



# The National Association of Small Trucking Companies

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June 15, 1998

Federal Highway Administration  
Attn: Docket Clerk  
U.S. DOT Dockets, Room PL-401  
400 Seventh Street, SW  
Washington, DC 20590-000 1

RE: Docket **NG. FHWA-98-3706**, <sup>20</sup>RIN 2 125-AD52  
Hours of Service of Drivers; Supporting Documents

DEPARTMENT OF TRANSPORTATION  
58 JUN 18 AM 1:30  
DOCKET SECTION

To whom it may concern,

My name is David Owen; I am the President of The National Association of Small Trucking Companies, Inc. (NASTC.) NASTC represents approximately 1,000 trucking companies who range in size from 2 trucks to 200 trucks; our average member operates 25 power units. While our members consist of many different types of carriers most of them do run long and are required to have their drivers maintain Records of Duty Status and comply with 1 hours of Service regulations.

in the ordinary course of our business, NASTC provides a variety of products, services and information to our members. Our mission statement reads as follows:

***NASTC is dedicated to helping small trucking companies control their costs through managed purchasing, analysis, consultation and advocacy. Our ultimate mission is to level the competitive playing field allowing our member companies to grow, prosper and remain a significant force in the transportation industry.***

Although we concentrate most of our effort on the direct cost side of our member's businesses through purchasing programs in major areas such as fuel, insurance, supplies, communications, employee leasing, and software, just to name a few, we are ever mindful that our members operate in a regulated environment and strive to assist them with the challenges this creates. To that end we provide our members with access to what we feel is the best drug and alcohol testing program available in the country. Our drug and alcohol testing program is designed to provide participating companies with all the tools needed to achieve complete compliance with parts 40 & 382 of the Federal Motor Carrier Safety Regulations, from random selections to company policy development and supervisor's training. I mention this program because it was made possible only because of the clarity of those rules; this is what you must have, this is what you must do, and this is what you do when this happens. Even with clear regulatory guidance, we spend a lot of time researching special situations and answering a lot of "what if" questions. The primary reason our program is effective is because our members participate with confidence. They know that if they do what we tell them that they will be in compliance and when they encounter strange or special circumstances they can call us to find out what to do. I bring up our drug and alcohol testing program only to point out that with clear regulatory guidance we can develop programs to help our members comply with the rules.

We would love to develop such a program for Hours of Service but don't see that it is feasible. The difficulty with this proposed rulemaking is that I cannot go to our members and tell them that if you do it this way, you will have a good program and be in compliance with the rules. We need either a lot more clarification or a system that will approve programs as effective and assurances that auditors will work within our programs to help our members administer them effectively. I can encourage NASTC members to participate in programs if I can reasonably assure them that their participation will put them in compliance. This cannot be accomplished unless there is a clear understanding of what the rule is by not only the carriers but the auditors as well. Any program that requires the individual auditor to bless it as effective fails to achieve the clarity needed to encourage good program development.

This proposed rulemaking seems to have been written for larger carriers operating hundreds of trucks, with a staff dedicated solely to safety and compliance, and that these proposed rules would be minor adjustments to existing programs. Small trucking companies have none of these things, and these proposed rules would require them to add staff and incur great expense in an effort to comply with unclear rules. The vast majority of trucking companies in this country are small. Our members want to comply and they are looking to us for guidance, but the best we could hope to accomplish in Hours of Service would be to develop a program or provide education and guidance that might help them. This is not enough. Under no circumstances will any rule lend itself to proactive voluntary compliance if any part of that effort is left to the discretion of an individual auditor to determine effectiveness.

In reviewing the notice of proposed rulemaking, I have several concerns. First of all, I agree with the underlying sentiment of this proposed rule; all carriers should have programs in place to ensure safe operations and compliance with the rules. As it relates to Hours of Service I believe that every motor carrier should have a program in place to reasonably assure themselves that their drivers are complying with the rules, and to the extent they're not, have measures in place to actively encourage compliance through education, training and discipline. Where I part company with the proposed rulemaking is it lacks focus and direction and the high price for non-compliance. The proposal list over 30 documents that could be used as supporting evidence for a log audit program and assigns no value to one of these documents over another. Give us some guidance! Show us what you think an ideal program should look like. Which of these potential supporting documents would you prefer we use? If we set up our program using bills of lading are we going to have trouble with the auditor who believes that fuel receipts are a better supporting document? If we set up our program using fuel receipts and toll tickets, will the auditors limit themselves to those supporting documents in the audit? Are we to apply supporting documents to every single driver log that is presented to us, or will a random sampling of 10%, 25% or 50% be acceptable? Tell us what supporting documents you would like for us to use, to what degree you would like for us to use them, and inspect us for compliance based on the programs we develop. I cannot stress enough that the language in any proposal on this issue must address what is acceptable behavior on the part of the auditor. The biggest fear of many of our members is that regardless of how

they try to put an effective program in place, an auditor will come in and apply some obscure document to the logs in an effort to find the carrier at fault. This fear is well founded; we've encountered this behavior from auditors on more than one occasion. What is the cost for non-compliance? The way I read the proposal, if an auditor finds a program to be ineffective they have the ability to require the carrier to drastically change their program to include the retention of over 30 different types of documents and apply all of this supporting data back to the record of duty status provided by the driver. In essence you will be telling a small carrier to hire staff they cannot afford or contract with an outsource provider which is not practical. Given the complexity of the proposed rule, neither of these alternatives is likely to solve the problem and either will burden the carrier with additional costs that could put them out of business.

