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Comments
of the
National Private Truck Council
to the
Federal Highway Administration
on the
Hours of Service of Drivers; Supporting Documents

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Re: FHWA Docket No. FHWA-98-3706
Hours of Service of Drivers; Supporting Documents
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Background

These comments are submitted on behalf of the members of the National Private Truck Council (NPTC), a national trade organization representing manufacturers, processors, distributors, retailers, and construction, mining, and service companies that use their own corporate or “private” truck fleets to meet their inbound and outbound transportation requirements. In addition, at least 35-percent of NPTC’s members have “for-hire” operating authority, which also allows them to haul products for other companies and concerns.

According to the most recent Truck Inventory and Use Survey (TIUS 92) published by the Department of Commerce’s Economics and Statistics Administration, private truck fleets include 3.8 million (approximately 75-percent) of the medium and heavy-duty trucks (i.e., over 10,000 pounds GVW) registered in the United States. Additionally, this survey revealed that private truck fleets traveled more than 63 billion miles annually, representing approximately 54 percent of all the U.S. miles travel for medium and heavy-duty trucks.

The private trucking industry is comprised of many segments, each of which is tailored to best meet the needs and specialized transportation requirements of our members’ companies. Some of the predominant segments are:

- **Local/Short Haul Segment:** Trucking operations confined to an area within a 100-Air-Mile radius of a terminal or the primary place a driver reports to work and provide pick-up and delivery services to and from customers' shipping and receiving facilities.
- **Over-the-Road (Linehaul) Solo Driver Segment:** Trucking operations that extend beyond a 100 Air-Mile radius and provide pick-up and delivery services to and from customers' shipping and receiving facilities.
- **Terminal-Terminal Solo Driver Segment:** Trucking operations that extend beyond a 100 Air-Mile radius.
- **Over-the-Road (Linehaul) Team Driver Segment:** Two-driver trucking operations that extend beyond a 100-Air-Mile radius and provide pick-up and delivery services to and from customers' shipping and receiving facilities.

Efficacy of Rulemaking

At the outset, NPTC would point out that it questions whether the issue of supporting documents can be effectively addressed separately from the issue of hours-of-service given the relationship between the two and the impact they have on each other. NPTC recognizes this rule was mandated by Congress with the enactment of the *Hazardous Materials Transportation Authorization Act* of 1994, Pub. L. 103-311, 108 Stat. 1673 (August 26, 1994). However, where is the logic of developing supporting documents regulations for hours-of-service rules that are 60 years old, out-of-date, and currently under review in an ancillary rulemaking proceeding? (Hours-of-Service of Drivers, FHWA Docket No. MC-96-28, 61 Federal Register 57252, November 5, 1996). That rulemaking was also mandated by Congress in section 408 of the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (December 29, 1995).

At the very least, NPTC would urge that DOT postpone any action on this issue until it completes its handling of the hours-of-service proceeding.

However, should the Department feel compelled to complete this proceeding as published, the following are NPTC's rulemaking comments.

Safety Mission And Guiding Principles

NPTC members support the improvement of highway safety and compliance with the hours-of-service regulations. NPTC, as a leader in assuring safe, productive trucking operations, promotes the highest standards of safety, health and environmental excellence. Our goal is zero accidents, injuries, and incidents and, the safety of employees, customers, and the public is a top priority.

NPTC is proud that a recently-published study (audited by officials from the Federal Highway Administration's Office of Motor Carriers) of 75,577 firms, over a five-year period, determined

that private carriers had reportable accident rates nearly 20-percent lower than those of for-hire carriers.’ We believe that this statistic helps to illustrate our members’ commitment to safety.

Additionally, private fleet operations today are under close scrutiny by upper management and corporate shareholders and cannot afford any neglect in compliance with regulations, including the effect of non-compliance resulting from an unfavorable compliance audit. Given the intense economic pressures on their parent corporations, which must compete in a global marketplace, and the range of effective outsourcing options available, private fleet managers are held to the highest competitive and compliance standards.

