



**American
Fuel & Petrochemical
Manufacturers**

1800 M Street, NW
Suite 900, North
Washington, DC
20036

202.457.0480 office
202.457.0486 fax
afpm.org

**AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS' COMMENTS ON
THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S
NOTICE OF PROPOSED RULEMAKING
"HOURS OF SERVICE OF DRIVERS"
DOCKET NO. FMCSA-2018-0248
84 FED. REG. 44190**

Rob Benedict
American Fuel & Petrochemical
Manufacturers
1800 M Street, NW, Suite 900
Washington, DC 20036

October 21, 2019



I. INTRODUCTION

The American Fuel & Petrochemical Manufacturers (“AFPM”) welcomes the opportunity to comment on the Federal Motor Carrier Safety Administration’s (“FMCSA”) Notice of Proposed Rulemaking (“NPRM”) entitled, “Hours of Service of Drivers.”¹ On August 22, 2019, FMCSA issued the NPRM proposing amendments to its hours of service (“HOS”) requirements to provide greater flexibility for drivers subject to the HOS rules. AFPM encourages FMCSA to utilize this opportunity to enhance productivity and flexibility with modifications to the HOS regulations while maintaining the safety of drivers and the American public.

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. AFPM members own and operate large trucking fleets, as well as utilize contract carriers for highway transportation needs. The Bureau of Transportation Statistics reported that in 2017 trucks hauled over 1 billion tons of crude oil and another 4.44 billion tons of gasoline and other refined products.² This constituted over 30 percent of total truck tonnage. 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 new and advanced technologies, including electronic logging devices (“ELDs”), now is a perfect time to improve and update the existing regulations. AFPM encourages FMCSA to update their regulations to reflect the current operating environment while maintaining a high level of safety. We are supportive of this proposed rulemaking and provide some constructive comments below.

II. AFPM’s COMMENTS ON FMCSA’s NPRM

In the NRPM, FMCSA proposes amendments to its HOS requirements to provide greater flexibility for drivers subject to the HOS rules without adversely affecting safety. This would be accomplished by:

¹ See Docket No. FMCSA-2018-0248-5454, “Hours of Service Drivers,” 84 Fed. Reg. 44190, proposed August 22, 2019, <https://www.regulations.gov/document?D=FMCSA-2018-0248-5454>.

² Bureau of Transportation Statistics, “Freight Shipments by Commodity: Weight and Value of Freight Shipments by Commodity: 2017.” <https://www.bts.gov/topics/freight-transportation/freight-shipments-commodity>. Accessed October 7, 2019.



- altering the short-haul exception to the record of duty status (“RODS”) requirement available to certain commercial motor vehicle (“CMV”) drivers,
- modifying the adverse driving conditions exception, increasing flexibility for the 30-minute break rule by requiring a break after 8 hours of driving time (instead of on-duty time) and allowing on-duty/non driving periods as qualifying breaks from driving,
- modifying the sleeper berth exception to allow a driver to spend a minimum of 7 hours in the berth combined with a minimum 2-hour off-duty period, provided the combined periods total 10 hours (rather than the current 8/2 split),
- allowing one off-duty break that would pause a truck driver's 14-hour driving window.

A. Short-haul operations

Under the current regulations,³ CMV drivers do not have to prepare RODS, use an ELD, maintain supporting documents, or take a 30-minute break after 8 hours of duty if they meet certain conditions, including a return to their normal work reporting location and release from work within 12 consecutive hours after their starting time. Under this short-haul exception, drivers also must operate within a 100 air-mile radius of their work reporting location. Truck drivers operating under this provision are permitted a 12-hour workday in which to drive up to 11 total hours. Drivers not utilizing this exemption have a more flexible 14-hour window in which to drive up to 11 total hours.⁴

This NPRM proposes extending the maximum allowable workday under short-haul exception from 12 to 14 hours and to extend the existing distance restriction under this provision from 100 air miles to 150 air miles. Truck drivers would continue to be limited to 11 hours of driving time.

The proposed modification to the 100 air-mile exception allows CMVs two additional hours to complete their workday and a much wider area within which to operate. This change would provide the greatest benefit to crude oil gathering operations without impacting safety. 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 overweight⁵ oilfield equipment. After such repetitive use, road conditions are understandably deficient. 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 time allotted would allow drivers to address any mechanical issues encountered while not being penalized for addressing those issues. This could potentially have a positive safety impact as drivers would have additional time to address issues without impacting their HOS. It also has the potential to allow drivers to operate with an abundance of caution on roadways that may be deficient.

