



October 23, 2023

U.S. Department of Transportation
Federal Motor Carrier Safety and Administration
1200 New Jersey Avenue SE
Washington, DC 20590
Submitted via www.regulations.gov

Re: Agency Information Collection Activities; New Information Collection: Impact of Driver Detention Time on Safety and Operations
Docket No. FMCSA-2023-0172

Dear Docket Clerk,

Pursuant to the Federal Motor Carrier Safety and Administration's (FMCSA), notice and request for comments published in the August 24, 2023, Federal Register regarding, Agency Information Collection Activities; New Information Collection: Impact of Driver Detention Time on Safety and Operations, Docket No. FMCSA-2023-0172, the Truckload Carriers Association (TCA), hereby submits these comments.

TCA, with offices at 555 E Braddock Road, Alexandria, VA is the only national trade association whose collective sole focus is the truckload segment of the trucking industry. The association represents dry van, refrigerated, flatbed, and rail intermodal carriers operating in 48 contiguous U.S. states, Alaska, Mexico, and Canada. As a significant part of an industry with over half a million companies within the United States operating millions of power units, TCA and its trucking company members regularly comment on matters affecting the national transportation industry's common interests and potential impacts.

In the American Trucking Research Institute's 2023 Critical Issues in the Trucking Industry survey, detention time was ranked ninth among the top 10 industry concerns.¹ However, detention time was ranked fifth among the top concerns for commercial drivers.² With that in mind, TCA and its members wish to provide the following feedback regarding FMCSA's Agency Information Collection Activities; New Information Collection: Impact of Driver Detention Time on Safety and Operations, and its significant impact on our carrier member operations.

¹ American Trucking Research Institute. (2023). CRITICAL ISSUES IN THE TRUCKING INDUSTRY- 2023(p. 21). <https://truckingresearch.org/wp-content/uploads/2023/10/ATRI-Top-Industry-Issues-2023.pdf>

² American Trucking Research Institute. (2023). CRITICAL ISSUES IN THE TRUCKING INDUSTRY- 2023(p.26). <https://truckingresearch.org/wp-content/uploads/2023/10/ATRI-Top-Industry-Issues-2023.pdf>

In reviewing the notice, our members question how the FMCSA would act throughout the course of this pending study and raise the following concerns in regard to this research:

- Unintended Consequences
- Variables at Play
- Continuous Offenders

Unintended Consequences

After hosting studies of the impact of detention time in 2001 and 2014, the FMCSA has failed to act accordingly after their findings. After the study in 2001, FMCSA determined that drivers experiencing extended wait times and handling a greater number of loads were prone to increased levels of driver fatigue³. Instead of further investigating this issue in a timely manner, the FMCSA waited until 2014 to host another study.

In Docket No. FMCSA-2023-0172, the FMCSA states that the completed 2014 study on the impact of detention time on CMV safety “provided valuable initial insights, it had several limitations, including a small sample of mostly large carriers, a rudimentary estimation of detention time, the inability to identify time spent loading/unloading, and data that did not cover an entire 12-month period.”

While we appreciate the FMCSA's intention to investigate further issues stemming from detention time, there is a concern regarding the possibility of delayed action if new issues are identified. Given the duration of the initial study, there is apprehension that any new issues that may arise will not be explored promptly, potentially resulting in a significant delay, such as the decade-long interval observed previously.

Variables at Play

After numerous studies that the FMCSA has had on detention time, there is always the question if the FMCSA will monitor detention time, and if so, how? Detention time within the trucking industry is a complex issue with various factors at play. The FMCSA would face significant challenges to effectively regulate detention time due to the numerous definitions and tracking methods employed by trucking companies.

One major obstacle is the lack of a standardized definition for detention time across the industry. Different trucking companies and drivers may have their own interpretations and criteria for what is considered detention time. This diversity makes it difficult for the FMCSA to establish a universal set of regulations to address the issue, this also could be a flaw within the study itself.