Rulemaking Proposal Does Not Improve Compliance

This rulemaking was mandated by Congress with the enactment of the *Hazardous Materials Transportation Authorization Act* of 1994, Pub. L. 103-3 11, 108 Stat. 1673 (August 26, 1994). Under section 113 of the Act, the Secretary of Transportation was required to prescribe regulations amending 49 CFR Part 395 to improve both (A) *compliance by commercial motor vehicle (CMV) drivers and motor carriers with the HOS requirements*, and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

However, as the current proposal is written, compliance by CMV drivers and carriers will not be improved, while significant burdens will be placed on private fleets.

The rulemaking proposal states that all supporting documents must include time, date, and location information.

*395. IO(g) The motor carrier must identify each supporting document received from the driver under paragraph (d) of this section, or from any other source including self-generated documents, by **noting on the document the following information, if the information does not already appear on the document.***

- (1) The time, date or location of the event that produced the document;*
- (2) the driver’s name; and*
- (3) the vehicle number (i.e., truck, tractor, or coach).*

Unfortunately, many documents received in the normal course of business do not routinely include time and date information or the time and date information included in these documents does not reflect the duties of the driver. For example, many fuel receipts from independent truck stop facilities do not include time and date information, and some third-party weigh scales do not include time and date information.

Other documents include time and date information that is independent of driver activities. For example, the time and date information included on bills of lading or customer invoices might

¹ Leon M. Moses and Ian Savage. “The Effect of Firm Characteristics on Truck Accidents.” *Accident Analysis and Prevention*. Vol. 26, No. 2. Elsevier Science Ltd., 1994. pp. 173-179.

reflect when a trailer was loaded by warehouse or distribution center personnel. This could be many hours before a driver reported for duty or began his or her trip.

The proposed changes would not prevent unscrupulous drivers or carriers from falsifying driver logs or accompanying supporting documents. With a self-certification provision, those carriers choosing to perpetuate non-compliance with the hours-of-service regulations could instruct their drivers to ensure that the self-certified time and date information entered on the named supporting document mirrors the information on the hours-of-service record of duty status (driver log).

As a result, the rulemaking does not effectively improve compliance; it simply adds a paperwork burden and, thereby, increases reliance on paperwork compliance rather than safety performance.

Compliance Burdens

The two compliance burdens associated with the rulemaking proposal are initial compliance and administrative coordination. Initial compliance burdens result for those carriers without written procedures in place to cross-check time, date, and location information on driver logs with supporting documents. Administrative coordination burdens will result from required efforts to assemble and centrally-house supporting document information for compliance/cross-check audits from many different sources.

Initial Compliance Burdens

In the Federal Register rulemaking notice, the Federal Highway Administration's Office of Motor Carriers (OMC) estimates the first-year burden at 949,500 hours. The agency arrives at this figure by noting that about 422,000 motor carriers and 2,216,000 drivers were engaged in interstate transport as of October 1997. OMC estimates that 20 percent of all interstate carriers travel exclusively within a 100-air-mile radius of their operation and, thus, would not need such a system, since they are exempt from hours-of-service recordkeeping requirements. The agency also states that five percent of all carriers already have on-board recorders and would, thus, be exempt from the new requirements. That leaves 75 percent, or about 316,500 carriers, using paper log books that would have to comply with the system. The agency estimates that it will only take about *three hours* for each of these carriers to comply with the rule by preparing a manual, which it says could be contained on *one page or less*. The final figures are based on multiplying 316,500 carriers by three hours per carrier.

A more realistic, but conservative none-the-less, calculation of the initial burden is provided below:

1. According to OMC's most recent statistics, 452,000 motor carriers and 2.5 million drivers are engaged in interstate transportation.²

² Number of active carriers registered in the Motor Carrier Management Information Systems database as of May 20, 1998. *Active Carriers by Fleet Size With Percentages. Report LS50B901*. Office of Motor Carriers Information Analysis Division. Washington D.C. May 20, 1998. Pp. 1.

