

**Excerpt from American Trucking Associations Comments to the August 22, 2019 Notice of Proposed Rulemaking: DOCKET # FMCSA-2018-0248; 84 Fed. Reg. at 44,190.  
Submitted October 21, 2019**

**Short-Haul Operations**

Under 49 C.F.R. §395.1(e)(1)(ii)(A), drivers do not have to prepare RODS or use an ELD if they meet certain conditions, including a return to their work reporting location and release from work within 12 hours of starting in an on-duty status. These drivers, commonly referred to as “short-haul” or “local drivers,” may engage in the driving task for 11 out of 12 on-duty hours. Current HOS regulations give drivers who are completing RODS or utilizing an ELD up to 11 hours during a 14-hour on-duty period to drive.<sup>1</sup>

ATA supports the proposed expansion of the short-haul exemption with certain requirements to accurately track a drivers on-duty time. Because drivers operating under this provision are exempt from having to complete RODS, it is difficult for roadside enforcement or facility investigators to verify that drivers have not exceeded the exemption’s set geographic and time parameters. Under the current rules, short-haul drivers are only required to document their start, end, and total time on duty for each duty day and are not required to retain these records while operating a CMV.<sup>2</sup> Enforcement officers accordingly have limited ability to ensure drivers are not violating the exception.

While ATA supports this change, it is concerned that FMCSA’s proposal may increase the number of drivers who would no longer be required to use an ELD for RODS relative to the current rules. ATA conducted a survey of its membership shortly after the release of the NPRM in September 2019. ATA’s survey asked various questions regarding the proposed rulemaking, and with respect to short-haul, found several members who indicated significant increases in ELD exempt fleet sizes. In some cases, members said changes to the current short-haul exemption would make the *majority* of their fleets ELD-exempt relative to the proposed rule (Figure 1). As shown, motor carriers of differing fleet sizes would no longer be required to keep ELDs, with one fleet showing a 64% increase in ELD exempt drivers, for example.

**Figure 1: Changes to Driver Eligibility for the Short-Haul Exemption Based on the Current and Proposed Rule**

Motor Carrier Characteristics		Drivers Eligible for the Short-Haul Exception	
Carrier	# of drivers in operation	Current 12 Hours/100 Air-Miles	Proposed 14 Hours/150 Air-Miles
A	1,835	65%	75%
B	386	0%	64%
C	116	75%	95%
D	55	16%	27%

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<sup>1</sup> 49 C.F.R. §395.3.

<sup>2</sup> 49 C.F.R. §395.1 (e)(1)(v).

It is important to note that in the cases outlined above, all motor carriers said they would continue to require ELDs, even if DOT exempted them from doing so. Despite this, FMCSA must consider cases where motor carriers would *not* continue to require ELDs. By expanding the air-mile radius and reporting hours eligible for the short-haul exemption, FMCSA will encounter cases in which motor carriers remove ELDs from vehicles, even if they surpass the rolling 8- in 30-day RODS reporting threshold. These cases may occur due to an unintended misallocation of resources by the motor carrier, or in some instances be deliberate. Unfortunately, the NPRM does not estimate on how many motor carriers would now be exempt under the Agency's proposed rules. ATA's survey suggests this number may be small but not insignificant.

ATA asks the Agency to consider the following areas.

#### **i. Enforceability**

Motor carriers are currently required to maintain the previous six-months' of limited information including on-duty time records for each driver. These record-keeping requirements do not require carriers to show driver vehicle miles traveled, or total *driving* hours. In theory, drivers would have less of a chance to falsify their driving time with a 12-hour maximum duty day than with a 14-hour duty day. At most, a driver could complete 12 hours of drive time without being detected. However, this scenario is highly unlikely if a driver reports back to his or her reporting location within 12 hours.

