

October 21, 2019

Hon. Raymond P. Martinez
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

HOURS OF SERVICE OF DRIVERS; DOCKET NO. FMCSA-2018-0248:

Dear Administrator Martinez:

The Notice of Proposed Rulemaking (NPRM) on Hours of Service (HOS) of Drivers released in August 2019 provides much needed relief to the perishable fresh produce hauling industry. We appreciate the attention paid to the requests of our fresh produce drivers and anticipate positive effects from this NPRM. As was outlined in our industry petition to FMCSA in March 2019, there were three main requests that the produce industry maintained as crucial to the success of driver ability to deliver our highly perishable loads on time that fall within the correct quality standards required by regulation, as well as by buyers and consumers. These requests included:

- Adding an allowance for drivers to rest at any point during their trip without counting this rest time against their HOS allotments.
- Excluding loading and unloading times from the 14-hour on-duty HOS calculations.
- Allowing drivers to complete their trip, regardless of HOS requirements, if they come within 150 air miles of their delivery point (if delivery takes place on any day beyond the original departure work period).

While these requests are not addressed in their entirety through the NPRM, the proposed modifications provide some necessary concessions that move us closer to workable driving standards for the industry. The following paragraphs discuss how the rules in the NPRM might suit the fresh produce industry and how they might be improved to better serve drivers of perishable commodities. We bring forth these comments with full appreciation that driver and roadway safety are the top focus for any and all rule changes.

PROPOSED RULE: SPLIT DUTY PROVISION

One of the main concerns facing the fresh produce industry is the amount of time spent at the loading dock when waiting for a product to be harvested and loaded onto a truck. Due to variable weather, field and machinery conditions, the amount of time a driver plans to spend at the loading dock is unpredictable, and extended wait times spent as on-duty, but not driving still eat away at the driver's HOS clock for the day. This loading time variability, coupled with many produce shippers not utilizing appointment time loading, makes it very difficult for drivers to schedule their days and efficiently use their HOS. The proposed split duty provision provides much needed relief at the loading dock by allowing up to three hours for drivers to rest and wait, without counting this time against their 14-hour on-duty calculation. Fresh produce drivers will likely utilize this provision to offset extended detention times by pausing their HOS clocks for up

to three hours, effectively allowing them to use more of their HOS on-duty time on the road instead of at the loading dock.

It is also important to note that, while the provision provides some necessary relief at the loading dock, the industry petition supporters insist that the best solution for our drivers of perishable produce items is to completely exclude loading and unloading times from HOS calculations. We understand that this issue is not a part of the current NPRM, but reiterate the point and its importance to the fresh produce industry. Drivers of perishable items are tasked with not only delivering products on time, but also with delivering a quality product that stays within temperature requirements throughout the trip. Any delay in loading or unloading perishable products can result in losses of quality that may be attributed to the driver. Adequate compensation for detention time will not only improve driver sentiment at the loading dock, but might also encourage shippers and receivers to increase efficiency.

Beyond using the split duty provision time at the loading dock, this provision will also allow drivers to rest at any point in their trip without counting this time against their HOS allotments, encouraging them to stop driving instead of pushing through periods of fatigue. As was mentioned in the original industry petition, drivers feel the need to keep driving even when a rest is necessary because they are allotted a certain amount of time to move perishable produce items to the delivery point, and they cannot afford to use their HOS time taking a break. Companies that employ drivers of perishable produce tell their drivers in safety meetings that they should stop driving if they feel fatigued no matter where they are on their journey in regards to their HOS, but the current rule does not provide drivers with any incentive to stop in these situations. The change in this provision provides the important incentive for drivers to rest when they need to while still being able to make their deliveries, without consideration of the HOS clock ticking down.

The undersigned groups believe this rule could be further improved by allowing drivers to divide the rest time into multiple periods that add up to three hours. This would provide drivers even more incentive to stop when they are tired if they know they can also stop their HOS whenever needed. For drivers that make multiple pickups throughout the day, dividing this rest period would allow them to use their rest times in the most practical way based on anticipated wait times. We recognize that this request may require a minimum amount of time taken per break period or a maximum number of divisions of the break period for safety reasons, and we welcome FMCSA's direction on how to best manage that aspect.

