National Retail Federation®
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February 5, 2010

Docket Management Facility
U.S. Department of Transportation - FMCSA
1200 New Jersey Avenue, SE.
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Driver Hours of Service Public Listening Session Comments (Docket No. FMCSA-2004-19608)

Dear Administrator Ferro:

The following comments are submitted on behalf of the National Retail Federation (NRF) in response to the Federal Motor Carrier Safety Administration's (FMCSA) announcement of public listening sessions to solicit comments and information on potential changes to the current hours-of-service (HOS) regulations. NRF strongly supports the current HOS regulations and questions the need to make changes. Any changes to the current HOS regulations should be based on sound science and studies of safety and driver health. In addition, the FMCSA must consider the significant economic impact that changes to the current HOS will have across the industry, including the impact to retail operations at both the store and distribution center level. NRF appreciates the opportunity to submit comments in support of the current HOS regulations.

By way of background, NRF is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail companies, more than 24 million employees - about one in five American workers - and 2008 sales of $4.6 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

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BACKGROUND

As submitted in previous comments to the FMCSA on February 15, 2008, NRF strongly supports the current HOS regulations, including the 11-hour on-duty driving limit and the 34-hour off-duty rest period. NRF encourages FMCSA to maintain the current HOS regulations.

Safe and efficient supply chains are critical to the success of a retailer's operations. The ability to transport products to distribution center and retail stores in a timely and efficient manner is critical to ensure products will be on store shelves for consumers. This is a fundamental requirement for the continued health of the retail sector. The efficient movement of goods not only benefits the retailer, but their vendor partners, their consumers and the U.S. economy as a whole.

While many in industry were concerned about the impact of the HOS regulations when they first went into effect in January 2004, U.S. industry, including retailers, have adapted their operations to comply with these requirements. However, removing the current rules and reverting back to the old rules or some variation thereof, as some are seeking, would result in significant cost increases for the industry as a whole and would adversely impact the U.S. economy.

NRF and its members fully support FMCSA's efforts to improve the health and safety of drivers in the transportation industry. As the FMCSA engages in new rulemaking, it must ensure that new regulations do not make it more difficult for new drivers to enter the market or make it too expensive for current drivers to remain in the industry. Maintaining the current HOS rules would be the best option for the reasons outlined below:

Enhanced Driver Safety

NRF refers FMCSA to the Interim Final Rule (IFR) published in the December 17, 2007 Federal Register and which was seeking comments to the HOS regulations.

In the IFR, FMCSA discussed numerous studies that have measured the results of the existing HOS regulations and the impact on driver safety. As pointed out both by the U.S. Department of Transportation (DOT) studies and those conducted by industry, including the American Trucking Associations (ATA), there is significant evidence that the 11-hour on-duty rule has resulted in enhanced driver safety, not less as some have claimed. All of the studies have pointed to fewer fatalities due to accidents involving trucks. The latest statistics from the DOT National Highway Transportation Safety Administration which were released in July 2009 show that truck fatalities declined by twelve percent in 2008. Preliminary numbers for the first quarter of 2009 show another decrease.

In addition, while not all NRF members directly track accidents involving their transportation providers, those that do have noted lower accident rates since implementation of the existing HOS regulations.

If the 11-hour on-duty time were to be repealed and replaced with the old 10-hour on-duty time, or some variation thereof, this would result in the requirement for significantly more trucks and drivers on the road to fulfill the demands of what is currently being accomplished under the 11-hour on-duty time. This in turn could lead to both safety and environmental degradation resulting from the need for additional trucks on the road. Some impacts could include increased diesel emissions, additional congestion and more wear and tear on infrastructure.

11-Hour Daily Driving Limit

NRF's members operate complex supply chains, which include an interwoven network of distribution centers and retail stores which are serviced by both private and contract motor carrier fleets. All of these companies rely on significant on-time delivery rates to get their merchandise onto the store shelves for retail sale. This is critical in the scheduling of labor at both the distribution center and the retail stores. This allows for the seamless flow of products through the distribution system with delivery of the right products to the right place at the right time. The existing 11-hour daily driving limit is critical to accomplishing this.

As a result of the current 11-hour daily driving limit, U.S. retailers have been able to achieve significant efficiencies within their supply chains and distribution networks. They have been able to work with their transportation providers to appropriately plan for the safe and efficient delivery of goods to their distribution centers and retail stores with a significantly high on-time delivery rate. Most, if not all, of NRF's members have instituted new technology and process solutions in order to comply with the current HOS regulations. Any change to this daily driving limit will upset the careful balance and efficiencies that have been achieved and require changes to those new systems and processes. In addition, such changes could result in significantly higher transportation costs and could lead to less safety as additional drivers and trucks will be required to make up for the shortfall. These changes would impact retailer costs—increases that would ultimately be passed on to the consumer.

In addition, it is important to note that distribution networks are experiencing increased demand, which is expected to grow substantially. This is significantly important as we start to recover from one of the worst recessions in history. Additional trucks and drivers will be necessary to meet this growing demand regardless of the HOS requirements. This will be extremely difficult as there is currently a shortage of available drivers. This in turn is leading to significant capacity reductions. This will be further exacerbated as we expect an

increase in the number of bankruptcies of smaller trucking companies due to an inability to come up with the necessary investment to meet new clean engine emissions laws. A change in the current HOS regulations will not only lead to further capacity reductions because of less driving time, but will also increase congestion on the roads and require retailers to carry additional inventory, at additional costs, in order to ensure that they have products on their store shelves, since reliability of service could be interrupted.

HOS Investments

The transportation industry as a whole has invested millions of dollars on compliance with current HOS regulations. This includes considerable investments by U.S. retailers in their systems and operations, including training, to ensure compliance with the regulations. Any changes to the current HOS regulations will once again require substantial investment to enable companies to readjust and retrain an entire workforce, including a large number of new drivers, to be able to comply with new rules. This will result in significant increases in transportation costs, which could be millions of dollars per company. In addition, this could result in increased costs for other services, including a potential requirement to carry additional inventory to ensure products are on the store shelves. These increased costs will be passed from the transportation provider to their customer and ultimately to the end consumer.

Conclusion

NRF appreciates the opportunity to submit comments in support of the FMCSA's listening sessions on the drivers hours of service. On behalf of America's retailers we urge the FMCSA maintain the current HOS to ensure there is no adverse impact to the timely delivery of goods and services, especially for the retail industry. If you have any comments, please contact Jonathan Gold, NRF's Vice President for Supply Chain and Customs Policy.

Sincerely,

Steve Pfister
Senior Vice President
Government Relations