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AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS' COMMENTS ON THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S ADVANCE NOTICE OF PROPOSED RULEMAKING "HOURS OF SERVICE OF DRIVERS" DOCKET NO. FMCSA-2018-0248-0160 83 FED. REG. 18379

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I. INTRODUCTION

The American Fuel & Petrochemical Manufacturers ("AFPM") welcomes the opportunity to comment on the Federal Motor Carrier Safety Administration's ("FMCSA") Advance Notice of Proposed Rulemaking ("ANPRM") entitled, "Hours of Service of Drivers."[1] On August 23, 2018, FMCSA issued the ANPRM seeking public input in four specific areas in which the Agency is considering changes: 1) the short-haul hours of service ("HOS") limit; 2) the HOS exception for adverse driving conditions; 3) the 30-minute rest break provision; and 4) the sleeper berth rule to allow drivers to split their required time in the sleeper berth.

AFPM is a national trade association representing nearly all U.S. refining and petrochemical manufacturing capacity. AFPM's member companies produce the gasoline, diesel, and jet fuel that drive the modern economy, as well as the chemical building blocks that are used to make the millions of products that make modern life possible–from clothing to life-saving medical equipment and smartphones. With over four million miles of roads in the U.S., highways do more than just move people: they drive our economy. Moreover, AFPM members own and operate large trucking fleets, and others depend on contract carriers. The 2015 NTTC Tank Truck Industry Market Analysis estimated that tank trucks hauled 1.22 billion tons of gasoline, diesel, and aviation fuel. This constituted 49.2% of all tank truck tonnage and 33% of all tank truck revenue.[2] The petrochemical industry also relies on trucks to move resins short distances from petrochemical processing plants and intermodal rail terminals to manufacturing facilities that produce consumer goods. Given the importance of highway transportation to the economy and our members' deep reliance on a safe and efficient highway system, AFPM has a vested interest in the HOS regulations and appreciates the opportunity to provide comments to FMCSA.

AFPM members are committed to protecting the health and safety of their workers, contractors, customers, and the communities where fuels and petrochemical products are transported. AFPM member companies recognize a safe, reliable, and efficient transportation system is essential for both industry and the American public. FMCSA regulatory requirements, including the HOS regulations, help ensure the safe and efficient highway transportation of these goods. With the advent of electronic logging devices ("ELDs"), there are opportunities to improve the existing regulations. AFPM encourages FMCSA to utilize this opportunity to enhance productivity with modifications to the HOS regulations while maintaining the safety of drivers and the American public.

II. AFPM's COMMENTS ON FMCSA's ANPRM

[1] *See* Docket No. FMCSA-2018-0248-0160, "Hours of Service Drivers," 83 Fed. Reg. 42631, proposed August 23, 2018, https://www.regulations.gov/document?D=FMCSA-2018-0248-0160.
[2] *See* "Tank Truck Industry Market Analysis Now Available, " March 30, 2015, https://www.trucking.org/itemcontent.aspx?uid=69dbb11c-c741-4aaf-930a-411789c5f5cc.

In the ANRPM, FMCSA requests comments on potential revisions to the hours of service regulations. While AFPM does not respond directly to the detailed questions posed by FMCSA, we provide comments where we believe FMCSA can focus their efforts.

A. Short-haul operations

Under the short-haul exception,[3] drivers do not have to prepare records of duty status ("logs") or use an ELD if they meet certain conditions, including a return to their work reporting location and release from work within 12 consecutive hours. Drivers operating under this provision therefore have a 12-hour window in which to drive up to 11 total hours. Other truck drivers have a 14-hour window in which to drive up to 11 total hours.[4]

A change from a 12-hour period to the 14-hour period would greatly benefit crude oil gathering operations. The lease roads that crude oil haulers operate on are the same roads that hundreds, if not thousands, of water and hydraulic fracturing sand haulers use in the crude oil production process. In addition, these roads routinely bear overweight[5] oilfield equipment. After such repetitive use, road conditions become substandard. The constant jarring negatively affects onboard pumping equipment used to load and unload crude oil. As a result, mechanical issues routinely delay drivers operating in these conditions. Safety would not be compromised by extending the 12-hour period to 14 hours since the drive time remains limited to 11 hours. The additional two hours allows for more time to diagnose and repair malfunctioning on-board pumping equipment.

