

October 15, 2019

VIA ELECTRONIC SUBMISSION  
(<http://www.regulations.gov>)

The Honorable Raymond Martinez Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue Southeast  
Washington, D.C. 20590

**Re: Intermodal Association of North America  
Comments Regarding Docket FMCSA-2018-0248  
Notice of Proposed Rulemaking -- Hours of Service of Drivers**

Dear Administrator Martinez:

The Intermodal Association of North America (“IANA”) submits the following comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Motor Carrier Safety Administration (“FMCSA”) relative to possible changes to the hours-of-service regulations governing commercial motor vehicle drivers (the “HOS Regulations”). As described in further detail below, IANA respectfully requests that FMCSA consider our comments that support ensuring that the regulatory framework for hours of service provides adequate flexibility for intermodal drivers and places safety first.

**A. IANA’s Interest in The HOS Regulations**

IANA is North America’s leading industry trade association representing the combined interests of the intermodal freight industry. IANA’s membership roster of over 1,000 corporate members includes intermodal and over-the-road motor carriers, railroads (Class I, short-line and regional), water carriers, stacktrain operators, port authorities, intermodal marketing and logistics companies, and suppliers to the industry such as equipment manufacturers, intermodal leasing companies, and consulting firms. IANA’s associate (non-voting) members include shippers (defined as the beneficial owners of the freight to be shipped), academic institutions, government entities, and non-profit associations.

Intermodal transportation is the movement of cargo in shipping containers or trailers by more than one mode of transportation (*i.e.*, via steamship, rail, and motor carrier). As part of the intermodal network, more than 471,000 individuals who work for 8,000 motor carriers perform over 60 million intermodal drayage moves annually. Intermodal transportation offers a wide range of undisputed benefits to U.S. shippers and, ultimately, to individual U.S. consumers. For instance, due to rail fuel efficiency and the double-stacking of domestic containers, intermodal transportation is the most cost-effective transportation option for containers moving 500 miles or more. Likewise, intermodal transportation provides an environmentally-friendly and safe solution as it requires fewer trucks on the highways and, therefore, results in reduced greenhouse gas emissions. The use of an intermodal transportation solution also materially reduces instances of cargo theft due to the more controlled, closed-loop environment providing for enhanced security. All the foregoing ultimately reduces the price of goods for businesses and individual consumers.

IANA's mission is to promote the growth of efficient intermodal freight transportation through innovation, education, and dialogue. In furtherance of its mission, IANA maintains standing committees devoted to safety, operations, and maintenance and repair practices. IANA also administers the Uniform Intermodal Interchange and Facilities Access Agreement (an equipment interchange agreement adopted almost universally throughout the intermodal industry) and offers a wide variety of value-added business services and programs relating to operations, maintenance, risk management, safety, and security. These services are intended to promote intermodal productivity and operating efficiencies through the development and implementation of safe, uniform industry processes and procedures governing the interchange of intermodal equipment among ocean carriers, railroads, and motor carriers. Simply put, IANA is the connecting force behind intermodal freight.

Consequently, as motor carriers are a crucial link in the nation's intermodal network, IANA highly values regulatory changes that enhance intermodal truckers' productivity without compromising safety. IANA believes that modifications to the HOS Regulations would help the industry achieve these dual goals.

## **B. IANA's Comments to the NPRM**

IANA offers the following responses and recommendations related to selected elements of the NPRM that are of most importance to the intermodal industry.

### **1. Short-Haul Operations**

IANA supports extending the driving window for the short-haul exemption from 12 to 14 hours and extending the distance from 100 air miles to 150 air miles, but only in those instances where an ELD capable of tracking and reporting a driver's hours of service, is equipped in the vehicle.

Extending the hours and distance provisions of the exemption will assist the intermodal industry in providing additional flexibility to meet the needs of today's customers. Most intermodal drivers operate within 150 air-miles of their reporting location.

We recognize that extending the 12-hour period contained in the current exemption to 14 hours presents additional risk exposure to the drivers who need to use it. However, we believe adding in the ELD requirement for those drivers who occasionally need to extend beyond the 12 hour and 100-mile radius limitations of the current exemption will provide a more than adequate solution to enhance safety and compliance monitoring.

Drivers who wish to continue using the short-haul exemption as it exists today would continue to do so and remain exempt from the requirements of §§395.8 and 395.11.