2. Each of these registered carriers will consume about *two hours* to read and comprehend the 12,000 word Federal Register Notice and the proposed rule. Multiplying 452,000 by two corresponds to 904,000 *hours*.
3. Each affected carrier (according to the Federal Register notice, approximately 75 percent of all registered carriers use paper log systems and would thus be affected by the proposal) will consume about *three hours* evaluating their current system and determining what changes will be required. Using OMC's above assumptions 339,000 carriers will be affected by this proposal. Multiplying 339,000 by three corresponds to *1,017,000 hours*.
4. Those carriers who choose to self-comply would consume about *three hours* developing a policy and drafting a self-compliance manual. Multiplying 339,000 by three corresponds to *1,017,000 hours*.
5. Each affected carrier would consume about *fifteen minutes with each affected driver* to communicate the new policy and rulemaking changes. This time could occur either as part the agenda of a driver safety meeting or on a one-on-one basis. Assuming OMC is correct in its assumption that 454,000 drivers would be unaffected by this proposal because they either operate exclusively within a 100 air-mile radius or they use on-board recorders to track hours-of-service, 1,762,000 drivers remain and would thus be affected by the proposal. Multiplying 1.762 million times 15 minutes per driver corresponds to *440,500 hours*.

Totaling the hours from each above items, the estimated first year burden of this proposal is *3,378,500 hours*. This total is significantly greater than the 949,500 hours indicated in the rulemaking notice.

Administrative Coordination

The proposed rule will create enormous administrative burdens for carriers. Most of the documents used to support driver logs are also utilized by carriers in other aspects of their business. Therefore, while they currently maintain these documents, they do not necessarily maintain them with the driver logs. New procedures will have to be established to ensure that sufficient copies of these document are made and transmitted to all the required departments and to ensure the proper maintenance of all documents related to hours of service and driver logs.

Next, not all supporting documents are available when drivers submit their logs. Additionally, many supporting documents are presently maintained by carriers in other departments and will have to be duplicated and submitted to wherever the carrier maintains the log records. This will result in considerable cross-department coordination in order to centrally house the named supporting documents.

OMC incorrectly assumes that most supporting documents are submitted with the driver log when it is turned in by the driver. This simplistic assumption, however, is not consistent with manner in which many carriers do business. For example, cellular phone bills and electronic toll payment are extremely helpful in auditing hours-of-service compliance. However, drivers do not get receipts for phone calls or electronic toll payments. The statements or bills for these services

are not generally available until 30-45 days after the fact. Further, when submitted to the carrier, these statements may go to another department from the one responsible for maintaining driver logs. Thus resulting in further delays.

In order to utilize these documents to verify driver logs, carriers would have to match each named supporting document to the appropriate driver log. Different carriers have different procedures for turning in driver logs. Some carriers require drivers to turn in daily logs; others require turning them in less frequently. Obviously, a monthly telephone or toll bill will cover more than just one driver log. In fact, it may cover as many as 15-20 logs. Carriers would have to ascertain which calls or bills go with which driver log, not itself an easy task, make enough copies of the bill so that it can be attached to each log covered by it, mark each copy with the required information, and transmit it to wherever it maintains the driver log records. This would be a very cumbersome process!

Proposed Rule Improperly Makes Carriers Responsible for Third-Party Supporting Documents

According to the rulemaking notice, private fleets will be held liable for maintaining the documentation of third-party providers they utilize. Many private fleets use owner-operators to haul outbound freight on company trailers. This is done under a contractual arrangement, and these drivers are not employees of the company. *Therefore, private trucking companies should not be made responsible for maintaining supporting documents for these drivers.* Such drivers are self-employed businessmen and are responsible for all matters related to their businesses, including their supporting documents. It would be extremely unfair to place this burden on private fleets.

Further, since the relationship these drivers have with private fleets is a contractual one, the only way that private fleets would have of getting required supporting documentation would be to include a provision for its submission in the contracts they have with owner operators. Since such a requirement is not now in these contracts, it would mean that each and every contract that private fleet companies have with owner operators would have to be redone. This would create yet another administrative nightmare.

