



March 10, 2005

U.S. Department of Transportation  
Docket Management Facility  
Room PL-401  
400 Seventh Street, S.W.  
Washington, DC 20590-0001

**Re: FMCSA Notice of Proposed Rulemaking (NPRM) on Hours of Service of Drivers;  
Docket No. FMCSA-2004-19608**

Dear Docket Clerk:

These comments are filed in response to the U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration's (FMCSA's) Notice of Proposed Rulemaking (NPRM) on Hours of Service of Drivers published in the January 24, 2005 *Federal Register*.

The Truckload Carriers Association (TCA), with offices at 2200 Mill Road, Alexandria, VA 22314-4677 is the only national trade association whose sole focus is the truckload segment of the trucking industry. TCA represents dry van, refrigerated, flatbed and intermodal container carriers operating in the 48 contiguous states as well as Alaska, Mexico and Canada. Furthermore, as a major part of an industry that has over 524,000 companies within the U.S. operating millions of power units, TCA and its trucking company members are vitally interested in the DOT's objectives and strategies to improve highway safety and the potential impact these objectives and strategies could eventually have on our operations. To this point, and as this relates to the critical issue of hours of service (HOS), the TCA has commented on a number of HOS-related proposals in the past, we have intervened in the U.S. Court of Appeals for the District of Columbia Circuit HOS court case as well, and therefore, are extremely interested in submitting comments to this proposal.

In reading through the NPRM, the FMCSA's position on the current HOS rule is clear. In the FMCSA's own words, "the agency is putting forward the 2003 rule as the 'proposal' on which public comments are sought... and asks the public to comment on what changes to that rule, if any are necessary to respond to the concerns raised by the court, and to provide data or studies that would support changes to, or continued use of

the 2003 rule.” The agency further states that, “commenter(s) should address the incremental, direct impact of any proposed changes in the HOS requirements on driver health, the safe operation of CMV’s, and economic factors.” To quote Administrator Sandberg’s words: “We are moving aggressively to make sure we have the best regulations in place to ensure truck driver health, save lives and keep the American economy moving safely on the highways... Public feedback is critical to this effort.”

The Truckload Carriers Association continues to support the current HOS rules implemented on January 4, 2004. By way of background, on July 8, 2003, the TCA filed a Motion For Leave To Intervene in the court challenge that had been brought by Public Citizen and others. We intervened in support of the agency to help ensure that benefits the industry gained under the final rule would not be lost; specifically, the 34-hour restart; the 11-hours driving time; and no mandate for electronic on-board recorders (EOBRs). Subsequently on July 23, 2004, the U.S. Court of Appeals for the District of Columbia Circuit Court issued an opinion vacating the new HOS rule in it’s entirety and sent it back to the agency for further review.

On August 30, 2004 the agency officially filed a Motion to Stay the July 23 Court decision. The FMCSA stated in their brief “a stay is necessary to avoid substantial disruption in the enforcement of HOS requirements while affording the agency a reasonable amount of time to address the Court’s decision, and to develop and implement a plan addressing the issues raised.” On the same day, the American Trucking Associations (ATA) filed a separate motion to the Court, which included TCA as an intervenor asking for an indefinite stay of the effective date of its decision overturning the HOS rule. In our motion it was explained that going back to the old rule would install a regulatory regime that is far less safe than the current one, and would cost the industry hundreds of million of dollars. We added, “The instantaneous revival of the former HOS rule would cause chaos and would diminish highway safety. The trucking industry, shippers, and the law enforcement community simply cannot convert from one HOS regime to another without a lengthy transition period. A judicially imposed *immediate* conversion to the former HOS rule would cause rampant confusion and severe dislocation for these stakeholders.” This brief contained trucking company affidavits -- many of which were forwarded from truckload carriers -- to effectively demonstrate to the Court the potential negative safety and cost implications of transitioning back to the old rule, or rewriting the current ones.

