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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: Hours of Service of Drivers Notice of Proposed Rulemaking (Docket No. FMCSA-2004-19608)

The National Association of Manufacturers (NAM) is pleased to submit these comments on the proposed revision of the regulations for hours of service (HOS) for drivers of property-carrying commercial motor vehicles (CMVs). This comment seeks to articulate the many concerns small, medium and large manufacturers have expressed about the proposed rule which eliminates important flexibilities that shippers, motor carriers and professional drivers rely upon to increase productivity and maintain competitiveness.

The NAM is the nation's largest industrial trade association, representing 11,000 manufacturers in every industrial sector and in all 50 states. Manufacturing has a presence in every single congressional district providing good, high-paying jobs.

America's manufacturers heavily rely on services provided by for-hire motor carriers while some manufacturers operate a private fleet of trucks to help support business competitiveness, efficiency and growth. The NAM is concerned that the Federal Motor Carrier Safety Administration's proposed rule does not demonstrate why a departure from the current rule is necessary to achieve the program's safety goals. The current rules have proven successful in achieving reductions in truck-related fatalities and truck accidents. The National Association of Manufactures strongly favors the current rules and believes the driving and on-duty requirements and 34-hour restart provisions in place today should remain intact. Manufacturers note that in calculating the economic impacts in past rulemakings, FMCSA estimated that similar changes now proposed by the agency would cost the U.S. economy \$2.2 billion annually.

In addition, there is a need to improve enforcement of current rules and manufacturers believe FMCSA did not provide an entirely complete justification or an accurate set of impacts and analyses to support the NPRM. Manufacturers are alarmed that a recent review of the FMCSA Regulatory Impact Analysis (RIA) commissioned by the American Trucking Associations concludes that FMCSA overstated the net benefits of the proposed rule by about \$700 million annually.

Shipper Perspectives

Shipper concerns with the FMCSA proposed HOS rules are consistent and according to manufacturers will directly impact three areas of operations: costs, productivity and service to customers. Unfortunately, it appears that regulatory impacts to the shipper community were not considered in the proposed rule's accompanying cost-benefit analysis. This glaring inaccuracy should not have occurred because shippers represent an important transportation constituency and are a workhorse for a recovering economy. Manufacturers are serious about transportation safety and strive for HOS rules that will achieve intended results. Based on analytic flaws in the FMCSA's methodology and its accompanying RIA, manufacturers are not confident that the proposed rule will improve highway safety. Manufacturers believe that the deadline to achieve and publish a final rule by July 26, 2011 has not given the FMCSA enough time to carefully gather all the required data to fully assess the negative impacts of these proposals. In sum, manufacturers are concerned that the new regulatory burdens will unnecessarily increase congestion, limit trucking productivity, make enforcement uneven and full compliance difficult to achieve for every type of CMV driver due to the immense complexities of the proposal.

The issues and concerns that follow were compiled from individual manufacturing members of the NAM and are broadly representative of the challenges facing shippers in all industrial sectors and across different motor carrier segments. The FMCSA's proposal, unfortunately, has failed to account for or address them sufficiently.

Costs

There will be extremely significant costs to implement a substantially revised HOS rule change. One large manufacturer assessed that the new rule as proposed will cost an additional \$80 – 90 million/year for its operation that serves domestic and international markets. Such factors going into this assessment include a reduction of one hour of daily driving time as FMCSA prefers, reducing an overall duty window from 14 to 13 hours, the need for more drivers and equipment to deliver the same amount of freight, and the cost of compliance to ensure proper understanding and reporting requirements associated with the final rule. Another manufacturer estimated its \$350 million motor carrier budget to increase between \$21 and \$30 million if both driving time and on-duty time are reduced as proposed. During a period of energy uncertainty and rising fuel costs, these potential new costs to already stretched transportation budgets will make U.S. manufacturers less competitive, especially when benchmarked against other global regions.

The loss of one hour of driving time will force shippers to add an additional day to delivery lead-times. The addition of these extra days to what should be a one-day delivery will cause manufacturers and their customers to increase inventories. The trucking industry is warning shippers in nearly every sector that a potential reduction in driving times will result in the need for more trucks and additional drivers. The increased capital cost for the trucking industry will be passed on to manufacturers and consumers.

