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RE: Docket Number FMCSA-2019-0248: Notice of Proposed Rulemaking

INTRODUCTION

The New England Fuel Institute appreciates the opportunity to present the following comments on the Federal Motor Carrier's Safety Administration's (FMCSA) advanced notice of proposed rulemaking to provide regulatory relief to driver hours of service requirements. (Docket Number FMCSA-2019-0248).

The New England Fuel Institute (NEFI) is the nation's largest heating fuel trade association. Nearly all NEFI members are classified as small businesses under the Small Business Administration's business size categories. NEFI members are generally multi-generational family owned businesses operating in localities where they are long established integral parts of their community. Nationwide, the industry provides home heating fuel to more than 6.5 million residential and commercial customers. Eighty percent of these homes and businesses are in in the Northeast and Mid-Atlantic region.

A majority of NEFI members employ CDL drivers who transport gasoline, diesel fuel, jet fuel, kerosene and heating oil to both wholesale and retail customers in DOT specification cargo tank vehicles and transport vehicles. Most drivers employed by NEFI members qualify for the 100 air-mile radius exception from keeping recording daily hours of service under 49 CFR 395.1(e)(1).

COMMENTS

1. SHORT-HAUL DRIVER EXCEPTION - 48 CFR 395.1(e)(1)

NEFI strongly supports the FMCSA's proposal to extend the on-duty time for short-haul driver exception for CDL drivers from 12 hours to 14 hours per day and expand the air-mile radius

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requirement from 100 to 150 miles. NEFI cannot identify any safety consideration for reducing the 14 hour on-duty time to 12 hours for CDL drivers using the short-haul exception. There are a number of studies demonstrating that due to the nature of their work, short-haul drivers operate more safely, experience less fatigue and are involved in fewer crashes than long-haul drivers

There is no reason to believe that extending the 12-hour on-duty period to 14-hours for short haul drivers will result in a lower safety performance record from that of long-haul drivers who follow a 14-hour on-duty time under the Federal Motor Carrier Safety Regulations (FMCSR). In fact, there are a number of mitigating factors that suggest short-haul drivers are less likely to experience reduced safety performance due to the nature of the job, including routes traveled, time of day working and work activities. Among those mitigating factors include:

Undivided Highways: One study of driver performance under real world driving conditions found that undivided highways increase driver attention and reduce fatigue¹. Unlike long-haul drivers, short-haul drivers primarily operate on undivided highways making local deliveries.

Varied Work Functions: Short-haul drivers who interrupt their driving time to perform work functions such as loading and unloading activities, have fewer crashes as compared to long haul drivers². One U.S. DOT study found that when nondriving activities were introduced during a driver 's on-duty time, the risk of safety-critical events for the first hour after the break³ were significantly reduced. Unlike long-haul drivers, drivers employed by heating fuel dealers make continual stops throughout the day to load and deliver fuel, change placarding, inspect their vehicles and take rest breaks. These varied driving interruptions provide relief from the

¹ National Transportation Safety Board. Fatigue, Alcohol, Other Drugs, and Medical Factors in Fatal-to-the-Driver Heavy Truck Crashes, Safety Study. Washington, DC: National Transportation Safety Board; 1990. (NTSB/SS-90/01).

² Barr LC, Yang CYD, Hanowski RJ, Olson R. An Assessment of Driver Drowsiness, Distraction, and Performance in a Naturalistic Setting. Washington, DC: U.S. Department of Transportation, Federal Motor Carrier Safety Administration; 2011. (FMCSA-RRR-11-010).

³ Blanco M, Hanowski RJ, Olson RL, Morgan JF, Soccolich SA, Wu S-C, Guo F. The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations. Washington, DC: U.S. Department of Transportation, Federal Motor Carrier Safety Administration; 2011. (FMCSA-RRR-11-017).

⁴Barr LC, Yang CYD, Hanowski RJ, Olson R. An Assessment of Driver Drowsiness, Distraction, and Performance in a Naturalistic Setting. Washington, DC: U.S. Department of Transportation, Federal Motor Carrier Safety Administration; 2011. (FMCSA-RRR-11-010).