Subsequently on September 30, 2004, President Bush signed the Surface Transportation Extension Act of 2004, which included language that keeps the current HOS rule in place at least until September 30, 2005. This series of rapid events has placed the trucking industry in a difficult position and many trucking companies could face irreparable harm due to the instability of the rules designed to govern the safe operation of CMV’s on our highway system. If prolonged, this instability could do great harm to not only the transportation infrastructure but also the U.S. economy as a whole.

As stated previously, our position regarding the current HOS rule is clear. We continue to collect and process data from the truckload industry in an effort to provide meaningful evidence that the current HOS rule not only provides reasonable and compelling data that the highway user community is protected but also that the health and well being of the driver is sufficiently addressed. Given the short period of time to comment, our ability to currently provide this evidence is diminished. With this in mind, TCA requests that the FMCSA leave the record open so that beneficial data and information can be provided to assist the agency in their deliberations. We believe this is essential in determining the best course of action for all parties concerned. As a point of clarification, this is not a request to extend the comment period.

However, at this time, we are prepared to offer the following introduction of data that is beginning to be collected and compiled. It is the opinion of TCA, that additional supporting evidence will become available within the next 60 days. When complete and if FMCSA will allow the record to remain open, we believe that this additional data will provide a clearer picture of the benefits of the existing rule:

1) American Transportation Research Institute (ATRI) “Safety and Productivity of New Hours of Service, Preliminary Data Findings”

In November 2004, ATRI initiated research to analyze the safety and productivity impacts of the current HOS rule. ATRI’s research includes a commercial driver survey, focus groups with industry safety professionals and objective quantitative analyses of national crash databases, industry-wide safety and productivity data, and data from specific fleets. In addition to the survey and focus group analyses, much of the quantitative analysis compares 2003 performance under the old HOS rule to 2004 performance of the current rule. The following is a snapshot of data that continues to be collected and compiled:

- Truckload specific reductions in preventable collisions, total injuries and collision related injuries.
- The average number of drivers in the truckload sector was higher in each quarter of 2004 when compared to the same periods in 2003.
- In surveying drivers, the initial data finds:
  - Drivers report being more rested and relaxed under the current rule;
  - Drivers report that the current rule makes it easier for them to schedule and track time;
  - Drivers report satisfaction with the 11 hour driving limits and the 34 hour restart period; and
  - Drivers report that any major changes to the current rule would have significant impacts on carriers.
- Focus group data currently suggests the following:
  - Participants report that much has been invested in reengineering systems and training drivers to comply with the current rule.

- Participants feel that another major change would negatively impact their operations.
- Participants report investing time and resources in educating shippers and receivers about the current rule and the impact that lengthy delays have on drivers' ability to meet shipper/receiver demands.
- Participants report concerns about CMV enforcement personnel having to be re-trained and educated should a major change be implemented.

While much of this may appear anecdotal, the full scope of the data being collected is still developing. Given additional time to provide this data, we believe it will reinforce the trucking industry's belief that the current rule addresses both the necessary safety and driver health requirements.

2) *"Managing Safety, Alertness and Performance through Federal Hours of Service Regulations: Opportunities and Challenges"* a report by Dr. Mark R. Rosekind.

The TCA continues to review a report written by Dr. Mark R. Rosekind, the President and Chief Scientist for Alertness Solutions entitled, "Managing Safety, Alertness and Performance through Federal Hours of Service Regulations: Opportunities and Challenges." Dr. Rosekind presents the report in two primary sections: the first part of the report provides a lengthy discussion on managing fatigue in complex operational environments, the value and limitations of scientific data, and the core physiological issues that underlie fatigue. The second part of Dr. Rosekind's report directly addresses the four specific core issues raised by the FMCSA in the NPRM regarding the HOS regulations in commercial trucking. This part of the report attempts to provide a thoughtful analysis of the core operational issues using relevant scientific data and sources to establish definitive policy decisions. To this end, Dr. Rosekind, focuses in on the four core issues identified in the NPRM including: 1) the 11 hours drive time; 2) the 34-hour restart; 3) the sleeper-berth; and 4) the driver's health. As this report is still being reviewed and evaluated, TCA offers brief comments on a few of the reports findings:

### **11-Hours Driving Time**

As stated earlier in our comments, TCA supports the increase in allowable driving time from 10 to 11 hours. According to Dr. Rosekind in his report, "There is very limited data to address a drive time restriction and from a physiological perspective, less foundation to establish its role related to fatigue in the context of a hard duty time limit. The minimal data available do not show significant differences between 10 and 11 hour drive times."

