged the adverse driving hours, more integrity will be added into the process. Not only would this verification system empower drivers to use the adverse driving conditions exception when necessary, but it would also effectively minimize the ability of bad actors to unfairly take advantage of the present flexibility when they are not actually facing these conditions.

d. *Should the definition of adverse driving conditions be changed?*

In conjunction with TCA’s response to question 2a above, we do not believe the definition of adverse driving conditions should be changed.

- e. *Should the adverse driving exception apply to the 14-hour work day window, not just the 11-hour driving limit?*

It is important for drivers to be able to extend the 14-hour work day window and not just the 11-hour driving limit when they are utilizing the adverse driving exception. Due to various factors outside the driver's control, such as loading and unloading time, which contribute to the 14-hour work day, drivers may be pushed over the 14-hour limit if they claim adverse driving conditions. Merely extending the 11-hour driving limit does provide some flexibility to drivers, but they may be forced to go in violation of hours of service rules when the exception allows them to drive for 13 hours but not extend their work day. Keeping the 2 hour exception flexibility consistent for both the driving limit and the work day window would provide the drivers with a sense of security as they proceed with their trip, knowing they will likely not violate either window when utilizing the exception.

A key point to note, however, is that utilizing the adverse driving exception should not be construed as a common occurrence, and TCA does not advocate for abusing the flexibility to allow for more driving when the adverse conditions do not exist. The regulations should simply be made more sensible so that drivers encountering dangerous conditions can safely proceed with their trip. Additionally, TCA is opposed to an overall extension of the 14-hour workday.

### 3. *30-minute break.*

- a. *If the 30-minute rest break rule did not exist, would drivers obtain adequate rest breaks throughout a daily driving period to relieve fatigue?*

In conjunction with full split-sleeper berth flexibility, drivers will be able to obtain adequate rest breaks through a 24-hour daily driving period to relieve fatigue if the 30-minute rest break rule is eliminated. Allowing drivers to stop and rest when they feel tired, and not at a time that is predetermined by the Agency, is key to alleviating fatigue-related safety issues for drivers.

- b. *Are there alternatives to the 30-minute rest break that would provide additional flexibility to drivers while achieving the safety benefits goal of the current 30-minute break?*

Split-sleeper berth flexibility, allowing drivers to take their mandated 10 hours of off-duty rest time in various intervals over a 24-hour period, would effectively achieve the safety benefits goal of the current 30-minute break. In a study conducted in 2010-2011, FMCSA found that, while consolidated nighttime sleep provides the best opportunity for drivers to obtain the maximum amount of sleep and become fully rested, split sleep throughout

the workday is preferable to consolidated daytime sleep.<sup>1</sup> The study notes that, “these findings are in accord with human circadian physiology, which has sleep propensity high at night when the circadian drive for wakefulness is falling or low, and sleep propensity low during the day when the circadian drive for wakefulness is rising or high.”<sup>2</sup>

Since many drivers operate at night in order to avoid traffic congestion, particularly around large cities, it is clear that providing the flexibility to sleep at any period throughout the day is preferable from a safety perspective to forcing drivers to take their rest at one interval during the day when they will experience low sleep propensity and obtain less rest than if they had split the rest period into separate parts.

- d. *How does the 30-minute rest break impact the efficiency of operations from a driver's or a carrier's perspective?*

The 30-minute rest break requirement leads to inefficient operations from both a driver's and a carrier's perspective. Drivers are forced to stop and rest for 30 minutes even if they do not physically feel the need for it, in many cases using the full 30 minute break or longer to simply locate safe parking. The requirement is also unneeded as many drivers will stop for that length of time to eat or rest without the rule. As commenters noted at the FMCSA public listening session held on August 24, 2018 in Dallas, TX, drivers will voluntarily rest during the day to reset their minds and eyes, use the restroom, or purchase food.<sup>3</sup> Reducing the regulatory burden would save enforcement dollars for the government and compliance time and money for drivers and carriers.

- e. *How would your suggestions impact the costs and benefits of the 30-minute break?*

Benefits would be gained from removing the 30-minute break requirement. This can already be seen by the multiple exemptions presently granted from this requirement for drivers of various types of CMVs, proving both the ambiguous nature of the rule and its narrow relevance for only a small number of fleet types.<sup>4</sup> If the 30-minute rest break does not work for every type of driver, fails to provide a one size fits all solution, and can only be

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<sup>1</sup> U.S. Department of Transportation Federal Motor Carrier Safety Administration, “Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health,” (December 2012): xviii. <https://rosap.ntl.bts.gov/view/dot/8>.

