



Associated Equipment Distributors
Washington Office
1201 15th Street, NW
Suite 220
Washington, DC 20005

October 21, 2019

Mr. Raymond P. Martinez
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001

Re: Docket No. FMCSA-2018-0248; Hours of Service of Drivers

Dear Administrator Martinez:

These comments are submitted by Associated Equipment Distributors (“AED”)¹ to the Notice of Proposed Rulemaking (“NPRM”) published by the Federal Motor Carrier Safety Administration (“FMCSA”) at 84 Fed. Reg. 163 (August 22, 2019).

AED is the international trade association representing companies involved in the sale, rental, servicing and manufacturing of construction, mining, farm, energy, forestry and industrial equipment. Its 500 distributor members, which are predominantly small-medium-sized, family-owned businesses, have over 4,500 locations, employ 120,000 workers and account for more than \$60 billion of annual sales revenue of equipment and related supplies and services in the U.S. and Canada. AED also has 300 non-distributor members, which include equipment manufacturers and industry service providers.

AED member companies operate fleets of service vehicles driven by field service technicians who maintain and repair heavy equipment at jobsites. Some of the vehicles are between 10,000 and 26,000 lbs., gross vehicle weight (GVW), while many other vehicles are over 26,000 lbs. GVW. Thus, all of the technicians/drivers are subject to the FMCSA’s hours of service regulations in 49 CFR Part 395. These field service technicians are highly skilled and trained technicians who typically drive less than 150 miles per day. Eighty percent or more of their duty time is on non-driving activities involving repairing and maintaining heavy equipment and related administrative duties.

These drivers do not face the same demands or fatigue concerns as long-haul truck drivers. Although the drivers may work long hours, they are servicing equipment used on projects and job sites within a local area. For these drivers, operating a commercial motor vehicle is incidental to their primary job responsibilities.

Moreover, the equipment industry faces a significant shortage of diesel technicians to service heavy equipment. Indeed, AED members have identified the technician shortage as the greatest strategic challenge for the construction equipment industry. According to a 2016 report by the College of William & Mary, the industry’s technician shortage costs AED members

¹ AED has also jointly filed comments to this NPRM as part of the “Construction Coalition,” a group of trade associations representing companies operating commercial motor vehicles in the construction and related industries.

approximately \$2.4 billion per year in lost revenue and economic opportunity.² AED members have cited a lack of flexibility in the hours of service regulations as a deterrent for qualified individuals to pursue careers as equipment service technicians.

AED field technicians, much like utility service vehicle drivers, spend long days repairing and maintaining heavy equipment and related duties, but often run out of hours and are unable to drive themselves back to the work-reporting location, to their home or to a motel for suitable rest.

Its common for equipment dealers to hire additional drivers during the construction season to do nothing but drive technicians to and from the customer's job sites, so that the technician can focus on his or her primary responsibilities and need not be concerned with the driver hours of service limitations. This adds extraordinary expenses to the company's operations and is indicative of how equipment dealers are dealing with hours of service limitations throughout the country.

While AED strongly believes the hours of service regulations shouldn't apply to equipment service technicians as driving is ancillary to these individuals' primary job function, the association supports the following modifications contained in FMCSA's NPRM that will provide greater flexibility and efficiencies for AED members while enhancing safety.

A. The Short-Haul Exemption

AED supports FMCSA's proposal to modify the short-haul exceptions in 49 CFR § 395.1(e)(1) and (2) by extending the maximum duty period allowed to certain CMV drivers from 12 hours to 14 hours and expanding from a 100 to a 150 air-mile radius, the maximum distance in which drivers qualifying for the short-haul exception may operate.

Under the current short-haul rules, CDL drivers are exempt if they operate within 100 air-miles of their work reporting location and complete their work day within 12 hours. Non-CDL drivers are exempt from using an ELD if they operate within 150 air-miles of their work reporting location and complete their work day within 14 hours.

Expanding the rule to a 14-hour duty period would place the short-haul driver on the same duty period as a long-haul truck driver, see 49 CFR § 395.3(a)(2), even though a short-haul driver is not subject to the same fatigue concerns as a long-haul operator. 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.

Indeed, equipment distributors highlighted the simplicity and efficiencies that expanding the short-haul exemption will provide. For example, an AED member that operates an equipment dealership with locations across six states in the Midwest United States, said:

Not only would this clear up a significant amount of confusion when it comes to driver training and understanding of who falls under which exemptions, it creates simplicity

² "AED and the Skills Gap: Assessing the Skills Gap, Its Causes, and Possible Solutions," December 2015, http://aednet.org/wp-content/uploads/2016/03/Foundation_AEDF-WM-USSkillsGapReport-LB3-4-16.pdf

across the board. If CDL and non-CDL fall under the same exemptions, it will be easy to remember for everyone. Additionally, our drivers are in and out of the truck and/or shop multiple times a day and are able to get rest from the road. Fatigue is not the same issue in our industry as it is for over the road trucking companies that these regulations were written for. We are not stuck in a truck for long hours, driving nonstop down the highway.

