



900 Spring Street, Silver Spring, MD 20910 USA (301) 587-1400/888-84NRMCA/ FAX: (301) 587-1605

June 8, 2011

Docket Management Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Ave, S.E.
Washington, DC 20590-0001

Subject: Hours of Service of Drivers

Docket nos. FMCSA-2004-19608
FMCSA-2011-0039

The National Ready Mixed Concrete Association (NRMCA) was founded on December 26, 1930, and today represents more than 1,300 member companies and subsidiaries that employ more than 125,000 American workers who manufacture and deliver ready mixed concrete. The Association represents both national and multinational companies that operate in every congressional district in the United States. The industry is currently estimated to include more than 65,000 ready mixed concrete trucks.

NRMCA agrees with and practices smart and safe driving principles that do not hinder the flow of commerce. However, the proposed HOS regulations as published on December 29, 2010, will have a devastating effect on the way ready mixed concrete producers conduct their business. Listed below are the concerns of the ready mixed concrete industry:

1. “Requiring off-duty time immediately following the end of the driving window”:

Never before has FMCSA limited the on-duty time in which a driver is allowed to perform his/her work. It has only regulated the amount of time a driver can safely drive. By forcing companies to release drivers at the end of the driving window, and not allowing them to continue on-duty work, will hurt a company’s competitiveness. Many NRMCA members use a driver to help with additional duties at the plant such as inventory control and batching of concrete. By limiting their on-duty time to 14 and 16 hour increments, FMCSA has overstepped its boundaries and responsibilities by restricting working time not just driving time. This will force employees to lose pay as the nature of construction dictates a schedule that frequently exceeds the proposed limits.

2. “Reduced driving time from 11 to 10 hours”:

Safety related incidents for truck traffic has been declining since the rule to allow 11 hours of driving time per day was adopted. NRMCA sees no justifiable reason to reduce that number. To the contrary, a reduction in driving time would cause more trucks to be on the road to deliver the same volume of

concrete; thus producing more traffic congestion and increasing the use of fossil fuels in direct opposition to the current administration's policy to reduce the nation's carbon footprint.

3. "Mandate a break of 30 minutes every 7 hours":

Ready mixed concrete drivers spend less than 50% of their on-duty time actually driving, the other 50% 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 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. 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. If a driver were to start work at 5 a.m. he/she may be required to take the 30 minute lunch break as early as 9 a.m. due to the length of time required to complete another delivery. Every day is different in the construction field, thus companies need the flexibility to deliver concrete when the customer needs it. The 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.

4. "Limiting restarts of the 60/70 hour clock to once in 7 days":

Weather plays a huge factor in the placement of concrete. Many companies operate on a very busy summer schedule and use a reduced workforce for the winter months. Most ready mixed concrete truck drivers use the "Construction Materials Exemption" of 24 hours to restart their weekly clocks. A rainy day will often stop deliveries for an entire day, more than once a week. Many ready mixed concrete drivers use this 24 hour off-duty period to reset their weekly clock more than once in a 7 or 8 day period thus allowing construction schedules to continue when the weather improves. The proposed changes would eliminate this much needed practice. Drivers should have the flexibility to restart their weekly clock as they see fit instead of once per week. Construction schedules fluctuate and companies need the ability to stay compliant with the regulations and still service their customers. The current "Construction Materials Exemption" and how it's employed by ready mixed concrete truck drivers has not had any adverse effects on safety or compliance.

5. "Include at least two periods between 6am and midnight within a 34 hour restart period":

Many ready mixed concrete producers, especially those in the southern tier and desert southwest, work exclusively at night during the hot summer months. The cooler temperatures are better for the placement of concrete along with reduced traffic congestion. By mandating a driver's off-duty time to include at least two consecutive periods of midnight to 6 a.m., reduces the numbers of hours available to meet construction and delivery schedules to an unacceptable level. Not every work day takes place during daylight hours, making this proposed change overly restrictive.

6. "Limit on-duty time to 13 hours in a driving window":

NRMCA sees no justification to limit on-duty time. FMCSA should restrict its regulations to "driving time" as previously mentioned. During 16-hour-window-days, this would require a mandatory minimum of three hours of non-productive, non-paid time in which an individual may be forced to be away from his or her family. This regulation makes no sense for a short haul driving industry like ready mixed concrete.

7. Lastly, NRMCA would like to reiterate a suggested change to the current HOS regulations that we included in our comments to FMCSA during the 2010 listening sessions across the country.

For the ready mixed concrete industry, a consequence of the current HOS rule has resulted in a lack of common sense in the daily log regulations. The driver's daily log has been the primary regulatory tool used by the federal government, state governments, drivers, and commercial motor carriers to determine a driver's compliance with the HOS regulations. The information obtained from the log is used to place drivers out of service when they are in violation of the maximum limitations at the time of inspection. It has also been used in determining a motor carrier's overall safety compliance status in controlling excess on-duty hours, a major contributory factor in fatigue induced accidents.