Under the proposed 14-hour duty day, a driver could complete up to 14 hours of drive time without being detected. Without an accurate way to record drive time, enforcement officers would have no legitimate way of tracking on-duty driving hours. In ATA's 2018 response to FMCSA's advance notice of proposed rulemaking (ANPRM), we stated that "because the short-haul exception excludes a driver from the requirement to complete RODS or use an ELD, there is limited ability to effectively enforce the 11-hour maximum driving time allowed by regulation."<sup>3</sup> ATA suggested the Agency examine additional ways to track and enforce short-haul drivers' on-duty and driving times during the duty day. This NPRM does not address these concerns.

ATA is concerned that an expanded RODS-exempt definition would result in fewer motor carriers using ELDs, especially if those motor carriers occasionally meet the 8/30 requirement to keep RODS. Several commenters to the 2018 ANPRM suggested FMCSA require ELDs for all short-haul drivers. While ATA appreciates that suggestion, it understands the ELD requirement is impractical for some drivers who are engaged in local, daily activities.<sup>4</sup> ATA can only support a change that requires motor carriers—operating under an expanded list of criteria—to have some form of an electronic device that tracks on-duty and drive times. These devices will *not* need to meet the full ELD requirements found in §395.20 but rather a "watered

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<sup>3</sup> Comments to 83 Fed. Reg. at 42,631, accessed September 3, 2019, <https://www.regulations.gov/document?D=FMCSA-2018-0248-4922>.

<sup>4</sup> FMCSA has previously explained that "short-haul drivers ... have better HOS compliance, and much lower crash risk from HOS non-compliance." Therefore, "ELDs are not a cost-effective solution to their HOS non-compliance problem." 79 Fed. Reg., Electronic Logging Devices and Hours of Service Supporting Documents, Supplemental Notice of Proposed Rulemaking, March 28, 2014, at 17,659.

down” version that merely tracks on-duty time, drive-time, and the total driving miles. Additionally, these drivers would still be exempt from the supporting documents requirements and should remain exempt from the 30-minute break requirement.

ATA acknowledges that requiring electronic devices in these situations would add some financial and regulatory burdens on carriers that wish to use the expanded air-mile radius and on-duty times proposed in this NPRM. However, motor carriers should still be given the option to remain within a 100-air mile radius and return to the work reporting location within 12 hours to be completely exempt from any RODS or electronic device requirements.

FMCSA should also undertake an assessment of the motor carrier population affected by changes to the short-haul exemption. Such an analysis would better support this rule’s estimate of industrywide cost savings and could help approximate how the rule would impact motor carriers use of ELDs. In turn, such an estimate could better estimate the proposed rule’s estimates of cost savings.<sup>5</sup>

## **ii. Work reporting location**

The provision in §395.1 (e)(ii)(A) requires drivers to begin and end their day at the same work reporting location. This provision greatly reduces the chances that drivers will exceed the present air-mile radius or time on-duty restrictions. As previously stated, because the current recordkeeping requirements are limited, a driver could operate well beyond a 100 air-mile radius, for up to 12 hours, and go undetected by enforcement personnel. At a roadside inspection, short-haul drivers are not required to prove they are, in fact, short-haul drivers. And at terminal investigations, motor carriers are required to only provide limited time records (of which, daily mileage is not considered).

Without the work-reporting requirement, a driver could, in theory, travel across the country in 150-air mile moves without having to complete RODS.<sup>6</sup> Although impractical, enforcement would have no way to ensure drivers adhere to air-mile radius and time on-duty restrictions. Maintaining this provision is one of the few means of ensuring compliance with the rule, and the Agency should ensure it remains intact.

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<sup>5</sup> According to the Agency, “Due to the uncertainty surrounding the driver’s eligibility at the beginning of the workday, the carrier may choose to have their driver operate as though he or she is not eligible for the short-haul exemption. This results in unnecessary ELD expenses.” 84 Fed. Reg., Hours of Service of Drivers, NPRM, at 44,213.

<sup>6</sup> ATA echoes the comments submitted by CVSA in this regard. “This is not the intent of the short-haul exemption and requiring drivers to end their work shift at their dispatch location prevents the abuse of this provision.” CVSA, Comments submitted to FMCSA-2018-0248, Hours of Service of Drivers, October 21, 2019.