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March 4, 2011

The Honorable Anne S. Ferro  
Administrator  
Federal Motor Carrier Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Suite W60-300  
Washington, DC 20590

Via Electronic Submission

**RE: Comments for the Record by the Retail Industry Leaders Association for Public Docket No. FMCSA-2004-19608**

Dear Administrator Ferro:

The Retail Industry Leaders Association (RILA) greatly appreciates the opportunity to submit written comments to the Federal Motor Carrier Safety Administration (FMCSA) regarding the agency's efforts to revise the current hours-of-service rules. While RILA strongly agrees that driver health and safety are of utmost importance, we disagree with the findings that the proposed rules would accomplish this goal. RILA believes that in order to continue positive safety trends and sustainable advancements, the current 11-hour driving limit and 34-hour restart period must be retained.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA's membership consists of some of the largest users of the supply chain. These companies place the highest premium on safe supply chain operations and require the same of the motor carriers that transport their goods. Since 2003, industry has relied on the current hours-of-service regulations to operate just-in-time supply chains required in today's growing global economy. The ability to transport products to stores and distribution centers in a timely manner is essential to the continued health of the retail sector.

### **Safety First**

It is important to note that since the current hours-of-service rules were implemented, the trucking industry's safety record has improved by significant means. According to figures cited by the U.S. Department of Transportation (DOT) in 2009, the trucking industry is now the safest it has been since the DOT began keeping crash statistics in 1975, with the number of truck-involved fatalities on U.S. highways declined by 19 percent since 2004. These safety improvements are being

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displayed over a time period when the number of miles driven by large trucks abundantly increased. With our national safety record improving under authority of the current rules, retaining the rules as they currently stand is vital.

In light of the fact that there have been significant safety improvements under the current hours-of-service rulemaking, RILA believes changes made to these rules must be carefully analyzed to make sure the trends in safety are not reversed. RILA's membership absolutely respects the FMCSA's intent to prevent commercial vehicle-related crashes and fatalities; however, the proposed rulemaking falls short of ensuring these goals. RILA believes any changes to a successful rule need to be substantiated with a firm foundation of reliable studies and research. Failing to do so will warrant adverse effects on the shipping industry, the economy, and the driver's welfare.

In regards to the driver's well-being, RILA has concerns that stress levels and the sleep cycles of the driver might be altered to have an undesirable effect on safety under the new guidelines of the proposed rules. RILA's members depend on an efficient system to move the high volume of products throughout their supply chains; adding additional traffic woes only heightens the difficulty of delivering to stores in a just-in-time fashion. Increasing the number of uncontrollable variables, while in the same instance narrowing the driver's target drive time, will exponentially intensify a driver's stress level.

### **FMCSA's Sleep Pattern Assertions Are Unfounded**

The FMCSA, in an effort to achieve the goal of improved driver health, correlates the betterment of driver health with decreased drive times in the proposed rule. In doing so, the FMCSA assumes that a reduction in the amount of hours worked will lead to increased sleep time. In the "Review of FMCSA's Regulatory Impact Analysis for the 2010-2011 Hours of Service Rule"<sup>1</sup> prepared for the American Trucking Associations, Edgeworth Economics finds in previous FMCSA Regulatory Impact Assessments, that the agency stated on multiple occasions that there is little research linking driver health and work hours. In 2005, the agency stated "the difference between a driving limit of 10 and 11 hours is inconsequential from the standpoint of driver health" and the agency later confirmed that view in 2008.

The current proposed rules display a shift in this viewpoint and cite two studies as the basis for this change. The two studies, Baltkin, *et al.* and Ferrie [2007], are flawed for several reasons. The first study<sup>2</sup> of concern asserts a relationship between work time and sleep time, comprised of data collected in 2000. Since current rules have only been in place since 2004, this data is no longer pertinent. This analysis also assumes that a reduction in drive time would cause drivers to sleep and exercise with this time off duty, instead of choosing other activities, with no explanation or basis for this causation.

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<sup>1</sup> See Edgeworth Economics, "Review of FMCSA's Regulatory Impact Analysis for the 2010-2011 Hours of Service Rule" prepared for the American Trucking Association. February 15, 2011.