The largest compliance problem facing our members and the industry in general has always been the hours of service requirements. The 10, 15 and 70 hour rules when rigidly enforced offer no flexibility, and as a result drivers are encouraged to cheat on their logs so that they do not have to shut down 30 miles from home or so they can make deliveries which often involve as much as a \$1 ,000.00 fine for late delivery. The regulations require that a carrier not "require or permit" a driver to exceed the hours of service requirement. Through proper dispatch, a carrier can reasonably ensure that a driver is not required to exceed the hours of service by keeping track of the driver's hours and proper planning. The lengths to which a company must go to avoid "permitting" a driver to exceed the hours of service is a more difficult question and is the question which is the subject matter of this proposed rulemaking.

Most responsible carriers check their drivers' logs for accuracy. The paper log currently submitted by all over the road drivers amounts to a sworn statement concerning the driver's hours of service. The carriers have long recognized their duty to not only "trust but to verify" the logs as submitted. This is typically done by reviewing the logs for accuracy and making the necessary hours and mileage calculations to confirm the data as entered by the driver. Mistaken entries or misfeasance can be ordinarily caught by reviewing the log. The heart of this rulemaking, though, is not aimed at the inadvertent or unintentional violation of the hours of service, but at squarely placing the burden on the carrier to catch drivers who make fraudulent log entries. In the proposed rulemaking the DOT cites over 30 different extrinsic documents which typically cross a trucking company's desk and suggest that some, part, or all of these documents can be used as an external check to stop log falsifications.

Under the proposal, carriers which do not use global positioning systems (GPS,) are required to write a specified policy indicating a program of external audit checks which the carrier believes will catch violations. No prototypes are suggested, and the carrier is left to its own to establish its log monitoring system. Upon an audit, it is up to the carrier to prove to the satisfaction of the investigator that (a) such a written program exists; (b) show evidence that the program has been implemented; and (c) apparently demonstrate to the investigators satisfaction that the program has become effective.

***While the tenor of the proposed rulemaking evidences the Department's willingness to work with carriers and avoid harsh application of the rules, the proposal contains no guidelines or examples of acceptable programs.***

I have reviewed the proposed rulemaking in detail, and could not begin to design a program, which, if implemented, would assure NASTC members of a finding of satisfactory compliance. I read recently with interest Vice President Gore's emphasis on re-inventing government so that regulations are straightforward, clear cut and easy to understand. While the Agency's heart might be in the right place, I do not believe the proposed regulations meet this standard.

Let me pose the following example:

One of our larger, more sophisticated members has a comprehensive system for intrinsic audit of its logs. Their dispatcher only dispatches drivers on loads which their hours of service show they can deliver legally. This carrier receives its driver's trip package containing the driver prepared record of duty status, toll receipts, bills of lading, and many of the other 30+ items named in the proposed regulation. All of the driver logs are reviewed for completeness and compliance with the IO, 15 and 70 hour rules. Approximately one third of the logs, selected randomly, are compared to supporting documents to determine if there has been any falsification. All log violations are noted and the offending drivers are notified by letter. Repeated violations result in warnings, out of service letters and ultimately termination.

This program can be reduced to writing and presented to an auditor upon request. The carrier does not now nor can it easily keep a record of the external checks the log audit clerk has made. Only the notices of violations are kept, and after the initial audit is performed, bills of lading are forwarded to the billing department, fuel receipts to the fuel tax department, and lumper fees and toll tickets are sent to payroll.

While the carrier believes this system to be effective, it is random and, the carrier has no way to document all of the successful external matches which were made. (The extra recordation burden would be costly and time consuming for this carrier and practically impossible for a very small carrier to accomplish.)

Does the above described program meet the requirements of the proposed rule? It seems clear that two or more auditors could disagree, one finding the above described program perfectly acceptable, so long as it worked, yet another demanding segregation and retention of every individual external match to prove that the written program was actually being implemented. I have read the DOT's proposed rulemaking, and I cannot honestly tell this carrier, or any of my other members, whether the above described program meets the regulations or not. There is no formal "letter opinion" to get an answer to the question.