Productivity

Manufacturers employ a variety of strategies and practices to ensure timely delivery of raw materials, supplies, content, components, parts and finished products. Some own and

operate private truck fleets while others utilize for-hire motor carriers or rely on a combination of private and for-hire services. Motor carriers provide critical services to the manufacturing sector and are integral to the supply chain that keeps the United States on competitive footing.

The current HOS rules are fair and effective while permitting important flexibilities for shippers, motor carriers and their employees. The 16 hour driving window for two days during seven calendar days adds needless complication to an already complex set of work rules and is not an adequate replacement for the proposed termination of permitted non-driving tasks beyond the current 14 hours duty period. One manufacturer with a private fleet operation believes that the new 14 hours driving window and limits of 13 hours of duty within the window will lead to a negative effect on their employees' health and well-being because work decisions that are currently autonomous for the drivers, such as schedule adjustments based on various factors such as weather conditions or bad traffic, will disappear. The proposed rules will not provide drivers the same on-duty flexibility to take "non-qualifying" sleeper berth rests at strategic points in time. Further, the proposed rule does not offer any data or evidence to suggest that on-duty tasks beyond the 14th hour pose safety or health risks to drivers.

Reasonable work-place flexibility allows employees to make good rest and health choices. To that point, mandated rest breaks at the 7th hour will discourage drivers from taking more frequent breaks and the new restrictions will force drivers to continue driving until the very point when they are required to take a rest that might not be as beneficial as shorter breaks throughout the work-day. Furthermore, mandatory breaks will be challenging to implement at a time when states are closing rest areas due to constrained budgets and other safe rest options might not be readily available based on the geography of the driver's route or local truck parking restrictions. Manufacturers believe offering professional drivers some level of autonomous discretion when it comes to managing workload and rest is important to maintaining a qualified and experienced workforce that is already in demand. A professional driver shortage worries manufacturers and some motor carriers have told their customers that more drivers will be needed to cover the same amount of business.

Manufacturers that rely on for-hire motor carrier services have expressed concerns that the proposed rules will increase costs and potentially decrease availability of competitive services in the Less Than Truckload (LTL) segment of the trucking industry because making multiple stops will be more costly and less profitable. The result in this scenario will be increased rates due to less productive trucks and potentially more limited freight consolidation options available to shippers. Manufacturers are questioning the safety benefits of the proposed rule resulting in a less productive trucking industry that adds more trucks to the road and compounds current problems with congestion and antiquated infrastructure.

Service to Customers

One manufacturer serving the construction industry noted that its private fleet of trucks will lose 7% capacity in its delivery operation due to the proposed one hour reduction in on-duty time as part of the proposed 13 hours duty window because the fleet serving its customer base makes multiple delivery stops throughout a region. To maintain the same level of service to its customers, this manufacturer will have to purchase additional trucks and hire more drivers from an already limited pool of qualified drivers to make-up for the lost capacity. However, while the manufacturer in this instance will adjust to provide continuity in service, its customers will face increased costs passed on by the manufacturer. For-hire motor carriers will follow a similar pattern of adding trucks and drivers to the roads in order to guarantee services to its

manufacturing customers and will pass on those additional costs. Manufacturers observe that FMCSA's singular focus on "long-haul" operations in its Regulatory Impact Analysis (RIA) ignores the effects of the proposal on the entire supply chain.

Another manufacturer with eight facilities in various parts of the United States reports an anticipated 9% productivity loss from its for-hire carriers which will affect its entire supply chain and reduce its current level of service to its customers. As a result, its production facilities will have an impacted throughput, effectively creating a bottleneck where transportation services cannot keep up with production at current levels. To compensate and comply with the proposed rules, this manufacturer anticipates a need for more trucks and drivers to serve its business, adding congestion and increasing both emissions and fuel consumption during a period of high diesel costs. Such impacts would cost \$5 to 10 million annually and consumers would undoubtedly feel the impact of these rising costs on their products offered at retailers across the country.

Maintaining the 11 Hours Daily Driving Is Critical to Competitiveness

Manufacturers are extremely concerned with a proposal to reduce current driving times from 11 hours to 10 hours. The reduction of one hour of driving would have major impacts to supply chain operations and common just-in-time distribution practices that manufacturers have worked to design, invest and maintain since the current HOS rule went into effect in 2004. One manufacturer's distribution network is designed to reach nearly 75% of its customers within one day. Of note, this is a common "target" for manufacturers making products for American consumers. The proposal, if implemented as written, will reduce access to customers by negatively impacting a professional driver's ability to reach his/her destination by 50 to 100 fewer miles per day. This change will mean that 8% of shipments will incur an additional day in transit and reduce the ability of this manufacturer to serve its customers by 15% - making only 60% reachable in one day.

