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December 7, 2016

Your Comment Tracking Number: **1k0-8tgo-jb4f**

Docket Management Facility M-30
US Department of Transportation
West Bldg., Room W12-140
1200 New Jersey Ave., SE
Washington, DC 20590

Re: Docket No. FMCSA-2014-0083 and Docket No. NHTSA-2016-0087

Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices.

VIA ELECTRONIC SUBMISSION

INTRODUCTION

The New England Fuel Institute (NEFI) is the largest heat oil trade association in the country. NEFI represents nearly 1,000 small business heating oil dealers across the New England region and beyond. NEFI members are short-haul, private motor carriers who supply and transport heating oil, kerosene, diesel fuel, propane and other products in cargo tank transport trucks to both wholesale and retail customers. NEFI members employ hundreds of CDL HAZMAT drivers who deliver product locally pursuant to the Federal Motor Carrier Safety Regulations (FMCSR).

NEFI appreciates the opportunity to present the following comments on the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration's (NHTSA) Notice of Proposed Rulemaking (NPRM) concerning *Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices.*

NOTICE OF PROPOSED RULEMAKING

NHTSA is proposing to establish a Federal Motor Vehicle Safety Standard (FMVSS) that would require new multipurpose passenger vehicles, trucks, buses, and school buses with a gross vehicle weight rating of more than 26,000 pounds to be equipped with a speed-limiting device. Additionally, as manufactured and sold, each vehicle would be required to have its device set to a specified speed. Although NHTSA has not specified a maximum set speed in this proposal, NHTSA intends to specify a maximum set speed between 60 and 68 miles per hour in a final rule.

FMCSA is proposing an federal motor carrier safety regulations (FMCSR) requiring each commercial motor vehicle with a gross vehicle weight rating of more than 26,000 pounds to be equipped with a speed limiting device meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture, including the requirement that the device be set to a specified speed. As with the FMVSS, FMCSA has not specified the maximum set speed in this proposal. Instead, FMCSA intends to specify the maximum set speed in a final rule implementing this proposal. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed-limiting devices for the service life of the vehicle.

NEFI COMMENTS

NEFI opposes adoption of the speed limiter requirement proposed by the FMCSA and the NHTSA because the one-size-fits-all regulatory framework in the NPRM is inadequate to address the many differences between long-haul for hire carriers and short-haul private carriers. NEFI also asking for the rule to be withdrawn due to insufficient analysis and data on small business impact and lack of conclusive studies on possible adverse safety consequences of speed differential created by a speed limiter requirement.

One-Size-Fits-All Rulemaking Fails to Consider Logistical Differences between Long-Haul For Hire Carriers and Short-Haul Private Carriers that Incentivizes Excess Speed.

NEFI believes that the FMCSA and NHSTA speed limiter proposal is too broad. The agencies seeks to impose a one-size-fits-all regulatory framework on an industry that is highly diverse in terms of carrier size, vehicle miles travelled, interstate versus intrastate operations, and driver compensation, among other differences. Specifically, the agency's Notice of Proposed Rulemaking (NPRM) largely focuses on for hire motor carriers and independent operators who transport goods long distance. Much of the analysis and assumptions in the NPRM are based on the long-haul for hire logistics paradigm. In some ways this makes sense because long-haul for hire carriers are the largest sector of the trucking industry and the one where speed is a key factor driving carrier profitability and driver compensation. However, short haul, private carriers have different logistics that makes speed limiters unnecessary.

Long- Haul For Hire Carrier Logistics.