⁵Ibid.

6Ibid

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monotony of nonstop driving which induces fatigue. Unlike their long-haul counterparts, short-haul drivers are able to break their driving routine by getting out of the cab, taking in fresh air and energizing their bodies with mild physical activity, all of which enhance attentiveness and *wakefulness*.

Time of Day: A National Transportation Safety Board (NTSB) study reported that the strongest factor influencing driver fatigue was determined to be time of day of driving. Drowsiness was greatest during *night driving*. The hours associated with daytime driving was not a strong predictor of fatigue. Unlike long-haul operators who drive both day and night without regard to circadian rhythms, short-haul drivers employed by heating fuel dealers work largely during the daylight hours. Night time deliveries are limited in number and when they occur, the driver is conducting other non-driving work functions and returns home at the end of his/her daily shift for the required 10-hour off-duty rest period. Short-haul drivers are not subject to the same fatigue induced stress of nighttime driving without interruption as many long-haul drivers must do for 11 hours every night.

Shortage of Sleep: A report by the National Academies of Sciences, Engineering and Medicine found that shortage of sleep was given as the critical reason in 7% of crashes involving CDL drivers, and partial sleep deprivation was given as an associated factor in 13% of those crashes¹. Short-haul drivers delivering petroleum products are far less likely to experience full or partial sleep deprivation than long-haul drivers because they return home each day at the end of their shift. These drivers have established circadian rhythms that are rarely interrupted or altered during the scheduled work week. Drivers employed by heating fuel dealers are generally well rested with 10 or more hours off-duty between shifts⁴ and therefore, far less likely to be involved in a fatigue related crash than a long-haul driver.

Drowsiness: A study assessing driver drowsiness, distraction and performance found that drowsiness is twice as likely to occur at between 6:00 and 9:00 am⁵. Moreover 30% of all drowsy events occur during the first hour of work. Expanding short-haul drivers on-duty period by two hours at the end of a shift presents less safety risk for fatigue than already occurs at the beginning of a driver's shift.

NEFI believes unique characteristics of short haul carrier operations mitigate any potential for increased safety risk by adding two hours to driver on-duty time. At the very least, the two hours will not result in a safety performance record any greater than that of long-haul drivers. In fact, NEFI can't find any justification or reason why short-haul drivers were required to reduce their on-duty time to 12-hours in the first place. The decision was likely made many years ago based on outdated beliefs that fatigue increases proportional to hours worked. This may be true for long-haul drivers, but unlikely for short-haul drivers on-duty for two additional hours when considering all the mitigating factors discussed above. Modern science and academic study do not support the assertion that driver fatigue is necessarily any greater during a 14-hour shift than a shorter 12-hour on-duty period. In fact, studies suggest that short-haul drivers experience

¹ National Academies of Sciences, Engineering and Medicine. 2016. *Commercial Motor Vehicle Driver Fatigue, Long-Term Health and Highway Safety: Research Needs*. Washington, D.C. The National Academies Press.

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less fatigue due to the unique characteristics of their job than long-haul drivers. This begs the question why short-haul drivers have two fewer hours on-duty than long-haul drivers who are more fatigued and present a greater risk for crashes.

Scheduling Flexibility: NEFI is requesting adoption of the proposed short-haul exception because, the 14-hour on-duty period would provide small business carriers partial relief from the chronic shortage of CDL drivers nationwide. There are simply not enough drivers available to meet demand even with generous incentives such a training, tuition assistance and bonuses are provided. This is particularly true in the heating fuel industry due to the seasonal nature of the job. Most heating fuel dealers try to keep drivers employed year-round by placing them in non-driving positions during the off-season. Maintaining CDL drivers on the payroll is a major issue for heating fuel dealers due to the chronic shortage of CDL drivers. Qualified drivers are so scarce that new job opportunities for them are nearly limitless. This wide-open job market provides CDL drivers with a strong incentive to switch jobs for trivial reasons that are often beyond the control of employers to address. As a result, small business heating fuel dealers are forced into a perpetual search for qualified drivers. The additional 2 hours on-duty time per shift would help to mitigate the driver shortage by increasing productivity of drivers already on the payroll. This is a tangible and effective way for the FMCSA to reduce the CDL driver shortage through the current regulatory framework without compromising safety.