The loss of one hour of driving time will also disrupt and challenge the efficiency principles of Lean Manufacturing, causing manufacturers to carry more inventory and increase operating costs in a recovering economy. Such impacts were not appropriately addressed in the proposed rule's accompanying RIA.

Reducing driving times, even by an hour, would be a significant policy change with costly impacts that FMCSA must accurately assess and such a change should be based on data, not arbitrary preferences or unfounded assumptions.

Changing the 34-Hours Restart

While manufacturers are strong supporters of the current restart limit that permits 34 hours of consecutive rest with no limits on restarts during the workweek, manufacturers oppose specifying rest from midnight to 6:00 am during two periods because it will put multiple trucks and professional drivers on the road at the same time on certain days of the week, especially during daylight hours. Manufacturers are not in agreement that sleep between midnight and 6:00 am is any different from sleep between 11:00 pm and 5:00 am or other times for that matter. There is agreement however, that the proposed changes will negatively impact current safety gains and worsen congestion, especially during peak and daylight hours because shippers will not have the same flexibility to stagger schedules as they do today. Manufacturers

are also concerned that the 34 hours restart could actually extend to 53 hours depending on start time of the professional driver because the two consecutive midnight to 6:00 am rest periods included in the proposal could further limit a driver's total availability.

Additionally, many private fleets currently charged with delivering our nation's food supply on a daily basis would also be negatively impacted by the proposed change to the restart provision. These short-haul operations that deliver direct to groceries and retailers accrue significant productivity gains and cost savings by having the continuous ability to deliver to its customers – the American consumer – during non-peak hours, specifically midnight to 6:00 am. The proposed regulation would significantly increase the costs of operating these fleets and those costs would ultimately be passed on to the consumer in higher retail prices as well as adding congestion to an already overburdened transportation network.

Manufacturers note that FMCSA neglected to assess impacts that this specific provision will have on the short-haul and intermodal trucking sectors which serve port and railroad operations that operate on 24-hour/7-day week schedules. FMCSA's cost-benefit analysis excluded this segment of the industry based on a flawed assumption that the proposal would have little impacts to short-haul operators. In fact, the 34-hours restart provision as proposed would have a devastating impact on this industry segment and would erode important efficiencies that have been achieved to avoid trucks competing with daytime congestion, especially in places like the Ports of Los Angeles and Long Beach. A vibrant and competitive short-haul industry that ensures predictable and flexible delivery schedules is important to manufacturers that seek to serve both domestic and world markets.

Sleeper Berth Changes

Manufacturers are disappointed that the proposed rule does not significantly change the sleeper berth provision of the 2005 HOS rules. There is a strong desire to permit greater flexibility for split sleeper berth time so that team driver operations that work other duties in addition to driving are allowed to drive and sleep during shorter periods as once permitted prior to 2005.

Wide Support for Current Rule

Manufacturers now complying with FMCSA's Compliance, Safety, Accountability (CSA) initiative, formerly known as CSA 2010, wish to measure results of this new safety program because this effort is intended to influence and improve motor carrier and road safety. NAM members express a strong view that CSA 2010 should be allowed to realize its full impact before changing HOS rules to a point where more trucks and less experienced drivers will be added to the nation's roads and highways.

Additionally, shippers are eager for the passage of a new surface transportation authorization. NAM members believe the Department of Transportation has an obligation in its upcoming surface transportation reauthorization proposal to directly address infrastructure issues that are impacting road safety and congestion.

Manufacturers strongly support the HOS rules that were promulgated in 2003 and have been in practice since 2004 because the safety results are proven. The reduction in truck-involved fatality and injury crashes between 2003 and 2009 by more than one-third should not

be ignored by FMCSA. New proposed rules will add trucks to the nation's roads and confusing new requirements on companies and drivers will undoubtedly challenge this strong safety record. We believe the annual costs of compliance have been significantly underestimated by FMCSA and that the positive benefit-cost ratio calculated by the FMCSA does not accurately represent the anticipated benefits, nor does it fully account for all the costs of compliance under a new HOS regulatory framework that both motor carriers and shippers will have to bear.

Comments Submitted by:

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