



August 25, 2014

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building, Ground Floor, Room W12-140
Washington, D.C. 20590-0001

Re: Docket No. FMCSA-2014-0189
Agency Information Collection Activities; Revision of an Approved Information
Collection: Hours of Service (HOS) of Drivers Regulations

On behalf of the National Ready Mixed Concrete Association (NRMCA), I am writing to submit comments regarding the June 24, 2014 Federal Motor Carrier Safety Administration (FMCSA) Information Collection Request (ICR) titled "Hours of Service of Drivers Regulations". (79 FR 35843)

NRMCA was founded on December 26, 1930, and today represents more than 2,250 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 currently includes 68,500 ready mixed concrete trucks and 5,000 ready mixed concrete plants.

The ready mixed concrete industry manufactures a construction material vital for constructing our built environment. From roads and bridges, to homes and high-rises, our built environment could not be realized without the use of ready mixed concrete. This important building material is created by combining fine and coarse aggregates, cement and water. In 2013 alone, the industry produced more than 300 million cubic yards of ready mixed concrete, representing a value of roughly \$30 billion. Virtually every construction project in America uses at least some ready mixed concrete.

The vast majority of NRMCA producer members are classified as small businesses. As with

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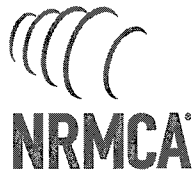
any small business, owning a ready mixed concrete company means that you are responsible for everything (ordering inventory, hiring employees, meeting environmental and labor regulations, and dealing with an array of mandates from federal, state and local governments). That is why, seemingly simple government regulations, particularly when it comes to the paperwork they generate, can be of great consequence. The less time ready mixed producers spend with “bureaucratic overhead,” the more time they can spend pouring concrete, employing more people and strengthening America’s economy.

Since 1942, with the passage of the Federal Reports Act (FRA), Congress has been interested in promoting the quality, integrity, and utility of information collected and disseminated by the federal government. The FRA established the policy goals of minimizing the paperwork burden on U.S. businesses and assuring the necessity and usefulness of information collected from the public and used or disseminated by the government.

However, the federal paperwork burden continued to balloon over the decades and in 1980 Congress again took steps to reduce the paperwork burden on U.S. businesses and to promote the utility and quality of data collected and disseminated by federal agencies by passing the Paperwork Reduction Act (PRA). This act marked the first effort by Congress to comprehensively manage the federal government's information collection activities. The PRA was enacted for the primary purpose of minimizing the federal paperwork burden on the public, and maximizing the utility of collected and disseminated information. Notably, small businesses were specifically identified as intended beneficiaries of the PRA reforms. Unfortunately, for the ready mixed concrete industry, as exemplified by the pending ICR, the PRA has not been fully deployed to account for the extra burden faced by

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short haul drivers when they are forced to complete the driver's daily log.

The federal government has regulated the hours of service of commercial motor vehicle operators since the late 1930s; the Interstate Commerce Commission (ICC) promulgated the first HOS regulations under the authority of the Motor Carrier Act of 1935. (*See* 49 U.S.C. § 31502(b)(1)). Jurisdiction over HOS regulations passed from the ICC to the Federal Highway Administration in 1995, and then to the newly created FMCSA in 2000.

Since its creation by the ICC in 1938, a driver's daily log form has been used to aid motor carriers and drivers alike in their efforts to observe the HOS regulations. The log has a grid format with fifteen minute increments and is completed by the driver to record the hours for each duty status. By looking at the submitted log, a motor carrier and a driver may determine the number of hours available for on-duty purposes. This is especially important for long-haul drivers in cross country dispatch that need to know the number of hours available to be on duty and be confident that the maximum HOS limitation will not be exceeded. The limitations as recorded in the log are designed to provide a general scale beyond which a driver is considered to be too fatigued to safely operate a commercial motor vehicle.

In addition, 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

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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, a 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.

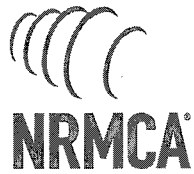
This exemption, which is found in 49 C.F.R. § 395.1(e), was first provided in 1980 as part of an effort to reduce the paperwork burden on drivers and motor carriers (*See* 45 FR 22042). However, the historic basis for the exemption has always been grounded in the understanding that drivers in the short-haul trades are less subject to the fatigue related effects of extended hours of driving time associated with cross country travel. Indeed, over the years the exemption radius has been steadily increased to take into account improvements in highway designs, expansion of roadways in metropolitan areas and improved truck design (*See* 42 FR 55109, 55110).

Ready Mixed Concrete Operations

As noted above, the 100 air-mile exemption has been used by the FMCSA and its predecessor

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agencies to meet paperwork burden reduction and regulatory flexibility mandates. However, as currently promulgated it contains a fatal flaw that ironically serves to exacerbate paperwork burdens for the ready mixed concrete industry.

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 truck driver's average delivery is only 14 miles from the ready mixed plant and concrete mixer truck drivers are actually driving only 4 to 6 hours per day. As a result, concrete mixer truck 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 truck 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 truck 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) due to the unpredictable nature of concrete delivery requirements. In these instances, drivers are required to complete lengthy log sheets on the days they exceed the threshold (*See* FMCSA 395.1 Interpretation #22).

The 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

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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 or 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 log 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 12-hour threshold, which is contrary to the intent of the 100 air-mile radius logging exemption.

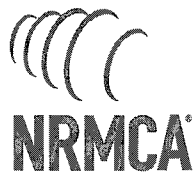
The FMCSA has claimed that the 12-hour return to work reporting location limit is a necessary safeguard to ensure that drivers adhere to driving time limitations. (*See* 64 FR 72373, 72375). Yet, as indicated above, concrete mixer truck drivers only drive 4 to 6 hours per day, definitely not fatigue inducing 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.

Estimated Time Burden

Concrete mixer truck drivers can deliver as many as 8 to 10 loads in a given work day. On days where they exceed the 12-hour return time limit, they must retrieve the trip ticket for each delivery and then reconstruct the entire day in 15-minute increments. NRMCA estimates, therefore, that it takes

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mixer truck drivers an average of 25 to 35 minutes per day to complete the daily log. It takes an additional 5 minutes for the driver to forward the completed log to the dispatcher. The dispatcher in turn takes an average of 2 minutes to review a daily log, and he/she will spend another 2 minutes in collecting, bundling, filing and otherwise maintaining each log for 6-months of storage.

The FMCSA has not accounted for this time burden in its ICR.

A Common Sense Fix

The PRA requires agencies to ensure that their paperwork collection requirements 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 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, thereby making these provisions 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 for the entire 14 hours of on-duty time.

Moreover, this small fix would provide real relief from a paperwork burden that has plagued the ready mixed concrete industry for decades. The costs associated with having to unnecessarily complete the drivers' daily log in terms of money spent on reporting, the time taken by drivers to fill

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out the logs, and the overall drain on manpower in the process is truly burdensome. NRMCA has outlined in these comments some simple steps that can be taken to reduce this burden without compromising safety. It is our hope that FMCSA will finally choose to take these steps.

NRMCA appreciates the opportunity to comment on FMCSA's Information Collection Request. Should you have any questions or need more information please feel free to contact me at kwalgenbach@nrmca.org or (240) 485-1157.

Sincerely,

Kevin Walgenbach

Senior Director of Compliance and Regulatory Affairs

National Ready Mixed Concrete Association

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