

COMMENTS OF THE
INTERMODAL ASSOCIATION OF NORTH AMERICA, INC.

DOCKET NO. FMCSA-2004-19608
HOURS OF SERVICE OF DRIVERS

SUBMITTED TO THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Dated: March 4, 2011

Introduction

On behalf of the diverse membership of the Intermodal Association of North America (IANA), following are our concerns regarding the Federal Motor Carrier Safety Administration's (FMCSA) proposed changes to its current regulations on "Hours of Service (HOS) of Drivers." We believe that the changes will cause several unintended consequences that will adversely impact all intermodal freight transportation providers, including railroads, ocean carriers, and motor carriers, as well as the entire domestic and worldwide supply chain.

IANA is the only trade association in North America that represents the combined interests of intermodal freight transportation companies and their suppliers. Our membership of more than 950 members includes railroads, ocean carriers, motor carriers, and intermodal marketing companies. These railroad, ocean, and motor carrier members transport over 90% of all intermodal freight that moves throughout North America and the world.

The efficient movement of containerized freight relies heavily upon intermodal motor carriers that provide a critical link by transporting intermodal shipments to their final destinations, as well as between ocean carriers and railroads. Following are brief definitions of the types of facilities that intermodal motor carriers regularly call on:

- Rail Terminal: A facility where containerized freight is loaded on/off intermodal rail cars and transferred to trucks;
- Port Terminal: A facility where containerized freight is loaded on/off containerships and at times transferred to trains or trucks; and,
- Container Yard Depot: A non-rail/port facility where motor carriers pick-up or deliver intermodal chassis and/or containers.

The Uniqueness of Intermodal Motor Carriers and Drivers

Intermodal motor carriers are unique, and three of the proposed changes to the current HOS regulation would dramatically impact their operations, resulting in what could be a severely negative impact to the efficiency of the entire domestic and worldwide supply chain. Intermodal drivers support an operational model that includes multiple daily interactions with various shippers' facilities, warehouses, rail and port terminals, and container yard depots. A driver's daily interaction between these diverse components of the supply chain typically begins with securing and validating certain types of equipment and the associated interchange process of intermodal equipment.

Intermodal drivers also experience a more predictive work week because they usually end up home every evening and the majority of each weekend. This is because most intermodal marine facilities where they pick-up loaded intermodal containers are either closed or conduct very limited hours beyond the Monday – Friday operational window. Nationwide, these terminals represent approximately 75-80% of international cargo that is interchanged between ships, port facilities and trucks.

The Impact on Intermodal Efficiency and the Worldwide Supply Chain

In 2010, aggregate intermodal volume managed by the North American rail system increased by 14.7% year-over-year to 13.4 million units and has been gaining ground since last January. International intermodal freight movements (those transferred between ocean carrier, barge and truck) also increased a substantial 12% over 2009, and have added a massive 8 million units to

the intermodal system for an estimated total annual volume of over 21 million units that required motor carrier services for pickup or delivery in 2010.

Preliminary calculations of IANA data suggest that motor carriers providing intermodal drayage services were directly responsible for pickup and delivery of between 38 and 39 million highway movements during 2010. Due to the efficiency of the intermodal freight transportation network, our short-term forecast is for intermodal activity to steadily increase each year, requiring additional intermodal motor carrier and driver capacity to meet the demands of the domestic and worldwide supply chains.

Since publication of the NPRM, IANA surveyed its intermodal motor carrier members as well as other intermodal freight transportation stakeholders regarding the proposed changes to the HOS regulation. Each motor carrier carefully evaluated the proposed changes and then applied the changes to its operational model. After this impact analysis, these intermodal motor carriers unanimously agreed that the proposed new rules would have a minimal impact on improving safety, but would adversely impact the efficiency of the entire intermodal freight transportation network and the domestic and worldwide supply chain.

The conclusion of our analyses is that the following three proposed changes to the current HOS rules would have unintended consequences that would make the intermodal freight transportation system inefficient, potentially cause global and domestic supply chain disruptions, and adversely impact the environment. The provisions in question are listed below:

- Restart Provision - 395.3 (c)(1)(2);
- Definition of On Duty - 395.2 (4)(i); and,
- Reduction of Driving Time - 395.1 (c)(1)(2).

