

March 4, 2011
Ms. Anne Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590
ATTN: Hours of Service of Drivers

RE: FMSCA-2004-19608

Dear Ms. Ferro,

The United Fresh Produce Association (United Fresh) is pleased to submit comments regarding the Federal Motor Carriers' Safety Administration Rule regarding Hours of Service.

United Fresh is the pre-eminent trade association for the produce industry in managing critical public policy issues; shaping legislative and regulatory action; providing scientific and technical leadership in food safety, quality assurance, nutrition and health; and developing education programs and business opportunities for members to better meet consumer needs for increased consumption of fresh produce. Founded in 1904, United Fresh represents the interests of member companies from small family businesses to the largest international corporations throughout the global fresh produce supply chain, including growers, shippers, fresh-cut processors, wholesalers, distributors, retailers, foodservice operators, industry suppliers and allied associations.

Overview of Comments

United Fresh certainly supports the goal of improving highway safety and we take the responsibility of safely transporting our products very seriously. However, it is also critical, particularly at a time of great economic challenges and record levels of unemployment, to ensure that government regulations do not unnecessarily undermine business viability without a substantial likelihood of improving public safety. In addition, we note that as providers of fresh fruits and vegetables across the country, our products are highly perishable; the bulk of our industry's commodities are harvested and shipped within 24 hours and many of our Association's businesses have established distribution centers within a one-day drive of customers. Government regulations that decrease the amount of time we have to get our products to consumers can seriously compromise our companies' ability to do business, as well as consumer access to healthy, nutritious foods. Furthermore, regulations which lengthen the time it takes to get our products to customers, which we believe these regulations would do, raise food safety concerns. The more time that product spends in transit, the greater likelihood that food safety will be compromised. This would be particularly unfortunate in light of recent passage of legislation to reform our nation's food safety laws. United Fresh has consulted with our Supply Logistics Council, which has extensive expertise in transportation issues, regarding the proposed rules. Following that consultation, we believe the proposed Hours of Service rule under consideration does not pass the test of balancing public safety with economic well-being and should therefore be withdrawn.

Specific Comments

Under the current Hours of Service rules, which have been in place since 2004, the trucking industry's safety performance has improved dramatically, resulting in reductions of truck-involved fatalities and truck-involved injuries of 33 percent and 39 percent, respectively. Consequently, the levels of fatalities and injuries are at their lowest levels since recordkeeping began in the mid-1970's.

While unintended, some aspects of the proposed rule may actually increase the safety risks to drivers and the driving public in general. The suggested changes to the 34-hour restart rule, which would require two consecutive periods of midnight to 6 a.m., would force drivers to spend more time driving in rush-hour conditions, increasing the risk to both commercial drivers and non-commercial drivers. Also, the decrease in driving and on-duty time will lead to drivers and loaded trucks spending more time parked at rest stops and similar areas, increasing their risk of being victimized by a variety of criminal behavior.

Furthermore, much of the data supporting the government's assessment of the purported safety benefits of the proposed rule appears to be lacking in long-term, real-world testing. Credible external analysis of the government's assessment of the cost-benefit ratio of the proposed regulations indicates a variety of flaws and deficiencies in the FMCSA's testing data. For example, in its Regulatory Impact Analysis, FMCSA used crash data collected before the current Hours of Service Rules went into effect, relied on assumptions about trucking safety using a very narrow sample population and has arrived at a cost estimate of the proposed rules that varies greatly with estimates of previous similar changes. With so many in the trucking industry operating already on very tight margins, it is imperative that estimates of the cost and benefits of any proposed rule must be based on the most accurate data that replicates real-life conditions as much as possible.

Without more assurance that the rules being considered would have a positive impact on highway safety, it makes little sense to implement requirements that are likely to have significant negative impacts on productivity and costs to business. As an example of the negative impact reduced driving hours could have, one of our member businesses indicates that a loss of an hour of driving time would result in up to 2 lost days per month and require nearly 35 additional trucks to cover the loss of capacity. It also stands to reason that the proposed reduction in allowable driving time from 11 to 10 hours will reduce drivers' flexibility and wage-earning capability. Furthermore, because our industry is based on providing the freshest products possible to consumers and our members frequently harvest and ship product on the same day, a reduction in driving time could seriously undermine our ability to meet consumer demand. Such changes in the proposed Hours of Service proposal can lead carriers to need more trucks and drivers on the road, the costs of which will ultimately be passed on to consumers. At a time when it is difficult to find qualified drivers, many of these new drivers will be inexperienced and require carriers to spend more on education and training. The reduction in capacity will also result in increased freight costs. Furthermore, carriers and growers will need to re-route their distribution channels, which are now based on the current rules. This is a costly and time-consuming process.

The new rules would have not only direct impacts on factors such as driver flexibility and increased costs to carriers for more trucks and drivers. There would, of course, be secondary impacts such as the costs of adapting transportation management and scheduling systems, educating related staff about the new rules; and the impact changes in driving periods could have on congestion at loading docks. Other

negative consequences could include greater fuel usage and vehicle emissions as trucks spend more time idling.

Conclusion

Driver safety is a paramount concern and those in the trucking industry willingly take on the responsibility of complying with safety regulations and doing everything necessary to uphold safety standards to protect their employees and the general public. Striving to improve highway safety should be an ongoing effort. However, the proposed rules regarding Hours of Service raise many critical questions about the cost-benefit ratio. It is far from clear that the rules put forth would have a significant positive impact on highway safety, but do appear to carry a significant risk of imposing high-cost burdens on carriers and individual drivers. This is particularly troubling in light of the support much of the trucking industry has expressed for the current rules and the data showing significant safety performance improvements under the current regulations. With the bulk of our products being shipped by truck, rules affecting commercial trucking can have a tremendous impact on the produce industry. We believe the FMCSA would do well to focus on compliance with current rules and gathering more accurate and consistent data before implementing rules that will undermine the viability of the trucking industry. Thank you for your time and attention.

Sincerely,

A rectangular box containing a handwritten signature in cursive script that reads "Julie Manes".

Julie Manes
Director of Government Relations
United Fresh Produce Association
April 7, 2011