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Via www.regulations.gov
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August 28, 2019

Hon. Elaine L. Chao, Secretary of Transportation
Attn: Hon. R. P. Martinez, Administrator, FMCSA
Docket Management Facility
FMCSA-2018-0248 / FMCSA-2018-0037
1200 New Jersey Ave. SE
West Bldg., Ground Fl., Rm. W12-140
U.S. Department of Transportation
Washington, DC 20590-0001

Dear Madam Secretary:

RE: (1) Comments on DOT/FMCSA Notice of Proposed Rulemaking Titled "Hours of Service of Drivers," **FMCSA-2018-0248**, 84 *Fed. Reg.* 44190 (Aug. 22, 2019)

(2) Comments on DOT/FMCSA Advance Notice of Proposed Rulemaking Titled "Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles," **FMCSA-2018-0037**, 84 *Fed. Reg.* 24449 (May 28, 2019)

This letter presents comments of the National Federation of Independent Business (NFIB) in response to (1) the Federal Motor Carrier Safety Administration (FMCSA) notice of proposed rulemaking titled "Hours of Service of Drivers" and published in the *Federal Register* of August 22, 2019 ("HOS notice"), and (2) the FMCSA advance notice of proposed rulemaking titled "Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles" and published in the *Federal Register* of May 28, 2019 ("Safe Integration advance notice"). With respect to the HOS notice, NFIB recommends and requests adoption of the FMCSA-proposed changes to hours of service (HOS) rules. With respect to the Safe Integration advance notice, NFIB recommends that FMCSA greatly accelerate its consideration of special adjustments to HOS rules that initiation of a partial transition to automated trucks may necessitate.

NFIB is an incorporated nonprofit association with about 300,000 small and independent business members across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and, in particular, ensures that the governments of the United States and the fifty states hear the voice of small business as they formulate public policies. Small and independent businesses benefit from timely, affordable, and safe trucking services and many owner-operators of trucks are small and independent businesses themselves.

Hours of Service of Drivers Notice (FMCSA-2018-0248)

The HOS notice proposes changes to HOS rules (see 49 U.S.C. 31502 and 31136, and part 395, title 49, Code of Federal Regulations) to:

- (1) extend the short-haul time limit from 12 hours to 14 hours on duty, of which no more than 11 hours may be driving;
- (2) extend the short-haul distance limit from a radius of 100 air miles to 150;
- (3) extend the 11-hour driving limit by up to 2 hours when unforeseen adverse driving conditions, such as snow, ice, or fog, arise;
- (4) require a 30-minute break after 8 hours driving time and allow the driver to use off-duty, sleeper berth, or on-duty-not-driving time for the break;
- (5) allow a sleeper berth truck driver to split the 10-hour per day off-duty time into two portions, provided the portions include 7 consecutive hours in the sleeper berth and a minimum 2-hour off-duty period; and
- (6) allow an off-duty break of at least 30 minutes, but not more than 3 hours, not counted against the 14-hour driving window during which it occurs, as long as drivers take at least 10 consecutive off-duty hours at the end of the shift.

FMCSA reported that more accurate recording of driving time by the FMCSA Electronic Logging Device rule “highlighted the rigidity of HOS provisions and the practical ramifications drivers faced” (84 *Fed. Reg.* at 44195, col. 3). The changes proposed in the HOS notice allow drivers to allocate time more efficiently to meet business and individual needs, without increasing maximum driving time. FMCSA determined that “this proposal would not adversely affect driver fatigue levels or safety” (84 *Fed. Reg.* at 44192, col. 3).

NFIB appreciates the FMCSA work to ameliorate the difficulties with HOS rules that surfaced with the implementation of the ELD rule and recommends and requests adoption of the FMCSA-proposed HOS rule changes. The flexibility afforded by the proposed changes should increase the efficiency of trucking businesses and improve the quality of life for drivers, without sacrificing safety or service to customers.

Safe Integration of Automated Driving Systems Advance Notice (FMCSA-2018-0037, Q. 3.1)

FMCSA is at a very early stage in considering what adjustments to make to various rules, including hours of service, in light of the soon-to-arrive phenomenon of self-driving trucks. Given the substantial priority the Department of Transportation leadership has placed on moving toward automated vehicle technology, see U.S. Department of Transportation, “Preparing for the Future of Transportation, Automated Vehicles 3.0” (2018) (available at <https://www.transportation.gov/av/3/preparing-future-transportation-automated-vehicles-3>), FMCSA should accelerate its consideration of special adjustments to HOS rules that initiation of a partial transition to automated trucks may necessitate.

