

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 to the Notice of Proposed Rulemaking ("NPRM") published by the Federal Motor Carrier Safety Administration ("FMCSA") at 84 Fed. Reg. 163 (August 22, 2019) are submitted by a coalition of trade associations (hereinafter "the Construction Coalition" or simply "the Coalition") representing companies that operate trucks in construction and related industries. They are submitting these comments collectively because their interests are similar in nature and their commercial motor vehicle operations often overlap at the construction site.

I. BACKGROUND AND INTERESTS OF THE CONSTRUCTION COALITION

The commenters are the following organizations.

American Concrete Pavement Association

ACPA is the national trade association for the concrete pavement industry, representing nearly 400 member companies and 2,300 individuals throughout the United States. A typical mainline paving project (i.e., pavement for highways, airports, streets, and large industrial facilities) involves mixing of concrete at a central-mix batch plant, transport of the freshly mixed concrete to the paving machine, placement of the concrete pavement, texturing of the slab surface (for optimal frictional characteristics), curing (temperature and moisture control) of the concrete slab (for long term durability), and finally saw-cutting of the pavement (to allow the natural expansion and contraction; to control warping and curling; and to minimize or eliminate uncontrolled cracks). All of the steps in this process are time-critical, as concrete mixtures are extremely perishable. Most State transportation agency specifications limit the time between mixing and discharge at the paving site to less than 60 minutes. As a result, all of these operations must be carefully managed to ensure the quality of the pavement.

National Ready Mixed Concrete Association

NRMCA is an industry advocate for the entire ready mixed concrete industry through leadership, promotion, education and partnering to ensure ready mixed concrete is the building material of choice. NRMCA represents more than 2,000 member companies that employ more than 125,000 workers. The industry is estimated to include more than 70,000 ready mixed concrete trucks. Their drivers spend between two to six hours actually driving a CMV each duty period. The remainder of their time is spent waiting to be dispatched, at the jobsite waiting for the contractor to receive the concrete, unloading concrete, and performing other administrative duties. Industry studies show that a concrete mixer driver's average delivery is only 14 miles from the ready mixed concrete plant.

National Asphalt Pavement Association

NAPA represents the interests of the asphalt pavement material producers and paving contractors, with nearly 1,200 companies as its members. Asphalt pavement is a combination of approximately 95 percent stone, sand, or gravel bound together by five percent asphalt cement, a product of crude oil. Asphalt cement is heated and mixed with the aggregate at a mixing facility. The resulting asphalt pavement material is loaded into trucks for transportation to the paving site. The trucks dump the pavement material into hoppers located at the front of paving machines. The asphalt is placed, then compacted using a heavy roller driven over the asphalt. A highly perishable product, asphalt is loaded into the delivery truck at 280-300 degrees Fahrenheit and begins to cool immediately. If the asphalt is not delivered and placed on the paving site within two hours, the product will harden and is no longer viscous enough to be usable. For this reason, the average delivery run can be only up to 30 or 40 miles from loading to paving. Drivers of asphalt delivery vehicles typically drive approximately one-third of their workday; the rest of their day is spent waiting to load or unload their vehicles and in other non-driving duties like paperwork and cleaning their trucks after each load.

National Stone, Sand and Gravel Association

NSSGA represents the crushed stone, sand and gravel ("construction aggregates") industry. Many of the association's vertically-integrated member companies incorporate these aggregates into concrete using Portland cement or asphalt cement. NSSGA members operate a variety of dump trucks, broom trucks, lube and fuel trucks, utility trucks, water trucks, service vehicles and tractor-trailers to transport construction aggregates to highway paving sites, remove debris from such sites and to provide related services. Like operators of asphalt trucks, drivers of vehicles transporting construction aggregates and related materials and equipment drive their vehicles only a limited number of miles or hours per day, and often the same drivers and vehicles delivering asphalt materials are delivering aggregates intermittently throughout any given shift. Much of their on-duty time is spent waiting to load or unload their vehicles or in other non-driving duties.

Portland Cement Association

PCA is the premier policy, research, education, and market intelligence organization serving America's cement manufacturers. PCA members represent 93 percent of U.S. cement production capacity with facilities in all 50 states. PCA promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and distribution, and generally promotes economic growth and sound infrastructure investment.