We appreciate that this provision provides drivers the ability to stop their HOS clock for a rest at any point in their trip, as was asked in our industry petition. This is a huge step forward in providing flexibility for drivers of perishable produce items and we believe that this provision will increase driver and road safety as a result.

PROPOSED RULE: SPLIT-SLEEPER BERTH

The proposed changes to the split-sleeper berth provision are also very helpful in addressing the concerns of the perishable produce industry. The increased flexibility of splitting sleeper berth

time into a 7/3 hour option, in addition to the 8/2 and 10/0 hour options allows drivers to better plan and execute their days. This sleeper berth time might be spent at the loading dock during an extended, unexpected delay, as a means to avoid heavy metropolitan traffic, or as a buffer for inclement weather. Before this proposed rule, drivers had very limited options for going off duty during a traffic, weather, or loading dock delay. Drivers could only take either two hours or eight hours in the sleeper berth to pass this time, or they would simply wait on the clock with their HOS running. The proposed rule allows greater flexibility for drivers to use on a case-by-case basis and at their discretion. Additionally, the ability to divide the sleeper berth time into a 6/4 hour split would provide even more welcomed flexibility for drivers of fresh produce and would further address the perishable produce industry's petition request to stop the HOS clock whenever necessary by providing another tool to accomplish this request.

Besides using the split sleeper berth provision as a means to address traffic, weather and loading dock issues, this provision allows drivers to dictate their sleep schedules as they see best fit. In speaking with drivers, they relay that very few of them spend 10 full hours in bed at home and much prefer to plan their sleep schedules around what they deem as most natural. However, this group also recognizes the extreme importance of road and driver safety and is amenable to the administration recommending a minimum amount of time spent in the sleeper berth at one time. However, as was cited in the industry petition, splitting sleep periods does not affect performance unless the total sleep time for the day is less than seven hours. Splitting the sleeper berth time into multiple options of 8/2, 7/3, or even 6/4 hours still requires the driver to accumulate 10 total hours for the day, well within the acceptable limits for daily sleep.

In terms of efficiency, drivers that are able to plan their sleep schedules according to their preferred sleeper berth time are also better equipped to plan their driving days most effectively, which helps them deliver quality product that meets the safety and quality standards demanded by produce receivers and customers. The extended sleeper berth provision gives drivers more options to get the right amount of sleep that they need and still make their deliveries on time and in a safe manner.

PROPOSED RULE: 30 MINUTE BREAK

The increased flexibility in the 30-minute break rule relieves a few issues that were present with the current requirement. Under the previous rule, drivers had to find a place to stop and completely shut down in off-duty status to satisfy the break requirement. Allowing drivers to record this time as on-duty, not driving allows our drivers to use the break as they best see fit when hauling perishable items. The proposed rule also allows drivers to stop when they feel they need to in an eight hour driving time, as opposed to an eight hour on-duty status, effectively providing drivers the ability to better plan their breaks, as detailed below.

As an example of how this rule change positively assists drivers of perishable produce, drivers relay that they have often used up their eight hours on-duty time by preparing their trucks in the morning, driving to the loading dock, and waiting to be loaded. In some situations, due to the currently required break after eight hours on-duty, drivers were required to shut down for a break immediately after pulling away from the loading dock. This means the load of perishable items that the driver just picked up is now being delayed to the delivery point by at least 30 minutes

because the driver had been on-duty (and not driving) for eight hours. By allowing this break requirement to shift to the eight hours of driving time, the driver could get a few hours down the road before stopping to take a break.

Further, if the proposed rule were to take effect, drivers would be able to take this required 30-minute break in on-duty, not driving status where drivers could use the restroom, check the temperature of their perishable cargo, check in with dispatch about road issues, plan for other dispatches, etc. Drivers could also potentially use this break time as part of their loading dock detention time instead of waiting for the 30-minutes to tick by, further addressing the needs of our industry to exclude loading and unloading times from HOS calculations.

It cannot be reiterated enough that this group represents drivers who haul products with extremely short viability windows and that need to reach the next destination as quickly as possible. Minimal idle time is imperative for haulers of fresh perishable produce to ensure they can deliver quality loads in the timeline required by this fragile product, and the flexibility in the provision allows drivers to use the required break in the most effective manner.