Negligible Increase in the Number of Exempt Drivers - NEFI does not believe that the addition of two hours to the maximum daily on-duty time would result in a significant number of non-exempt drivers employed by heating fuel dealers switching to exempt status. Heating fuel dealers primarily employ exempt short-haul drivers who conduct local fuel deliveries.

In some cases, heating fuel dealers may also employ one or two non-exempt drivers. These drivers are used to pick up fuel outside the 100 air-mile radius at a distant fuel terminal. This occurs due to either the remote location of the marketer's distribution area or in the event of a fuel shortage due to a terminal or pipeline shut-down for routine maintenance (or otherwise); inclement weather, and a shortage of refined product that triggers allocation at a terminal where product is limited in volume and sold to parties with higher proprietary priority . These drivers must sometimes travel more than 100 miles from their origination point at the beginning of their daily shift, but not more than 150 miles. In addition, unlike most "long-haul" drivers return home at the end of their daily shift. The current 100 air-mile limitation would prevent these limited number of non-exempt drivers from qualifying to exempt status.

Economic Benefits for Small Businesses: However, significant economic benefits can be gained by extending the 100 air-mile limitation to 150 miles for CDL drivers without compromising safety. The addition of 50 miles to the 100 air-mile limit would allow the one or two non-exempt drivers employed by heating fuel dealers to switch to exempt status. Switching to exempt status would allow these drivers to forgo recording hours of service and exempt them from the new ELD requirements as well. This would simplify compliance requirements for small business heating fuel dealers since most drivers they employ qualify for the exemption. Moreover, switching to exempt status would increase driver productivity, significantly reduce compliance costs and provide much needed driver scheduling flexibility.

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There is no question that the shortage of qualified CDL drivers is a damper on business expansion. There is significant consolidation currently occurring in petroleum retail operations. In order for independent small business heating fuel dealers (who collectively make up 65% of the retail motor fuel market) to remain competitive, and grow, regulatory flexibility is essential. An important element in incentivizing small business expansion in the industry is the ability to get product to market efficiently. Market efficiency is much more difficult to achieve when there is an ongoing nationwide CDL driver shortage. Therefore, anything that increases the productivity of drivers currently employed by heating fuel dealers without sacrificing safety, such as two additional hours of on-duty time and 50 more miles in the air-mile radius exception is welcome and essential.

NEFI believes the current 100-mile limit to qualify for exempt status is an arbitrarily limit with no substantive relationship to identifiable safety considerations. As stated previously, the unique characteristics of short-haul distribution generally mitigates most increased risk that may result from modest incremental changes in the regulatory framework; such as the addition of two hours to the daily maximum on-duty time and expansion of the air-mile radius exception by 50 miles. Short-haul and long-haul carriers differ significantly and the same assumptions with respect to risk shouldn't be applied to both. In short, one size does not fit all. Short-haul drivers have far fewer safety risk factors than their long-haul counterparts due to the nature of their job. The FMCSR should reflect those differences while maintaining the highest level of safety for both.

NEFI urges FMCSA to adopt the 150 air-mile radius exception for CDL drivers to provide heating fuel dealers the regulatory relief, compliance cost savings and flexibility needed to operate their businesses safely and efficiently in the face of unprecedented and ongoing driver shortages.