Expanding the short-haul exemption would allow AED members' service technicians to be more productive and efficient, with no impact on safety. In fact, according to an AED member operating in the Rocky Mountain states, modifying the short-haul exemption as proposed by FMCSA will, "allow our technicians to focus more attention on the tasks at hand and practicing safe driving to and from the jobsite."

AED strongly urges FMCSA to adopt this reform in its final regulation.

B. Eliminate the Short-Haul Exemption's Return to Work Reporting Location Requirement

FMCSA requested comments about permitting drivers using the short-haul exception to be allowed to end the work shift at a different location than the one from which they were dispatched.

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 in order to be eligible for the exemptions in 49 CFR § 395.1(e)(1) or (2). AED urges FMCSA to 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.

Returning to a normal work reporting location is not necessary to ensure the safety of operations or to locate a driver subject to the short-haul exemption. Going back to the same origin point every date does not necessarily promote safer driving habits. Many drivers begin their duty period from home, or from different jobsites, or motels on the road. With modern telecommunications between drivers and management, it is unnecessary 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.

AED recommends that the rule simply require the driver to establish the origin point for that duty period 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 return to that same point and are relieved from duty by the end of the 14-hour duty period, they would be exempt under § 395.1(e)(1) or (2).

AED members believe this modification will benefit safety and provide greater flexibility for equipment dealers. Where field mechanics begin their days will vary a great deal and often will take their vehicle home. For example, if a driver begins their day at a branch location he or she may feel pressure to return to that location as opposed going straight home, possibly compromising safety. The ability to complete work and make it to a closer branch store, parking lot or a hotel to be picked-up creates a safer option.

According to an AED member that operates equipment dealerships across six states in the Midwest United States, the requirement that drivers return to their starting location creates inefficiencies and unnecessary complexities:

Many salespeople and field technicians take their trucks home with them. If a call comes in late at night or early in the morning, it is more efficient for them to start the day from their house and go straight to the customer. Then at the end of the day, maybe they have ended up in the shop or back at the store, but that isn't the same as their starting location, meaning they would need a log book for that day, even if they didn't travel very far.

AED urges FMCSA to eliminate the short-haul exemption's return to work reporting location requirement.

C. Split-Duty Period

AED supports FMCSA's proposal to add a new option under § 395.3(a)(3)(iii) that would allow 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 drivers take at least 10 consecutive hours off duty at the end of the work shift. This approach would also eliminate the requirement for a 30-minute break after 8 hours on duty in 49 CFR § 395.3(a)(3)(ii) for those drivers who are not eligible for the short-haul exception.

Professional service technicians who drive CMVs for AED companies know when they are fatigued and 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. This would also eliminate the need to hire or contract for supplemental drivers to drive the technicians home from a jobsite at the end of a long day.

Due to the short construction season, many times AED technician/drivers 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.

One AED member with ten locations operating in the Rocky Mountain region discussed the retention and safety benefits of permitting drivers to split duty time:

This could be a profound change for drivers and driver retention. For example, under current regulations, drivers are unable to attend children's school programs or make it to a doctor's appointment of an expecting spouse. They would most likely need to take an entire day off because the current regulations would make many jobs impossible to

complete. The current rules create a tendency for technicians to take risks or choose another career path with more flexibility.

AED urges FMCSA to adopt its proposal to grant 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 drivers take at least 10 consecutive hours off duty at the end of the work shift.

D. Adverse Driving Conditions

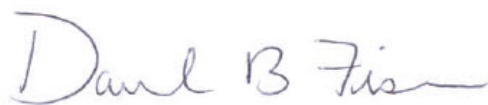
Finally, AED supports expanding the exception in 49 CFR § 395.1(b)(1) to allow drivers to drive for an additional two hours beyond the 14 hour daily on-duty limit in addition to the 11-hour driving limit. AED technician/drivers sometimes get caught in inclement weather in which they must stop and put chains on their vehicles. Because these technicians do not drive more than two hours per day usually, 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 their destination safely and within the regulations.

E. Conclusion

In comments to the advanced notice of proposed rulemaking, AED urged FMCSA to provide an exemption from the hours of service regulations for equipment service trucks. While the agency refrained from granting this request in the NPRM, AED strongly supports the reforms detailed above that will provide much-needed relief to the current regulatory regime.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Daniel B. Fisher". The signature is written in a cursive, flowing style.

Daniel B. Fisher
Vice President of Government Affairs