



**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2013-0317]**

**Hours of Service of Drivers: National Ready Mixed Concrete Association; Application for Exemption; Final Disposition**

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

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant the National Ready Mixed Concrete Association (NRMCA) a limited exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. Under the terms and conditions of this exemption, drivers operating ready-mixed concrete trucks may 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 exemption giving these drivers the same regulatory flexibility that 49 CFR 395.1(q) provides for drivers transporting explosives. The FMCSA has determined that granting these drivers an exemption from the 30-minute rest break requirement is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

**DATES:** The exemption is effective from 12:01 a.m., [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m., [INSERT

**DATE TWO YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver, and Vehicle Safety Standards; 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 Federal Motor Carrier Safety Regulations. 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 the safety analyses and public comments, 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 specific 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 of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

**Request for Exemption**

The National Ready Mixed Concrete Association (NRMCA) is an industry trade association that represents more than 2,000 member companies and subsidiaries that manufacture and deliver ready-mixed concrete. They estimate that there are roughly 68,000 drivers of ready-mixed concrete mixer trucks. According to NRMCA, approximately 5 percent of ready-mixed concrete deliveries – with around 3,400 drivers - involve interstate commerce.

NRMCA requests an exemption from the hours-of-service (HOS) regulation pertaining to rest breaks [§ 395.3(a)(3)(ii)]. Membership in NRMCA would not be required to be eligible for the exemption, it would apply industry-wide to all motor carriers and drivers operating ready-mixed concrete trucks. NRMCA requests the exemption because it states that most concrete-mixer drivers operate for at least 8 hours per day; however 10 hours or more per day during the busy construction season is common. They indicate that less than 40% of this time is actual driving time. Furthermore, 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 while transporting a perishable product during the busy season.

Mixer drivers take numerous rest breaks throughout each work period; however, those breaks are not “off duty” under interpretations of the Federal regulations and therefore do not count as the minimum 30-minute breaks. According to NRMCA, a common example of this is a mixer driver merely sitting inside the cab of the truck, at the controls, waiting to move the truck into position and unload. This very common occurrence within the industry is not considered a valid off-duty break under the current

regulations and guidance because the mixer driver still has “responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying” (§395.2 definition of on-duty time.)

Regarding the §395.1(e)(1) exemption from the 30-minute rest break provision for short-haul carriers, NRMCA added that mixer drivers often work past the 12-hour reporting time limit for the exemption, and therefore are unable to utilize it. According to NRMCA, when a mixer driver is forced to work past the 12-hour reporting time limit, there is currently no method to show that a driver intended to comply with the 100 air-mile logging exemption and therefore did take or log a 30-minute break. This causes a “compliance conundrum” for the ready-mixed concrete driver.

Further details regarding the industry’s safety controls can be found in the application for exemption, which can be accessed in the docket identified at the beginning of this notice. NRMCA asserted that granting the exemption would achieve the same level of safety provided by the rule because ready-mixed concrete drivers routinely receive numerous 10-, 15-, and 20-minute breaks throughout the work day. NRMCA claimed that extending one of these breaks to 30 minutes and only “attending” the vehicle during this period would have no negative safety impact. NRMCA further added that the ready-mixed concrete industry ensures mixer-truck drivers are as safe as possible and continues to use practices that emphasize safety. This attention to safety is achieved through mandating rigorous training for concrete mixer-truck drivers; daily, weekly, monthly, quarterly and annual safety checks; and self-imposed random safety audits. The proposed exemption would be effective for 2 years, the maximum period allowed by

§381.300.

### **Public Comments**

On August 20, 2013, FMCSA published notice of this application, and requested public comment (78 FR 51267). Over 250 comments were submitted, with more than 87% in support of the exemption request. These comments came mainly from various ready-mixed concrete companies. Nine industry trade associations – primarily concrete-related State associations – filed comments in support of the NRMCA exemption. Fifteen other individuals (drivers, etc.) commented: 11 favored the exemption request; 3 were opposed; and 1 took no position.

The comments stated that requiring ready-mixed concrete truck drivers to comply with the 30-minute rest break provision causes an undue hardship on the drivers, the delivery of their product, service to their customers, and the bottom-line finances of their company. The primary reasons for requesting the exemption were: (1) Concrete mixer drivers deliver a perishable product and spend less than 40% of their on-duty time driving; (2) industry-wide, mixer drivers on average drive 14 miles from the ready-mixed concrete plant to the job, do not have the fatigue-inducing work conditions long-haul truckers experience; and (3) while some concrete mixer drivers will be able to take advantage of the exception from the 30-minute break for certain short-haul drivers, many drivers often work more than 12 hours in a day, and therefore cannot utilize the short-haul exemption.

Some comments opposed to the NRMCA exemption saw no safety benefit in a 30-minute break in the first place, while others believed that this segment of the industry

should not be granted relief from the 30-minute break while other industry segments have to comply with the rule.

### FMCSA Decision

FMCSA has evaluated NRMCA's application and the public comments and decided to grant the exemption. The Agency believes that the exempted ready-mixed concrete drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. It is important to note that the Agency is not granting a complete exemption from the 30-minute rest break provision required by 49 CFR 395.3(a)(3)(ii). Instead, FMCSA is granting an exemption for ready-mixed concrete trucks and drivers who remain with the CMV (i.e., wait) while not performing any other work-related activities. The only subject of the exemption is the duty status of the driver while "waiting" with the vehicle during a required rest break. Like drivers of trucks carrying certain kinds of explosives (§395.1(q)) drivers of ready-mixed concrete trucks will be allowed to use 30-minutes on-duty periods in attendance on the vehicles, while performing no other work, to meet the requirement for a rest break. Therefore, the Agency grants the exemption request subject to the terms and conditions in this **Federal Register** notice.

### **Terms of the Exemption**

1. Drivers of ready-mixed concrete trucks subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of "waiting time" to meet the requirements for a rest break. "Waiting time" means time spent while waiting with the CMV at a job site or terminal and performing no other on-duty activities during this time.

2. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
3. All motor carriers operating under this exemption must have a “Satisfactory” safety rating with FMCSA, or be “unrated.” Motor carriers with “Conditional” or “Unsatisfactory” FMCSA safety ratings are prohibited from using this exemption.
4. All motor carriers operating under this exemption must have Safety Measurement System (SMS) scores below FMCSA’s intervention thresholds, as displayed at <http://ai.fmcsa.dot.gov/sms/>.

#### Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through 11:59 p.m., **[INSERT DATE TWO YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

#### Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply with all other applicable provisions of the FMCSRs.

#### Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

#### Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMV drivers operating under the terms of this exemption. The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and license number and State of issuance
- d. Vehicle number and State license plate number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

## Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: March 26, 2015.

**T. F. Scott Darling, III,**  
*Chief Counsel.*

**BILLING CODE 4910-EX-P**

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