Submitted via Regulations.gov
Federal Motor Carrier Safety Administration
U.S. Department of Transportation,
1200 New Jersey Avenue SE.,
Washington, DC 20590-0001

Attention: Docket ID No. FMCSA-2018-0248

RE: Hours of Service of Drivers: Notice of Proposed Rulemaking (August 22, 2019); Extension of comment period (September 19, 2019)

The National Pork Producers Council (NPPC) supports the Federal Motor Carrier Safety Administration (FMCSA) proposal to update and modernize its rules on Hours of Service (HOS) of drivers of commercial motor vehicles. As we stated in our September 12, 2017 petition seeking a waiver and limited exemption from FMCSA’s Electronic Logging Device (ELD) requirements, it remains our belief that FMCSA needs to work on revising the HOS rules to allow livestock haulers to more effectively comply with the rules while maintaining the welfare of the animals in the care of livestock haulers. While not perfect, FMCSA’s proposed rule is part of a series of welcome steps the agency has taken to adjust policies necessary to help address the challenges faced by livestock haulers. While we support this rulemaking, as explained below (and in our previous comments to the agency), we also believe there are additional, more significant, steps that FMCSA can undertake that directly address the unique needs of livestock haulers and will ensure those drivers can meet their duty to safely and humanely transport livestock over the nation’s highways. The U.S. Pork Industry looks forward to continuing to work productively with FMCSA.

NPPC is an association of 42 state pork producer organizations that serves as the global voice for the nation’s pork producers. The U.S. pork industry represents a significant value-added activity in the agriculture economy and the overall U.S. economy. Nationwide, more than 60,000 pork producers marketed more than 120 million hogs in 2017, and those animals provided total gross receipts of more than $20 billion. Overall, an estimated $23 billion of personal income and $39 billion of gross national product are supported by the U.S. pork industry. Economists Daniel Otto, Lee Schulz and Mark Imerman at Iowa State University estimate that the U.S. pork industry is directly responsible for the creation of nearly 37,000 full-time equivalent pork-producing jobs and generates about 128,000 jobs in the rest of agriculture. It is responsible for approximately 102,000 jobs in the manufacturing sector, mostly in the packing industry, and 65,000 jobs in professional services such as veterinarians, real estate agents and bankers. All told, the U.S. pork industry helps support more than 550,000 mostly rural jobs in the United States.

The U.S. pork industry is national in scope, with hogs raised in all 50 states. Commercial hog production is centered, though, in three primary areas: the corn belt states, ranging from Nebraska and South Dakota in the west to Ohio in the east; the eastern seaboard, ranging from South Carolina northward to Pennsylvania and centered on a large industry in North Carolina; and the Panhandle region of Texas and Oklahoma. Pigs routinely travel between regions, and within, these largely rural regions.
Proposed Changes to the Hours of Service Rules

Day to day, in ideal conditions, most haulers carrying hogs can comply with current HOS rules. However, many haulers are often placed at risk of violating HOS rules due to factors outside their control. These factors can include such unpredictable events as weather and traffic delays or backups and work stoppages at processing plants that prevent timely deliveries from being made. Combined with the incompatibility of the ELD mandate with livestock hauling, current HOS rules have caused significant disruption for livestock haulers, increasing already severe driver shortages, and potentially endangering the health and welfare of the millions of animals transported by livestock carriers daily.

FMCSA’s proposed changes to the Hours of Service rules will help address these situations.

- **Short Haul Exception**: The proposed changes to the short haul exception, extending from 100 to 150 air mile radius, and expanding from 12 to 14 hours, the maximum duty period for drivers will provide significant relief to those parts of the industry that operate within a short geographic range.

- **Adverse Driving Conditions**: The proposal to increase the maximum “driving window” 2 hours for drivers who encounter adverse driving conditions also makes common sense and will ensure those drivers who encounter unexpected adverse conditions have time to complete their deliveries. However, we continue to believe that FMCSA needs to expand the universe of what an “adverse driving condition” is for drivers hauling livestock. Livestock haulers face more challenges than other commercial motor vehicle operators due to the nature of the livestock in their care. These adverse conditions include not only incidences of rain, snow, ice and unexpected traffic disruptions, but should also include excessive temperature extremes and a recognition that either excessive heat or cold will require a driver to continue driving, in order to maintain the proper temperature for the animals in their care.

- **30 Minute Rest Break**: We support the commonsense change to allow a 30 minute rest break to be taken by drivers in non-driving conditions by being either “off duty” or remaining “on duty” but not driving. This will allow the flexibility needed by drivers to take a rest break but also ensure that they can watch and service the welfare needs of the animals in their care.

