

**Before the
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
Washington, D.C. 20590**

In the Matter of)	
)	
)	Docket No. FMCSA-2018-0248
Hours of Service of Drivers)	
)	84 Fed. Reg. 44,190
)	
)	

**COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE**

October 21, 2019

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Introduction

On behalf of the Competitive Enterprise Institute (“CEI”), I respectfully submit these comments in response to the Federal Motor Carrier Safety Administration’s (“FMCSA”) Notice of Proposed Rulemaking on Hours of Service of Drivers (“NPRM”).¹

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective.² CEI’s interest in Hours of Service (“HOS”) of Drivers dates back to the December 2010 proposed HOS rule, which we opposed as unnecessarily costly, inflexible, and counterproductive.³ Our comments below broadly support the HOS rule changes contemplated in the NPRM.

Proposed HOS Rule Revisions Would Benefit Drivers, Carriers, Shippers, and Consumers

CEI appreciates the added flexibility of the HOS NPRM. If finalized, the proposed rule would benefit drivers, carriers, shippers, and consumers by preserving and enhancing road safety while better aligning safety benefits with the administrative and economic costs of HOS regulations. While CEI did not support the electronic logging device (“ELD”) rule, we recognize a silver lining in the ELD mandate that increased ELD use improved the accuracy of driving data, thereby exposing inefficiencies attributable to the current HOS rule. As FMCSA notes in the NPRM, “the accurate recording of driving time by ELDs highlighted the rigidity of HOS provisions and the practical ramifications drivers faced.”⁴

We support the expansion of short-haul operations, which the NPRM proposes to modify by increasing the maximum duty period by two hours and the maximum air-mile radius by 50 miles.⁵ We believe the available evidence demonstrates this proposed amendment would add meaningful flexibility for drivers, carriers, and shippers without negatively impacting highway safety.

We support the proposed change in the NPRM to allow drivers taking the adverse driving condition extension to use this provision beyond the maximum driving windows.⁶ The

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1. Hours of Service of Drivers, *Notice of Proposed Rulemaking*, FMCSA-2018-0248, 84 Fed. Reg. 44,190 (Aug. 22, 2019) [hereinafter NPRM].
 2. See About CEI, <https://cei.org/about-cei> (last visited Sep. 20, 2019).
 3. Comments of the Competitive Enterprise Institute in the matter of Hours of Service of Drivers, *Notice of Proposed Rulemaking*, FMCSA-2004-19608, 75 Fed. Reg. 82,170 (Dec. 29, 2010), available at <https://cei.org/sites/default/files/Marc%20Scribner%20-%20Proposed%20HOS%20Rule%20Comment%20Letter%20-%20FMCSA%202004-19608.pdf>.
 4. NPRM, *supra* note 1, at 44,195.
 5. *Id.* at 44,197–44,199.
 6. *Id.* at 44,199–44,200.

added flexibility from this proposed amendment will allow drivers to more safely respond to adverse driving conditions by reducing the existing tension between safety and on-time performance.

We appreciate the added flexibility in the proposed changes to the 30-minute rest break provision,⁷ but believe driver flexibility could be further and safely enhanced by eliminating the 30-minute rest break provision in its entirety. The research cited by FMCSA in the past to justify the current 30-minute break provision as well as the modification proposed in the NPRM does not support the claim that the 30-minute break provision, in either on-duty or off-duty form, materially enhances highway safety.⁸

Finally, we appreciate the added flexibility and support the proposed changes to both the split-sleeper berth provision⁹ and split-duty provision.¹⁰

Conclusion

We appreciate the opportunity to submit comments to FMCSA on this matter and look forward to further participation.

Respectfully submitted,

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7. *Id.* at 44,200–44,202.

8. *See, e.g.*, Ronald R. Knippling, *Threats to Scientific Validity in Truck Driver Hours-of-Service Studies*, Proceedings of the Ninth International Driving Symposium on Human Factors in Driver Assessment, Training and Vehicle Design (2017), *available at* <https://ir.uiowa.edu/drivingassessment/2017/papers/57/>.

9. NPRM, *supra* note 1, at 44,202–44,206.

10. *Id.* at 44,206–44,208.