Additionally, tracking detention time is a challenge due to the various methods and technologies used for monitoring. Trucking companies have advanced Electronic Logging Devices (ELDs) in their trucks that have software to automatically track and notify companies if drivers are about to undergo or are in detention. These systems facilitate billing shippers and receivers for detention time and help in monitoring compliance. However, since there is not a universal ELD for all trucks to use, companies who

³ “Effects of Detention Times on Commercial Motor Vehicle Driver Fatigue.” FMCSA, The Federal Motor Carrier Safety Administration, 18 June 2018, www.fmcsa.dot.gov/research-and-analysis/research/effects-detention-times-commercial-motor-vehicle-driver-fatigue.

do not have ELDs with this software would have to rely on manual communication with drivers to determine detention time.

Independent Contractors operating within the trucking industry present an additional layer of complexity regarding detention time. Since they are not employees of the trucking companies, these contractors are responsible for managing and communicating detention time on their own behalf. Due to the issues surrounding misclassification, the challenge arises from the fact that trucking companies cannot treat independent contractors in the same way they would treat their own employees when it comes to detention time.

Unlike company-employed drivers who may have established processes and technologies in place to track and report detention time, independent contractors often need to handle this aspect on their own. They must communicate effectively with their destination to notify them when detention time occurs and negotiate any potential billing related to the delay. This lack of standardized processes and reliance on individual communication can lead to discrepancies and challenges in accurately tracking and addressing detention time for independent contractors.

In light of these complexities and challenges, it is crucial for the FMCSA to acknowledge the diverse variables related to detention time as they continue their study. Understanding the details and nuances of detention time within the trucking industry is essential for developing effective and fair regulations that may address this pressing issue. The FMCSA must work towards establishing standardized definitions, encouraging technological advancements, and considering the unique circumstances of independent contractors to pave the way for a more efficient and equitable detention time monitoring system.

Continuous Offenders

Communication is critical when it comes to tracking and managing detention time effectively. Drivers often need to communicate with their shippers and receivers to convey their arrival time for loading and unloading, as well as to negotiate and establish the start and end times of detention. Equally, the facility must also share the responsibility of engaging in transparent communication with drivers. It's vital for shippers and receivers to acknowledge the initiation of detention time accurately, fostering a mutual understanding between both parties.

The lack of a standardized and documented process for handling detention time occurrences can lead to confusion and disputes among the involved parties—shippers, receivers, drivers, and the trucking company itself. This lack of clear guidelines can especially pose challenges when dealing with recurring cases of detention time. If certain locations consistently cause detention time problems, it creates a substantial challenge for all parties involved. Trucking companies may struggle to address the issue effectively without established protocols or regulatory support to handle persistent detention time offenders.

Additionally, the difference in customer contracts regarding billing for detention time further complicates the situation. Some contracts allow shippers and receivers to avoid being charged for detention time, resulting in an inconsistency in detention time enforcement. What's more, ELD's do not offer any flexibility in terms of time, given that trucking companies methodically plan routes based on Hours of Service (HOS) regulations. If a driver exhausts their HOS, it not only results in lost revenue for the trucking company but also presents a challenge as shippers and receivers often do not cover trucking expenses.

It's essential for these facilities to be held accountable for detention time and adapt to a reasonable grace period of two hours. Establishing clear communication channels and standardizing detention time protocols can significantly mitigate disputes and enhance the efficiency of detention time management in the trucking industry. Considering this, the FMCSA should explore avenues to investigate how shippers and receivers manage detention time, recognizing their responsibility in this matter.

Given these complications and the diversity in the industry, any attempts by the FMCSA to monitor detention time would need to consider and accommodate these issues. However, striking a balance between supervising detention time and considering the industry's diverse needs and capabilities remains a formidable challenge.

The Truckload Carriers Association and its members express their gratitude to FMCSA for providing the opportunity to offer their insights and comments. By doing so, we aim to contribute to the ongoing efforts to enhance the truckload industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Ward". The signature is fluid and cursive, with a large, stylized "J" and "W".

Jim Ward
TCA President