<sup>2</sup> RIA, pp 5-3 - -5-5 citing Baltkin, T., Thome, D., Sing, H., Thomas, M., Redmond, D., Wesensten, N., Williams, J., Hall, S., & Belenky, G., "Effects of Sleep Schedules on Commercial Motor Vehicle Driver Performance," Walter Reed Army Institute of Research, Washington, D.C., May 2000

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The second analysis<sup>3</sup> pulls sampling data from British civil servants from the late-1980s through the early-1990s. The data shows a higher mortality rate associated with low weeknight sleep amounts. While differences in the sampling population causes initial concern over potential disparities, even more troubling is that the FMCSA overlooks Ferrie's conclusion that "there is no evidence that sleeping habitually between 6 and 8 hours per day in an adult is associated with harm and long term health consequences." Ferrie's analysis, along with broader field research, show no mortality changes from people who sleep between 6 to 8 hours.

Likewise, moving driver sleep patterns to a more 'common' pattern is not necessarily normal for the driver who has become adjusted to a certain schedule. FMCSA's reference to a yet to be published Washington State University study which analyzes 12 drivers is not comprehensive enough to assert this allegation. Extending the current 34 hour restart to include two rest periods from midnight to 6:00 a.m. so that drivers are able to have two consecutive nights off for a more restorative sleep time, and thus solidifying FMCSA's assertion they will be more alert when on the road, is unfounded. This provision essentially forces truck drivers who have adjusted their circadian sleep cycle to sleep during daytime hours to now adopt sleep patterns mandated by the government. For some drivers, the quality of their sleep patterns do not link up with the same characterization that the Department is proposing, nor will the final outcome of these proposed changes necessarily command a safer environment on the roads.

### **Congestion, Congestion, Congestion**

The proposed changes to the hours-of-service regulations would not only increase the amount of drivers needed, but because of the suggested restart provisions, these drivers would be funneled onto the road at peak driving times. Simply stated, the additional capacity needed to transport the same amount of products would place more trucks on the road at the highest volume traveling periods. RILA member companies are forecasting an increase to their private and dedicated fleets of around fifteen percent to service their stores effectively. Since freight and passenger vehicles share common infrastructure, this expected road congestion would lead to additional safety concerns not only for truck drivers, but for all traffic on the roadways.

Equally as important, when considering potential congestion concerns, is the fact that less drive hours will assuredly result in more trucks on the road to deliver the same amount of goods. The FMCSA's proposed rules reference a 2007 Commodity Flow Survey that indicates 75 percent of freight is moved in trips of less than 100 miles. As a result, the argument is made that drivers making several shorter distance trips are unable to drive 10 hours a day, let alone the full 11 hours, eradicating the need to increase the amount of drivers on the road. Upon further research, the methodology description for the 2007 Commodity Flow Survey states that while many users of the supply chain were included in this study, the coverage only extends to "some retailers." It is irresponsible to assume the data set used in the survey represents a fair majority of users of the supply chain when large format retailers consist of some of the largest users of the system. Since the survey omits a very large consumer of the supply chain, the survey should not be included as a justification to limiting the current drive time.

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<sup>3</sup> Ferrie, J., Shipley, M., Cappucio, F., Brunner, E., Miller, M., Kumari, M., & Marmot, M., "A Prospective Study of Change in Sleep Duration: Associations with Mortality in the Whitehall II Cohort," *Sleep*, v. 30, n. 12, 2007, pp. 1659-1666.

There's further reference to a FMCSA 2007 Field Study on long haul's utilization of the 11th hour that contends the extra hour is hardly used; yet again, the scope of the survey was too small to qualify itself as a grounded scientific evaluation. While the 11th hour is used mainly as a scheduling buffer, it is important to maintain it; RILA's membership alone estimates that it is utilized 60-70 percent of the time to allow drivers the flexibility of reaching their destination. In addition, the "Review of FMCSA's Regulatory Impact Analysis for the 2010-2011 Hours of Service Rule"<sup>4</sup> confirms that while the FMCSA assumes that lost driving time will be 'replaced seamlessly' by shifting time to another work day or to another driver, that will hardly be the reality. Impacts on productivity by reducing the allowable driving time will undoubtedly lead to the need to schedule additional trips which results in using additional trucks. Channeling current and prospective truck drivers onto our roadways, at peak hours, is not only a logistical nightmare for industry users, but it spells congestion chaos for all drivers.