The 34-Hour Restart Provision - 395.3 (c) (1) (2)

Current Usage: During our survey, there was strong agreement that the current 34-hour restart provision is effectively used to establish a predictable rest period that allows drivers to recover from their workload, ease associated fatigue and provide an adequate opportunity to improve overall driver health. Additionally, the current restart period enables drivers to meet the diverse needs of their weekly work routines and is critical to maintaining the efficiency of intermodal motor carriers that provide rail and port terminal drayage services, since in many instances, intermodal facilities are open 24 hours a day, seven days a week. The provision allows drivers the flexibility to effectively utilize their time to make deliveries to receivers that have expanded hours of operation and also permits the scheduling of pick-ups of intermodal containers that had previously been dropped at a shipper's or receiver's dock. Under the existing rule, drivers have the ability to retrieve and position empty equipment and motor carriers can schedule the next day's early morning delivery appointments.

Current Benefits: Motor Carriers providing intermodal drayage services require flexibility in their operations to effectively interact and interchange equipment and cargo between a broad array of rail, port, and shipper's facilities. In any given metropolitan area, schedules to meet ships, trains and customer expectations have considerable operational variability and require motor

carriers and their drivers to maintain a high degree of adaptability and elasticity to effectively service these schedules that are beyond their control.

Additionally, rail facilities, port terminals, and container yard depots depend upon the existing restart period to provide drivers with the latitude to adapt to their dispatch demands during off-peak hours. This flexibility also reduces congestion on the highways that access facilities and volume and traffic congestion within the terminals themselves. Several regional programs and industry initiatives have been implemented to assist with alleviating traffic congestion surrounding port facilities by offering extended gate times and extended days of operation, most notably and successfully, a program in southern California entitled PierPass. The PierPass program has been effective in moving intermodal cargo flows and port-related traffic congestion towards non-peak hours.

Impact of the Proposed Change: The proposed change to the current restart provision would reduce a driver's present work week. The unintended consequence would be a significant influx of additional intermodal trucks and drivers on America's roads during the heavily-congested Monday-Friday work week, resulting in a considerable increase in emissions that would adversely impact the environment. The proposed two consecutive midnight to 6:00 a.m. restart requirement will basically create a nationwide start time of 6:00 a.m. on any given day, with Monday and Tuesday being the heaviest of those days, since many intermodal drivers would lose the ability to restore their hours over the normally recognized weekend.

The majority of intermodal freight transportation facilities are located in close proximity to, or within, major population centers such as Los Angeles, Chicago, New York City-metro area, Atlanta, Memphis, Saint Louis, and New Orleans. With a nationwide 6:00 a.m. start time, the comingling of addition intermodal trucks with commuter traffic during already substantial rush hour congestion will have a cascading effect that would create major traffic backups on the nation's highways, and intermodal connector access roads to-and-from rail and port terminals and related facilities.

A uniform morning start time would also increase the potential for accidents, have a degrading environmental impact due to increased emissions, and reduce fuel efficiency for all vehicles traveling and idling during the same period. We believe this reduction in fuel efficiency will also cause an increase in fuel demand. Such a start time would also force many intermodal facilities, specifically rail terminals, to adjust clerical and staff support hours to address the congestion associated with the new early morning "peak" demand that the existing rule prevents. Due to the nature of short haul intermodal operations, intermodal drivers are domiciled within a two-hour drive time to the rail and port facilities they rely upon for their equipment pickup and delivery.

If many intermodal truck drivers begin their work day at the proposed 6:00 a.m. start time, they would not only face the traffic congestion and vehicle interaction mentioned above, they would also converge upon the intermodal facilities within the same time window, exacerbating delays in picking-up or delivering time-sensitive loads that are scheduled to meet designated railroad schedules or ocean carrier sailings.

Conclusion: IANA supports the continuation of the existing 34-hour restart period. The current provision allows intermodal truck drivers to efficiently operate within the traditional workweek while providing multiple options for appropriate rest periods. Due to the unique nature of

intermodal cargo flows, intermodal motor carrier drivers are home most evenings and receive the required amount of rest before starting work on the next day. Drivers currently utilize portions of post-midnight and early morning hours to handle loads to and from intermodal rail and marine terminals and shipper's docks.