The NPRM could have an impact on recordkeeping requirements by reducing the so-called 8-in-30 exemption. This exemption allows drivers to log on paper eight days in any 30-day period and remain exempt from using an ELD. If a current 100 air-mile CMV operator exceeds 100 air miles or a 12-consecutive hour workday, the driver must create a log for the day. If a driver must log more than eight times in the prior 30 days, the driver must log on an ELD. AFPM seeks additional information

³ See 49 CFR § 395.1(e)(1).

⁴ See 49 CFR § 395.3(a)(2)-(3).

⁵ 5 Gross Vehicle Weight exceeding 80,000 lbs.



from FMCSA on the potential impacts the proposed short-haul exemption modifications could have on other recordkeeping requirements, including the 8-in-30 exemption.

FMCSA has previously recognized the importance of increasing efficiencies while maintaining safety, especially in the context of CMV operators transporting refined products. On April 9, 2018, FMCSA granted the National Tank Truck Carriers, Inc. (“NTTC”) and the Massachusetts Motor Transport Association’s (“MMTA”) petition for exemption⁶ 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 Virtually every gallon of fuel is moved the final mile to the consumer by tank truck.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.

B. Adverse driving conditions

The current regulations¹⁰ allow two additional hours of driving time under adverse conditions, which are defined¹¹ 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.

Trucks provide flexibility in adverse and emergency weather conditions as has been shown in numerous weather events in the Gulf Coast. Despite extreme weather conditions, few drivers are able to utilize the adverse driving conditions exception because of the cap on the 14-hour workday. Amending the 14-hour workday window to 16 hours to coincide with the extended 13-hour driving window, as the NPRM states, could reduce the need for HOS waivers from FMCSA in weather-related emergencies.

It is critical that the driving window be extended commensurate with allowable driving time. Weather conditions in oil producing regions like West Texas (Permian Basin) and North Dakota (Bakken Basin) as well as downstream regions in the U.S. Gulf Coast can be unpredictable. Dust storms, blizzards, and flooding are commonplace and can arise unexpectedly. Currently, if a driver

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 (April 9, 2018), <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 See Docket No. FMCSA- 2017-0270.

⁹ 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 and diesel fuels. Smaller distribution trucks also deliver heating oil and propane used for space heating directly to 11.5 million homes. See American Fuel & Petrochemical Manufacturers, “The Fuel and Petrochemical Supply Chain.” <https://www.afpm.org/infrastructure-report/>. (Accessed October 18, 2019.)

¹⁰ See 49 CFR § 395.1(b)(1).

¹¹ See 49 CFR § 395.2.



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. We agree with FMCSA's assessment that, "the flexibility provided in the proposal would give drivers greater latitude to respond to adverse driving conditions by removing the existing penalty that 'shortens' the driver's duty day if he or she responds cautiously to an adverse condition in a manner that takes up more duty time."¹² AFPM supports FMCSA's proposal to allow an expansion of the driving window during adverse weather conditions and agrees with FMSCA's assessment that the phrase "or duty time during which driving is permitted"¹³ should be added to § 395.1(b)(1).

C. 30-Minute Break

Currently, the hours-of-service regulations require that if more than 8 consecutive hours have passed since the last off-duty (or sleeper-berth) period of at least half an hour, a driver must take an off-duty break of at least 30 minutes before driving. For example, if the driver started driving immediately after coming on duty, he or she could drive for 8 consecutive hours, take a half-hour break, and then drive another 3 hours for a total of 11 hours. The NPRM proposes to make the 30-minute break requirement for CMV drivers applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute interruption. Under the proposal, a 30-minute break could be satisfied with a non-driving period, either off duty, in the sleeper berth, or on-duty.

