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Docket Management Facility
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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 recommending a broad construction industry exemption from current Hours of Service (HOS) rules. AGC individually and as part of the Construction Coalition submitted comments on the August 23, 2018 Advance Notice of Proposed Rulemaking (ANPRM) pointing out the unique nature of construction industry driving and why a broad industry exemption was necessary. The comments also pointed out that both Congress and the FMCSA recognized this uniqueness by providing construction industry drivers with several different exemptions from various parts of the Hours of Service rules. AGC reiterates the call for FMCSA to adopt a construction industry exemption.

AGC and the Construction Coalition supported many of the proposed rule changes in the ANPRM as an important step in addressing concerns of the industry and we are pleased that the proposed rule would adopt these changes. AGC believes the changes will provide needed flexibility for construction drivers subject to the HOS rules without compromising safety. AGC supports the following five specific changes to the current HOS rules: related to short-haul drivers, adverse driving conditions, the 30-minute break, split-sleeper berth, and split-duty time provisions.

AGC urges you to adopt these changes and our comments in support are listed below.

Work Reporting Location

One issue that was not addressed in the NPRM but on which FMCSA is seeking further information is the provision on work reporting location. Currently to be eligible for the short-haul exemption a driver must begin and end its shift at the same work reporting location. AGC supports the Coalition recommendation that FMCSA provide an exception to this requirement if the short-haul driver ends their work shift at a different location than the one from which they were originally dispatched.

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 also be mobile. Moving regularly from location to location. The construction job sites are 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, by notating on the driver's timecard, using a paper log, 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).

Changing the work reporting location requirement would provide contractors efficiencies in their trucking operations. Planning could be enhanced to take advantage of what needs to be hauled and what trucks are near. Contractors lose many hours a week moving trucks due to the location issue. It would also relieve some stress among dispatchers and drivers. It would eliminate the urgency drivers feel about returning to their work reporting location before their driving hours expire. This would enhance safety.

AGC urges FMCSA to undertake a further revision of the HOS rules to make the work reporting location requirement more flexible.

Proposed Rule Changes

AGC strongly supports the following proposed changes in the HOS rules:

Short-Haul Drivers - Extending the maximum "duty period" under the short-haul exception from 12 hours to 14 hours and extend the maximum distance qualified short-haul drivers may operate from a 100 to a 150 air-mile radius.

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 negative impact of HOS on the construction industry.

Allowing an additional 2 hours of on-duty time for the short haul exemption is a significant improvement for the construction industry 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”.

Adverse Driving Conditions - Allowing drivers to use the “adverse driving conditions” (e.g., weather, road conditions, etc.) exception to extend the maximum driving windows by up to 2 hours (i.e., 13 hours in a 16-hour window for property-carrying operators and 12 hours in a 17-hour window for passenger-carrying operators).

This approach would provide an additional margin of safety for drivers. On occasions when drivers are caught in inclement 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. They would not feel the urgency to continue driving in unsafe conditions in order to meet their hour driving limits.

30-Minute Break - Making the 30-minute break requirement for property-carrying commercial motor vehicle drivers applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute interruption. If required, a 30-minute break could be satisfied with a non-driving period, either off duty, in the sleeper berth, or on-duty not-driving.

Drivers in the construction industry are so frequently either loading materials, waiting to have the truck loaded, unloading, or waiting to unload, the 30-minute rest break just is not necessary. Allowing drivers operating under the short-haul exemption and transporting construction materials and equipment to count this waiting time as an alternative to a 30-minute rest break is an important improvement in the existing rules.

Split-Sleeper Berth - Modifying the sleeper-berth requirements to allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth. Neither time period would count against the maximum 14-hour driving window.

This flexibility is important for construction industry drivers for scheduling time critical operations. It is especially important 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. This sensible split sleeper berth rule would resolve many of the scheduling problems.

Split Duty Provision - Adding a new option for one off duty break of at least 30 minutes, but not more than 3 hours, during the course of a driver's 14-hour "driving window" to extend that period for the length of the break, provided that drivers take at least 10 consecutive hours off duty at the end of the work shift.

As professionals, drivers are expected to know when they are fatigued and to take rest breaks accordingly. Offering the driver the flexibility to take a break when his or her body requires it, rather than at a predetermined point after 8 hours on duty, will promote safety by encouraging the driver to rest at the most opportune and beneficial time. Allowing the driver to then extend the duty window by the amount of the off-duty break will encourage the driver to actually take a meaningful break without creating a sense of urgency to complete the trip within the 14-hour driving window.

For drivers in the construction industry, due to the short season, many times they must be on duty beyond the 14-hour limit. But they often have an opportunity to take a break during the daily duty period when they are not required to drive or complete any other job-related tasks. Providing them the flexibility to take a break during the day and extend the 14-hour window by the amount of the break would improve efficiency and productivity and promote safe rest practices.

Conclusion

Thank you for the opportunity to comment on FMCSA's Proposed Hours of Service of Drivers Amendments Rule. AGC appreciates FMCSA's efforts and flexibility in reviewing and proposing significant changes in the existing rules. AGC believes that these proposed changes will enhance construction driving efficiencies, will not undermine driver safety or health and in fact will enhance roadway safety. AGC urges FMCSA to adopt the proposed rule changes expeditiously. AGC recommends that FMCSA consider the proposed change in the work reporting location and look to examining the idea of a broad construction industry exemption.

Sincerely,



Brian Deery
Senior Director
Highway and Transportation Division