Revised Definition of "On-Duty" Time – 395.2 (4) (i)

Current Usage/Benefits: In 2005, the FMCSA essentially eliminated the split sleeper berth provision, requiring drivers to take eight hours of rest – with two hours allowed for off-duty periods – for a total of 10 off-duty hours. This provision required drivers to take one longer uninterrupted period of rest, but eliminated the flexibility of allowing drivers to take naps during the day without jeopardizing their driving time. The current rule also allows a "split" sleeper berth period, but one of the splits must be eight hours long and the remaining two hours do not stop the 14-hour on-duty period. This rule is confusing and impractical for many intermodal truck drivers, who in result take the full 10-hour break. Under the current definition, drivers are on-duty if they are in a truck, unless they are resting in a sleeper berth.

Although there are provisions within the current rules for a driver to acquire certain rest periods, the rules do not consider time spent resting while in a parked commercial motor vehicle. The proposal to revise the definition of on-duty time to exclude time resting in, or on a parked commercial motor vehicle, would be beneficial for intermodal truck drivers. This is because there are multiple situations where the driver's activity is controlled by multiple factors beyond the power of the driver or the motor carrier.

Impact of the Proposed Change: The proposal to exclude the time resting in a commercial motor vehicle from on duty time is appropriate for intermodal truck drivers for several reasons. From a port or rail terminal operations perspective, the majority of daily activities is driven by the arrival and departure of ships and trains that are being unloaded of intermodal containers and trailers that arrived earlier in the day, or will depart later in the day.

Equipment interchange activities between motor carriers, railroads and ocean carriers are concentrated in the very early hours of the morning (post-midnight – 4:00 a.m.) for the pick-up of containers for delivery and later in the afternoon or early evening for delivering departing freight to the terminals. Because of this, intermodal truck drivers utilize their available hours to comply with these schedules and often have longer periods of downtime than conventional over-the-road drivers. In many instances, drivers do not return to their home or domicile after their morning pick-ups due to the demand for their services later in the day. Drivers currently log this period as on-duty, not driving, although they could be resting in a parked commercial motor vehicle. This dynamic precludes drivers from using any time spent waiting at facilities for customs clearance, administrative or documentation issues to be resolved, repair lines or operational considerations such as matching containers to the correct chassis for highway transport.

This situation is also present during extended roadside breakdown situations where it can take a repair vendor several hours before arriving and making needed repairs. Similarly, extended downtime can also exist at the facilities of shippers and consignees, where drivers may be required to wait several hours before loading or unloading occurs. During these periods, drivers that do not have a responsibility for loading, unloading, or assisting with the freight are simply

relegated to an informal “rest status,” however, this time is considered on duty, under the current rules.

Additionally, the Government Accountability Office’s January 2011 report to the House Transportation and Infrastructure Committee’s Subcommittee on Highways and Transit recognized the significant impact that excessive loading, unloading and wait times could have on HOS violations. The report cited that, “For those drivers that reported previously experiencing detention time, about 80% reported that detention time impacts their ability to meet Federal hours of service safety requirements...by reducing their available driving time.” The report further recognized that detention and wait times have a greater “revenue loss” impact to independent owner-operators, because their pay structure is typically based on actual miles driven or by the number of loads delivered.

Conclusion: IANA supports the FMCSA’s proposal to exclude from the definition of on-duty, time spent resting in, or on, a parked commercial motor vehicle. IANA also requests that the agency revise the definition of on duty time in 395.2 (1) by deleting: (1) All time at a plant, terminal, facility, or property of a shipper, or on any public property, waiting to be dispatched”.

Reduction in Driving Time to 10 Hours - 395.2 (c)(1)(2)

Current Usage/Benefits: The current HOS rule allows for 11 hours of driving time within a 14-hour period from the time a driver begins work after the driver has been off-duty for a period of at least 10 consecutive hours. It also provides a limited exception to the 14-hour provision for certain drivers – such as intermodal drayage drivers – who return to the same place of business at the end of each day during a given workweek.

Although most intermodal movements that are picked-up and delivered within the 200-250 mile range of an origin facility would be compliant with a 10-hour driving window, the remaining longer-haul segment of 250+ miles often requires the flexibility afforded by having the 11th hour available. This 11th hour is not necessarily used every day, or used to execute an actual appointment schedule. But on many occasions, the 11th hour is used to offset delays incurred during the workday, respond to unanticipated circumstances such as congestion, accident delay and equipment failure, or to locate a safe facility to secure the cargo, and then initiate the 10-hour rest period.

