

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

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

Request for Public Comment:
Hours of Service of Drivers

Comments of the National Association of Wholesaler-Distributors; Wine & Spirits
Wholesalers of America, Inc.; International Association of Plastics Distributors;
Convenience Distribution Association

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October 21, 2019

In response to the Department's request for comments on the notice of petition for determination of exemption published in the Federal Register on August 22, 2018, these comments are submitted on behalf of the National Association of Wholesaler-Distributors (NAW), the Wine & Spirits Wholesalers of America, Inc. (WSWA), the International Association of Plastics Distributors (IAPD), and the Convenience Distribution Association (CDA). We appreciate the opportunity provided by the Department in this proceeding to bring the Department's attention to how current Hours of Service (HOS) rules are impacting the wholesale distribution industry.

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 \$6.01 trillion in annual sales volume and provides stable well-paying jobs to more than 5.9 million workers.

WSWA is a national trade organization and the voice of the wholesale branch of the wine and spirits industry. Founded in 1943, WSWA represents nearly 400 companies in all 50 States and the District of Columbia that hold state licenses to act as wine and/or spirits distributors and/or brokers. WSWA's members distribute more than 80% of all wine and spirits sold at wholesale in the United States.

IAPD, established in 1956, brings together performance plastics distributors, fabricators, manufacturers, manufacturers' representatives, recyclers and service providers. IAPD member companies have locations in nearly every state in the United States and employ approximately 100,000 Americans who produce long-lasting, engineering-grade performance plastics for the automotive, agriculture, building/construction, defense/aerospace and infrastructure marketplaces.

CDA is the trade organization working on behalf of convenience products distributors in the United States. Associate members include leading convenience product manufacturers, brokers, suppliers and others allied to the industry. Convenience distributors employ nearly 59,000 people directly and support over 173,000 jobs nationally. CDA supports the HOS rule

changes laid out in the NPRM and adds their support for the Federal Motor Carrier Safety Administration's efforts to enhance truck safety.

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 and demanding marketplace.

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 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 manner 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 to meet the goals they have set. The current HOS regulations impede the supplier's and/or the wholesaler-distributors 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.

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. The current federal HOS rules were based on research on long-haul trucking operations, which are very different from multiple-delivery operations. The Federal Motor Carrier Safety Administration (FMCSA) research and regulatory development have traditionally focused on operations where driving is the main task and drowsiness from driving is the primary safety risk.

Consequently, the current rules focus on limiting the total amount of consecutive time drivers spend behind the wheel. However, once again, multiple delivery drivers spend significant portions of their on-duty time out of the vehicle engaging in substantial amounts of low-impact physical activities. We are pleased that the NPRM revises the 30-minute break regulations. The current regulation 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 is redundant as multiple-delivery drivers can fulfill the break requirements with time spent unloading the vehicle or waiting for the vehicle to be unloaded. Further, multiple-delivery drivers have low mileage exposure and risk simply because they spend at least half their time on

non-driving activities and much of the driving undertaken by these drivers is at lower speeds on local roads, which are conditions not associated with driver fatigue.

It is for these same reasons that we support the Departments revision to extend the Electronic Logging Device & Drivers Record of Duty (ELD/RODs) short-haul exception from 12 hours to 14 hours. It is our opinion that this change would likely cause little to no change in safety performance for multiple-delivery drivers. This is, once again, because the moderate exercise multiple-delivery drivers engage in makes them more physically active and less vulnerable to fatigue and drowsiness. Additionally, as you well know, FMCSA has previously recognized that many of the factors discussed above greatly reduce the risk of fatigue-related crashes.

The NPRM specifically asks respondents what cost savings are expected from not having to comply with the ELD requirements. On December 1, 2000, NAW submitted comments to FMCSA regarding the administrations 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 that, "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 than \$150,000,000" and "that more than 2.3 million hours of driving could be saved." By allowing more flexibility in HOS regulations, as this NPRM does, these savings could be recouped.

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.

¹ Jeffery Short, "Technical Memorandum: Hours-of-Service Flexibility," American Transportation Research Institute, August 2018

According to FMCSA, drivers “must take at least 8 consecutive hours in the sleeper berth, plus a separate 2 consecutive hours 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 hours, often leaving drivers with no choice other than to drive through peak highway congestion. For these reasons we strongly support the NPRM’s modification of the split duty period. Much of the congestion-related reasoning listed above also supports the NPRM’s modification of the adverse driving conditions rule modifications.

Additionally, we support the Department’s changes to allow more flexibility on split sleeper berth provisions. In fact, 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.” By implementing a 7/3 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, the commenters support the HOS rule changes laid out in the NPRM and 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 this NPRM and thank you in advance for your careful consideration of 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