On April 9, 2018, FMCSA granted the National Tank Truck Carriers, Inc. ("NTTC") and the Massachusetts Motor Transport Association's ("MMTA") petition for exemption[6] requesting relief from the 30-minute rest break requirement and an extension of the 12-hour drive window for drivers hauling several types of fuels.[7] FMCSA's grant is based on the agency's conclusion that the exemption would "be equal to, or greater than, the level of safety that would be achieved if the drivers were required to take a rest break,"[8] and is an example of the types of efficiency improvements the agency should consider – those that increase productivity without compromising safety. Virtually every gallon of fuel is moved the final mile to the consumer by tank truck. AFPM estimates that moving this volume of fuels to consumers requires more than 22 million truck trips per year, or more than 60,000 trips each day. Tank trucks deliver fuels to more than 120,000 retail outlets, where consumers purchase gasoline

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[3] *See* 49 CFR § 395.1(e)(1)(ii)(A) https://www.law.cornell.edu/cfr/text/49/395.1.
[4] *See* 49 CFR § 395.3(a)(2)-(3) https://www.law.cornell.edu/cfr/text/49/395.3.
[5] Gross Vehicle Weight exceeding 80,000 lbs.
[6] *See* Docket No. FMCSA- 2017-0270, "Hours of Service of Drivers: National Tank Truck Carriers and Massachusetts Motor Transportation Association; Application for Exemption," 83 Fed. Reg. 15221, https://www.gpo.gov/fdsys/pkg/FR-2018-04-09/pdf/2018-07189.pdf.
[7] U.N. 1170 - Ethanol, U.N. 1202 - Diesel Fuel, U.N. 1203 - Gasoline, U.N. 1863 - Fuel, aviation, turbine engine, U.N. 1993 - Flammable liquids, n.o.s. (gasoline), U.N. 3475 - Ethanol and gasoline mixture, Ethanol and motor spirit mixture, or Ethanol and petrol mixture, and N.A. 1993 - Diesel Fuel or Fuel Oil.
[8] *Id.*

and diesel fuels. Smaller distribution trucks also deliver heating oil and propane used for space heating directly to 11.5 million homes.[9] The exemption is vital for the refined petroleum products supply chain, and AFPM applauds FMCSA's recognition that the level of safety achieved by this industry is equal to, or greater than, the level of safety that would be achieved if the drivers were required to take the rest break. Moreover, the exemption has greatly benefitted refined product delivery service and should be codified beyond the current five-year window.

B. Adverse driving conditions

The current regulations[10] allow two additional hours of driving time under adverse conditions, which are defined[11] 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." Although the rule allows up to 13 hours of driving time under adverse conditions, instead of the normal 11 hours, it does not provide a corresponding extension of the 14-hour driving window to 16 hours.

There is not adequate flexibility in the existing adverse driving conditions exception. Weather conditions in oil producing regions like West Texas and North Dakota can be unpredictable. Dust storms and blizzards are commonplace and can arise unexpectedly. Currently, if a driver encounters adverse conditions, and he or she has taken a 30-minute meal break, or spent time loading or unloading freight, he or she must still fit 13 hours of driving into a 13.5-hour window.

The adverse driving exception should be applied to the 14-hour work day window, not just the 11-hour driving limit. Trucks provide flexibility in adverse and emergency weather conditions. Following Superstorm Sandy, when pipeline problems, port disruptions, and power outages at terminals and retail outlets led to fuel supply shortages in and around New York City, trucks were essential for bringing fuel in from outside the region to supply emergency responders and other essential public services. More recently, when Hurricane Maria resulted in storm damage and power outages that closed terminals in Puerto Rico, tank trucks loaded with fuel on the mainland United States were shipped to the island to supply much needed fuels for transportation and backup power generators. When the "polar vortex" brought extreme cold to parts of the United States in late 2013 and early 2014, Midwest space heating demand for propane surged. As pipeline and rail infrastructure that normally delivers bulk supply of propane into the Midwest struggled to keep up with demand, tank trucks supplied the needed fuel. Despite the extreme weather conditions, few drivers were able to utilize the adverse driving conditions exception because of the cap on the 14-hour workday. Amending the 14-hour work day window to coincide with the extended 13-hour driving window could reduce the need for HOS waivers from FMCSA in weather-related emergencies.

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[9] American Fuel & Petrochemical Manufacturers, "The Fuel and Petrochemical Supply Chain." https://www.afpm.org/infrastructure-report/.

[10] *See* 49 CFR § 395.1(b)(1) https://www.law.cornell.edu/cfr/text/49/395.1.