All of this said, this group absolutely recognizes the need for quality driver breaks to maintain roadway safety, especially during long haul trips. In regards to the “required” aspect of this break period, it could be argued that most drivers will stop for a rest within eight hours of driving regardless of the requirement. However, if the break will continue to be a requirement through FMCSA, we believe that allowing drivers to use it as they see most beneficial, instead of simply waiting out a 30-minute period with perishable items in the truck, is the most optimal change.

PROPOSED RULE: SHORT HAUL EXEMPTION

This group also recognizes the flexibility added through the expanded short haul exemption. This exemption, while important to the transportation industry as a whole, is less impactful to haulers of perishable produce because of the provisions provided by the agricultural exemption 49 CFR § 395.1(k) during planting and harvesting periods.

PROPOSED RULE: ADVERSE CONDITIONS

As for the adverse conditions rule, this change also adds an extra layer of flexibility for drivers. First, this group believes that by adding two extra hours to driving time when a driver experiences adverse conditions, incentivizes drivers to stop driving in adverse conditions as opposed to pushing through to get the most of their HOS allotment. Allowing drivers to appropriately react to adverse conditions not only makes roadways safer, but also allows the driver to make sound decisions based on their concern for their own safety. The driver may choose to use part of the extra two hours to find a safe place to pull off to wait out the adverse condition.

A large part of this provision hinges on what exactly constitutes an adverse condition. The current definition defined in § 395.2 as “*snow, sleet, fog, or other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was*

begun” covers a large portion of what this group would consider as adverse driving conditions. This group agrees with the latter part of the statement that in order for the condition to be adverse, it must be unforeseen. We also agree that these listed adverse conditions would need to delay drivers by at least two hours to match the two hours given back at the end of the driver’s day by the adverse driving condition provision. Otherwise, drivers could plan to use the additional flexibility in the split duty provision, split sleeper berth provision, or required 30-minute break to wait out an expected condition. As for what conditions should be covered under this provision, this group speaks from a national perspective, with regional input from the individual organizations based on their needs. Therefore, this group requests that FMCSA consider including the following situations as adverse if a driver or dispatch is not able to predict it ahead of a driving day:

- *Snow*. An example could be drivers originating in Florida or certain parts of California. Due to the long distances these drivers travel, they may not reach an area where snowy conditions occur for several hours into their drives. This may mean that drivers did not expect a snowstorm when they originally set out on their route.
- *Severe storms*. These could include severe thunderstorms with heavy downpours, lightning, and wind and storms containing tornados or other events. The possibility of intense storms developing over the roadway without warning is common in certain parts of the country.
- *Wildfires*. Fires can break out and move exceptionally quickly and in unexpected directions. This is especially true in regions or states that experience overly dry conditions and/or high winds – both factors that can fuel a fire to reach even more dangerous proportions. In such situations where mass evacuations are common, drivers may encounter heavy traffic and unavoidable detours with few alternative routes available. Additionally, the risk of smoke and other unsafe air conditions could prevent a driver from finding a secure location to pause driving.
- *Crashes and other unforeseen road delays*. For example, the roads that drivers take through Central Florida and Southern California are completely unpredictable in their traffic volumes on any day at any time of the day. There is no way to know one day to the next if a road will be clear or if drivers will face a gridlock.

Again, this group recognizes and appreciates the efforts of the FMCSA to work with the industry to provide much needed relief to the Hours of Service regulations. Much of the increased flexibility proposed through these five rule changes allow drivers of perishable produce to transport their loads efficiently while keeping driver and roadway safety at the forefront. Taken together, this NPRM is a significant and important step forward for the transportation and perishable agricultural commodity industries. This group also encourages FMCSA to consider the additional requests contained in this comment document in future rulemakings. As an industry, we will continue to monitor our ability to safely and effectively transport our perishable produce and provide additional input as necessary to FMCSA. Thank you again for your time and attention to this important issue.

Submitted on behalf of the following organizations:

American Farm Bureau Federation
California Citrus Mutual
California Farm Bureau Federation
California Fresh Fruit Association
California Specialty Crops Council
Florida Farm Bureau Federation
Florida Fruit and Vegetable Association
Florida Strawberry Growers Association
Florida Watermelon Association
National Association of Perishable Agricultural Receivers
National Potato Council
National Watermelon Association
Sunshine Sweet Corn Farmers of Florida
Texas International Produce Association
United Fresh Produce Association
Western Growers Association