2. ADVERSE DRIVING CONDITIONS – 49 CFR 395.1(b)(1)

NEFI fully supports the FMCSA proposal to add two additional hours to on-duty time under the adverse weather driving exception. The adverse driving exception allows CDL drivers to add two hours to their eleven-hour on-duty time driving limit so long as they go off-duty after the 14th hour. Heating fuel dealers are spread across the country and operate in all types of adverse driving conditions. Whenever these events are unexpected, the two-hour increase in driving time is essential to move fuel products to market as quickly, efficiently and as safely as possible. Adverse driving conditions can have a negative impact on both fuel supply and price. While heating fuel dealers operating below the terminal rack have little control over pricing, they are frequently the first to be investigated by state attorneys general for price gouging during emergency events. Therefore, it is important for NEFI members to ensure the uninterrupted distribution of fuel during severe weather events in order to maintain supply and prevent price inversions. The adverse driving condition exception is vital in this effort, particularly between the onset of the event and the time regulatory authorities on the state and federal level issue an emergency HOS waiver. This interim period can last for a few hours or a up to a week depending on the jurisdiction, weather forecasts and the level of procedural efficiency of those responsible for making state HOS waiver decisions.

However, while adverse driving conditions may slow deliveries, it is the related delays at fuel supply terminals that are the main disrupter to the retail fuel distribution system. During severe

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weather events, the time a driver must wait to load at fuel terminal loading racks increases significantly. This happens for a number of reasons, but often, the adverse driving conditions and delays they cause can result in an unusually high number of drivers arriving at the terminal loading rack simultaneously for whatever fuel is available. Wait times up to four hours are not unusual during these events. Without an emergency HOS waiver, drivers could easily surpass their daily driving limits and maximum on-duty hours after a single terminal run - or not at all. The FMCSA could add significant flexibility by extending the exception to maximum on-duty an additional two hours. The extra two hours would help partially offset the loss of driver hours spent waiting at terminal loading racks and mitigate any resulting fuel shortages at the retail pump. NEFI also suggests that the FMCSA change the exception from "adverse driving" to "adverse weather" exception to facilitate the expansion of the exception to maximum driver on-duty hours.

3. THIRTY MINUTE REST BREAK - 49 CFR 395.3 (a)(3)(ii)

NEFI has no comments on the 30-minute rest break requirement because it does not apply to short-haul drivers. NEFI members primarily employ short-haul drivers who are exempt from the 30-minute rest break requirement.

4. SLEEPER BERTH

NEFI has no comments on the split-sleeper berth issue because it does not apply to either the short or long-haul drivers employed by heating fuel dealers.

5. SPLIT DUTY PROVISION

NEFI Supports the FMCSA proposal to allow one off-duty break of at least 30 minutes, but not more than 3 hours, that would pause a driver's 14-hour on-duty period, provided the driver takes 10 consecutive hours off-duty at the end of the work shift. Waiting times at terminal operations are growing longer which disrupts the efficiency of product distribution. In the petroleum marketing industry, driver wait time at wholesale fuel terminals have increased dramatically over the past 10 years. As a result, it is often difficult for a petroleum transport driver to make more than one terminal run per day. This creates unnecessary logistic inefficiencies and additional costs for heating fuel dealers who are at the same time facing a chronic nationwide shortage of qualified CDL drivers. Drivers are currently required to remain on-duty in the cabs of their trucks for lengthy periods of time while lined up at the terminal fueling rack.

NEFI is requesting that the FMCSA extend the split duty provision to CDL drivers with hazardous material endorsement for Class 3 materials (fuel) and allow them to count the time as off-duty while they are in attendance of their lading as they are currently required. There is little difference between a driver sitting in a stationary line at a terminal to load and a driver taking a thirty-minute break as allowed under the FMCSR while remaining in attendance. NEFI is asking for the split duty provision to apply to hazardous materials drivers as long as the truck remains stationary during the wait period.

NEFI recognizes the logistical difficulty in making this change for hazardous material drivers hauling Class 3 materials. However, if the split duty provision is appropriate for non-hazardous material drivers from a safety perspective, hazardous materials drivers hauling class 3 materials

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should not be treated any differently given they will remain in attendance during the stationary waiting period, ready and able to go back on-duty immediately.

CONCLUSION

NEFI would like to thank the FMCSA for this very important rulemaking. Regulatory relief is very important to small businesses from a cost and efficiency perspective. NEFI appreciates that the FMCSA realizes that one size does not fit all when regulating small businesses.

NEFI appreciates the opportunity to comment on this important issue. Please do not hesitate to contact me should you require further information. Thank you.

Sincerely,



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