There is a very strong incentive for long-haul for hire carriers to move goods as quickly as possible. Motor carriers need to move products with speed and efficiency in order to meet customer delivery requirements, maintain low overhead, and maximize logistic capacity to keep trucks filled, rolling and profitable. Long- haul, for hire motor carrier logistics planning is efficient, precise and incentivizes speed. In addition, the industry standard for long-haul carriers is to pay drivers by the mile. Drivers are expected to drive between 2,000 and 3,000 miles per week and must do so with as little delay as possible on interstate highways at posted speeds as high as 85 mph. However, delays caused by traffic congestion, weather conditions, waiting for scales, roadside inspections, loading and unloading and repairs, all work to slow truckers down and travel fewer vehicle miles over longer periods of time. These factors can significantly reduce driver earnings because the loss of time translates into fewer vehicle miles travelled during weekly, monthly and annual compensation periods. To avoid loss of compensation due to delay, the CDL driver is incentivized to make up lost time by speeding. The truism that “time is money” is especially applicable to the long-haul for hire motor carrier trucking sector. Because all these factors create an incentive for speed, long-haul for hire carriers are statistically more likely to be involved in the type of speed related accidents that speed limiters are designed to address.

Short-Haul Private Carrier Logistics.

As stated in the introduction to these comments, NEFI represents small business heating oil dealers who sell and transport petroleum products from a refiner or pipeline terminal facility to their own gasoline stations or wholesale customers, including state and local governments, construction companies, farmers and marinas. Typically, heating oil dealers are intrastate carriers operating close to their principal place of business. There is a subset of heating oil dealers who, due to their location near a state boundary line, operate interstate. Either way, with few exceptions, heating oil dealers transport product within a 150 air-mile radius of their principal place of business. Most of these vehicle miles travelled are over local roads, with posted limits, with dozens of residential delivery stops, robust traffic enforcement activity and general traffic conditions that keep speed far below the maximum limits of 60 mph, 65 mph and 68 mph proposed in the NPRM.

In addition, unlike in the long-haul for hire sector, short-haul CDL drivers are typically salaried or paid an hourly wage in daily shifts that can range between 8 and 12/14 hours in length. As a result, short haul driver compensation generally does not vary based on vehicle miles travelled during their daily shift. Moreover, CDL drivers hauling petroleum are more acutely aware of the danger associated with excess speed and its consequences by virtue of the nature of the product they haul and the enhanced knowledge and skill training required to earn a hazardous materials endorsement. All these characteristics of the short-haul private motor carrier sector combine to disincentive speed, keeping their trucks significantly below the maximum speed limits proposed by the NHTSA.

NEFI is not advocating that speed limiters be required for long-haul for hire motor carriers. Instead, NEFI is pointing out the differences between long-haul for hire carriers and short-haul private carriers to illustrate that the motor carrier industry is diverse, and assumptions made in the NPRM about excess speed do not necessarily apply to all carriers, particularly short haul private carriers. This is why NEFI believes the one-size-fits-all approach in the NPRM is too broad, and imposes on short-haul private carriers a regulatory requirement that cannot be justified given logistic realities. Instead, should the FMCSA and the NHTSA proceed to a final rule, an alternative regulatory approach must be provided for short-haul carriers that takes into account operating characteristics which act as disincentives to excess speed. An alternative approach is particularly important should the final rule adopt a retrofit requirement (a requirement that NEFI firmly opposes). NEFI recommends an alternative provision that would grant an exception from the speed limiter requirement for short-haul private motor carriers who operate within 150 air mile radius of a driver's normal work reporting location or the carrier's principal place of business.

Conclusive Study on the Safety Impact of Speed Differentials Between Cars and Trucks Required.

The critical difference between long-haul and short-haul motor carriers that incentivize excess speed is only one reason NEFI believes the NPRM should be withdrawn. NEFI also believes that the FMCSA and NHTSA have not undertaken a comprehensive regulatory analysis on the efficacy of speed limiters in the NPRM or their impact on small business necessary for an informed rulemaking.

The FMCSA and NHTSA contend that speed limiters will reduce the severity of accidents involving heavy duty commercial motor vehicles. The NPRM would set maximum speed limits for heavy duty trucks at either 60 mph, 65 mph or 68 mph. States have set speed limits on interstate highways in a range between 55 mph and 85 mph. Any one of the maximum speeds proposed in the NPRM would create significant speed differentials between cars and heavy duty trucks on today's interstate highway system.

