



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[FMCSA-2013-0317]**

**Hours of Service of Drivers: National Ready Mixed Concrete Association;**

**Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from the National Ready Mixed Concrete Association (NRMCA) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service regulations for commercial motor vehicle (CMV) drivers. The requested exemption would apply industry-wide to all motor carriers and CMV drivers operating ready-mixed concrete trucks. Due to the nature of their operation, NRMCA believes that compliance with the 30-minute rest break rule is extremely difficult due to the numerous variables associated with delivery (e.g., weather, customer readiness, traffic) and becomes even more problematic and burdensome during periods of peak demand at construction sites. FMCSA requests public comment on NRMCA's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2013-0317 by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov), and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you

want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **NRMCA Application for an Exemption**

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

NRMCA seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). The requested exemption would apply industry-wide to all motor carriers and drivers operating ready-mixed concrete trucks. This industry currently operates roughly 68,000 ready-mixed concrete trucks, driven by approximately 68,000 drivers. Approximately 5 percent of ready-mixed concrete deliveries involve interstate commerce. NRMCA requests the exemption because it states that ready-mixed concrete drivers almost always spend less than half of their on-duty time actually driving the CMV. Most of the industry's drivers operate 8 hours per day, with 10 hours or more per day being a common schedule during the busy season.

NRMCA states that, on average, a typical driver will carry 4 loads per day, each of roughly 2 hours round-trip, and drive an average of only 14 miles one-way away from the ready-mixed concrete plant. The remainder of the driver's "duty day" is spent at the plant waiting to be dispatched, at the jobsite waiting for the contractor to receive the concrete, unloading concrete, and performing various other administrative duties.

According to NRMCA, concrete is a perishable product. Once the ingredients that comprise ready-mixed concrete have been mixed (or batched) there is a "window" of roughly 90 minutes before the concrete hardens and by specification is no longer usable. NRMCA indicated the American Society for Testing and Materials (ASTM) Standard Specification for Ready Mixed Concrete requires delivery and unloading within 90 minutes. Thus, once a delivery is started it must be completed quickly or the concrete may harden in the CMV, causing monetary damage to the company and potentially violating a delivery contract. An uninterrupted delivery is also necessary in case a driver is made to wait a long period of time on a construction site before unloading, which is a common occurrence. NRMCA states that adding a 30-minute rest break to this process risks the integrity of the industry's delivered product, jeopardizing delivery contracts and creating the very real potential to cost concrete companies thousands of dollars in additional costs.

NRMCA believes the exemption would achieve the same level of safety provided by the rule requiring the 30-minute rest break because ready-mixed concrete drivers routinely receive numerous 10-, 15-, and 20-minute breaks throughout the work day. It is common for these drivers to take breaks of up to 2 hours resulting from weather or unforeseen construction delays. NRMCA claims that these frequent breaks work to keep

the drivers awake and alert throughout the course of their work day. One additional 30-minute break – as is now required by the FMCSRs – would not add an additional level of safety for their operation. A copy of NRMCA’s exemption application is available for review in the docket for this notice.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on NRMCA’s application for an exemption from certain provisions of the driver’s HOS regulations in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: August 14, 2013

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Larry W. Minor  
Associate Administrator for Policy

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