FP2

FP2 is a trade association supported by the pavement preservation industry. Pavement Preservation is the process of preserving roads in the early stages of the wear cycle in order to extend the life of the road before reconstruction or rehabilitation is needed. Preservation treatments are varied and include asphalt and concrete based materials. Given the broad scope of preservation a wide variety of commercial equipment is used including: emulsion/binder tankers, distributors, rollers, and aggregate haul trucks. Much of the product used at projects is perishable and must be applied in a timely manner. Typical treatments include: fog seals, emulsion chip seal, slurry seal, micro surfacing, cape seal, scrub seal, cold and hot in place recycling. A typical preservation project requires the movement of machinery and product from the company's base location to a stockpile location from which drivers will make multiple short haul trips to the actual placement site. Drivers of vehicles transporting pavement preservation construction materials and equipment typically spend much of their day waiting to load or unload their vehicles. FP2's national contributors include the Asphalt Emulsion Manufacturers Association, the Asphalt Institute, Asphalt Recycling & Reclaiming Association, National Asphalt

Pavement Association, International Grooving & Grinding Association, the International Slurry Surfacing Association, and the Western Regional Association for Pavement Preservation.

Associated General Contractors of America

AGC is the leading association for the construction industry. AGC represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty contracting firms. More than 10,500 service providers and suppliers are also associated with AGC, all through a nationwide network of chapters. AGC members perform construction contracts in all 50 states and own and operate fleets of commercial motor vehicles to carry out these construction contracts.

Associated Equipment Distributors

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's dealer members operate fleets of service vehicles driven by field service technicians who service and repair heavy equipment at the jobsite. These technicians typically drive 150 miles per day or less, and 80 percent or more of their duty time is on non-driving activities.

Power and Communication Contractors Association

PCCA represents construction contractors, manufacturers, and suppliers that build and repair America's power and communications infrastructure, including broadband, electric transmission, distribution, and substation facilities, telephone, and cable television systems. For the most part, PCCA members fall under the exemption for drivers of utility service vehicles as defined in 49 CFR § 395.2.

American Pipeline Contractors Association

APCA represents merit shop construction firms, manufacturers, and distributors who build and maintain interstate natural gas and oil pipeline systems across the country on behalf of many natural gas pipeline operators. APCA drivers spend most of their driving time working along a pipeline right-of-way, not on public roads.

Distribution Contractors Association

DCA represents contractors, manufacturers, and suppliers who provide construction services including installation, replacement and rehabilitation of natural gas distribution pipelines. DCA members fall under the exemption for drivers of utility service vehicles as defined in 49 CFR § 395.2.

Pipe Line Contractors Association

The PLCA is a U.S.-based association of unionized pipeline contractors specializing in the construction and maintenance of oil and gas transmission pipelines. The PLCA negotiates and administers the nationwide labor agreements that cover this highly-specialized construction work with our pipeline industry Union partners. PLCA members operate a fleet of commercial motor vehicles (CMVs), owned and/or leased, on each project. Employees operate 1-ton and 2-ton pickups and flatbeds, dump trucks, sweeper trucks, skid trucks, water trucks, hydro-vac trucks, and buses. Most of these construction vehicles are stationary or move infrequently throughout the day once they arrive at the pipeline right-of-way. Because pipeline construction employees work off-road along the length of pipeline trench, they often do not drive on public roads except at the beginning and end of the workday.

National Utility Contractors Association

The National Utility Contractors Association (NUCA) is the largest national trade association working solely for the utility and excavation industry. NUCA represents contractors, manufacturers, suppliers, and service providers that provide the workforce, equipment, materials, and services that build and maintain the nation's network of water, sewer, gas, electric, and telecommunications infrastructure.

National Electrical Contractors Association

The National Electrical Contractors Association (NECA) is the voice of the \$171 billion electrical construction industry that brings power, light and communication technology to buildings and communities across the U.S. NECA's national office and 118 local chapters advance the industry through advocacy, education, research and standards development. A diverse group of nearly 4,000-member companies account for approximately 300 million manhours per year.

American Road & Transportation Builders Association

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. These include prime contractors, sub-contractors and suppliers. Overall, our industry generates nearly \$500 billion annually in U.S. economic activity and sustains the equivalent of 4 million American jobs.

The Coalition's member companies are all involved in highway and other construction industries and/or development and maintenance of utilities. In addition, the commonality of their CMV operations is that these companies all operate trucks that are subject to the FMCSA's driver hours of service regulations, but their drivers typically operate CMVs only a few miles or a few hours each day. Their drivers do not face the same demands or fatigue concerns as long-haul truck drivers. Although the drivers may work long hours, they are either providing materials to a construction jobsite or servicing equipment used in such projects within a local area. For many of the drivers, operating a CMV is incidental to their primary job responsibilities.