The FMCSA and NHTSA acknowledge in the NPRM that a significant speed differential would be created by the speed limiter requirement between cars and heavy duty trucks. The agencies also acknowledge that the speed differential could have the opposite effect of what they hope to achieve with speed limiters by actually increasing the number of accidents involving heavy duty trucks. However, The FMCSA and NHTSA agree that studies on accident rates where significant speed differentials exist are largely inconclusive. If the studies are inconclusive, the FMCSA and NHTSA can' say with any certainty that the speed limiter requirement wouldn't lead to an increase in accidents on interstate highways.

NEFI believes the FMCSA and NHTSA need more conclusive data on the impact of speed differential as it relates to accident rates between cars and trucks before it precedes further in the rulemaking process. Moreover, the agencies should give significant weight to drivers' near universal insistence that such differentials create a high risk for accidents and conduct a comprehensive study of the issue before moving forward with a final rule.

A Comprehensive Small Business Regulatory Impact Analysis is Needed Before Rule Becomes Final.

The FMCSA and NHTSA state in the NPRM that the speed limiter requirement would create a significant economic impact on small businesses. NEFI agrees with this analysis particularly where a retrofit requirement is concerned. The cost to retrofit mechanically controlled speed limiter unit on older vehicles with an electronic model would impose significant equipment and installation costs. Additional costs would be incurred by pulling trucks out of service for a day or longer while installation work is performed. Add to these costs, the expense associated with paying CDL drivers to drive trucks back and forth to mechanic facility for installation and long term costs associated with device maintenance, testing and recordkeeping. The same is true for trucks already equipped with electronic speed limiters that must be updated or adjusted to meet the requirements under the NPRM. NEFI estimates the one-time costs on the petroleum transportation industry could range anywhere from $500 to $2500 per truck. The ongoing costs for maintenance, repair, inspection and recordkeeping are not entirely known but believed to be significant.

The economic burden on small business motor carriers imposed by the NPRM, particularly if the agencies intend on adopting a retrofit requirement, would likely exceed the $200,000,000 threshold triggering a comprehensive regulatory flexibility analysis. NEFI agrees with the agencies that a speed limiter requirement for newly manufactured vehicles only, would significantly reduce the economic impact on small businesses, though costs associated with inspection, maintenance, repair and recordkeeping would still be incurred. It is beyond the capability of NEFI to provide the FMCSA and NHTSA with comprehensive data on the full economic burden that a speed limiter mandate would impose on small businesses. For this reason, NEFI believes that the rule should be withdrawn and the agencies undertake a comprehensive small business impact analysis in partnership with the Small Business Administration's Office of Small Business Advocate.

CONCLUSION

NEFI Opposes Speed Limiter Requirement Under the Current NPRM.

The proposal seeks to impose a one-size-fits-all regulatory framework on two sectors of the trucking industry that have fundamentally different logistics which directly correlate with the probability of operating a commercial motor vehicle at excess speeds. The logistics of long-haul for hire trucking creates incentives for drivers to speed that are largely absent in short-haul private motor carrier operations. An alternative regulatory framework is needed for short-haul private carriers to address these differences if the FMCSA and NHTSA intend to publish a final rule on speed limiters. NEFI recommends an exception from the speed limiter requirement for short-haul motor carriers who operate within 150 air mile radius of a driver's normal work reporting location or the carrier's principal place of business, which is often the same place.

Furthermore, NEFI believes that the FMCSA and NHTSA have not collected the relevant data to fully measure how the speed differential created by a speed limiter requirement would impact the accident frequency between cars and trucks, or the economic burden a retrofit requirement would place on small business motor carriers. NEFI is also concerned with engine performance issues for retrofitted trucks, the technical feasibility and the expense of reprograming the software of existing electronic speed limiters. For all of these reasons, NEFI recommends the FMCSA and NHTSA conduct more study on the speed limiter requirement. Specifically, NEFI asks the agencies to withdraw the NPRM and issue a

Notice of Information Collection in order to compile the data the agencies need to make a more informed decision on the need for speed limiters. NEFI would be happy to assist the FMCSA and NHTSA in collecting more comprehensive data on this issue.

Please feel free to contact me should you have any questions. Thank you.

Respectfully Submitted,
Sincerely,

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