



January 26, 2011

Federal Motor Carrier Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

RE: FMCSA– 2004–19608

On behalf of the Small Business Legislative Council (SBLC), we wish to make the following observations about the proposed Hours of Service rules.

We have concerns about the impact of the proposal on small businesses that are engaged primarily in the transportation of goods. We believe, however, those concerns will be clearly articulated by others.

We therefore wish to focus on what we believe will be new costs for small businesses such as distributors, retailers and service providers in local markets. These businesses would not ordinarily consider themselves to be in the trucking business and generally do not have the expertise in transportation regulation issues.

First, if carriers of all kinds have to increase the number of trips to deliver goods as the number of driver hours are reduced, the cost of goods at each point in the supply chain is going to increase. Either this is going to have a chilling impact on sales, if everyone tries to pass the cost on to the consumer, or some business in the supply chain is going to get stuck absorbing those costs and it is most likely to be the smaller businesses in the chain.

Second, we are concerned about the impact on those small businesses that receive goods on a regular basis - this maybe at a warehouse, store or factory. In particular, we are concerned that reducing allowable driving time to 10 hours from 11 hours and the changing the 34 hour restart periods will impose additional burdens and costs on these non-trucking industry small businesses. If the reduction in driving hours and the restrictions on restart periods result in more deliveries and at different times, the receiving business will have to rearrange its own receiving personnel shifts or add individuals to handle the new schedules.

The proposal to change the restart rule to include two periods between midnight and 6 a.m. will have the effect of eliminating some early morning deliveries. The businesses making those deliveries utilize the early mornings to avoid traffic issues, which saves time and conserves fuel. Those are not the only benefits, however. There are benefits on the other side of equation as some retailers prefer the early morning delivery option to avoid disruptions during the day when their primary focus is on serving their customers.

Separately, we wish to comment on the impact of the existing and proposed rules on non-trucking industry businesses that make “local” deliveries of good or have commercial motor vehicles that are driven by individuals who are primarily service technicians. Specifically, we have found that it is difficult for them to translate the current regulations and the 100 mile and

150 mile “exceptions.” We use the word “translate” intentionally because the explanations of the exceptions are not written in plain language that allows a business owner and drivers who are primarily in the retail, distribution or service businesses and not in the trucking industry, to understand their responsibilities. The explanations are largely relegated to footnotes and generalized exception observations rather than declarative statements. As an example, in the “frequently asked questions” on the Hours of Service webpage, it states: “Operators of property-carrying commercial motor vehicles not requiring a CDL, as defined in Part 383, may be covered by the Non-CDL 150 air-mile radius provision. Note that the applicability depends on the type of vehicle being driven, not whether the operator possesses a CDL.”

In addition, it would be helpful if the agency were more careful when it uses the term “commercial motor vehicle” to more clearly distinguish what type/weight of vehicle is involved. Most small businesses, that are not involved full-time in the trucking industry, do not automatically understand that a “commercial motor vehicle” as used in Part 395 is a different from a “commercial motor vehicle” as used in Part 383.

We do not believe many small businesses will understand the agency’s explanation in these proposed rules of Section 395.1(o) and Section 395.1(e)(2) and therefore cannot provide input on the questions asked by the agency.

Finally, while the current rules and the proposal allow for exceptions when work and drive times exceed allowable limits on an occasional basis, we urge the agency to continue to provide the maximum flexibility without imposing additional responsibilities for businesses engaged in primarily local deliveries or providing local services with a vehicle that is a commercial motor vehicle for the purposes of the Hours of Service rules.

In conclusion, we urge you to retain the current 11 hour drive time rule, either retain the current 34 hour restart rule or adjust the proposal so that early morning restarts are not eliminated, and provide a clear rule that allows for maximum flexibility for local activity.

*The Small Business Legislative Council is a permanent, independent coalition of over 50 trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views.*