
Cutting Through Trucking “Hours of Service” Confusion: The Impact of NAPA's Exemption

Federal Motor Carrier Safety Administration (FMCSA) Hours of Service (HOS) regulations affect the transport of asphalt pavement mixture and construction equipment by commercial trucks. Truck drivers and the companies that employ drivers are required to comply with a several FMCSA HOS regulations, including requirements for electronic logging devices (ELDs) and mandatory 30-minute rest breaks for drivers, under some circumstances. This Special Report addresses those requirements and the new exemptions effective January 26, 2018 applicable to drivers engaged in the transportation of asphalt and related materials.

Background

FMCSA [HOS regulations](#) are directly applicable only to interstate commerce where a vehicle crosses state lines; however, the majority of state transportation agencies also use these rules to regulate intrastate commercial driving within their state. Because each state has its own trucking regulations, it is important to understand HoS regulations in the state(s) where your trucking activities occur.

FMCSA HOS regulations apply to commercial motor vehicles (CMVs) with a minimum combined gross vehicle weight (CGVW) of 10,001 lbs. Full-size pick-up trucks, such as a Ford F-350 or Chevrolet Silverado 3500, can have curb weights approaching 7,500 lbs. Therefore, these regulations could apply to a one-ton company pick-up truck hauling a load slightly greater than 1 ton or hauling a small trailer of equipment with a CGVW of over 10,001 lbs.

As part of the U.S. Department of Transportation, FMCSA's mission is to prevent commercial motor vehicle-related fatalities and injuries. This includes promulgating regulations that help ensure safe motor carrier operations, ranging from driver requirements to driver operating practices, such as rest breaks and limiting hours on duty, as well as vehicle equipment and safety awareness.

Many of the FMCSA HOS regulations limiting how long drivers can stay on the road have been in place for many years. But in July 2013, revised regulations that affect allowable time spent behind the wheel went into effect.

FMCSA Exemptions for Asphalt Pavement Road Construction Industry

On January 26, 2018, FMCSA granted NAPA's application for exemptions on behalf of the asphalt pavement road construction industry regarding the 30-minute break and the short-haul exemption. The notice was published in the Federal Register at [83 Fed. Reg. 3864](#) and is formally known as the “NAPA Exemption” which is actually comprised of two separate exemptions.

The first exemption is from the HOS 30-minute rest break provision and 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 such “drivers to use the short-haul [record of duty status] exception but return to their work-reporting location within 14 hours instead of the usual 12 hours.”

Drivers must have a [copy of the Federal Register notice](#) or the equivalent [signed FMCSA exemption document](#) in their possession while operating under the terms of the exemptions. **The notice or document must be presented to law enforcement officials upon request.** Additional terms and conditions of the NAPA Exemption are identified in the notice and document including the need to notify FMCSA, within 5 business days of any applicable accident while operating under the exemption.

The NAPA Exemption grants relief from these HOS requirements for a variety of vehicles associated with asphalt pavement road construction activities, including but not limited to transporting equipment trailers, operating water and tack trucks, street sweepers, and the transport of asphalt pavement mix in dump trucks.

Applicability of HOS regulations for Asphalt Road Construction

The following information applies to “property-carrying drivers,” which includes drivers hauling pavement mixture from a production facility to a job site, transporting construction equipment, driving specialized on-road vehicles such as water trucks, and transporting related materials and equipment:

Definition of “asphalt and related materials”: Although this term is not identified in FMCSA’s notice, it is alluded to in the agency’s exemption document (accessible above). FMCSA provides some clarity of this term in its initial notification letter of approval, dated 4 April 2018, indicating “the transportation of liquid asphalt to a mixing plant ... would be included in the exemption if the transportation is ‘time sensitive’ in relation to an ongoing paving project.” Coupled with a broad Supreme Court interpretation of the term “relating to” (504 U.S. 374), representatives associated with a number of similar road construction-related motor carrier activities are currently seeking additional FMCSA concurrence with the NAPA Exemption. If there is any question regarding the applicability of certain motor carrier activities with the terms of the NAPA Exemption, it is highly recommended to obtain a legal counsel or agency guidance.

Definition of “on-duty”: “On-duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work.” This includes time spent waiting at a site to load or unload material, time inspecting or servicing a vehicle, and actual driving time.

Time spent resting in a vehicle may still count as “on-duty” time. A full list of activities covered in the definition can be found in FMCSA’s [guidance on 49 CFR 395.2](#).

Minimum Off-Duty Hours Between Shifts: 10 consecutive hours

Mandatory Rest Break During Shift: Drivers are generally not permitted to drive if eight hours have passed since they last took a 30-minute or longer break. However, drivers using the short-haul exception at [49 CFR 395.1\(e\)](#) are not held to this break requirement. To qualify for the short-haul exception, a driver must operate the vehicle, if a commercial driver’s license (CDL) is required, within a 100 air-mile radius of its point of origin and must return to the work-reporting location, among other conditions. If a CDL is not required, the radius increases to 150 air-miles. For drivers transporting asphalt and related materials but unable to take advantage of the short-haul exception, e.g., traveling greater than the air-mile radius, they can still take advantage of the NAPA Exemption by using 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.