Moreover, the seasonal nature of the construction and utilities industries requires that operations must be as efficient as possible. The construction season in much of the United States is limited to the warmer months, which requires maximum efficiency in operations to meet demand, particularly in the more northern states. Construction and resurfacing of highways, airport runways, parking lots and other facilities with asphalt or concrete, and maintenance of related utility lines, improves safety and operational performance for those rights of way. The Coalition members play a crucial role in maintaining the transportation infrastructure in this country.

Like all companies operating truck fleets, the members of the Construction Coalition are struggling with the shortage of qualified CMV drivers nationwide. This shortage further requires the companies to use their existing driver pools as flexibly and efficiently as possible to meet demand.

II. EXISTING AND PENDING EXEMPTIONS

In granting a number of exemptions from the hours of service regulations in 49 CFR Part 395, Congress and the FMCSA have both recognized that many construction industry driving practices should not fall within the HOS restrictions as their operations are different than long haul drivers. Currently there are a variety of exemptions and exceptions, all adopted on a piecemeal basis over the years.

First, The FMCSA granted the National Ready Mixed Concrete Association a limited exemption from the 30-minute break requirement of the driver hours of service regulations. 80 Fed. Reg. 17819 (April 2, 2015). Under this exemption, drivers operating ready-mixed concrete trucks may use 30 minutes or more of on-duty "waiting time" to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break.

The FMCSA noted the primary reasons for requesting the exemption were:

- (1) Concrete mixer drivers deliver a perishable product and spend less than 40% of their on-duty time driving;
- (2) industry-wide, mixer drivers on average drive 14 miles from the ready-mixed concrete plant to the job, do not have the fatigue-inducing work conditions long-haul truckers experience; and
- (3) while some concrete mixer drivers will be able to take advantage of the exception from the 30-minute break for certain short-haul drivers, many drivers often work more than 12 hours in a day, and therefore cannot utilize the short haul exemption. Id. at 17820.

The FMCSA placed several conditions on the exemption:

1. Drivers of ready-mixed concrete trucks subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of "waiting time" to meet the requirements for a rest break. "Waiting time" means time spent while waiting with the CMV at a job site or terminal and performing no other on duty activities during this time.
2. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
3. All motor carriers operating under this exemption must have a "Satisfactory" safety rating with FMCSA, or be "unrated." Motor carriers with "Conditional" or "Unsatisfactory" safety ratings are prohibited from using this exemption.
4. All motor carriers operating under this exemption must have Safety Measurement System (SMS) scores below FMCSA's intervention thresholds.

Id. 17820-21.

Second, the FMCSA, as directed by Congress in the Fixing America's Surface Transportation Act (FAST Act), has allowed the driver of a ready-mixed concrete truck to 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. § 395.8 and the supporting document requirements in 49 C.F.R. § 395.11 as long as they return to the work reporting location and are released from work within 14 consecutive hours. 49 C.F.R. § 395.1(e)(ii)(B). Drivers using the short-haul exemption are also exempt from the 30-minute break requirement in 49 C.F.R. § 395.3(a)(3)(ii).

The exemption imposes certain conditions on the driver and motor carrier:

- (A) the driver operates within a 100 air-mile radius of the normal work reporting location;

- (B) the driver returns to the work reporting location and is released from work within 14 consecutive hours;
- (C) the driver has at least 10 consecutive 8 hours off duty following each 14 hours on duty;
- (D) the driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; and
- (E) the motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records that show-
 - (i) the time the driver reports for duty each day;
 - (ii) the total number of hours the driver is on duty each day;
 - (iii) the time the driver is released from duty each day; and
 - (iv) the total time for the preceding driving week the driver is used for the first time or intermittently.

81 Fed. Reg. 47714, 47717.

Third, also as directed in the FAST Act, the FMCSA amended the definition of "transportation of construction materials and equipment" in 49 C.F.R. § 395.2. That definition provided that, for a driver who transports construction materials and equipment within a 50 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. The FAST Act increased this to a 75-air mile radius, and the FMCSA implemented this change to conform to the statute. 81 Fed. Reg. at 47717. Drivers of such vehicles are able to restart their weekly on-duty periods after a period of 24 consecutive hours off duty, rather than the 34-hour restart requirement for other drivers of property-carrying CMVs.

