

Modernizing FMCSA's Hours of Service Regulations When Transporting Construction Industry Materials and Equipment

Summary

Hours of Service (HOS) regulations that limit on-duty time and driving time for truck drivers are unnecessary for short haul drivers in the construction industry and can increase the cost of construction with no positive impact on safety. Current law has long provided a construction industry exemption without controversy, and FMCSA recently provided an additional exemption for certain construction material deliveries. However, these provisions must be modernized to meet the challenges of construction material and equipment delivery.

Background

- The Federal Motor Carrier Safety Administration (FMCSA) administers rules that limit the hours a driver may operate a commercial motor vehicle (CMV) throughout the course of an entire day and week. [49 CFR 395]
- The original intent of FMCSA's hours of service (HOS) regulations were to prevent accidents caused by driver fatigue by limiting driving time and on-duty time of long haul drivers.
- Because FMCSA has generally applied a "one-size-fits-all" approach for HOS rules to all CMV drivers, the rules unnecessarily include short-haul drivers transporting construction materials and equipment to active construction sites— even though they are not long-haul drivers.
- Generally, FMCSA's HOS regulation limits on-duty time and driving time for truck drivers. Recent changes in the HOS rules require that CMV drivers take a 30-minute break prior to reaching 8 hours of "on-duty" time – regardless of whether those on-duty hours are straight behind-the-wheel time, spent loading and unloading equipment and materials, waiting in queue, or participating in other non-driving activities. [49 CFR 395.3(a)(3)(ii)]
- Congress recognizes the unique nature of CMV drivers transporting construction material and equipment and affords these drivers an exemption from the HOS 34-hour restart requirement, and instead allows a reset of their weekly aggregate on-duty time after a 24-hour consecutive off-duty period. Provided those drivers work solely within a 50 air-mile radius and deliver to an active construction site. [49 CFR 395.1(m), 49 CFR 395.2]
- Short-haul drivers are able to take advantage of an exemption from having to fill out a record of duty status (RODS), also known as a daily log. Drivers, who only drive within a 100 air-mile radius from their work reporting location, don't work past 12-hours, and who keep time cards for at least 6 months, are not required to fill out and keep a daily log. This is most commonly known as the 100 air-mile logging exemption. [49 CFR 395.1(e)(1)]
- In addition, FMCSA has recently issued guidance exempting, from the 30-minute break provision, drivers that can take advantage of the 100 air-mile logging exemption (78 FR 64179, 78 FR 76757). Furthermore, FMCSA has granted a temporary, limited exemption from the 30-minute break provision for a certain construction material supplier industry's drivers.

- CMV drivers in other industries are afforded more encompassing exemptions. For example, drivers transporting agricultural commodities within a 150 air-mile radius are totally exempted from all HOS regulation. [49 CFR 395.1(k), 49 CFR 390.5]
- As well, the current intrastate tolerance guidelines and the non-CDL logging exemption both have air-mile radius tolerances of 150 [49 CFR 350.341(d), and 49 CFR 395.1(e)(2)(ii)] respectively.
- Although the current HOS regulations provide limited exceptions for drivers transporting construction material and equipment, the rule must be modernized to promote efficiency, account for the perishable nature of construction materials during delivery, and recognize the increased distances needed to obtain raw materials.

Construction Material Supplier Industry Drivers are Faced with Unique Circumstances

- The construction industry puts the utmost priority on and attention to safety on our nation's roadways, construction sites and workplaces. The industry is committed to upholding this principle in all aspects of the industry's day-to-day operations.
- Unfortunately, the construction industry is currently forced to comply with certain HOS regulations that run counter to maintaining safety on our nation's roadways, construction sites and workplaces.
- A road cannot be built on frozen ground, and in many states across the country, the construction season is limited to spring and summer months. Similarly, because most construction projects cannot be constructed during rain events, there is an extremely limited period of time in which construction projects can be completed. Further complicating the situation, specific for road construction, the daily window for road construction and maintenance services is tight because state transportation agencies (DOTs) must balance the convenience of the motoring public with the ability to construct or maintain a roadway. Generally, active road construction activities may last for up to 12 or 14 hours per day.
- As a result, construction companies must utilize every minute of every day available to complete these projects. Unnecessary restrictions placed on CMV drivers that do not improve safety drastically reduce those precious available hours during this fixed season.
- In recognition of the unique circumstances of the construction industry drivers, FMCSA provides a few exemptions or exceptions to certain HOS rules for CMV drivers in the construction industry, including the 50 air-mile radius construction exemption for a 24-hour restart to the driver's weekly clock, the 100 air-mile radius logging exemption, and in some instances the 30-minute break requirement.
- Unfortunately these exemptions are insufficient in today's construction world and must be modernized. Currently, construction companies, material suppliers and their drivers are operating in large geographic areas as compared to when the various exemptions were put into place. In today's construction material supplier world resources have shifted further away from construction sites.
- Drivers in the construction material supplier industry often transport perishable materials. These products must be transported and applied within tight time limits or are unusable and wasted. If a driver is required to take a 30-minute break, it could infringe on that tight timeline resulting in costly problems and/or contractual breaches. Construction material supplier drivers should as such, be exempt from the 30-minute break.

