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Federal Hours of Service Regulations: 30-minute Break Provision

On December 22nd, 2011, the Federal Motor Carrier Safety Administration (FMCSA) finalized complicated and contentious changes to the federal Hours of Service (HOS) regulations (76 FR 81134). Specifically, one of the most egregious changes would:

- *Require drivers to take a 30-minute break after at most eight consecutive hours.*

→ The compliance date for the change was **July 1st, 2013**.

How it affects the ready mixed concrete industry:

Mandatory break of 30 minutes every 8 hours:

This new provision is by far the most over burdensome and difficult for the ready mixed concrete industry. A ready mixed concrete driver's average delivery is only 14 miles from the ready mixed concrete plant and drivers are actually only driving about 4 to 6 hours per day. As well, mixer drivers typically spend only about 40% of their on-duty time actually driving, the other 60% is spent at the plant waiting to be dispatched, at the jobsite waiting for the contractor to receive the concrete, unloading concrete, and performing other non-strenuous or administrative duties. Companies need to have the flexibility to give breaks as the schedule dictates throughout the day. For example: a concrete delivery often takes more than 2 ½ hours to complete. Concrete is a perishable product needed on a just-in-time basis. Once a delivery is started it must be completed or the concrete may harden in the truck causing thousands of dollars worth of damage, and potentially violating a delivery contract. Every day is different in the construction field, thus companies need the flexibility to deliver concrete when the customer needs it. Drivers also have a flexible start time where one day they start at 7 a.m. and the next at 12 p.m. Ready mixed concrete deliveries do not happen on a regular 9 a.m. to 5 p.m. schedule, nor do concrete customers always plan deliveries. Often customers order concrete on an "as soon as possible" basis.

30-minute break clarification bungled:

On August 5th, 2013 following the ruling from the U.S. Court of Appeals for the District of Columbia Circuit in *ATA vs. FMCSA [American Trucking Associations, Inc., v. Federal Motor Carrier Safety Administration, No. 12–1092 (D.C. Cir. Aug. 2, 2013)]*, FMCSA issued guidance on the court's ruling (78 FR 64179) effectively exempting short-haul operators from having to comply with the 30-minute break provided the driver complies with either one of the short-haul logging exemptions [49 C.F.R. 395.1(e)(1) or (2)]. While mixer drivers are able to take advantage of this guidance since they regularly utilize and are in compliance with the 100 air-mile logging exemption [49 C.F.R. 395.1(e)(1)], although as is common due to the unpredictable nature of delivering ready mixed concrete, mixer drivers often need to work past the 12-hour reporting time limit contained in the 100 air-mile logging exemption [49 C.F.R. 395.1(e)(1)(ii)]. This scenario often happens unknowingly after the work day starts and at last minute. Prior to the July 1, 2013 implementation date of the 30-minute break, mixer drivers would simply retroactively fill out a driving log for the day when they crossed the 12-hour threshold. While mixer drivers still use this practice today, there is an added variable with the 30-minute break.

On December 19th, 2013 FMCSA issued guidance to address "*Drivers Who Become Ineligible for the "Short-Haul" Exception During the Duty Day*". Specifically, the guidance states that for drivers who may go over the on-duty window limits set in the 100 air-mile logging exemption:

“To address this issue, FMCSA advises that in such situations, the driver should not be considered to be in violation of the break rule. The driver should annotate the RODS [Record of Duty Status] to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity. Ideally, this would be prior to preparing the RODS or immediately following the preparation of the RODS. Under FMCSA’s existing HOS requirements and guidance, drivers would begin preparing the RODS as soon as they determine they are no longer eligible for the RODS exemption.”

While this guidance was a welcome and needed clarification, it poses a number of questions regarding compliance. For instance: What’s the definition of “earliest safe opportunity”? What’s an acceptable annotation? Regardless of how either term is interpreted or adhered to, will the driver still “not be considered to be in violation of the break rule”? These few questions alone pose serious compliance complications as to how a FMCSA auditor will interpret and apply them in different localities. Absent a FMCSA established FMCSA uniform application of this guidance, CMV drivers are bound to be treated differently for the same action.

As well, FMCSA noted in the final rule, such situations make local short-haul drivers not as prone to fatigue and allow for “...frequent non-driving breaks...” This begs the question then, why would local short-haul drivers, such as concrete mixer drivers, be mandated to take an off-duty 30-minute break at any point during their shift or be off-duty for two consecutive nights, when FMCSA clearly recognizes the safety and fatigue realities of local short-haul drivers as sufficiently meeting positive safety and fatigue standards? Ready mixed concrete truck drivers take frequent breaks, in fact, in many situations drivers are required to take a break such as resting during meal time, and remain on-duty but not performing any work related tasks. NRMCA recognizes FMCSA’s reluctance to address “segment-specific” HOS regulations or accept the “one-size-fits-all” argument, as noted in the final rule; however it is undeniable that there are inherent flaws that exist in the current rule and in the new changes. FMCSA’s acknowledgement of local short-haul drivers being different from long-haul operators underscores the need to regulate such groups differently. FMCSA affording local short-haul drivers exemptions and exceptions in recognition of their difference from long-haulers and then suggesting that such a differentiation is not needed is both confusing and counterintuitive.

The solution:

An acceptable solution would provide language stating that a short-haul operator would be exempt from the 30-minute break mandate so long as the driver is compliant with 49 CFR 395.1(e)(1)(i) and (iii)(A) through (v) of the 100 air-mile logging exemption (which includes the mileage limits, but excludes the 12-hour on-duty threshold).

“Drivers of ready mixed concrete mixer trucks are exempt from 49 C.F.R. 395.3(a)(3)(ii) provided the driver is compliant with 49 CFR 395.1(e)(1)(i) and (iii)(A) through (v) of the 100 air-mile logging exemption.”