Fourth, the agency granted the National Asphalt Pavement Association a similar exemption for all drivers transporting asphalt and related materials and equipment from the HOS 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).

Like the exemption for NRMCA, the first exemption for NAPA from the HOS 30-minute break provision allows drivers engaged in the transportation of asphalt and related materials to use 30 minutes or more of on-duty "waiting time" to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. The second exemption allows drivers to use the short-haul RODS exception but with a 14-hour duty period instead of 12 hours.

In its application, NAPA requested that its exemption apply to the operation of certain vehicles and equipment (Water truck, Tack (Tar) Distributor, Equipment Hauler, and Pick-Sweeper (Street Sweeper)). 83 Fed. Reg. at 3865. The operation of these vehicles would be included in the definition of "transportation of asphalt and related materials and equipment."

Fifth, upon request by the National Stone, Sand and Gravel Association, the FMCSA issued further guidance on the scope and applicability of the NAPA exemption. See Letter to NSSGA from Larry Minor, FMCSA Associate Administrator for Policy, dated June 29, 2018. The letter states that the phrase

"transporting asphalt and related materials and equipment" in the NAPA exemption "may be construed to include any material and equipment that is necessary for satisfactory completion of the asphalt paving project." The guidance states this might include "various types of vehicles and material needed to prepare the site, mix products, conduct the paving, and other directly related tasks."

But the FMCSA guidance also clarified that the exemption "would not extend, for example, to the installation of drainage, landscaping, paint striping, and similar tasks that are needed to complete the overall project, but not directly tied to the asphalt paving phase." Id

Sixth, the FMCSA has noticed for public comment a request from the American Concrete Pavement Association for exemptions similar to those granted to NRMCA and NAPA from the 30-minute rest break provision and the requirement that short-haul drivers using the record of duty status exception return to their work-reporting location within 12 hours of coming on duty. 83 Fed. Reg. 45300 (February 6, 2018). The requested exemption would apply to drivers engaged in the transportation of ready-mixed concrete in vehicles other than those outfitted with rotating mixer drums, and the transportation of related materials and equipment. Comments on the proposed exemptions were due October 9, 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 (USVs) from all provisions of 49 CFR Part 395. The exemption applies to USVs as defined in 49 CFR § 395.2, which means 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.

The exemption does not apply to new construction of facilities necessary for the delivery of public utility services, however.

All of these exemptions were granted by Congress or the FMCSA in recognition of the unique circumstances faced by construction 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 or deliver materials, and drivers being under constant supervision as they return continuously to the job site or the source of the materials. Construction industry drivers generally drive only in good weather conditions. Moreover, no studies have concluded that there is a safety deficiency specific to construction workers driving under the current rules.

But 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 HOS regulations and to implement them in daily operations.

While the industry certainly appreciates the willingness of Congress and the FMCSA to consider their specific needs and operations in granting these exemptions, there are still many unresolved questions about which vehicles and drivers would be able to take advantage of these provisions.

Furthermore, at any jobsite there are likely to be vehicles operated under one or more, if not several, of the above exemptions. Drivers may be exempt from some or all of the HOS rules one day, and not exempt, or exempt from different rules, the following day. A single driver might also drive several different vehicles at a jobsite during the course of one day, with each vehicle subject to varying regulations.

Having more than one set of HOS rules applicable at a jobsite results in inefficiency and uncertainty as to the applicable requirements. If some drivers and vehicles are exempt, and others are not, the non-exempt drivers and vehicles will force the exempt drivers to stay on the jobsite longer than they would otherwise as necessary to complete the task. This means more trucks for longer periods of time at construction zones, and greater exposure to safety risks from surrounding traffic. Eliminating this regulatory snarl will also significantly reduce project costs.

III. COMMENTS

A. Uniform Construction Industry Exemption

Thus, the Construction Coalition continues to support the implementation of a uniform and simple approach to driver hours of service requirements. 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 utility service vehicles (USVs) as defined in 49 CFR §395.2 and transporters of agricultural commodities in 49 CFR § 395.1(k). Examples of USVs would be boom trucks, digger derricks, and other equipment used in electrical, communications, broadband and public works (water and sewer) utility construction, which is also the same equipment that is used in utility maintenance and repair. In fact, since USV drivers are primarily involved with utility maintenance, repair, and construction activities, it appears simpler to include USVs and their drivers in the requested and inclusive construction industry exemption.

