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October 10, 2018

Administrator Ray Martinez  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE, Washington, DC  
20590-0001

**RE: FMCSA-2018-0248 Hours of Service of Drivers – Advanced Notice of Proposed Rulemaking**

Dear Administrator Martinez:

The National Shippers Strategic Transportation Council (“NASSTRAC”) appreciates the opportunity to respond to the Advanced Notice of Proposed Rulemaking (“ANPRM”) concerning hours of service (“HOS”) of drivers of commercial motor vehicles issued by the Federal Motor Carrier Safety Administration (“FMCSA”) on August 23, 2018.<sup>1</sup> NASSTRAC was founded in 1952 and is an association for transportation and logistics professionals who manage freight across all modes. Its member companies range from consumer products, retail, pharmaceutical, chemicals, and cosmetics to machinery, medical, printing, publishing, durable goods, and food and beverage. NASSTRAC provides education, advocacy, and provider relations opportunities to its members. NASSTRAC members depend heavily on reliable and efficient truck transportation to receive inbound materials and deliver their goods to end customers. Accordingly, NASSTRAC has a strong interest in this proceeding.

The trucking industry is facing capacity constraints and driver shortages which has strained many companies’ supply chains and resulted in rising costs. NASSTRAC strongly supports changes to the HOS rules that would increase flexibility and reduce regulatory burdens on the trucking industry, without compromising safety on the nation’s highways. Accordingly, NASSTRAC commends FMCSA for identifying areas of potential reform of the HOS rules that may help to alleviate some of the challenges facing the trucking industry and its customers.

NASSTRAC submits the following comments in response to the ANPRM.

1. Short-Haul Operations:

NASSTRAC supports an expansion of the short haul exemption, i.e. operations within a 100 air mile radius<sup>2</sup> from 12 consecutive hours on duty to 14 consecutive hours on duty. Allowing an

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<sup>1</sup> Advanced Notice of Proposed Rulemaking on Hours of Service of Drivers, 83 Fed. Reg. 42631 (August 23, 2018).

<sup>2</sup> See 49 C.F.R. § 395.1(e)(1).

additional 2 hours for drivers to perform their duties and return to their work reporting location can be expected to improve productivity, without adversely affecting the safety conditions. In certain situations, the current 12 consecutive hour window creates challenges for drivers when they encounter traffic congestion or unanticipated longer than average detention times at the receiving facilities. Thus, NASSTRAC urges FMCSA to consider adding 2 hours to the current short haul exemption in order to provide drivers with increased flexibility to address these challenges.

B. Adverse Driving Conditions:

NASSTRAC urges FMCSA to consider increasing the 14-hour driving window to 16 hours when a driver encounters adverse driving conditions. “Adverse conditions” are defined under the HOS rules 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.”<sup>3</sup>

Current HOS regulations allow drivers to drive “for not more than 2 additional hours beyond the maximum time allowed under §§ 395.3(a) or 395.5(a) to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo.”<sup>4</sup> However, HOS regulations maintain the 14-hour driving window for drivers driving under adverse conditions. NASSTRAC believes that FMCSA should increase the 14-hour driving window to 16 hours for adverse driving conditions, and thus provide commercial drivers with greater operational flexibility to complete their delivery within an expanded driving window. Under the current regulations, a driver may use the additional two hours of driving time when adverse conditions occur but still may be unable to complete a delivery if he/she “times out” based on the 14 hour window. Expanding the driving window by two hours to correlate to the two additional hours of driving time will likely alleviate undue stress that can result from encountering adverse conditions under time pressures to complete a delivery or arrive in a safe location to allow the adverse conditions to pass.

C. 30-Minute Break:

NASSTRAC supports the elimination or modification of the 30 minute rest break. Current HOS regulations do not allow drivers to drive if “more than 8 hours have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes.”<sup>5</sup> Current HOS regulations adopt a one-size-fits-all approach and presume that all drivers will become fatigued after the 8 hour period. However, NASSTRAC believes that physical conditions of each driver may differ and allowing the drivers to have more control over their own driving schedule will benefit the safety of our nation’s highways. NASSTRAC urges FMCSA to adopt a more flexible approach for driver rest break requirements.

D. Split Sleeper Berth Time:

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<sup>3</sup> 49 C.F.R. § 395.2.

<sup>4</sup> See 49 C.F.R. § 395(1)(b)(1).

<sup>5</sup> 49 C.F.R. 395.3(a)(3)(ii).

NASSTRAC believes that FMCSA should consider modifying the sleeper berth requirements to enable drivers to split their sleeper berth time into segments other than the 8/2 periods. Current HOS regulations require drivers to take at least 8 consecutive hours of the 10-hours off duty period in the sleeper berth.<sup>6</sup> Furthermore, drivers must have a separate period of at least two consecutive hours off-duty to acquire additional driving time.<sup>7</sup>

A pilot program, announced by FMCSA on June, 2017, offers participating drivers temporary relief from the requirement of 8 consecutive hours in the sleeper berth:<sup>8</sup>

*“For study purposes, drivers would be allowed to split their sleep into no more than two sleeper berth segments. Current regulations allow drivers to use one 10 hour period, or splits of 9 and 1 hours or 8 and 2 hours. Drivers operating under the exemption for this study would be allowed to use any combination of split sleeper periods, totaling 10 hours, with neither period being less than 3 hours, allowing for the driver to use splits of 3 and 7 hours, 4 and 6 hours, or two 5 hour periods.”<sup>9</sup>*

NASSTRAC is supportive of the Pilot Program which will allow FMCSA to gather data on driver metrics and the effect of a more flexible sleeper berth rule on driver fatigue, including possibly modifying the current sleeper berth regulations to allow drivers to split their off-duty rest breaks in 3 and 7 hours, 4 and 6 hours or two 5 hour periods depending on the results of the pilot program.

In conclusion, NASSTRAC strongly supports amending the HOS regulations to allow the industry to thrive under more flexible regulations without compromising safety on the highways. NASSTRAC believes that adopting more accommodating HOS rules will help to alleviate some of the existing market challenges faced by the trucking industry while maintaining a strong commitment to safety.

Sincerely,



Gail Rutkowski

Executive Director

National Shippers Strategic Transportation Council

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<sup>6</sup> 49 C.F.R. 393.76; 49 C.F.R 395.1(g)(1)(ii)(A)(1).

<sup>7</sup> 49 C.F.R 395.1(g)(1)(ii)(A)(2).

<sup>8</sup> See Hours of Service of Drivers; Pilot Program To Allow Commercial Drivers To Split Sleeper Berth Time; 82 Fed. Reg. 26232 (June 6, 2017) (“Pilot Program”).

<sup>9</sup> *Id.*