<sup>2</sup> Ibid.

<sup>3</sup> Brian Straight, “Trucking industry to FMCSA: We just want flexibility with HOS,” *FreightWaves*, August 25, 2018. <https://www.freightwaves.com/news/driver-issues/industry-seeks-flexibility-in-driving-hours-changes>.

<sup>4</sup> Federal Motor Carrier Safety Administration, “FMCSA Part 381 Exemptions in Effect,” May 8, 2018. <https://www.fmcsa.dot.gov/exemptions>.

remedied by relaxing the regulatory burden, the costs of the requirement clearly outweigh the benefits and it should be repealed.

#### 4. *Split-sleeper berth.*

- a. *FMCSA has announced a proposed flexible sleeper berth pilot program. Beyond the information that will be collected in the pilot program, do you have any information that would support changing the current requirements?*

According to a recent study, “Technical Memorandum: Hours-of-Service Flexibility,” from the American Transportation Research Institute (ATRI), “...there is a range of 53.5 minutes between the best and worst travel times” in the travel corridor studied.<sup>5</sup> If drivers were able to utilize split sleeper berth flexibility and rest at the times which make the most sense from both a fatigue and a trip optimization standpoint, this nearly hour of potentially wasted time during the worst driving periods could be avoided. When comparing two hypothetical drivers, one operating under the current HOS regulations and another utilizing split sleeper berth flexibility, the driver with flexible hours saved 45.5 minutes in drive time and 1 hour 15.5 minutes of the 14-hour maximum work hours over the same trip.<sup>6</sup>

ATRI also points out that use of the current split sleeper berth flexibility is not practical to avoid congestion since rush-hour traffic often lasts for several hours. Providing drivers the flexibility to take their rest in the sleeper berth at the interval that works best for them would greatly help alleviate the stress of crowded roadways and lost efficiency in driving times. Fewer trucks on the road during rush hour presents a commonsense goal for the regulatory community. Exposure increases the risk of accident for truck drivers and the motoring public. Decreasing this risk by allowing drivers to rest during the busiest traffic periods would greatly advance safety.

Overall, even though the distance traveled by trucks will remain constant in this country, the time and money it takes to complete those trips can be minimized with more flexibility in the regulations.<sup>7</sup> At a time when the trucking industry is overwhelmed by questions regarding productivity, the split sleeper berth proposal provides FMCSA with an excellent opportunity to improve the industry’s safety and productivity at minimal cost.

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<sup>5</sup> Jeffrey Short, “Technical Memorandum: Hours-of-Service Flexibility,” American Transportation Research Institute, (August 2018): 6. <http://atri-online.org/wp-content/uploads/2018/08/ATRI-HOS-Flexibility-08-2018.pdf>.

<sup>6</sup> Ibid., 7.

<sup>7</sup> Ibid., 8.

d. *What cost impacts and safety benefits would result from different split sleeper berth options?*

With additional time beyond what was available in the comment window for this ANPRM, TCA would be able to compile data from our members on the cost impacts of different split sleeper berth options. TCA's members also plan to file comments on this ANPRM, and we believe they will provide the data and specific examples requested regarding cost and safety. However, in TCA's conversations with ELD providers, which have millions of data points on nearly every truck on the road, it has become clear that there are vast economic benefits to additional sleeper berth flexibility.

As detailed in FMCSA's own Office of Inspector General report, a mere 15-minute "increase in average dwell time – the total time spent by a truck at a facility – increases the average expected crash rate by 6.2 percent."<sup>8</sup> Using 2013 data, this figure represents an additional 6,509 crashes.<sup>9</sup> The report also affirms that drivers and motor carriers may earn less if they experience detention time at a shipper.<sup>10</sup>

These points are important in terms of safety because the time spent "dwelling" or being detained cannot be used for driver rest, chewing up valuable driver on-duty time and forcing drivers to push through their eventual fatigue later in the day in order to complete their route. Additionally, drivers may speed or engage in other dangerous behaviors to maintain compliance with current hours of service regulations, or may simply violate those rules when faced with unfair detention time.

5. *OOIDA Petition.*

a. *What specifically would change about your driver/carrier operations by extending the 14-hour driving window?*

TCA believes that a driver's hours of service should be looked at in the holistic context of a full 24-hour day, but we do not advocate for extending the 14-hour driving window. We do feel that rest hours should allow for a safer work day by effectively stopping the 14-hour clock and granting rest breaks of any interval totaling to 10 hours. This would enable drivers to best manage their time to handle fatigue in a way that still allows them to complete their runs without violating the hours of service regulations.