[11] *See* 49 CFR § 395.2 https://www.law.cornell.edu/cfr/text/49/395.2.

C. Split-sleeper Berth Rule

There are special HOS rules for drivers who operate vehicles equipped with a sleeper-berth. These rules allow a sleeper-berth user to divide the minimum ten hours off-duty into two equivalent separate periods. Drivers who use sleeper berths must take at least eight consecutive hours of the ten hour off-duty period in the sleeper berth.[12] The other separate rest period must be at least 2 consecutive hours long. This rest period may be spent in the sleeper berth, off duty, or sleeper berth and off duty combined. It does not matter which rest period is taken first. After the second required rest period is completed, the driver will have a new point on the clock from which to calculate hours available.

Currently, drivers using the split sleeper berth provision can only divide their off-duty hours in one of two ways: ten consecutive hours or eight hours and two hours. In 2017, FMCSA announced a proposal for a "Pilot Program to Allow Commercial Drivers To Split Sleeper Berth Time," scheduled to be conducted in fall 2018. This pilot program allows drivers more flexibility with their split sleeper berth time, giving drivers the option of using any combination of split sleeper periods, if neither one is less than three hours long. This allows a driver to take breaks when necessary and not keep driving because their drive time window is expiring. We anticipate these changes will increase safety and we look forward to reviewing the safety data from this pilot in an effort to improve efficiency of these types of operations.

D. Electronic Logging Devices

AFPM supports the review and revision of the Hours of Service of Drivers regulations to alleviate unnecessary regulatory burdens while maintaining CMV driver and motor carrier safety, as well as the safety of the public. Additionally, AFPM supports FMCSA's continued implementation of Electronic Logging Devices ("ELDs") and Automatic On-Board Recording Devices ("AOBRD"). In 1988, with the arrival of new technology for recording a truck driver's duty status, the AOBRD Rule was published to set out standards for use of the electronic device that records a driver's HOS.[13] With the advent of new technologies, in 2015, the ELD Final Rule[14] was published setting out the technical requirements for electronic logging devices. The rule provided a two-stage compliance timeline for carriers and drivers to transition from paper logs, logging software, and AOBRDs over to ELDs.

While FMCSA did not request comment on ELDs and AOBRDs, we believe any changes in hours of service requirements must be paired with ELD compliant vehicles. Based on data from the Center for Truck and Bus Safety of Virginia Tech Transportation Institute, drivers using ELDs had a significantly lower total crash rate (a 11.7% reduction) and a significantly lower preventable crash rate

[12] *See* 49 CFR § 395.1(g)(1)(ii)(A)(1) https://www.law.cornell.edu/cfr/text/49/395.1.
[13] *See* 49 CFR § 395.15 https://www.law.cornell.edu/cfr/text/49/395.15.
[14] *See* Docket No. FMCSA- 2010-0167-2284, "Electronic Logging Devices and Hours of Service Supporting Documents," 80 Fed. Reg. 31336, https://www.regulations.gov/document?D=FMCSA-2010-0167-2284.

(a 5.1% reduction) than trucks not equipped with electronic driver logs.[15] These tools ensure consistent, quality monitoring of HOS data and significantly reduce instances of noncompliance. The HOS regulations should be updated to reflect these new technologies' incorporation into the CMV fleet.

III. CONCLUSION

AFPM supports informed, risk-based, and cost-justified approaches to developing, reviewing, and revising regulations related to transportation, and expects the same of federal regulators. We applaud FMCSA's recognition of the scientific literature that suggests regulatory limitations on work hours may not be sufficient to prevent worker fatigue and will be following closely the results of the pilot program.

AFPM acknowledges the need for robust safety regulations that the HOS provide. Efforts to reform the HOS regulations should be driven by scientific data, promote safety for the driver and the community, and ultimately provide safe, yet flexible transportation regulations. We share FMCSA's commitment to safe transportation. It is because of these shared interests that AFPM submits our comments on this important rulemaking action. AFPM thanks FMCSA for its time and consideration of our comments related to revisions of the HOS regulations. We look forward to the opportunity to work together on this. Please contact me at (202) 844-5491 or rbenedict@afpm.org if you wish to discuss these issues further.

Sincerely,

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[15] Virginia Tech Transportation Institute. Center for Truck and Bus Safety. "Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Records Final Report" Hickman, Jeffrey S.; Camden, Matthew C.; Guo, Feng; Dunn, Naomi J.; Hanowski, Richard J. https://rosap.ntl.bts.gov/view/dot/187.