Impact of the Proposed Change: A reduction from the current 11-hour driving time limit to the agency’s preferred 10 hours would have negative effects on safety, productivity, carrier rates, and related accessorial charges. If the drive-time hours are reduced, we believe that highway safety would be adversely impacted because some drivers would attempt to make up the reduced drive-time by increasing their travel speed. A reduction in hours would also, as referenced under our comments regarding the restart period, compress an intermodal truck driver’s working day and create increased congestion in major cities across America.

In an attempt to mitigate some of the productivity that would be lost due to a reduction in driving time, many motor carriers could potentially reduce the amount of wait time at shipper’s facilities, increase their detention and wait time rates, and adjust prices and services to reflect these new

requirements and work rules. Ultimately, these costs would be reflected in higher prices for consumer goods.

Another unintended consequence of the reduced hours would be an increase in service delays. Such delays would negatively impact the competitiveness and viability of intermodal transportation as more and more shippers are turning to rail intermodal service as part of their global supply chain plan.

Conclusion: While the logic of the 10 hour consideration is tied to the mandatory break periods for traditional over the road drivers, intermodal drivers have several opportunities to schedule their own break periods throughout the day while waiting at customers' docks or terminals and facilities. The current rules provide a safe and flexible methodology for drivers to effectively manage the many situational and operational challenges they face every day and allows them to utilize their experience and judgment in determining how best to meet those challenges.

Economic Impacts on Intermodal Motor Carriers

Impact of the Proposed Change: As we prepared IANA's comments regarding the proposed HOS rule, we asked our motor carrier members to comment on how the proposed rule changes would impact their current operations. In order to sustain existing business levels, intermodal motor carriers estimate that they would need to increase capacity in terms of drivers and trucks by 10%. This benchmark is similar to facts that were conveyed by the many individuals who spoke at the FMCSA Listening Session held February 17, 2011, in Arlington, VA. In an attempt to analyze the economic impact on intermodal motor carriers, IANA collected driver recruitment information and the related costs to secure drivers, for the year 2010. The results showed that intermodal motor carriers typically needed to interview as many as 10 candidates in order to hire one driver and the cost to hire each driver ranged from \$2000-\$5000, depending upon the region and local competitive markets.

The economic impact to the drayage industry can be estimated by applying the above numbers to the Intermodal Driver Database, an industry resource maintained by IANA and used to validate driver and motor carrier operations at intermodal facilities throughout the country. Currently, 6,637 intermodal motor carriers have registered over 402,000 unique drivers in the program. An estimated 10% increase in driver capacity translates to a potential need for 40,000 additional drivers under the proposed rule. The resulting estimated cost for intermodal motor carriers to secure these drivers, assuming that adequate candidates could be found, would fall in the range of \$80-\$200 million.

Conclusion: If intermodal motor carriers were required to increase the number of drivers to compensate for reduced productivity under the proposed rule, they would be faced with almost insurmountable challenges to find qualified candidates and fund the recruitment and training of any new hires. In addition, drayage fleets would need to expand in an already challenging environmental, economic, and CSA environment.

Closing/Summary

IANA has a strong and ongoing interest in improving motor carrier safety. However, we believe that the proposed changes to the Drivers Hours-of-Service regulations will have very little impact on safety and could dramatically alter current operations of intermodal motor carriers, resulting in a reverberating effect across the domestic and global supply chain.

The operational structure of the intermodal freight network is critical to the needs of a rebounding economy that is more dependent than ever on a vibrant, efficient and productive intermodal system. Changes to the HOS rule must be assessed against this economic reality and should recognize the unique operating environment of the intermodal business.

A regulatory scheme that would result in more drivers, more trucks, and more truck trips and add to ever-present and ever-growing highway congestion is counterintuitive to actions designed to improve the safety of the motoring public.

For the reasons stated within the body of our comments, IANA respectfully requests that the FMCSA reconsider:

- The proposed changes to the 34 hour restart provision, Section 395.3(c)(1)(2);
- The revised definition of “On-Duty” time, Section 395.2 (4)(i), and
- A potential reduction in the amount of Driving Time, Section 395.2(c)(1)(2).

Thank you for the opportunity to comment and for considering these views as you develop a final HOS rule.