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<sup>8</sup> U.S. Department of Transportation Office of Inspector General (OIG), "Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis," FMCSA Report no. ST2018019, (January 31, 2018): "Highlights."

<sup>9</sup> Ibid., 9.

<sup>10</sup> Ibid., 8.

- b. *Is there a likely increase in safety risk from extending the 14-hour driving window? For example, would altering the current rule allowing 14 hours on duty and 10 hours off duty interfere with drivers' circadian rhythm? Could driver health be affected?*

TCA does not advocate for extending the 14-hour driving window. In regard to giving drivers the ability to stop the 14-hour clock, we do not believe there is a likely increase in safety risk, but rather that this will produce safety improvements in conjunction with sleeper berth flexibility. Doing so will encourage and foster safe driving behaviors. Drivers will no longer feel the need to speed or drive fatigued, knowing that they can take a rest break and still have time to drive later in the day.

Professionals from across the trucking industry have taken note of increased violations of the hours of service regulations coupled with an uptick in serious accident claims caused by speeding. Data from the National Highway Traffic Safety Administration (NHTSA) show that in 2016, speeding was a contributing factor in 27% of all fatal crashes.<sup>11</sup> It is clear that speeding is a growing problem for the trucking industry, and rigid hours of service regulations are only serving to make this problem worse.

Furthermore, allowing drivers to rest in such a way that will minimize their time in congested traffic will produce the benefit of having fewer trucks on the roads during these busiest of times, minimizing the number of accidents that could result and limiting trucks' exposure to unsafe conditions.

#### 6. *TruckerNation Petition.*

- a. *Is there a likely increase in safety risk from eliminating the consecutive 14-hour driving window? For example, would the absence of a limit on the length of the work shift—the time between the driver coming on duty after accumulating the minimum of 10 hours off-duty and the driver being prohibited from driving—combined with splitting the required 10 consecutive hours off-duty into a number of segments, interfere with drivers' circadian rhythm? Could driver health be affected? Please provide data on the costs and benefits of this approach.*

TCA does not believe that there would be an increase in safety risk from eliminating the 14-hour driving window – rather, this change would greatly improve safety by giving drivers the flexibility to take rest when needed, regardless of the time of day or how many hours they still have on duty. As previously stated, safety is the overall goal of hours of service regulations, and as such, providing a system that will enable drivers to be as safe as

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<sup>11</sup> National Highway Traffic Safety Administration, "The Dangers of Speeding," *Risky Driving: Speeding*. Accessed September 28, 2018. <https://www.nhtsa.gov/risky-driving/speeding>.

possible should be the priority for the agency. Since the current regulatory framework disincentivizes drivers from operating in a safe manner by encouraging them to drive fatigued to make their deadlines, we encourage the Agency to look closely at this framework proposed by TruckerNation as a viable alternative, with the exception of mandating that off-duty periods must be 3 hours or longer. Putting a minimum on the amount of time a driver can spend resting would be counter to the objective of providing flexibility to sleep when needed.

- b. *Are there other flexibilities or other non-safety benefits that could be realized if the 14-hour window is eliminated?*

One key benefit from flexibility in the 14-hour window is that drivers will be able to find better truck parking and will not be forced to park in dangerous locations simply because they are nearing the end of their allotted on-duty time. In a recent survey from Trucker Path, “70% of truckers admitted to violating HOS rules because they couldn’t find parking, and 96% of truckers have parked in unauthorized areas when they couldn’t find legal parking.”<sup>12</sup> In 2018, 48% of drivers spent an hour or more looking for safe truck parking, up from 40% in 2017, with the resulting annual loss per driver at roughly \$5,000.<sup>13</sup> While this problem is often attributed by many in the industry to the new electronic logging device (ELD) mandate, this more accurately reflects issues with inflexible hours of service rules.

Sincerely,



John Lyboldt  
President

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<sup>12</sup> Truckinginfo, “80% of Drivers Say ELDs Make Finding Parking Harder,” *Heavy Duty Trucking*, August 29, 2018. <https://www.truckinginfo.com/312029/80-of-drivers-say-elds-make-finding-parking-harder>.

<sup>13</sup> Chad Prevost, “Trucker Path pushing the needle on the parking problem,” *FreightWaves*, June 12, 2018. <https://www.freightwaves.com/news/driver-issues/truck-parking-problem-trucker-path>.