It also comes as no surprise that our nation has struggled to fund our troubled highway infrastructure. With the inaction of Congress and the Administration to provide a comprehensive long-term surface transportation measure, it would be irresponsible to add regulations that would be detrimental to the current stress of our nation's highways, roadways and bridges. Our nation's infrastructure has already reached capacity in many regions and is not well-equipped to handle the additional strains this proposed rule would generate. As previously stated, the amount of miles driven by large trucks has increased dramatically since the 2003 ruling; these miles will still need to be trekked, yet with more drivers, more trucks, and at peak hours under the proposed ruling. By sheer statistics alone, this would cause more accidents to occur, while also adding additional strains on our highways. That certainly does not bode well for the future state of our nation's infrastructure.

### **Sustainability Gains Will Be Lost**

RILA members have embraced the pursuit of environmentally sustainable operations. Across the retail industry and throughout the supply chain, retailers are seeking and implementing innovative solutions to reduce energy consumption and waste. Major gains have been made in an effort to support clean air programs; however, the FMCSA proposed rules threaten that effort. In a time when RILA member companies are the leaders in meaningful sustainability efforts throughout their supply chains, the possibility of less capacity resulting in idling trucks and more carbon emissions is counterproductive and distressing.

A fair majority of RILA's membership take advantage of backhaul operations to increase efficiencies in the supply chain. Backhauling drastically reduces emissions by decreasing the amount of trucks on the roadways. The proposed rule greatly challenges this added benefit of retailers' current complex logistics systems. If the new rule is implemented, the driver would have a decreased amount of time to deliver the core shipment and the consequences of that action would most likely result in a severe decrease in the usage of this environmentally-friendly logistics solution.

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<sup>4</sup> See Edgeworth Economics, "Review of FMCSA's Regulatory Impact Analysis for the 2010-2011 Hours of Service Rule" prepared for the American Trucking Association. February 15, 2011.

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Another significant issue that would arise if this proposed ruling is set into place is that fact that in recent years, retailers have opened more stores in city centers and have increased 'livability' in those urban areas. Retailers have a duty to make sure all of their stores are appropriately stocked with both perishable and nonperishable goods, including having items at destinations on Monday mornings and during the peak holiday seasons. The proposed rules make it increasingly difficult to deliver to urban areas in which congestion during peak hours is an issue, not to mention the already daunting restrictions drivers have to overcome in urban areas. With the proposed ruling, these trucks would be hauling loads in peak traffic times at a higher frequency and as a result, retailers would not effectively be able to deliver their products to their stores in a just-in-time fashion.

### **Hours of Service Investments**

After 2003, when the 11-hour allowable limit for continuous truck operation and the 34-hour "restart" provision were put into place, many RILA member companies began expansion of their supply chain operations modeling them after the current laws. RILA's members have continued to build an ever expansive network of store fronts and distribution centers based on these laws, including investments in extensive process solutions and advanced technology systems. If the proposed rulemaking is implemented, retailers would have to front significant capital designed to comply with new requirements.

At a time when economic development is at the forefront of the President's agenda, placing financial burdens on the industry should be warranted in the final rulemaking process. On December 2009, DOT cited traffic congestion being an \$87.2 billion annual drain on the U.S. economy, with 4.2 billion hours and 2.8 billion gallons of fuel spent sitting in traffic. Those figures can only go up if the proposed rulemaking is set into place. At a time of one of the worst economic recessions in history, investments into updating technology, additional training, more drivers, and extra equipment are hard to justify when there are serious doubts to the effects of the forecasted changes.

To conclude, RILA members strongly urge FMCSA to retain the 11-hour daily driving limit and the 34-hour restart provisions as they currently stand. We look forward to working with FMCSA to ensure that truck operations remain safe and viable.

Should you have any questions regarding this matter, please feel free to contact me at (703) 600-2064 or [kelly.kolb@rila.org](mailto:kelly.kolb@rila.org).

Sincerely,



Kelly Kolb  
Vice President  
Global Supply Chain Policy