

EDDIE STEWART, President
DIRK ELSPERMAN, Senior Vice President
ROBERT C. LANHAM, Vice President
JOEL ZINGESER, Treasurer
STEPHEN E. SANDHERR, Chief Executive Officer
JEFFREY D. SHOAF, Chief Operating Officer



October 10, 2018

Docket Management Facility
U.S. Dept. of Transportation
1200 New Jersey Ave. SE
Washington DC 20590-0001

RE: Docket ID: FMCSA-2018-0248

The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 26,000 firms in 89 chapters throughout the United States. Among the association's members are approximately 6,500 of the nation's leading general contractors, more than 9300 specialty contractors, and more than 10,000 material suppliers and service providers to the construction industry. AGC members perform construction contracts in all 50 states and own and operate fleets of commercial motor vehicles to carry out these construction contracts. As such, AGC members are directly impacted by the Federal Motor Carrier Safety Administration's (FMCSA) Hours of Service (HOS) rules.

AGC is working with numerous construction industry associations as part of the Construction Coalition in a joint letter commenting on this Advanced Notice of Proposed Rulemaking (ANPRM) and recommending a broad construction industry exemption from current HOS rules. AGC urges you to support these recommendations. Below are AGC's comments in support of this collective construction industry initiative.

Construction Industry Drivers are Faced with Unique Circumstances

Construction industry truck drivers operate in unique circumstances that make the HOS restrictions particularly onerous. Consider the following:

A road cannot be built on frozen ground. And, in many states across the country the construction season is limited to spring and summer months. Similarly, because roads cannot be constructed during rain events, there is an extremely limited period of time in which road construction projects can be completed. Further complicating the situation, the daily window for road construction and maintenance services is tight because state transportation agencies (DOTs) must balance the convenience of the motoring public with the ability to construct or maintain a roadway. Generally, active road construction activities may last for up to 12 or 14 hours per day.

As a result, construction companies must utilize every minute of every day available to complete these projects. Unnecessary restrictions placed on CMV drivers associated with construction projects chew into those precious available hours during this fixed season.

Drivers in the construction industry transport perishable materials such as concrete and asphalt. These products must be transported and applied within tight time limits or are unusable and wasted.

Typically, construction industry drivers spend much of their time not actually driving but waiting to pick-up or deliver materials or load/unload equipment.

Construction companies must obtain permits and pre-approved routes to operate longer trailers that can transport asphalt drums and silos, for example. These tractor-trailers can be up to 120 feet long, 16 feet wide and weigh over 240,000 lbs. While transporting these pieces of large construction equipment short distances, drivers are not allowed to deviate from the pre-approved routes identified to avoid low bridges and weight restricted areas. The permitted routes can easily increase what would normally be a 75-mile drive to 200 miles – often triggering a 30-minute break requirement. Complying with the current 30-minute break requirement would be unsafe and difficult or impossible to accomplish considering the load size. Finding a location and releasing a driver from all on-duty responsibilities associated with that type of construction material load is impractical, inefficient, and creates additional safety problems.

Many companies who operate in multiple adjoining states run a central equipment shop and dispatch center to more efficiently move equipment, materials, and employees to various projects throughout their area of operation—saving time and precious daylight hours. Under the current construction exemptions, companies that operate in these areas frequently travel in excess of 50 or 100 air-miles and are “on-duty,” although not driving for periods of time. Nonetheless, the 30-minute break requirements are triggered and they are disqualified from the 24-hour restart exemption.

Example: A truck driver drives 55 air miles from the work reporting location to Site A to deliver a piece of equipment, immediately excluding the construction exemption for a 24-hour restart. Once the driver employee arrives at Site A, the equipment is unloaded and the driver employee begins to perform work-related duties (on-duty but not driving). After a few hours, the employee drives the empty truck another 50 air-miles, away from its start location, to pick up another piece of equipment at Site B. At Site B, the driver works (on-duty but not driving) and loads the equipment onto the truck before returning to his work reporting location and unloading the equipment. Because the driver has exceeded the 100 air-mile radius, the short haul exemption is similarly voided, and the driver is required to take a 30-minute break prior to any 8 hour on duty – even though those hours were not continuously spent driving behind the windshield.