From the inception of the log requirement 70 years ago, exemptions from preparing the driver's daily log have been allowed for drivers of commercial motor vehicles who operate wholly within a specified distance from their normal work reporting location (e.g. garage, terminal or plant). Currently, the 100 air-mile radius log exemption is applicable if:

- (1) The driver returns to the work reporting location and is released from work within 12 consecutive hours;*
- (2) At least 10 consecutive hours off duty separate each 12 hours on duty;*
- (3) The driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; and*
- (4) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records.*

This exemption, which is found in 49 C.F.R. § 395.1(e), was first provided in 1980 as part of an effort to reduce the paperwork burden on drivers and motor carriers (See 45 FR 22042). However, the historic basis for the exemption has always been grounded in the common sense notion that drivers in the short-haul trades are less subject to the fatigue related affects of extended hours of driving time typically associated with cross country travel. Like many other short-haul operators, concrete mixer truck drivers are on-call and deliver product on a just-in-time basis. They operate exclusively in the short-haul construction industry, generally beginning and ending each shift at the same plant location and rarely exceeding a 50 air-mile radius of the work reporting location. In fact, industry studies show that a concrete mixer driver's average delivery is only 14 miles from the ready mixed plant and mixer drivers are actually driving only 4 to 6 hours per day.

As a result, concrete mixer drivers are eligible for the 100 air-mile radius log exemption contained in § 395.1(e) and ready mixed concrete producers employing these drivers are subject to the reduced recordkeeping requirements specified in § 395.1(e)(5). This latter provision enables a company to keep track of concrete mixer drivers' hours through an electronic time clock that indicates the start time, number of hours on-duty, and the time the driver gets off work each day. Unfortunately, concrete mixer drivers are often unable to take full advantage of the 100 air-mile radius exemption. This is almost always caused by a driver surpassing the 12-hour on-duty threshold contained in § 395.1(e)(1)(ii). In these instances, drivers are required to retroactively complete lengthy log sheets on the days they exceed the threshold (See FMCSA 395.1 Interpretation #22).

The current HOS regulations afford drivers a maximum of 14 consecutive hours of on-duty time per shift (after which drivers may not drive), yet drivers who otherwise meet the requirements of the 100 air-mile radius log exemption must still complete a log if they exceed 12 hours of on-duty time during the shift. Unlike in the long-haul trades, it is very difficult in the ready mixed concrete industry to predict on any given day whether the 12-hour threshold will be surpassed. If the driver surpasses the threshold but did not expect to do so, he or she must go back and retroactively log his/her duty status for the entire day. This is simply not practical for concrete mixer truck drivers, as their duty status changes frequently throughout the day and completing an accurate logbook from memory is a difficult task. To preempt such difficulties, many ready mixed concrete producers have instructed their drivers to log every day just in case they happen to exceed the threshold, which is contrary to the intent of the 100 air-mile radius logging exemption.

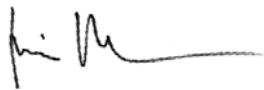
The FMCSA has claimed that the 12-hour return to work reporting location limit is a necessary safeguard to ensure that drivers adhere to driving time limitations. (See 64 FR 72373, 72375). Yet, as indicated above concrete mixer truck drivers drive only 4 to 6 hours per day, clearly not fatigue inducing operating conditions. Requiring them to return to the plant within 12 hours so that they don't exceed 11 hours of driving time is regulatory overkill and unnecessarily burdensome. Notwithstanding repeated requests from NRMCA and other short-haul operators, the FMCSA has yet to provide any data to underpin the seemingly arbitrary 12-hour return time limit.

The Paperwork Reduction Act (PRA) requires agencies to ensure that their ICRs have practical utility, are not duplicative, and impose the least possible burden. In the case of the 100 air-mile radius log exemption, all three of these congressional directives have been ignored by the FMCSA. As a result, concrete mixer truck drivers and other short-haul drivers, have for years been forced to complete a burdensome paperwork requirement from which they are clearly exempt.

To show its commitment to the PRA, FMCSA should initiate a process that would provide a common-sense fix for the 100 air-mile radius exemption. The remedy would simply involve raising the 12-hour on-duty threshold in § 395.1(e)(1)(ii) and § 395.1(e)(1)(iii)(A) to 14 hours, consistent with the maximum allowable number of hours per shift, after which the driver may not drive. This would allow concrete mixer truck drivers to take full advantage of the 100 air-mile radius log exemption.

NRMCA appreciates the opportunity to comment on the proposed HOS rule and its effects on the ready mixed concrete industry. For more information, comments or questions, please feel free to contact me at kwalgenbach@nrmca.org or (240) 485-1157.

Sincerely,



Kevin Walgenbach
Senior Director of Government Affairs
National Ready Mixed Concrete Association (NRMCA)