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March 10, 2005

Docket Clerk
Docket Management Facility
U.S. Department of Transportation
Nassif Building, Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

RE: Docket No. FMCSA-2004-19608; Hours of Service of Drivers

Dear Sir or Madam:

This statement is filed by the Food Marketing Institute (FMI) in response to the Federal Motor Carrier Safety Administration's (FMCSA) request for comments on the hours of service (HOS) rules for truck drivers. The regulations were published in April 2003 and were vacated by the U.S. Court of Appeals for the District of Columbia Circuit on July 16, 2004. Congress subsequently provided that the rules will remain in effect until the effective date of a new final rule addressing the issues raised by the court or September 30, 2005, whichever occurs first.

Food Marketing Institute (FMI) conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

FMI is also a member of the Corporate Transportation Coalition (CTC) an alliance of associations and companies that use truck fleets as an integral part of their business operations. CTC has also filed extensive comments in this proceeding and FMI endorses those comments as well.

FMI welcomes the opportunity to revisit the HOS rules. Just about every item on the shelves of our nation's supermarkets and grocery stores was delivered to the store by truck. Thus our industry is collectively among the largest users and operators of trucks, and individual members operate some of the largest truck fleets in the country. FMI and

its members, therefore, are vitally concerned about the safety and the productivity of these operations and the health of drivers. Our members' trucks – emblazoned with their names and logos – travel through the communities they serve every single day. They are extraordinarily cognizant of the need to operate those vehicles as safely as possible. Our members are proud of their record when it comes to training and promoting safety standards for their drivers and vehicles.

FMI filed comprehensive comments when the HOS rules issued in April 2003 were first proposed. Our comments were highly critical of aspects of the proposal and FMI was pleased that the final version of the rules addressed many of our concerns. However, those rules were vacated by the Court of Appeals because the court concluded that the agency in promulgating the rules had failed to consider driver health as required by statute. Implicit in the decision is the belief that the rules would result in increased driving time, leading to greater driver fatigue which would adversely impact driver health. While we believe that this premise is inaccurate, it is likely that some of the prescriptive, burdensome requirements originally considered by FMCSA will be reconsidered, and even more onerous requirements will be suggested. Therefore FMI's prior comments are attached hereto and we request that they be considered and incorporated in this record.

We do want to comment specifically on one provision of the regulations. Under the current rules a driver may drive 11 hours consecutively and may not work more than a maximum of 14 consecutive hours from the time he or she clocks in. This is a reduction from the 15 hours allowed under the previously existing rules. However, the previous regulation did not count break time and other idle, non-driving time toward on-duty time. Under the current regulation all time is counted toward on-duty time, even break time. This is intended to reduce fatigue and improve safety, and would seem at first blush to have that result. But in the real world it often has the opposite effect, forcing drivers to forgo lunch and other needed rest breaks in order to complete their runs.

We believe that the regulation should promote breaks rather than discourage them. Drivers in our industry typically work regularly scheduled shifts and return home each evening. Often drivers can spend a third or even 40 percent of their time on non-driving activities as they pick up grocery products and deliver them to stores. Those pick-ups and deliveries are an essential component in keeping shelves stocked and assuring that customers have fresh product to bring home. Unfortunately, the rules do not reflect these operational realities. Although well-intentioned, they have the effect of promoting fatigue by creating a disincentive for drivers to take breaks. This is especially troublesome because, as FMCSA has acknowledged in the preamble to the rules, there are considerably fewer fatigue related crashes in the short-haul sector and this regulation will not result in reduced crashes for short-haul operations.

Indeed, the current rules are likely to adversely impact safety by increasing the number of trucks on the road. As we demonstrated in our prior comment, food retailers and wholesalers will be forced to place more trucks on the road at peak driving periods

and these trucks will likely be driven by inexperienced drivers. In addition, the increased number of trucks on the road will have an impact on fuel use and air quality, and the reductions in store deliveries will have an impact on the availability and freshness of product that reaches consumers. The distribution of food to retail customers is a 24-hour, 365-days-per-year endeavor. We do not shut down for weekends or at night. Please see our previous comments for the complete discussion as to why these rules will have a negative impact on consumers as well as on other highway users.

The Food Marketing Institute urges the FMCSA to modify the rules to encourage rest breaks for drivers as discussed above. The food distribution industry remains strongly committed to pursuing a safer transportation environment for our truck drivers, and the communities and customers we serve. We look forward to the opportunity to work in a cooperative manner with the Department of Transportation to develop a more effective approach to improving driver health and the safety on our nations' highways.

Respectfully submitted,

George Green
Vice President
General Counsel

Enclosure