Total On-Duty in Each Shift: 14 consecutive hours, with a 30-minute rest break, which means a maximum of 13.5 hours of on-duty time. No driving may occur after 14 consecutive hours; however, non-driving work is allowed past the 14-hour driving window. Typical drivers taking advantage of the short-haul exception can only do so if they do not exceed 12 hours of on-duty

time; but drivers transporting asphalt and related materials, under the NAPA Exemption, may have 14 hours to take advantage of this provision.

Maximum (Consecutive) Driving Hours: 11 hours of driving is permitted during the 14 hours of on-duty.

Maximum Cumulative On-Duty Time: 60 hours in seven days or 70 hours in eight days for carriers that operate seven days a week.

Cumulative On-Duty “Restart”: Generally, 34 consecutive hours off-duty resets a driver’s cumulative on-duty service clock back to zero or restarts a driver’s 60- or 70- hour weekly clock at any point in a driver’s seven-day cycle. However, the construction industry has an additional exemption to the 34-hour restart rule in FMCSA’s guidance on [49 CFR 395.1\(m\)](#): “In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of seven or eight consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.” In essence, this allows drivers transporting construction materials and equipment to restart their work week after a 24-hour off-duty period. In order to qualify for this exemption, transportation of construction materials and equipment must remain within a 75 air-mile radius.

Record of Duty Status (RODS) requirements: Every driver must record their duty status for each 24-hour period using either the FMCSA-specified grid or an electronic logging device (ELD). However, the RODS reporting requirement is exempted for short haul CDL drivers operating within a 100 air-mile radius of their normal work reporting location and who have a maximum of 12 hours on-duty time; drivers transporting asphalt and related materials may have 14 hours to take advantage of this provision. This means that a driver on-duty for more than 14 consecutive hours would not qualify for the RODS reporting exemption. For non-CDL holders, the operating radius expands to 150 air-miles. [Click here](#) and [click here](#) for additional information on how the short-haul exemption affects RODS requirements.

Electronic Logging Devices (ELDs): FMCSA’s [ELD Rule](#) requires all applicable drivers to maintain their RODS electronically as of December 18, 2017. There are two relevant industry exceptions to this rule: 1) if the vehicle was manufactured before model year 2000, or 2) if the driver is not required to maintain a RODS, e.g., if the driver can take advantage of the short-haul exception. If neither of these circumstances exist, the use of ELDs would generally be required; however, if either one of these conditions exists, the use of ELDs is not required. Drivers transporting asphalt and related materials that take advantage of the short-haul exception with the 14-hour duty window are exempt from ELD requirements as long as they stay within the 100 air-mile radius (150 miles for non-CDL drivers), return to the work-reporting location, and are relieved from duty within 14 hours. If the driver exceeds either the hours or mileage limit on this exception, the driver must complete a paper RODS for that day. A driver may exceed the hours or mileage limit and complete paper RODS for the day for up to 8 days in any rolling 30-day period without becoming subject to the ELD requirements.

Proper Recordkeeping: Recordkeeping most frequently occurs through the RODS (or ELDs if they apply). However, if a driver is operating on a short-haul exception without RODS or ELDs, then the motor carrier must [maintain a driver’s time-record](#) that shows the time a driver reports for and is released from duty, the total on-duty hours each day, and [possibly other information](#). These records must be maintained for at least six months.

Hours of Service and ELDs — Bottom Line

Drivers transporting asphalt pavement mix and other road construction equipment and materials can take advantage of a number of FMCSA exceptions and exemptions, providing relief from Record of Duty Status reporting (including ELDs) and the 30-minute break requirement. Asphalt road construction industry drivers that can take advantage of the short-haul exception (e.g., staying within a 100 air-mile radius) are now exempt from the 30-minute break requirement and are allowed an extra 2 hours on-duty time under the NAPA Exemption for a maximum of 14 hours. If drivers can't take advantage of the short-haul exception, drivers transporting asphalt and related materials and equipment are still, in essence, exempted from the 30-minute break requirement under the NAPA Exemption. Additional relief is afforded with a 24-hour construction restart if travel distance is reduced to within a 75 air-mile radius of their starting location. In both the short-haul exception and the 24-hour construction restart, the starting location must be the same as the driver's ending location. Consistent with the short-haul exception, the use of ELDs would not be required.

However, due to the complexity of complying with HOS, and especially with taking advantage of the short-haul exception, each company should consider installing an ELD or a similar GPS-based tracking system or mobile app. These types of devices can help ensure compliance with all applicable state and federal HOS regulations and requirements.

Drivers operating under the any provision of the NAPA Exemption must physically have a [copy of the Federal Register notice](#) or the equivalent [signed FMCSA exemption document](#) in their possession while operating under the terms of the exemptions. The notice or document must be presented to law enforcement officials upon request. The motor carrier must also notify FMCSA, within 5 business days, of any applicable accident while operating under the exemption.

If there is any question regarding the applicability of certain motor carrier activities with the terms of the NAPA Exemption, it is highly recommended to obtain a legal counsel or agency guidance.

For more information, contact NAPA Vice President for Environment, Health & Safety Dr. Howard Marks at hmarks@asphaltpavement.org or 301-731-4748.