Americans likely will not accept automated trucks on the nation's highways until they have seen a clear and reliable demonstration of the safety of automated trucks. Achieving that demonstration will likely require a significant period during which a number of automated trucks operate on the highways with a human aboard to monitor the truck and to take control of it if any risk to safety arises (a "monitor/stand-by individual").

The Safe Integration advance notice reflects that FMCSA has quite a way to go before it makes a determination of what HOS rules should apply to a monitor/stand-by individual:

The Agency believes, preliminarily, that the basic approach for applying the HOS rules should continue to be used; that is, any time a human is at the controls of an ADS-equipped CMV, either in the driver's seat or operating it remotely, the time should be recorded as on-duty, driving. Any time the human is working without having the responsibility for taking control of the ADS-equipped vehicle (because it is operating in a fully autonomous mode within its intended ODD [sic: operational design domain]) should be considered on-duty, not driving. For scenarios in which the human is in a sleeper-berth on a vehicle controlled by ADS technology, the human may record his/her duty status in the same manner as a team driver with hours off-duty in the passenger seat or sleeper-berth time. (84 Fed. Reg. at 24454, col 1.)

The FMCSA preliminary position expressed above addresses (1) an individual who is in an ADS-equipped truck and who is driving the truck, (2) an individual who is not in the ADS-equipped truck but who is driving the truck through the use of remote technology, and (3) an individual who is in the ADS-equipped truck, but who monitors the truck's operations and stands by to take over the driving of the truck if the truck goes awry. With respect to monitor/stand-by individuals (the third category above), FMCSA's preliminary position contains two implicit assumptions requiring further examination:

-- *First*, FMCSA's preliminary position implicitly assumes that a monitor/stand-by individual is a "driver." The term "driver" is a key term that governs to whom the HOS rules apply (see 49 CFR 395.1), but the HOS rules do not define the term (note the absence of a "driver" definition in 49 CFR 395.2). FMCSA needs to make an explicit determination whether, and under what circumstances, a monitor/stand-by individual is or becomes a "driver," and in particular needs to explain why FMCSA seeks to apply the HOS rules to a monitor/stand-by individual even though that individual may serve in essence as a passenger on an ADS-equipped and operated truck and never actually drive it. A conclusion that monitor/stand-by individuals are not "drivers" would make current HOS rules inapplicable, but FMCSA could establish separate hours of service rules for monitor/stand-by individuals to the extent they are "employees" of motor carriers (see 49 U.S.C. 31502(b)).

-- *Secondly*, FMCSA's preliminary position implicitly assumes that there is no difference in terms of human performance factors (e.g., attention, fatigue, and stress) between (1) a driver who drives non-ADS-equipped trucks and who is on duty but not driving, and (2) a monitor/stand-by individual in an ADS-equipped truck who monitors second-by-second the safety of a truck that drives itself, while remaining ever-ready to take over the driving of the truck. FMCSA should test the accuracy of that assumption.

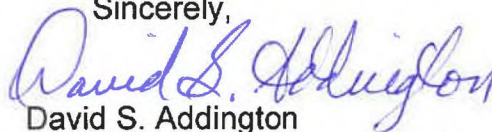
Upon completion of the work on the implicit assumptions and whatever other matters FMCSA must address, FMCSA should make any adjustments to the HOS rules necessary for monitor/stand-by individuals.

Monitor/stand-by individuals likely will be in ADS-equipped and ADS-operated trucks on the highways soon, as part of the effort to build public confidence in the safety of ADS-operated vehicles. FMCSA should greatly accelerate the HOS portions of the rulemaking process it initiated with the Safe Integration advance notice, so that motor carriers and monitor/stand-by individuals have notice of the legal regime under which the individuals work.

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NFIB appreciates FMCSA's leadership in developing hours of service rules based on sound science, public safety, and the needs of the American economy. America's small and independent businesses, and indeed all Americans, benefit from timely, affordable, and safe delivery of goods by truck.

Sincerely,



David S. Addington

Senior Vice President and General Counsel