### **2. Adverse Driving Conditions**

IANA recommends clarifying the definition of "adverse driving conditions" contained in 49 C.F.R. §395.2 to make sure it is clear what conditions and circumstances are covered under the definition, and what, if any, documentation might be necessary for compliance purposes. The current definition does not provide enough specificity or clarity to assist the industry with effective compliance practices, nor does it help assist the enforcement community with consistent enforcement.

Additionally, the current definition does not allow adequate flexibility for the intermodal industry. Many conditions (beyond mere driving conditions) have a significant adverse impact on an intermodal driver's ability to complete a run safely. For instance, intermodal drivers constantly

encounter adverse conditions outside of their control at marine, rail, and container yard terminals and at other loading and unloading facilities. These conditions include, but are not limited to, congestion forcing a motor carrier to sit in a long queue awaiting entry to a facility, congestion and labor shortages causing a driver to wait inside a terminal to pick up a chassis, container, or a load, or the complexity and condition of equipment that requires long waits for a repair at a roadability station. Intermodal drivers experience these adverse conditions much more frequently than other sectors of the motor carrier industry due to the nature of the business. These various delays substantially undermine intermodal productivity as drivers can make fewer trips than other motor carriers during an identical time period.

Accordingly, in the interest of alleviating congestion, improving safety, and creating a level playing field, IANA respectfully requests that FMCSA consider clarifying the “adverse driving conditions” under which the intermodal driver can extend his/her hours of service by up to two (2) hours caused by circumstances outside of the control of the driver. This two (2) hour extension would apply both to the 14-hour work day and the 11-hour driving limit.

An alternative approach to address our comments could be to institute 2 separate definitions relating to this issue, one relating to adverse “weather” conditions, and another relating to adverse “operating” conditions. Should the Agency wish to consider this approach, in both cases we would support extending by 2 hours the maximum window in which driving is permitted when these circumstances present themselves to the driver/motor carrier.

### 3. 30-Minute Rest Break

IANA recommends that the 30-minute rest break requirement be removed altogether for several reasons.

An intermodal driver should be able to take a break whenever necessary in order to avoid fatigue and to obtain the proper amount of rest, as well as to accommodate his or her work schedule for the day. The current one-size-fits-all approach across the entire motor carrier industry does not enhance safety and, moreover, restricts flexibility and the ability of the driver to manage his or her needs properly in the unique intermodal sector.

In addition, an intermodal driver already has abundant opportunities to rest in the course of performing his or her duties. For instance, in the course of a typical day, short-haul intermodal drivers are stationary at a marine, rail, or container yard terminal, or shipping/receiving facility for anywhere from 1-3 hours as loading and unloading takes place. During those periods the driver is inactive in his or her vehicle, offering an opportunity to rest, snack, or eat a meal. Such situations can occur 2-3 times daily.

Furthermore, as described above in Section 2, an intermodal driver experiences a wide variety of other interruptions during a typical work day, most of which are far outside of his or her control and adversely impact his or her ability to comply with this provision. In addition, intermodal drivers often find themselves in places and locations (and at times) that are not conducive to taking a separate break. The current regulation, combined with the rolling 14- hour clock, has an adverse impact on safety as an intermodal driver is forced to stop work or take a break at suboptimal times and places. Indeed, the current regulations create a risk to the public when forcing a driver to take a break even though the driver does not need a rest.

Proper compliance under the current regulation also imposes a tremendous administrative burden on intermodal motor carriers and drivers. In IANA’s view, this burden is not justified by any demonstrative safety benefits.

### 4. Split-Duty Period

We are supportive of this provision of the proposal. As noted in our comments in sections 2 and 3, there are a number of external factors that impact the hours of service of intermodal drivers. The off-duty break provided for in the Split-Duty Period offers an option that would enable much needed flexibility for the driver to be able to complete his or her work day in a more effective and safe manner.

Lastly, with respect to FMCSA's request regarding the timing of the compliance date, IANA would be supportive of moving this rule into effect as quickly as possible. However, we do recognize, and are sensitive to, the needs of the ELD providers in having an appropriate amount of time to conform their systems to the changes.

**C. Conclusion**

IANA, as the voice of the intermodal freight industry, respectfully requests that, in response to the NPRM, FMCSA consider these comments in the interest of improving intermodal driver flexibility and productivity. This will empower intermodal drivers to more effectively manage their work day and to rest and sleep when needed, which will in turn improve safety.

IANA is pleased to answer any questions you may have. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Joanne F. Casey". The signature is written in a cursive, flowing style.

Joanne F. Casey  
President and CEO  
Intermodal Association of North America