Limited Exemptions Granted

Congress and the FMCSA have both recognized these characteristics of construction industry driving practices as different from long haul drivers and therefore should be provided some relief from HOS restrictions. Currently there are a variety of exemptions and exceptions, as follows:

Construction industry drivers transporting construction materials and equipment that drive within a 75 air-mile radius from their work reporting location are allowed a 24-hour reset/restart to the driver’s 70 hour/8 day on duty clock.

Short haul construction industry drivers that stay within a 100-mile radius of their normal work reporting location are exempt from requirements to maintain a log, including ELD requirements. Under this short haul exemption ready-mix concrete truck drivers and asphalt delivery drivers have a 14 hour on-duty allowance to still stay within the short haul exemption. However, the ready-mix exemption only includes trucks that have a mixer drum agitator and does not include dump trucks and other trucks critical to concrete paving operations. While the asphalt exemption includes the delivery truck, water

truck, tack distributor, equipment hauler, pick-up sweeper and attenuator truck, other trucks are not included.

Ready mix and asphalt delivery drivers can also count time waiting to deliver their product to meet the 30-minute rest period during an eight-hour shift. Additionally, while the definition of asphalt includes “related materials and equipment,” it is not clear if this definition would include aggregates, sand and other trucks used in asphalt paving.

Safety Record in Tact

The construction industry has welcomed this relief and demonstrated strong compliance with the HOS regulations in the past. The record shows that the Congressionally mandated 24 hour reset provision has not been detrimental to public safety nor has it had adverse effects on driver health. AGC also believes this provision has benefitted the nation by allowing the delivery of vitally needed infrastructure in a timely and cost-effective manner.

In providing this exception in 1995, Congress recognized that the hours-of-service regulations were too restrictive on several industries, including the construction industry. In granting this exception in the National Highway System Designation Act of 1995 (section 345) Congress also directed the Secretary of Transportation to ensure that granting the construction industry exemption would be in the public interest and would not have a significant adverse impact on the safety of commercial motor vehicles. If at any time the Secretary determined that this was not the case, the Secretary could “prevent the exemption from going into effect, modify the exemption, or revoke the exemption.” Now, more than twenty years after the rules’ implementation, no specific adverse impact has been identified.

Uniform Construction Industry Exemption Makes Sense

While the exemptions that have been granted to the construction industry are helpful, they are limited, do not address all the industry’s needs and are confusing to administer and enforce. On any given construction site, some trucks and products are exempt from some HOS requirements while others are not. The fundamental reasoning behind granting the existing exemptions applies more broadly across all construction industry trucking operations. Asphalt and paving operations do not occur with only the vehicles that are delivering those specific materials to the jobsite. Aggregate must be placed on the road bed before either concrete or asphalt can be placed. Water and oil must be applied, attenuators put in place to protect workers, debris removed, equipment transported, and an array of other operations that are essential to completion of a road, bridge, runway and other transportation facilities. For these reasons, AGC believes it is essential to provide a uniform construction industry exemption.

The simplest and most straightforward approach would be an exemption from all of the provisions of 49 CFR Part 395 for drivers of vehicles in the construction industry, similar to the exemptions for drivers of USVs as defined in 49 CFR § 395.2 and transporters of agricultural commodities in 49 CFR § 395.1(k).

A wide variety of trucks and materials involved in transportation construction include: liquid asphalt, hot mix, concrete, aggregates, clay, water, oil, various types on construction equipment (pavers, excavators, backhoes, compactors, etc.), striping, and numerous others. It is not feasible for FMCSA to identify which of these construction trucking operations or material deliveries should be covered and which should not. Therefore, a broad exemption is necessary.

In addition to transport of materials, the exemption should also clarify that vehicles owned or operated by a company under contract for the construction or reconstruction of a highway or other transportation facility when operated within the immediate construction project as described in the contract.

A construction exemption would recognize local nature of these operations and the fact that non-uniform requirements and piecemeal exemptions increase the risk of crashes by increasing exposure.

Alternative Approach

If a full construction exemption is not granted, AGC supports the changes proposed in the Construction Coalition comments that would mitigate some of the impacts of HOS restrictions on construction industry drivers, as follows:

Expand Short Haul Exemption

Since many construction operations are local in nature, the short haul exemption has been helpful but limited. Expansion of the short haul to 150 miles would significantly reduce the impact of HOS on the construction industry.

