



**PETROLEUM
MARKETERS
ASSOCIATION
OF
AMERICA** DEPT. OF TRANSPORTATION
DOCKET SECTION
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Docket Clerk
U.S. DOT Dockets
Room PL-401
400 **Seventh Street, SW**
Washington, D.C. 20590-0001

June 19, 1998
hardcopy via federal express

Docket Number FHWA 98 3706 -38
RE: RIN 2125-AD52 Hours of Service of Drivers; Supporting Documents

Docket Clerk:

The Petroleum Marketers Association of America (PMAA) appreciates the opportunity to comment on the Federal Highway Administration's (FHWA) proposed rule regarding supporting documentation for driver's hours-of service (HOS). We submit these comments in opposition to the proposal. PMAA believes that this rulemaking is premature to any legitimate reform of the HOS rules; that there are serious problems with the rule's ability to achieve its purported goal of verifying the beginning and ending times of driver service; and that there are anticipated **difficulties** with the definitional language of the rule, to the extent that companies will not be able to adequately design programs that fit within its scope. Furthermore, we believe that the agency failed to meet its burden under the Small Business Regulatory Enforcement Fairness Act (SBREFA).

The Petroleum Marketers Association of America represents over 8,000 small business marketers of petroleum products across the country. As a part of their business, most marketers engage in the hauling and distribution of these products to a multitude of customers, both end users and ultimate vendors. Because petroleum products are classified as hazardous materials under the law, marketers take the transportation of these products very seriously, especially with regard to regulations governing driver fatigue.

I. A new hours-of-service rule, simply augmenting the existing fatigue regulations, is misplaced and premature at this time.

PMAA and other industry groups believe the federal regulations governing driver fatigue (49 CFR 395) are in serious need of reform, as they have not been significantly modified since their initial issuance in the late 1930's (3 M.C.C. 665). At the same time, highly

developed over-the-road hauling practices and ever changing **transportation** technology have evolved the trucking **industry** into an extremely sophisticated business. Despite these facts, the Department of Transportation (DOT) has been ever so reluctant to reform the existing HOS regulations to fit the needs of this changing industry.

At this time, DOT has an open rulemaking (**RIN 2125-AD93**) regarding HOS reform on which they have solicited numerous comments from industry. For unknown reasons, DOT has failed to finalize this rulemaking. We believe that the issuance of this new proposed rule is premature, given the unfinished state of DOT's other pending HOS reform efforts. We realize that the Department may effectively combine this **rulemaking** with **RIN 2125-AD93** at some time in the future, yet this fact makes such a proposed **rulemaking** all the more misplaced. How can DOT expect **industry** to make legitimate comments on a rule of this nature when the basic rule on which it relies is under the present scrutiny of the Secretary? We **request** that DOT put this effort on hold until sometime **after** the finalization and implementation of legitimate HOS reform regulations, as the proposed rulemaking is inappropriate at this time, given the pending status of the 1996 ANPRM.

II. There are serious problems with the proposed rule's ability to achieve its purported goal of verifying beginning and ending times of driver service.

PMAA believes that **the proposed rule does not necessarily design an audit system that would "... at a minimum, verify the driver's beginning and ending timer, as well as such intermediate times, as would effectively detect HOS violations and preclude opportunities for false or inaccurate reporting."** Most of the documents contemplated by 395.2 as *supporting documentation* would not adequately verify the specific beginning and specific ending times of each driver's duty status for purposes of the rule. It is true that the carrier could use much of the 395.2 supporting documentation to identify various times that the driver is actually on duty, whether driving or not. **We are** simply suspect about the fact that one specific type of documentation could consistently be used under the rule to verify start and finish times.

HI. There are anticipated difficulties with the definitional language of this proposed rule.

PMAA believes that the proposed mandate of 395.10 to "**...have a self-monitoring auditing system... that can be used effectively to verify the driver's hours o/service...**" is ambiguous to the extent that companies will not be able to adequately design programs that fit within its scope of the rule. How would a **carrier** evaluate the "effectiveness" of its self-monitoring program for purposes of determining compliance with the proposed rule? Moreover, how would FHWA propose to evaluate the "effectiveness" of a **carrier's** self-monitoring system during a routine compliance audit? The answers to these

questions are crucial to the successful implementation of a comprehensive program, **as** well as necessary for the rule to withstand potential judicial review.

Iv. DOT has clearly not met its burden under the Small Business Regulatory Enforcement Fairness Act (SBREFA).

PMAA believes that the Federal Highway Administration (**FHWA**) has not satisfied its burden under the Small Business Regulatory Enforcement Fairness Act (SBREFA) by adequately evaluating the effects of this rule on the community of small business carriers. By DOT's own estimation, 90% of the over 400,000 motor carriers are small business operators. This calculates into over 360,000 **small** entities affected by this regulation. These businesses, some of which are petroleum marketers, are serious about compliance with HOS regulations, yet do not at this time have sophisticated self-auditing practices that would fit under the auspices of this rule for purposes of compliance.

Presently, 49 CFR 395 simply requires that a carrier retain supporting documentation for purposes of **verification** of RODS with the carrier's RODS records. In contrast, the new rule at 395.10 would impose additional requirements on the carrier, such as the development and maintenance of a written plan explaining the carrier's self-monitoring audit system that would include, among other things, a detailed description of how the system is used. This section contemplates a much more formalized procedure than is in place at this time; one that would certainly require the expenditure of additional time and resources, regardless of the size of the carriers operation.

These additional requirements are clearly a sizable increase in paperwork, as well as a financial burden on the **small** business carrier's hauling operation. As such, DOT's assertion that the regulation would have no significant economic impact on a substantial number of small entities is absurd. DOT has clearly violated the statutory requirements by not adequately evaluating the proposed rule's effect on small business.

In conclusion, **PMAA** reiterates our opposition to this effort on the part of Federal Highway Administration. The rule is clearly premature given the state of affairs with regard to HOS reform effort. Substantively, there are obvious problems with the way the rule is set up, as it will not really allow carriers to identify key points in time relevant to the RODS of drivers. Additionally, the **rule** has **definitional** holes in it and will not enable a carrier to know whether **its** operation is truly in compliance with the rule's mandate. Finally, it is unfortunate that DOT would move forward with such an effort without adequately evaluating its affect on the small business community of carriers it regulates.

Thank you for your consideration of the foregoing comments of the Petroleum Marketers Association of America. If you have any questions on the above or would like to talk with us further about our concerns, please don't hesitate to contact me at 703-351-8000, ext.30.

Respectively yours,

Kristen Manos
PMAA Government Affairs counsel

cc: Small Business Administration