



California Construction Trucking Association

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Docket Management Facility
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE.
Washington D.C. 20590-0001

RE: Docket Number - FMCSA-2013-0317

Hours-of-Service of Drivers; National Ready Mixed Concrete Association; Application for Exemption

The California Construction Trucking Association (“CCTA”) submits these comments in response to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”), Notice and publication on August 20, 2013 at 78 Fed. Reg. 51267, seeking comments on an application for exemption from the new 30-minute break requirement submitted by the National Ready Mixed Concrete Association (“NRMCA”).

The CCTA is the largest non-profit association of construction trucking firms in the U.S. Founded in 1941 and headquartered in Upland, California, the CCTA advocates for sensible legislation and regulations that affect our members. The CCTA is made up of five distinct conferences of which one is the (California) Concrete Pumpers and motor carriers whose primary business is hauling asphalt (concrete) and could be directly affected by a decision to grant this exemption.

The CCTA encourages FMCSA to grant the exemption from the 30-minute break requirement (49 CFR 395.3 (a) (3) (ii)) requested by the NRMCA because we believe it will achieve the same level of safety for those drivers exempted from the requirement. As we will detail further in our comments, we also believe FMCSA should include in this exemption – if granted – operators of concrete pumps and those hauling asphalt (concrete) mix because the same fact patterns that causes us to support the NRMCA exemption request applies to these operations too.

DISCUSSION

In promulgating the most recent hours-of-service regulations which included the newly mandated 30-minute break requirement, FMCSA relied heavily on analysis – both negative and positive from the perspective of property carrying, for-hire trucking (e.g. interstate “long-haul” trucking). The Regulatory Impact Analysis (“RIA”) contained within the docket (FMCSA-2004-19608) and used to support FMCSA’s proposed changes in the HOS rules relied heavily on analysis of exclusively for-hire, property carrying motor carriers.

There was no analysis of the impact of proposed changes on “vocational/construction trucking” operations (e.g. companies/drivers where their trucking operations are a secondary function to their primary business – in the current instance, activities related to transporting and placement of ready-mixed concrete) which cannot be compared to interstate property carrying operations when discussing the key issue surrounding HOS rules – the reduction of fatigue involved crashes. Time spent on task (driving time) is an important variable when discussing fatigue and there is a lack of literature analyzing construction trucking activity from the standpoint of fatigue and relationship to crashes. Frankly, our members are more likely to be victims of crashes while working in highway construction zones while waiting to load and unload.

In the decision handed down by the U.S. Court of Appeals for the District of Columbia Circuit in *American Trucking Associations v. Federal Motor Carrier Safety Administration, No. 12-1092* where the court vacated the 30-minute break requirement for short-haul operations, part of the opinion issued by the court stated, “The 2011 Final Rule contains not one word justifying the agency’s decision to apply the new requirement to the unique context of short-haul operations.” While the court’s decision will be beneficial to some transporters of ready-mixed concrete in using the short haul exemption, once a work day goes beyond 12 hours they cannot. Weather delays and equipment breakdowns can unexpectedly extend a work day beyond 12 hours thus putting operators in a regulatory catch-22.

Construction trucking in most cases is event or project related, and subject to operating permits which designate project construction hours that are normally only 8 to 10 hours a day, 5 days per week. Because of the low cost of construction commodities, local manufacturing and hauling of these commodities is mostly prevalent within a 200 mile or less radius, meaning most vocational truck drivers sleep in their own bed each night. Truck loading and unload queue's regularly provide opportunities for construction truck drivers to eat and drink during the course of their on-duty cycle. Under current federal rules, even the time spent sitting behind the wheel of the truck cannot be considered off-duty time – yet expecting construction trucking operators to leave the cabs of their truck poses far greater danger to the driver because of the environment in which they mostly work.

The differences between construction trucking and general freight hauling operations could not be more dissimilar thus further making the NRMCA request reasonable. Also, various modes of trucking (agriculture, oil field, construction materials, etc.) enjoy different exemptions from Part 395 regulation in part because of recognition that a one-size-fits-all regulatory regime involving HOS is not practical. The CCTA would ask FMCSA to consider extend the definition of the person or class of person covered by this exemption if granted. Both driver/operators of concrete pumps and drivers hauling asphalt (concrete) face identical issues complying with the 30-minute break requirement as outlined in the NRMCA application for exemption.

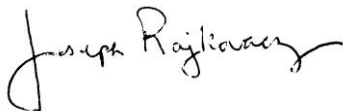
Asphalt (concrete) much like ready-mix concrete, is a perishable product needed on a just-in-time basis. New asphalt (concrete) mixes such as warm-mixes make up 40 percent of all asphalt (concrete) laid in the western U.S., and has only a 2-hour shelf-life at the most by comparison, hot-mix spec window is around 3 hours. Once a delivery is started it must be completed or the asphalt (concrete) will be out-of-spec and in the worst senario may harden in the truck causing thousands of dollars worth of damage to the truck box and the loss of the commodity's value (\$90/ton x 25 ton = \$2,250). Additionally, an undeliverable load may violate a contract and there will be extra expenses from the time spent to clean-out the truck bed and repairing any damages.

Although it is common that a driver routinely receive numerous "queue" and "stand-by time" breaks throughout the course of each day's work, it's also not uncommon to get breaks from driving for up to two hours because of weather or unforeseen construction delays. These are not off-duty breaks since the driver spends that time sitting in the truck.

Whether transporting ready-mix concrete or asphalt (concrete) from a batch plant to the job site, or moving equipment into place to perform construction related duties (e.g. a concrete pump), the task and time spent actually driving can be minimal when compared to other duties. For some, on-duty time will encompass operating off-road equipment and for others engaged in only transporting materials, they will spend significant amounts of their on-duty hours queued in lines waiting to load and unload. Once mixed, both ready-mix concrete and asphalt (concrete) are perishable commodities and must be transported to the point of use and immediately placed or the commodities will be rendered useless.

CONCLUSION

The CCTA supports the request for exemption made by the NRMCA and asks FMCSA to include concrete pumps and those who haul asphalt (concrete) should the agency render a favorable determination.



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