Even if it were to be done, however, there would still be another major obstacle. Often the owner operators used by private fleets are considerably less sophisticated in their business practices. They do not have the detailed, complex recordkeeping and accounting systems and practices that larger companies do. Nor do they have even simple equipment, such as computers or copiers. Compliance with these supporting document rules would be burdensome for them. Any owner operators that cannot provide this documentation as required will, quite simply, not be used by private fleets. Therefore, reliable drivers with good safety records will be out of business simply because of unnecessary paperwork compliance.

The loss of these drivers will also negatively impact the private carriers to whom they are leased. Driver turnover will increase and, thus, effect private carrier operating costs and resulting bottom line.

Carrier Concerns Regarding Investments in Existing On-Board Systems

In the Federal Register notice of the proposed rule, OMC indicates that those carriers with existing on-board systems that record drivers hours-of-service would be exempted from supporting document requirements. As noted on page 19460 of the notice:

“Nothing in this proposal would have any effect on current exceptions for automatic on-board recording devices in accordance with Sec. 395.15.”

And also on page 19460:

“The OMC is also proposing to allow motor carriers to use electronic, laser or automated technology, (e.g., global positioning systems (GPS), automatic vehicle identifier (A VI) transponders, electronic bills of lading used by customs officials in the U.S. and other countries, and State driver-vehicle inspection reports prepared by using pen-based computer systems) in lieu of paper supporting documents.”

However, these exceptions are not noted in section 395.10 of the proposed rulemaking provision. NPTC members have made extensive investments in on-board devices to track and record hours-of-service. These devices are in compliance with 49 CFR part 395.15, which specifies the operating requirements of on-board recording devices. NPTC seeks assurance from OMC that no modification to these systems will be required as a result of this rulemaking proposal. Therefore, NPTC is asking OMC to insert specific references to exemptions from supporting document requirements in section 395.10 for those carriers with on-board systems that are in compliance with section 395.15.

Private Fleet Operations With No Current Supporting Documentation

Some private fleet operations have drivers that conduct their operations without any supporting documentation. For example, one major private fleet employs drivers who primarily function as traveling mechanics. These individuals drive commercial motor vehicles from one company terminal to the next and repair or adjust trucks in the fleet inventory. These individuals frequently spend much of the day conducting vehicle repairs and rarely have external business transactions that result in independent supporting documentation. In addition, the only current documentation of these individuals' efforts are vehicle repair reports prepared by them. Mandates to implement a self-certified supporting document system in this operation will create a significant burden and, as noted previously, provide no assurance of increased compliance with the hours-of-service regulations.

Summary

Again, NPTC urges the Secretary to suspend this proceeding until the underlying hours-of-service rulemaking is complete. Efforts to further prescriptive and dated hours-of-service rules through the implementation of supporting document mandates are not prudent, given the parallel agency rulemaking to rewrite the hours-of-service rules by the year 2000.

However, should the Secretary continue the proceeding, NPTC urges that careful consideration be given to the development of proposals that are simple, effective at improving compliance, and create minimal burdens on an industry subject to increasing complexity.

NPTC cautions that such modifications need to strike a balance between the public interest in improved highway safety and complex customer needs that are driven by globally competitive challenges. Therefore, in response to this ANPRM, the NPTC

- Supports compliance with the hours-of-service regulations because of demonstrated commitment to improve highway safety.
- Notes that the supporting documents rule, as proposed, will not improve compliance with the hours-of-service regulations because unscrupulous carriers and drivers could falsify missing date, time, and location information on named supporting documents.
- Observes that the rule will create the paperwork compliance burdens shown below:
 - » First year compliance is conservatively estimated at 3,378,500 hours.
 - » Administrative burdens will occur in collecting and maintaining the required supporting documentation.
- States that carriers with extensive investments in on-board recording systems have no guarantee that their current systems will be in compliance with the proposed supporting document provisions.
- Notes that some private fleets currently conduct their operations with no external business transactions and they are thus void of supporting documentation

NPTC looks forward to assisting in the development of performance-based rules that would provide incentives for carriers to use innovative safety management systems to best manage their fleet resources.

Any follow-up and/or questions should be directed to:

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