### **34-Hour Restart Provision**

TCA and its membership has been a strong supporter of the 34-hour restart provision. To this point, many of our member companies report that the 34-hour restart provision is perhaps the most beneficial regulatory allowance seen in some time resulting in realized productivity gains. Dr. Rosekind's findings in the report support the 34-hour restart provision.

According to Dr. Rosekind, "There are no scientific data that specifically address the issue of how many work hours in a week, or longer timeframe such as in a month or annually, result in fatigue that reduces performance, alertness or safety. [However], a core premise in the weekly work hour limitations is that they both restrict the total work hours and provide a recovery period within a certain timeframe. The 34-hour restart specifically addresses the recovery opportunity.... In practice, a 34-hour period provides an opportunity for at least two 8-hour sleep periods and up to 18 hours of total wakefulness... The 34-hour restart period provides two sleep opportunities that should allow recovery from a cumulative sleep debt.... Once any cumulative sleep debt has been erased through recovery sleep, an individual should be considered rested and without any acute sleep loss or sleep debt. From a physiological perspective then, after a 34-hour restart period, a driver would be calculated to have zero sleep loss, acute or cumulative, and be appropriately rested for duty.... In fact, the primary objective of a recovery or restart period is to 'zero out' any accumulated fatigue effects and have a rested operator prepared for duty."

### 3) TCA Encouraged and Assisted its Membership in Filing Comments to the NPRM.

On a weekly basis since the January 24, 2005 NPRM was officially published in the *Federal Register*, TCA has been strongly encouraging its members, through the TCA Newsletter, the *Truckload Carrier Report* to file comments to this docket with information and data to support the current HOS rule. Furthermore, to assist the motor carriers in filing these comments, TCA publicized to its members a guide for responding to the NPRM.

In the NPRM the agency posed a number of questions for commenters to address. However, TCA's further guidance to its members provided a means to organize thoughts into six categories and produce what the industry perceived as an easier to follow guide which would result in a higher volume and more logical industry response. These categories were referenced to select questions raised in the NPRM, which allowed the responder to review what was being requested by the agency and thereby provide useable information.

**Summary of TCA Comments**

By way of review, TCA ***strongly*** supports the agency in its defense of the current HOS rule. The truckload segment of the industry believes this rule melds the operational needs of the trucking industry while protecting and improving driver health and well being. A great deal of time and capital was invested in changing trucking operations to match and comply with the rule as promulgated. To ignore this commitment would greatly reduce the confidence that private industry has in the regulatory process. If FMCSA were forced to rewrite the current rule or revert to a previous version of the HOS rule, it would cause a severe disruption in trucking operations which could have significant and in many cases, irreparable consequences for not only our industry, but also the economy as a whole. This would be in addition to a lack of confidence in the regulatory process due to a continued instability of the rulemaking. We renew our request to keep the record open for an additional 60 days so that TCA and other interested parties can continue to provide beneficial and meaningful data to assist in ensuring both the needs of the industry and the community at-large is preserved. Again we emphasize that this is not a request to extend the comment period.

To this point, the following efforts were cited and continue to be reviewed and associated data collected. It is our hope, that we will have an opportunity to provide further analysis of the data currently being collected:

- Truckload-specific data from American Transportation Research Institute (ATRI) “*Safety and Productivity of the New Hours of Service Preliminary Data Findings*”
- “*Managing Safety, Alertness and Performance through Federal Hours of Service Regulations: Opportunities and Challenges*” a report by Dr. Mark R. Rosekind, President and Chief Scientist for Alertness Solutions.
- Continued TCA collection of member specific data and encouragement of participation.

In closing, we wish to thank the Department for the opportunity to comment on this important rulemaking issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CBurruss', with a long horizontal flourish extending to the right.

Christopher Burruss  
President