The short haul exemption should allow for an additional 2 hours of on-duty time. These additional 2 hours are absolutely crucial due to the seasonal nature of construction, and the fact that drivers in this industry are so frequently waiting at a jobsite – which we classify as “on duty not driving”.

AGC supports the Coalition’s approach that would provide one set of HOS rules for short-haul operations, wherein a CDL driver would be exempt from the requirements if the driver operates within 150 air-miles of the work reporting location and completes the work day within 14 hours. Expanding the rule to a uniform 150 air-mile standard would make the rule uniform for all CMV drivers and give additional flexibility to CDL drivers.

In addition, since drivers in the construction industry are so frequently either loading materials, waiting to be loaded, unloading, or waiting to unload, the 30-minute rest break just is not necessary. Drivers operating under the short-haul exemption and transporting construction materials and equipment should be allowed to count this waiting time as an alternative to a 30-minute rest break.

Eliminate the Return to Work Reporting Location Requirement for the Short-Haul Rule

The current short-haul exceptions require the driver, whether in a CDL or non-CDL vehicle, to return to the driver’s normal work reporting location and be relieved from duty with 12 hours to be eligible for the exemptions in 49 CFR § 395.1(e)(1) or (2). AGC supports the Coalition proposal that FMCSA revise the rule to eliminate the requirement that a driver must return to the normal work reporting location and be relieved from duty within the time limit to be eligible for the exemption.

There is nothing magical about a normal work reporting location. Going back to the same origin point every day does not necessarily promote safer driving habits. Many drivers begin their duty period from home, or from different jobsites, or motels on the road. Construction operations can be mobile. The construction job location is always changing. With modern telecommunications between drivers and management, it is not necessary for the driver to be physically present at a work reporting location to be

relieved from duty in person. Drivers often now communicate with dispatchers and managers electronically on a daily basis, often exclusively, with no diminution in safety.

AGC supports the Coalition suggestion that the rule simply require the driver to establish the origin point for that duty period, using GPS or some equivalent means, and be relieved from duty within 14 hours. Drivers can notate their origin for the day in order to establish the 150 air-miles radius. If they are relieved from duty by the end of the 14-hour duty period, they would be exempt under § 395.1(e)(1) or (2).

Adverse Driving Conditions

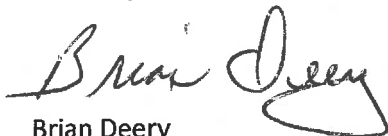
AGC supports the Coalition recommendation to expand the exception in 49 CFR § 395.1(b)(1) to allow drivers to drive for an additional two hours beyond the 14 hour daily on-duty limit in addition to the 11-hour driving limit. This approach would provide an additional margin of safety for drivers. For example, in rare instances drivers get caught in inclement weather in which they must stop and put chains on their vehicles. Because these drivers do not drive more than a few hours per day on average, providing an exception to the 11-hour driving limit does not offer any relief. But allowing them an extra two hours beyond the 14-hour daily driving window would provide some additional relief and give them an opportunity to return to a safe haven within the regulations.

Sleeper Berth Flexibility

Finally, AGC supports the Coalition's call for additional flexibility for drivers using the sleeper berth rules to divide the minimum 10 hours off duty into two separate periods. Presently, drivers must take at least 8 consecutive hours of the 10-hour off duty period in the sleeper berth as required by 49 CFR § 395.1(g)((1)(ii)(A)(1). Yet the consensus among motor carriers using this provision that few, if any, drivers, can generate sufficient rest with 8 consecutive hours of more confined in the sleeper berth compartment. The Coalition supports an approach that would allow drivers to take two periods of fewer than 8 consecutive hours in the sleeper berth while still accumulating 10 hours off duty.

This flexibility is important for construction industry drivers for scheduling time critical operations. It is especially important particularly in rural areas or remote projects. Liquid asphalt delivery is an example of how this flexibility is necessary. In many areas asphalt terminals can be long distances away from the project location. In some states there may be only one liquid asphalt terminal. In order for the liquid asphalt to be delivered on a time critical schedule a driver may need to pick up product the evening before and drive to the project location and be ready to deliver the next morning. A sensible split sleeper berth rule, instead of the current requirements for splitting the required 10 hours off duty, could resolve many of the scheduling problems. AGC urges FMCSA to revert to the previous sleeper berth rules.

Sincerely,



Brian Deery
Senior Director
Highway and Transportation Division