AFPM supports the NPRM's proposal to modify the existing 30-minute rest break. FMCSA has previously granted exemptions from a 30-minute break for drivers hauling various types of fuel as mentioned above. Indeed, the NPRM provides a review of data gathered during another 30-minute rest break exemption.¹⁴ This particular exemption allowed operators to count their on-duty attendance of hazardous material ("HM") cargo toward the required 30-minute rest break requirement provided they perform no other on-duty activity, similar to the NPRM. Using the Motor Carrier Management Information System ("MCMIS"), the agency utilized counts of crashes where a vehicle with a HM placard was present, as well as crash counts of all large truck crashes. Using these data points, FMCSA examined the total number of crashes where a vehicle with an HM placard was present for the 2 years before and after the exemption went into effect. Admittedly, this analysis has some limitations in that not all vehicles transporting HM are large trucks and not all crashes can be attributed to the exemption. However, the analysis showed a slight decrease in the HM placard share of total large truck crashes and may suggest that the exemption allowing attending time to satisfy the break requirement did not increase the crash risk for operators of vehicles transporting certain HM. Moreover, in all the years it has administered exemptions, FMCSA has not discovered evidence of adverse safety impacts that would require withdrawal of any 30-minute exemption.¹⁵

AFPM recognizes that taking a break from several consecutive hours of driving is critical to avoid fatigue, highway hypnosis, and potential health issues, such as deep vein thrombosis.¹⁶ Our members currently manage driver fatigue by encouraging breaks from driving above the minimum

¹² 84 Fed. Reg. 44199.

¹³ 84 Fed. Reg. 44208.

¹⁴ 80 Fed. Reg. 50912 (August 21, 2015).

¹⁵ 84 Fed. Reg. 44202.

¹⁶ FMCSA, Recommendations of the Medical Expert Panel.

<https://www.fmcsa.dot.gov/regulations/medical/recommendations-medical-expert-panel>.



requirements. If the 30-minute break provision was finalized in its current form, industry and company-specific exemptions may no longer be needed. This has the potential to reduce FMCSA's workload by obviating the need for certain petitions for exemption as well as harmonizing company-specific guidance with federal regulations.

D. Split Duty Provision

Current regulations require that after being off duty for 10 or more consecutive hours, a driver of a CMV is allowed a period of 14 consecutive hours in which to drive up to 11 hours. The 14-consecutive-hour driving window begins when an individual starts any kind of work. The individual may not drive again after the end of the 14-hour window until he or she has been off duty for another 10 consecutive hours, or the equivalent of at least 10 consecutive hours using the sleeper berth option. This 14-hour window currently may not be extended by off-duty breaks that may occur during the duty period.

On February 13, 2018, the Owner-Operator Independent Drivers Association ("OOIDA") petitioned FMCSA to allow CMV drivers to take a single off-duty rest break for up to 3 consecutive hours once per 14-hour driving window. That rest break would pause the 14-hour clock for the duration of the break. However, drivers would still be limited to 11 hours of driving time and required to have at least 10 consecutive hours off duty before starting a new duty period. OOIDA also requested that the agency eliminate the 30-minute break. This NPRM incorporates OOIDA's petition as the "Split Duty Provision" and seeks additional public input on the proposal.

This NPRM proposes to accept OOIDA's petition in whole and would allow a single break of off-duty time, ranging from 30 minutes to no more than 3 consecutive hours, to be excluded from the 14-hour driving window, provided the driver has at least 10 consecutive hours off duty before the start of his or her next duty period. However, based on the lack of data to support the overall provisions outlined in this petition, FMCSA should delay the petition's adoption and not finalize the split duty provision in this rulemaking.¹⁷ This would allow FMCSA to collect and review a robust data set supporting the proposal. The current 14-hour window is based on circadian rhythms and supported by a large body of research. Additionally, AFPM notes that revisions to the 30-minute rest break and rule changes in response to the results of the split sleeper berth study could achieve much of the flexibility this petition seeks.

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 its duty to revise regulations to ensure that they continue to meet the needs for which they were originally designed and that they remain justified, in accordance with applicable executive orders. Further, AFPM fully supports the final compliance date¹⁸ for ELDs and

¹⁷ FMCSA's proposal cites only one study peripherally supporting its actions - Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011) "The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations."

¹⁸ 80 Fed. Reg. 78292.



believes that any revisions to the current HOS regulations be made in concert with these tools ensure consistent, quality monitoring of HOS.

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 options for drivers.

AFPM thanks FMCSA for its time and consideration of our comments related to revisions of the HOS regulations. Should you have any questions concerning these comments, please contact the undersigned at (202) 844-5491 or rbenedict@afpm.org.

Respectfully submitted,

Rob Benedict
Senior Director, Petrochemicals, Transportation, and Infrastructure