

Before the Office of the Secretary of Transportation
U.S. Department of Transportation
Federal Motor Carrier Safety Administration

Docket No. FMCSA-2018-0248
Advanced Notice of Proposed Rulemaking

Request for Public Comment:
Short-haul Hours of Service Limit
30 Minute Rest Break Provision
Sleeper Berth Rule to Allow Drivers to Split Their Required Time in the Sleeper
Berth

Comments of the National Association of Wholesaler-Distributors

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In response to the Department's request for comments on the Advanced Notice of Proposed Rulemaking published in the Federal Register on August 23, 2018, these comments are submitted on behalf of the National Association of Wholesaler-Distributors (NAW). We appreciate the opportunity provided by the Department in this proceeding to bring the Department's attention to regulations that are candidates for repeal, replacement, or modification. NAW is an employer and a non-profit trade association that represents the wholesale distribution industry. NAW is comprised of direct member companies and a federation of approximately 85 national, regional, state, and local associations and their member firms, which together include approximately 40,000 companies operating in approximately 395,000 locations around the nation. NAW's members form the backbone of the United States economy; the link in the marketing chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. While wholesaler-distributors vary widely in size, the overwhelming majority are small to medium sized, closely held businesses. The wholesale distribution industry generates more than \$5.6 trillion in annual sales volume and stable well-paying jobs to more than 5.9 million workers.

Every wholesaler-distributor relies on over-the-road delivery systems in the day-to-day conduct of their enterprise. The ability of the wholesaler-distributor to both obtain products from suppliers in a timely fashion and meet the product needs of customers on a "just-in-time" basis, exists at the very heart of the business' prospects for success in an increasingly competitive, demanding marketplace.

Many wholesaler-distributors use drivers who are subject to the HOS rules, but who spend a significant portion of their on-duty time loading, unloading, and performing other non-driving activities; so-called multiple-delivery operations. Requiring a 30-minute break for multiple-delivery drivers whose on-duty work day consists of at least as much non-driving time as driving time should be revised to allow that break to be fulfilled by time spent unloading the vehicle or waiting for the vehicle to be unloaded. Multiple-delivery drivers have low mileage exposure and risk simply because they spend at least half their time on non-driving activities. Much of the driving undertaken by multiple-delivery drivers is at lower speeds on local roads, conditions not associated with driver fatigue. Finally, the moderate physical exercise experienced by multiple-delivery drivers is alerting, not fatiguing.

It is for many of these same reasons that extending the ELD/RODS short-haul exception from 12 hours to 14 hours would likely have little to no change in safety performance for multiple-delivery drivers. This is due to the fact that the moderate exercise multiple-delivery drivers engage in, makes them more physically active and less vulnerable to fatigue and drowsiness. Further, FMCSA has previously recognized many of the factors discussed above greatly reduce the risk of fatigue-related crashes.

On December 1, 2000, NAW submitted comments to the Federal Motor Carrier Safety Administration (FMCSA) regarding the administration's proposed revisions to HOS regulations (Docket No. FMCSA-97-2350). In the comments from December 1, 2000 NAW noted that the changes to the HOS regulations would increase the cost of doing business for wholesaler-distributors. This increased cost was anticipated due to amplified spending to meet the over-the-road transportation needs of expanded trucking fleets to move the same amount of freight and an increase in serious bottlenecks within the US transportation system.

These anticipated costs were realized and quantified within the American Transportation Research Institute's (ATRI) *Technical Memorandum: Hours-of-Service Flexibility*.¹ In the technical memorandum, ATRI concluded, "On a national scale, HOS flexibility has the potential to decrease the number of hours it takes to complete the 273.9 billion miles driven by combination trucks annually." Additionally, the ATRI concluded that HOS flexibility could equate to "an annual direct savings in truck operating costs of more the \$150,000,000" and "that more than 2.3 million hours of driving could be saved."

The wholesale distribution industry is a highly competitive market that places a premium on inventory management and just-in-time deliveries. It is our opinion that the current Hours of Service (HOS) regulations in 49 CFR 395.3 are inflexible and overly complex, which in turn negatively impacts the wholesale distribution industry by lengthening delivery intervals. Wholesaler-distributors rely on suppliers to provide them with product in a timely fashion to enable them to meet customer needs as the customer defines them. In the same vein, customers rely on wholesaler-distributors to provide them with product in a timely fashion in order to meet goals they have set. The current HOS regulations impede the supplier's and/or the wholesaler-distributor's ability to fulfill those tasks – including the ability to physically deliver the product where and when it is needed – as well as disrupt the channel and undermine the ability of those enterprises in the channel to fulfill business plans.

As a matter of logic, it seems highly unlikely that forcing thousands of additional trucks on the roads at peak traffic hours in heavily traveled areas would have any positive effect on either congestion or traffic safety. Under current HOS rules, truck drivers have very limited options for avoiding significant traffic congestions due to rush hour. Based on the current HOS regulations drivers must complete 10 hours of consecutive rest before beginning a new 14 hour work day. The only flexibility allowed to a driver is they can split the 10 hours into two shifts. According to FMCSA drivers "must take at least 8 consecutive hours in the sleeper berth, plus a separate 2 consecutive hours either in the sleeper berth, off duty, or any combination of the two." However, in most major cities, peak congestion during rush hour frequently lasts beyond 2

¹ Jeffery Short, "Technical Memorandum: Hours-of-Service Flexibility," [American Transportation Research Institute](#), August 2018

hours. This often leaves drivers with no choice other than to drive through peak highway congestion.

Allowing drivers more flexibility on split sleeper berth provisions that could pause the existing 14-hour on duty limit would greatly help drivers avoid congestion. Moreover, the December 2012 FMCSA study entitled, *Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health*,² found that “split sleep is preferable to consolidated daytime sleep in that split sleep yields more total sleep time and less subjective sleepiness.” We urge FMCSA to consider more flexible HOS rules. By implementing a 7/3, 6/4, or 5/5 split sleeper berth rule, the wholesale distribution industry could potentially see substantial time savings, cost savings, and decreased drive time. This would be a major benefit to not only the wholesale distribution industry, but the public would benefit as well through truck drivers spending less time in congested traffic during peak rush hour times.

As explained above, allowing for greater flexibility on split sleeper berth provisions has the potential to improve driver efficiency while also allowing large trucks to avoid rush-hour bottlenecks – which will be beneficial to companies, truckers, and commuters alike. Also, the 30-minute rest break requirement is not needed to address fatigue-related concerns for multiple-delivery drivers. By modifying the requirement for a 30-minute off-duty rest break FMCSA could produce substantial safety benefits in the form of fewer trips and less driving exposure.

The members of the National Association of Wholesaler-Distributors applaud the Federal Motor Carrier Safety Administration’s efforts to enhance truck safety and with it the safety of all citizens traveling on America’s highways. We support the Administration’s efforts to review the hours of service and rest break provision and hope you take into consideration the concerns we have outlined. Any rulemaking of this magnitude should be grounded in sound economic and safety analyses in which the regulator, the regulated community, and all stakeholders have the utmost confidence. Thank you in advance for your careful consideration to these comments and we stand ready to supply any additional data that FMCSA may request.

² Federal Motor Carrier Safety Administration (FMCSA), *Investigating the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health*. Report Number FMCSA-RRR-12-003. December 2012.