



March 4, 2011

Submitted Electronically

The Honorable Ray LaHood
Secretary of Transportation
U.S. Department of Transportation
West Building
1200 New Jersey Avenue, SE
9th Floor
Washington, DC 20590

RE: Hours of Service of Drivers

Docket No. FMCSA-2004-19608

On December 29, 2010, the Federal Motor Carrier Safety Administration (FMCSA) published in the Federal Register for comment a proposed rule which would revise the regulations for hours of service (HOS) for drivers of property-carrying commercial motor vehicles (the “Proposed Rule”).¹ The Proposed Rule changes the restart period and contemplates reducing maximum driving hours among other things.

The Food Marketing Institute (FMI) appreciates the opportunity to respond to the request of FMCSA for comments on the Proposed Rule.

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI’s members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI’s retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI’s associate members include the supplier partners of its retail and wholesale members.

¹ 75 Fed. Reg. 82170 (December 29, 2010).

I. Introduction

Virtually every product that is found on grocery store shelves is delivered by commercial motor vehicles. The universe of products that are typically found in your neighborhood supermarket includes dry goods, perishables, dairy, soft drinks, juices, deli items, meats, poultry, seafood, bakery, prescription drugs, household cleaning items, personal care products and over-the-counter medications among others.

Grocery stores are open 365 days of the year. Many supermarkets are open 24 hours a day. Truck deliveries occur at all hours as stores continuously receive and restock products. Our customers visit their neighborhood grocery stores 2.1 times a week on average and they expect to find store shelves fully stocked with a wide variety of products, especially fresh fruits and vegetables. The median number of items carried in your neighborhood grocery store is 48,750, up from about 30,000 ten years ago. Transportation logistics have become more important than ever to success in the industry. Our nation has the best system of food distribution in the world, and the Proposed Rule has the potential to significantly disrupt it.

FMI is concerned that the Proposed Rule will have dire consequences, likely resulting in higher prices for food products and other items sold in grocery stores.

II. Analysis

Current Rules are Working

FMI does not believe there is a need to move forward with the Proposed Rule. The current HOS rules are working extremely well. Since the rules were put in place seven years ago, fatalities and injuries involving large trucks have declined by more than one-third. This is the lowest level ever since the Department of Transportation (DOT) began collecting data. Indeed FMCSA has acknowledged that safety has improved by citing that data shows no decline in highway safety since the implementation of the 2003 rule and its re-adoption and the total number of crashes has been declining.

Clearly, no change is needed in the HOS regulations.

Maximum Driving Hours

FMCSA has proposed reducing the maximum driving time limit of 11 hours to 10 hours. However, the Agency extensively cites in the Proposed Rule a study sponsored by Department of Transportation (DOT) and conducted by the Virginia Tech Transportation Institute which found no increase in risk between the 10th and 11th hours of driving. Eliminating the extra hour of driving

time would impose significant burdens on the supermarket industry. This reduction in drive time would among other things impact driver routes that exceed 250 round trip miles with multiple stops. A number of FMI members have indicated such a reduction would cause increased lay-overs for drivers and increase the number of trucks needed to deliver products to retail stores in order to maintain current levels of service and product availability. As the number of crashes has continued to decline under the current rule which permits 11 hours of driving, FMI does not believe the agency should reduce the maximum amount of driving hours.

Restart Provision

The Proposed Rule amends the existing 34 hour restart provision to require that any restart include “two periods between midnight and 6:00 AM.” As previously mentioned in our comments, grocery stores are open 365 days of the year, and many supermarkets are open 24 hours a day. Consequently, truck deliveries occur at all hours of the day as stores continuously receive and restock products on store shelves. It should be noted that back in the mid-1960s when HOS regulations limited drivers to 10 hours of driving time, the average size of a grocery store was 4,881 square feet and the typical store carried approximately 6,800 products. In today’s marketplace, the average size of a grocery store has grown to 46,235 square feet and carry some 48,750 items. As such, larger store-formats with greater product selection necessitate more frequent truck deliveries in order to keep store shelves fully stocked.

FMCSA has stated it believes a majority of drivers work a traditional day-time schedule, but this is not necessarily true. In our industry, a number of FMI’s member companies estimate that between 40 and 50 percent of drivers have a day-time work schedule, but a corresponding percentage of drivers do not. The net effect is that those drivers without day-time schedules would need to take more than the 34 hours in order to get to the 2 nighttime periods between midnight and 6:00 AM. To meet this requirement, most drivers who do not have a day-time work schedule would have to extend their restarts to 48 hours or longer. As such, driver time would be reduced by some 16 percent over each one week period. The net effect will be that many FMI member companies with large trucking fleets will need to hire additional drivers and purchase additional trucks and equipment.

The Proposed Rule Will Trigger Higher Food Prices

Should the Proposed Rule be finalized by FMCSA the following will likely happen:

1. Food prices will rise because the Proposed Rule will hurt productivity and efficiency in the supermarket industry. Currently, USDA is projecting the Consumer Price Index (CPI) for food will increase four percent in 2011. At a time when consumers can least afford it, the Proposed Rule will further increase their costs at check out. The Proposed Rule will impact

not only grocery stores but all other agricultural-related sectors including farmers, grocery manufacturers, food processors and wholesalers.

2. Higher prices for groceries will be devastating to families that are already struggling financially, especially the 14 million Americans who are unemployed. The same holds true for seniors living on limited incomes and the most needy who depend on domestic feeding programs, such as SNAP and WIC whose benefits will not buy as much when food prices go up because of the Proposed Rule. Many military families also rely on domestic feeding programs and they will be impacted as well.
3. The Proposed Rule will hit hardest on rural communities where small, independent grocery stores rely on getting their products delivered by wholesalers who are often located hundreds of miles away. Farmers will also be adversely affected because of added costs incurred by wholesalers who backhaul their agricultural commodities.
4. The Proposed Rule will not be the only cost factor that will trigger higher food prices. Diesel fuel prices are also expected to increase in the next two years from the current price of about \$3.35 a gallon to \$5.00 gallon. As transportation costs increase, so will food prices in grocery stores.
5. The Proposed Rule will result in more trucks being on the nation's roads, highways and interstates causing more pollution and congestion. To maintain the same level of service to retail grocery stores, more trucks will be needed and the costs are substantial. A single new 18-wheel commercial motor vehicle can cost well over \$100,000. That figure does not include salary and benefits for additional drivers, insurance, fuel, operating maintenance, registration and licensing fees and other fixed costs.
6. A reduction in deliveries to retail stores resulting from the Proposed Rule will mean shortages of grocery items on store shelves. Shortages and unavailability of product will be particularly acute during the busy holiday season from just before Thanksgiving, through Christmas, New Year's Day and all the way up to the Super Bowl. Unavailability of product will significantly inconvenience consumers.

III. Conclusion

FMI Requests the Proposed Rule Be Withdrawn

If we want to avoid unnecessary increases in retail food prices, FMI urges FMCSA to abandon the effort to promulgate new HOS rules. The Proposed Rule is not needed as the current regulatory framework governing the amount of time a driver may operate a commercial motor vehicle is working extremely well. On behalf of our retail and wholesaler members, as well as the customers they serve, FMI respectfully requests FMCSA to withdraw the Proposed Rule.

We appreciate the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman
Regulatory Counsel