- **Split Sleeper Berth**: We are strongly supportive the development of a split sleeper berth provision. It is an effective, and flexible, change that will ensure drivers have an adequate amount of sleep, while also providing them the flexibility to adjust their sleep schedules to accommodate traffic and temperature conditions. However, FMCSA needs to ensure it does adequate outreach and training to educate drivers as well as enforcement authorities on the operation of the split sleeper berth.

While we support the current proposal to allow for one period of at least 7 or more hours and another sleeper berth or off duty period of at least two hours, we would encourage FMCSA to also continue exploring the feasibility of allowing other time splits for livestock haulers.
A more practical approach would be for FMCSA to consider allowing drivers to break the 10 hour sleeper berth time up into 3 separate periods provided that at least one has a minimum rest period of 6 hours.

- **Split Duty Provision**: We also are supportive of FMCSA’s proposal to allow drivers to take an off duty break of between 30 minutes and 3 hours to allow them to extend the length of the 14 hour driving window. Like the split sleeper berth provisions, this change will ensure drivers have an adequate amount of rest, while also providing them the flexibility to adjust their sleep schedules to accommodate traffic and temperature conditions. We also suggest that FMCSA dedicate itself to undertaking substantial education and outreach to drivers as well as enforcement personal on the operation of this change.

FMCSA’s proposed changes to the Hours of Service rules will help alleviate a number of the challenges livestock haulers face. However, in implementing these changes, FMCSA needs to ensure it does adequate outreach and training to educate both drivers as well as enforcement authorities on the operation of all these changes and their impact on the hours of service rules. Furthermore, FMCSA must also work to ensure that ELD manufacturers update their software to allow for the utilization of these new rules.

**Additional Recommended Changes to Hours of Service Rules**

While the US Pork industry supports the proposed rules, we continue to believe that FMCSA needs to do more to address the unique challenges facing livestock haulers. These steps include:

- **Eliminate the distinction between on-duty and driving time** FMCSA should seek to streamline the HOS rules for livestock haulers and eliminate the distinction between the 14 hour on duty clock and the 11 hour driving limit. Work is work, and if a driver can be on duty then the driver should be free to continue driving if they feel comfortable. Furthermore, expanding the driving time from 11 to 14 hours for livestock would provide livestock haulers with a significant level of flexibility and a built-in margin of error to address any delays that might arise as they transport their load to its destination.

Furthermore, as FMCSA has previously acknowledged, expanding the driving time for livestock haulers from 11 hours to 14 hours, can be accomplished in a safe manner and is also consistent with rules in a number of other jurisdictions including Canada\(^1\), Australia\(^2\), as well as for intrastate loads in California\(^3\) and Texas\(^4\).

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\(^1\) Canada allows up to 13 hours of driving time south of Latitude 60N, and 15 hours north of Latitude 60N.
\(^2\) Australia allows 12 hours of driving time in a 24 hour period, generally. However, drivers who have completed Basic Fatigue Management are permitted to drive up to 14 hours in a 24 hour period. Operators accredited in Advanced Fatigue Management can schedule drives up to 15.5 hours. Livestock haulers who participate in the Livestock Transport Fatigue Management Scheme (LTFMS) can also drive up to 15.5 hours on a long run.
\(^3\) California allows intrastate operation up to 12 hours under normal conditions. 13 CCR § 1212.5 (a)(2)(a).
California also allows intrastate operation of up to 14 hours under adverse driving conditions. 13 CCR § 1212(b)(1)(a).
\(^4\) Texas allows intrastate operation up to 12 hours under normal conditions. 37 TAC 4.12 (a)(2)
• **Motor Carrier Safety Rating:** Over the years, often as a result of attempting to balance their duty to the welfare of animals over strict adherence to otherwise incompatible HOS rules, some livestock haulers have seen their safety rating downgraded from Satisfactory to Conditional. This has the result of further reducing the pools of available drivers, and significantly increasing barriers for these haulers to remain in business. The situation is exacerbated by a systemic lack of opportunity for these haulers to come back into compliance and to restore their satisfactory safety rating.

As it works to implement these proposed changes to its HOS rules, FMCSA should also develop a program to help streamline and expedite the process of restoring satisfactory safety ratings for livestock haulers who are otherwise in compliance with all significant safety and paperwork requirements.

Thank you for the opportunity to submit these comments. The pork industry strongly supports this effort to revise and update the HOS rules. We look forward to continuing to work closely with the FMCSA staff as it develops revisions to the HOS rules. If you have any questions about these comments, or need additional information, please don’t hesitate to contact me at 202-347-3600 or by email at formicam@nppc.org.

Sincerely,

Michael C. Formica
Assistant Vice President & Legal Counsel, Domestic Policy
National Pork Producers Council