Of real concern to NASTC and our members is the potential red tape which could be generated by this proposed rulemaking. If one auditor required a carrier to keep a separate log with backup copies of every external check in a safety folder available for

inspection, the burden would be overwhelming and, I can't honestly tell from the proposed regulation whether an overzealous auditor would be authorized to make such a demand.

If "foolish consistency is the hobgoblin of small minds" then some small mindedness is essential in government regulations. Approved examples, prototypes, etc., are needed as guidelines in order to avoid the arbitrary and capricious enforcement of the monitoring program. A small carrier in North Carolina should not be burdened with more red tape than a similarly situated carrier in Kentucky because of the imprecision in the regulations being enforced or the interpretation of the auditor.

While I appreciate the DOT's reluctance to establish minimum guidelines for an effective monitoring program, a regulation which does not give at least **examples** of acceptable programs leaves us with little effective guidance and no realistic way to comment about the administrative burden which the regulations will ultimately entail.

A program developed with the proper guidance should either be acceptable or not acceptable based solely on the program itself. Technology notwithstanding identical and even substantially similar programs should be either effective or not based solely on program design **regardless of the size of the trucking company**. A program should stand alone based on its design. If the program is not being properly administered, that should be a separate issue. If a motor carrier is not doing an adequate job of implementing a well designed program, they should be encouraged to expend their resources in improving their implementation, not starting all over again. Program design and implementation are both important, but failure in one area should not bring punitive action in the other. If a driver is doing a bad job driving a truck, we deal with the driver and his driving, we don't go buy a new truck.

Clearly, NASTC, small trucking companies, and other groups interested in designing an effective monitoring program for small carriers need examples or a mechanism for obtaining pre-approval of a simplified external audit system which, if carried out, will be deemed effective. There is no such mechanism in the current regulation. In the absence of such specificity, NASTC urges the DOT to withhold approval of the pending regulations until concrete examples of prototype programs for small carriers can be developed, reviewed and approved.

Another concern raised by the proposed rulemaking is that larger carriers could receive an **unwarranted technological bias**. It seems obvious that the **DOT has** been encouraged to jump on the **industry bandwagon with a view to encouraging the use of satellite tracking** devices as a safety monitoring tool. The implicit if not explicit language of the proposal suggests that carriers who purchase satellite tracking can avoid the red tape and attendant monitoring costs of small carriers, if not even the paper logging requirements themselves. Many of our members use satellite tracking devices and many more will take advantage of that technology in the near future. However, our members use this technology to stay in touch with their drivers and reduce their communications expenses. They would have to hire additional staff to monitor all of the data that is generated by these devices and applying them as a substitute to the driver's log is not feasible, **unless** of course we mount

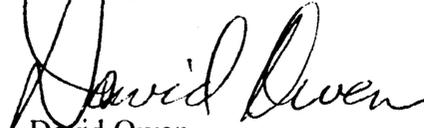
them on drivers instead of trucks. By comparison, the threatened burden on small carriers with manual systems is oppressive. If a carrier's manual system does not fly, the carrier can be required to date, have signed and keep every one of the 30+ external documents which may come into a driver's possession on each interstate movement. The prospect of this Draconian alternative for a small trucking company is **overwhelming**. Equally overwhelming is the prospect of being required to maintain, review and cross reference to driver logs the tremendous quantity of raw data generated by satellite tracking systems.

Satellite tracking is not driver specific. A driver could be working all day in a city and GPS could indicate no movement, and if movement were detected, it would give no proof of who was driving the truck. Can GPS detect driver changes in cases of slip seat or team operations? When a unit is sitting still, can GPS technology determine if the driver is in the sleeper berth, away from the truck, or loading or unloading the trailer? Another consideration is that whatever we do is designed to find the driver who is intentionally and chronically falsifying his logs; such drivers certainly have the savvy to disable satellite tracking systems so they become intermittently invisible. It may distress the regulators to know that this does not require an electronics expert or anything more sophisticated than a simple **small sheet of aluminum foil**.

If the DOT becomes inclined to accept satellite tracking reports as supporting evidence, who will be held accountable for the accuracy of the raw data? The trucking company, of course. Our general counsel has recently assisted one of our Mississippi members who purchased 30 satellite tracking/telecommunication units. Regardless of the best efforts of the trucking company and the supplier, on-board communications were possible, but all 30 units were consistently shown as parked in the bay of **Funday** off the Nova Scotia coast.

I agree with the basic premise that motor carriers should have a program in place to ensure compliance with the hours of service regulations. This proposed rulemaking, however, is not reasonable. Give us more guidance. **Simplify** the proposed rule so that small trucking companies can develop and implement a program with confidence. Address what is acceptable for an investigator or auditor; auditor discretion must be removed to ensure a fair program. Define the process. Provided with clear rules and a little guidance small carriers, and those of us trying to help them, will respond with programs that get ~~the job~~ done.

Sincerely,

A handwritten signature in black ink that reads "David Owen". The signature is written in a cursive, flowing style with a large initial "D".

David Owen

President, NASTC