The exemption should include drivers of all property-carrying CMVs engaged in construction, regardless of what they haul (for example, demolition debris, aggregates, water, oil, attenuator, dirt, clay, asphalt, concrete, heavy equipment, pickups hooked to a trailer, pipe, service vehicles, etc.). Also, the exemption would apply regardless of the type of vehicle--rumble strip trucks, grooving, breakers, striping, etc.--as well as any truck hauling construction materials or equipment.

Additionally, drivers of equipment service vehicles that maintain, repair and service construction equipment and other machinery should be included in the exemption.

Further, the Coalition supports an exemption from part 395 for drivers of any commercial motor vehicles owned or operated by a company under contract with a public or private entity for the construction, preservation or reconstruction of a highway when operated within the immediate construction project as described in the governmental agency contract.

This "construction exemption" would recognize local nature of these operations and the fact that non-uniform requirements and piecemeal exemptions actually increase the risk of crashes by increasing exposure. If a complete exemption is not feasible, the Coalition supports the following concepts, which are designed to increase certainty and provide maximum flexibility without jeopardizing safety.

B. The Short-Haul Exemption

The Coalition 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.

The Coalition'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.

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. This additional flexibility allows drivers to better operate in regard to the daily variables they experience regarding traffic conditions, type of heavy duty vehicle utilized or materials transported.

Countless members were surveyed in our coalition regarding this proposed change, and we received positive feedback across the board from member companies in the construction industry who recognize and appreciate the added flexibility as outlined in the Noticed for Proposed Rulemaking on Hours-of-Service. Expanding the short-haul exemption allows drivers working in various capacities within the construction industry to utilize schedules for other important tasks, like safety and job training and vehicle maintenance.

C. Amend the Return to Work Reporting Location Requirement for the Short-Haul Rule

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 within 12 hours in order to be eligible for the exemptions in 49 CFR § 395.1(e)(1) or (2). The Coalition urges 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. It is common that drivers within the construction industry are tasked with covering multiple locations, and depending on the task at hand or heavy duty

vehicle utilized, and providing them the ability to utilize another location as their work shift ends streamlines efficiency and does not sacrifice safety or accountability. Internal surveys of members show that some companies already utilize various tracking apps on phones and tablets or GPS systems to determine where their trucks are at any given time. One member hauling aggregates with facilities throughout the country illustrated the technology utilized their tracking services:

Our goal is to have all necessary vehicles connected to telematics for performance management and dispatch. This is the best way to enforce mileage rules. We use telematics for tracking wait times, driver behavior, hours of service and cycle time analysis.

Another company shared the distance required to cover their multiple sites and the urgency necessary for drivers to cover longer distances to return home:

Driving hours would likely decrease if we were allowed to stop in a different location. Typically, our late hours driving is trying to get back to our start locations.

According to one more company 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.

There is nothing magical about a normal work reporting location. 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. While telematics and electronic monitoring is being used by some large companies, small businesses are able to monitor the start and stop locations of their drivers through paper logs and timecard notations.

The Coalition suggests that if a driver plans to take advantage of ending their on-duty service at a different location than where they originated, they must be able to document their adherence to mileage and time requirements under the short-haul exception through GPS telematics, paper log, timecard notation 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) 10 hours off duty.

D. Split-Duty Period

The Coalition 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.

The drivers represented within the coalition and are the ones who best understand their schedules, their fatigue and when 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 take a meaningful break, one that provides necessary relief and rest, without creating a sense of urgency to complete their given trip within the 14-hour driving window. Utilizing a split-duty period enables drivers to better command their schedule with respect to their fatigue, route and traffic conditions, not force a driver to sacrifice meaningful rest due to a rigid driving schedule.

Due to the abbreviated construction season, drivers in the construction industry 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 coalition 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.

The Coalition 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.

E. Adverse Driving Conditions

The Coalition also supports expanding the exception in 49 CFR § 395.1 (b)(I) 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.

F. Sleeper Berth Flexibility

Finally, the Coalition supports 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)(I). Yet it is 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.

G. Conclusion

In comments to the advanced notice of proposed rulemaking, the Coalition urged FMCSA to provide an exemption from the hours of service regulations for the entire construction industry. While the agency refrained from granting this request in the notice of proposed rulemaking, the Coalition does appreciate and welcome the suggested changes offered by FMCSA in the Hours-of-Service NPRM, especially improvements for driver flexibility and short-haul truck operation. The Coalition strongly supports the reforms detailed above that will provide much-needed relief for drivers to the current and dated Hours-of-Service regulations.

Respectfully Submitted,
Nile Elam
The Construction Coalition