



**Associated Equipment Distributors  
Washington Office  
1201 15<sup>th</sup> Street, NW  
Suite 220  
Washington, DC 20005**

October 10, 2018

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”)<sup>1</sup> to the Advance Notice of Proposed Rulemaking (“ANPRM”) published by the Federal Motor Carrier Safety Administration (“FMCSA”) at 83 Fed. Reg. 42631 (August 23, 2018).

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 460 distributor members, which are predominantly small-medium-sized, family-owned businesses, have over 3,500 locations, employ 120,000 workers and account for more than \$51 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 CMV is incidental to their primary job responsibilities.

Moreover, the seasonal nature of the construction and utilities industries that utilizes heavy equipment places a premium on efficient operations. The construction season in the United States is limited to the warmer months, which requires maximum efficiency in operations to

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

meet demand, particularly in the northern states. AED members must often have their technicians work long hours to meet seasonal demand for their services and products, and they face the same nationwide shortage of qualified CMV drivers as all private and for-hire motor carriers.

Additionally, 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 approximately \$2.4 billion per year in lost revenue and economic opportunity.<sup>2</sup>

The 14-hour daily driving limit presents a particular hardship for these companies during the construction season. 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.

It's 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.

The FMCSA has granted a number of partial and total exemptions from the hours of service regulations in 49 CFR Part 395 to industries with driving practices significantly different from those of long haul truckers.

- The National Ready Mixed Concrete Association has a limited exemption from the 30-minute break requirement of the driver hours of service regulations. 80 Fed. Reg. 17819 (April 2, 2015).
- The FMCSA also allowed drivers of ready-mixed concrete trucksto use the short-haul exception in 49 C.F.R. §395.1(e)(1), but with a 14-hour on-duty period instead of 12 hours. 81 Fed. Reg. 47714, 47717 (July 22, 2016). This allows the affected drivers to be exempt from the record of duty status and/or electronic logging device requirements in 49 C.F.R. § 395 the 30-minute break requirement in 49 C.F.R. § 395.3(a)(3)(ii).
- The FMCSA also amended the definition of "transportation of construction materials and equipment" in 49 C.F.R. § 395.2. For a driver who transports construction materials and equipment within a 75 air-mile radius of the normal work reporting location of the driver, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. 81 Fed. Reg. at 47717.

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<sup>2</sup> "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](http://aednet.org/wp-content/uploads/2016/03/Foundation_AEDF-WM-USSkillsGapReport-LB3-4-16.pdf)

- The agency granted the National Asphalt Pavement Association a similar exemption for all drivers transporting asphalt and related materials and equipment from the hours of service 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii) and the restriction of the Records of Duty Status exception for short-haul operations available to drivers who return to their normal work-reporting location within 12 hours [49 CFR 395.1(e)(1)(ii)(A)]. 83 Fed. Reg. 3864 (January 26, 2018).
- Finally, section 4132 of SAFETEA-LU, Pub. L. No. 109-59, amends section 345 of the National Highway System Designation Act of 1995 (49 U.S.C. § 31136 note) to exempt operators of utility service vehicles from all provisions of 49 CFR Part 395. The exemption applies to utility service vehicles (USV) as defined in 49 CFR § 395.2.<sup>3</sup>

All of these exemptions were granted by Congress or the FMCSA in recognition of the unique circumstances faced by industry drivers, including seasonal limits on when work can be done, materials that must be put in place within tight time limits or be lost forever, drivers spending much of their time not actually driving but waiting to pick-up, deliver materials or providing other non-driving services, and drivers being under constant supervision as they return continuously to the job site or the source of the materials.

But as noted in the Construction Coalition comments, the individualized approach to these exemptions has led to a patchwork of rules, exceptions and exemptions that vary depending on the type of vehicle operated, the type of property carried, and/or the type of service provided. It is extremely difficult for drivers, company management, and enforcement officials to comprehend the scope and applicability of all of the various permutations of the existing hours of service regulations and exemptions and to implement them in daily operations.

### **A. Service Truck Exemption**

Technician/drivers for AED member companies most clearly resemble USV drivers. Both are highly skilled and trained individuals whose work is critical to restoring equipment and service at

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<sup>3</sup> 49 CFR § 395.2 defines a USV as any CMV:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

industrial and commercial job sites. Like USV drivers, AED technician/drivers operate CMVs only a few hours and/or a few miles each work day; instead, they focus primarily on their professional job requirements, which consume the substantial majority of their time. Driving a CMV is simply a means to get to and from a job site.

Thus, like the USV exemption, AED suggests a “service truck exemption” from the driver hours of service requirements in 49 CFR Part 395. This is the simplest and most straightforward approach to dealing with these short-haul, professional technicians to ensure their work is not jeopardized due to lack of hours. An exemption from all of the provisions of 49 CFR Part 395 for drivers of service vehicles would place them on the same regulatory footing as drivers of USVs as defined in 49 CFR § 395.2 and transporters of agricultural commodities in 49 CFR § 395.1(k).

This “service truck exemption” would recognize the local nature of these operations and the fact that the hours of service regulations application to equipment industry service trucks is actually increasing the risk of crashes by forcing additional trucks on the road and thereby increasing exposure.

If a complete exemption is not feasible, AED supports the following concepts, which are designed to increase certainty and provide maximum flexibility without jeopardizing safety.

### **B. Expand and Make Uniform the Short-Haul Exemption**

AED supports expanding and combining the short-haul exceptions in 49 CFR § 395.1(e)(1) and (2) to provide for a single exception for all CMV drivers, whether or not the vehicle requires a commercial driver’s license. The current short-haul exception exempts a driver from the record of duty status, the electronic logging device, and the 30-minute rest break requirements.

AED’s preferred exception would be similar to the approach taken in the HOURS Act, H.R. 6178, introduced earlier this year in the House of Representatives. 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.

AED recommends one set of hours of service 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 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.

### **C. 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 in order to be eligible for the exemptions in 49 CFR § 395.1(e)(1) or (2). Like the Construction Coalition, AED proposes 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.

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 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.

AED recommends 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 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).

### **D. OOIDA Petition—Three Hour Extension of 14-Hour Duty Window**

AED also supports the concept on the Owner-Operator Independent Drivers Association (OOIDA) petition for rulemaking, which would give the driver flexibility to extend the 14-hour daily duty window by up to three hours in a single off-duty break. 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.

### **E. 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 origin point safely and within the regulations.

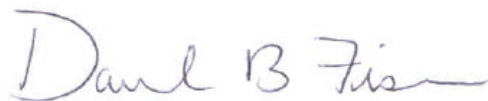
### **F. Conclusion**

AED strongly urges the FMCSA to provide an exemption from the hours of service regulations for equipment service trucks comparable to those issued for USV drivers and other sectors. A significant shortage of drivers and service technicians is exasperated by hours of service regulations that add significant cost to equipment dealerships and customers relying on timely maintenance and repair with no added safety benefit.

If the agency declines to exempt service technician drivers from hours of services rules, AED supports reforms to the current regulations as 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