- Commonplace in the construction material supplier industry, drivers spend much of their time not actually driving but rather waiting to pick-up or deliver materials, or load/unload equipment. These wait periods at the very least should be able to count toward a driver's 30-minute break.
- Often, construction companies must obtain permits and pre-approved routes to operate longer trailers that can transport specific equipment. Many times these tractor-trailers can be up to 120 feet long, 16 feet wide and weigh over 240,000 lbs. While transporting such pieces of large construction equipment short distances, drivers are not allowed to deviate from the pre-approved routes identified to avoid low bridges and weight restricted areas. The permitted routes can easily increase what would normally be a 75 mile drive to 200 miles – often triggering a 30-minute break requirement. Complying with the current 30-minute break requirement would be unsafe and difficult or impossible to accomplish considering the load size. Finding a location and releasing a driver from all duties and responsibilities associated with that type of construction material load is impractical, inefficient, and creates additional safety problems.
- Many companies who operate in multiple adjoining states run a central equipment shop and dispatch center to more efficiently move equipment, materials, and employees to various projects throughout their area of operation—saving time and precious daylight hours. Under the current construction material supplier exemptions, companies that operate in these areas frequently travel in excess of 50 or 100 air-miles and are “on-duty,” although not driving for periods of time. Nonetheless, the 30-minute break requirements are triggered and they are disqualified from the 24-hour restart exemption.
- Example: A driver drives 55 air-miles from the work reporting location to Site A to deliver a piece of equipment or material, immediately excluding the construction material delivery exemption for a 24-hour restart. Once the driver arrives at Site A, the equipment is unloaded and the driver begins to perform work-related duties (on-duty but not driving). After a few hours, the driver drives the empty truck another 50 air-miles, away from its start location, to pick up another piece of equipment or material at Site B. At Site B, the driver works (on-duty but not driving) and loads the product onto the truck before returning to his work reporting location and unloading the product. Because the driver has exceeded the 100 air-mile radius and potentially worked past 12 hours, the short-haul 100 air-mile radius logging exemption is similarly voided, and the driver is still required to comply with the 30-minute break – even though those hours were not all spent driving.

Recordkeeping

- FMCSA has proposed that all CMV drivers that are required to maintain Records of Duty Status (RODS) for HOS recordkeeping will also be required to install and use electronic logging devices (ELD) to assure compliance with HOS requirements. 79 Federal Register 17655 (March 28, 2014).
- As noted above, construction industry drivers are not required to maintain RODS under the logging exemption (less than 100 air-miles and 12-hours on-duty); however, when these drivers occasionally exceed the current thresholds, they are required to maintain the RODS, often retroactively having to fill out the logs in 15-minute increments from memory.
- Drivers who transport construction materials and equipment often do so under dusty and road/gravel-rough conditions. The proper operability of ELDs under these harsh conditions raises additional concerns for drivers in the construction material supplier industry.

- As well, to reiterate, construction material supplier drivers spend most of their time not driving, questioning the necessity for many of the HOS provisions and ELDs being required of short-haul, construction material supplier drivers.

Proposed Changes to Modernize HOS for Drivers Transporting Construction Industry Materials and Equipment

Modify the current exemption afforded the construction material supplier industry under 49 CFR 395.1(m) by:

1. Increasing the air-mile radius from 50 air-miles to 150 air-miles for transportation of construction materials and equipment, to satisfy the 24-hour reset period.
2. Exempt CMV drivers of construction materials and equipment, operating within a modified 150 air-mile radius, from the 30 minute-break requirement.
3. Exempt CMV drivers of construction materials and equipment, operating within a modified 150 air-mile radius, from potential requirements to install and use electronic logging devices (ELDs).

Under these recommendations to modernize HOS rules for drivers engaged in the construction material supplier industry, FMCSA would have the authority to monitor safety and take action in the unlikely event that operation under these revised provisions were identified to be not in the public interest and as having a significant adverse impact on the safety of commercial motor vehicle operations.