

October 5, 2018

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 and Fed. Reg. 2018-18379
Advanced 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 Advanced Notice of Proposed Rulemaking (“ANPRM”) 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 modify the HOS Regulations to provide intermodal motor carriers and their drivers with necessary flexibility while preserving safety.

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 435,000 drivers who work for 7,600 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 of 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 certain modifications to the HOS Regulations would help the industry achieve these dual goals.

B. IANA's Comments In Support of Revisions To The HOS Regulations

FMCSA has invited the public to respond to several specific questions in connection with the ANPRM. IANA offers the following responses and recommendations related to selected questions regarding the HOS Regulations.

1. Short-Haul Operations

IANA maintains that the exemption for short-haul operations memorialized in 49 C.F.R. 395.1(e) should be slightly modified as follows:

- The 12-hour work period contained in the exemption should be extended to 14 hours in order to be in harmony with the HOS Regulations governing all truck drivers. Doing so will simplify compliance on the part of the intermodal motor carriers and their drivers, particularly those that provide both short-haul intermodal drayage moves and longer haul services.
- The 100 air-mile radius provision should be extended to a distance of 150 air-miles. Most intermodal drivers operate within 150 air-miles of their reporting location. This extra 50 miles would not create any measurable safety risk to the public.
- The provision that requires the driver to report to his or her original work reporting location in order to be able to take advantage of this exemption should be eliminated because the rule provides no safety benefit and operates as an artificial constraint on operations that are vital to the U.S. economy.

As noted above, any improvements to intermodal motor carrier operations will have a positive ripple effect throughout the entire intermodal network without undermining safety.

2. Adverse Driving Conditions

IANA recommends expanding the definition of an "adverse driving condition" contained in 49 C.F.R. 395.2. The current regulation simply does not allow for needed flexibility. 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. 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 the definition of an "adverse driving condition" be expanded to include up to two (2) hours of wait time caused by circumstances outside of the control of an intermodal driver. This two (2) hour extension would apply both to the 14-hour work day and the 11-hour driving

limit.

3. 30-Minute Rest Break

IANA recommends that 49 C.F.R. 395.3(a)(3)(ii), governing rest breaks, 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.
- 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 shipping or 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 actually 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 imposes a tremendous administrative burden on intermodal motor carriers and their drivers. In IANA's view, this burden is not justified by any demonstrative safety benefits.

Once again, the proposed modification will enhance intermodal productivity while protecting public safety.

4. OOIDA Petition as to On-Duty Status

IANA recommends that 49 C.F.R. 395.2(1) be deleted altogether and that an express exception to the definition of "on-duty time" be added to ensure that time spent by an intermodal driver waiting in a queue to enter a marine, rail, or container yard terminal is not considered to be part of on-duty time. After all, delivery schedules are controlled by the motor carrier's customer (or the customer's shipper or receiver) to accommodate their specific interests. During such times, drivers are forced to be inactive and thus are at rest in the same manner as if they were on a rest or meal break. Further, local intermodal drivers generally drive less than 50% of allowable duty time with the remainder spent in rail or port terminals or at a shipper or receiver's facility in forced inactivity. Intermodal loads are nearly always received sealed. Only in the rarest of circumstances is an intermodal driver involved in any manner with loading or unloading. In fact, in order to control liability, most terminals, shippers, and receivers categorically forbid a driver to exit his or her vehicle.

IANA's proposed exception would be analogous to the exception contained in 49 C.F.R. 395.2(4)(i) (governing time spent resting in a parked vehicle). After all, a driver sitting in a queue or at a facility is

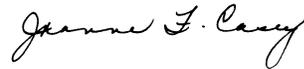
essentially sitting in a parked vehicle. The status of such a driver is qualitatively different than a driver actually driving a constantly moving vehicle. Moreover, this time can now be measured with much more precision due to the benefits of electronic logging devices.

C. Conclusion

IANA, as the voice of the intermodal freight industry, respectfully requests that, in response to the ANPRM, FMCSA adopt IANA's proposed revisions to the HOS Regulations 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 cursive script that reads "Joanne F. Casey".

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

cc: Marc Blubaugh, IANA General Counsel