



October 10, 2018

Mr. Thomas Yager
Chief, Driver and Carrier Operations Division,
Federal Motor Carrier Safety Administration,
U.S. Department of Transportation,
1200 New Jersey Avenue SE,
Washington, DC 20590

Re: Advance Notice Proposed Rulemaking for Hours of Service for Drivers of Property-Carrying Commercial Motor Vehicles (Docket number FMCSA-2018-0248 or RIN 2126-AC19)

Mr. Thomas Yager:

The American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), hereby submits comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) advance notice of proposed rulemaking (ANPRM) for hours-of-service (HOS) for drivers of property-carrying commercial motor vehicles (CMVs).

AAJ, with members in United States, Canada and abroad, works to preserve the constitutional right to trial by jury and to make sure people have access to justice through the legal system when their rights are violated. AAJ is an advocate for motorists who have been injured or killed in highway crashes as well as the CMV drivers themselves. The changes that FMCSA is considering to the current HOS rules for CMV drivers are detrimental to the health and safety of CMV drivers and the overall safety of the US motorways.

I. Truck Driver Fatigue is still a Significant Problem in Securing Safe Highways.

Injuries and fatalities caused by truck crashes is a serious problem in the United States. Every year more than 4,000 people are killed in truck crashes¹ and over 100,000 more are injured.² Unfortunately, these numbers have been increasing since 2009.³ In just one year, from 2015 to

¹ Fed. Motor Carrier Safety Admin., Large Truck and Bus Crash Facts 2016, "table 1: Large Truck Fatal Crash Statistics, 1975-2016" (May 2018); available at <https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2016>

² Fed. Motor Carrier Safety Admin., Large Truck and Bus Crash Facts 2016, "table 2: Large Truck Injury Crash Statistics, 1996-2016" (May 2018); available at <https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2016>

³ Fed. Motor Carrier Safety Admin., Large Truck and Bus Crash Facts 2016, "Trends" (May 2018); available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/398686/lbfcf-2016-final-508c-may-2018.pdf>

2016, the number of fatal crashes involving large trucks or buses increased by 2 percent.⁴ This was part of a larger trend, where fatality rates increased by 28 percent from 2009 to 2016.⁵

Many systematic problems plague trucking, including unsafe trucks and lack of proper enforcement, but driver fatigue is undeniably a significant cause of the alarming rate of injuries and fatalities in truck crashes. The National Transportation Safety Board (NTSB) has found that fatigue is a factor in 30 to 40 percent of all truck crashes.⁶ This is not just a passenger safety issue, but it is also a safety issue for the trucking workforce. Indeed, fatigue is the leading probable cause or factor of driver fatality accidents in heavy trucking, even more probable than drug or alcohol use.⁷ The issue of truck driver fatigue made national news when comedian Tracy Morgan was critically injured and a fellow comedian was killed when an 18-wheeler truck crashed into their van on the New Jersey turnpike.⁸ The NTSB determined that the accident was caused by driver fatigue, the driver had been on-duty for 13 and half hours before the accident occurred.⁹ The safety of motorists and the trucking workforce should not be compromised by commercial trucking corporations' attempts to force exhausting hours on CMV drivers.

II. Increasing On-duty Time to 14 hours Before a Break and Eliminating the 30-minute Rest Break altogether are Contrary to Safety and the Purpose of the HOS Rules.

Under consideration by the FMSCA in the ANPRM are proposals to eliminate the required 30-minute rest break for every 8 hours of driving time and to increase the maximum driving time before a break from 8 hours of driving time to once per the 14-hour on-duty time. These proposals by the Owner-Operator Independent Drivers Association (OOIDA) and TruckerNation undermine driver and highway safety under the guise of increasing flexibility. As evidenced by studies conducted by the NTSB,¹⁰ driver fatigue is a serious issue affecting highway safety. In fact, as recently as 2016, the NTSB named "reduce fatigue-related accidents" as one of their most wanted transportation safety improvements.¹¹ Yet, these proposals would put commercial drivers on the road longer without a break, increasing the likelihood of driver fatigue.

⁴ Id.

⁵ Id.

⁶ National Transportation Safety Board, Factors that Affect Fatigue in Heavy Trucking Accidents, Volume 1: Analysis, (Jan.1995), available at <https://www.nts.gov/safety/safety-studies/Documents/SS9501.pdf>

⁷ National Transportation Safety Board, Evaluation of U.S. Department of Transportation Efforts in the 1990s to Address Operator Fatigue, Appendix B, Page 49 (May 1999); available at <https://www.nts.gov/safety/safety-studies/Documents/SR9901.pdf>

⁸ Editorial Board, Tracy Morgan Crash Spotlights Trucking Safety: Our View, USA Today, (June 10, 2014); available at <https://www.usatoday.com/story/opinion/2014/06/10/tracy-morgan-truck-drivers-safety-editorials-debates/10303811/>

⁹ Howard Abramson, The Trucks are Killing US, The N.Y. Times, (Aug.21, 2015), available at <https://www.nytimes.com/2015/08/22/opinion/the-trucks-are-killing-us.html?action=click&pgtype=Homepage&version=Moat-Hidden&module=inside-nyt-region®ion=inside-nyt-region&WT.nav=inside-nyt-region>

¹⁰ See studies cited in Note 6 & 7.

¹¹ National Transportation Safety Board, NTSB 2016 Most Wanted Transportation Safety Improvements: Reduce Fatigue Related Accidents, available at https://www.nts.gov/safety/mwl/Documents/MWL_2016_factsheet01.pdf

A. 14 Hours of On-duty Time Before a Break Does Not Safeguard against Driver Fatigue.

Truck crash fatalities are continuing to increase,¹² yet the ANPRM is contemplating HOS proposals to increase time on the road for drivers before a break. One of the proposals by OOIDA essentially extends the time a driver can drive before the 30-minute break, to up to the 11 hours of maximum driving time in the 14-hour on-duty period. The current rule allows drivers to drive a total of 11 hours during a 14 hour on-duty period, after 10 consecutive hours off-duty.¹³ However, during that 11-hour driving time, a driver must take a mandatory 30-minute rest break after 8 hours of driving time with the exception of short haul drivers.¹⁴ This proposal seeks to extend driving time by allowing the 30-minute break to be taken any time in the 14-hour on-duty time. This would undermine the purpose of the 30-minute rest break after 8 hours of driving, by allowing drivers to drive the entire 11-hour driving time without taking a break.¹⁵ This is counterintuitive to what the data on driver fatigue suggests and would likely increase the chances of driver fatigue, and subsequent risk of crashes.

B. Eliminating the 30-minute Rest Period would be Catastrophic to Drivers and US Motorists.

A complete elimination of the mandatory 30-minute rest break period is an ill-conceived proposal with negative consequences. Both the OOIDA and the TruckerNation proposals include provisions seeking elimination of the 30-minute rest break. As mentioned above, current regulations require drivers to take a mandatory 30-minute rest break after 8 hours of driving time.¹⁶ Completely eliminating this required rest break would mean that drivers could and likely would drive for 11 hours straight without a break. These proposals would clearly undermine the original purpose of the HOS regulation, namely, to give drivers a break after a significant amount of driving time. The 8-hour driving time limit is not an arbitrary time frame, and in fact coincides with driver fatigue data that suggests drivers experience fatigue symptoms after 8 hours of driving time. Additionally, fatigue actually impairs the ability of an individual to judge just how fatigued that individual is.¹⁷ Therefore, drivers may find it difficult to determine how fatigued they are after 8-hours of driving, and continue to drive the allowed 11 hours without a break, even though they are fatigued. The elimination of the 30-minute rest break will likely lead to more fatigued driving, and therefore more fatigue-related accidents. Trucking is already a dangerous industry. FMCSA should be considering proposals that increase highway safety not undermine it.

¹² Fed. Motor Carrier Safety Admin., Large Truck and Bus Crash Facts 2016, “Trends” (May 2018); available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/398686/lbcbf-2016-final-508c-may-2018.pdf>

¹³ 49 CFR 395.3(a)

¹⁴ 49 CFR 395.3(a)(3)(ii)

¹⁵ National Transportation Safety Board, Factors that Affect Fatigue in Heavy Trucking Accidents, Volume 1: Analysis, (Jan.1995), available at <https://www.nts.gov/safety/safety-studies/Documents/SS9501.pdf>

¹⁶ 49 CFR 395.3(a)(3)(ii)

¹⁷ ¹⁷ National Transportation Safety Board, NTSB 2016 Most Wanted Transportation Safety Improvements: Reduce Fatigue Related Accidents, available at https://www.nts.gov/safety/mwl/Documents/MWL_2016_factsheet01.pdf

III. The Definition of Adverse Driving Condition Should be Narrowly Tailored.

FMSCA is also considering extending maximum driving time if a driver encounters adverse conditions, and greatly expanding the definition of “adverse driving condition.” The current rule defines “adverse driving condition” as “snow, sleet, fog, 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.”¹⁸ While it is completely reasonable to allow a driver to continue to drive to get out of an adverse weather event, such as a hurricane, it is not reasonable to allow drivers to drive longer because of traffic or city center congestion. Allowing the definition of “adverse driving condition” to apply to traffic or city center congestion undermines the narrow purpose of the exemption and increases the possibility that companies will exploit their drivers. If the definition is broadened, there would be nothing to stop companies from manipulating their drivers into driving longer hours using the usual traffic or city congestion as justification. The “adverse driving condition” rule is meant to be an exception to the usual hours of service regulations, allowing drivers to drive longer to avoid or get out of unintended weather conditions. If the definition of adverse condition is broadened, the exception would become the rule. CMV drivers would end up driving longer hours citing traffic or city congestion.

AAJ appreciates this opportunity to submit comments in response to the FMSCA’s advanced proposed rulemaking for HOS for drivers of property-carrying CMVs. The proposals submitted by OOIDA and TruckerNation undermine the safety of drivers and US motorists. We urge the FMSCA to reject these proposals. If you have any questions or comments, please contact Bonnie Johnston, AAJ Federal Affairs Counsel, (202) 684-9608.

Sincerely,



Elise Sanguinetti
President
American Association for Justice

¹⁸ 49 CFR 395.1(b)(1)