



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0237]

**Hours of Service of Drivers: American Concrete Pavement Association, Inc.;
Application for Exemptions**

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

ACTION: Notice of final disposition; grant of application for exemptions.

SUMMARY: FMCSA announces its decision to grant the American Concrete Pavement Association, Inc. (ACPA) exemptions from two requirements of the hours-of-service (HOS) regulations for drivers of certain commercial motor vehicles (CMVs): the 30-minute rest break provision; and the requirement that short-haul drivers utilizing the record of duty status (RODS) exception return to their work-reporting location within 12 hours of coming on duty. The first exemption will enable drivers transporting ready-mixed concrete and related materials and equipment in vehicles other than those outfitted with rotating mixer drums, to 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 second exemption will allow these drivers to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours.

DATES: This exemption is applicable **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and expires February 6, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2018-0237” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (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 compliance with 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 (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemptions

ACPA seeks two exemptions for drivers transporting ready-mixed concrete and related materials and equipment from the hours-of-service (HOS) 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii) and the restriction of the record of duty status (RODS) exception for short-haul operations to drivers who return to their normal work-reporting location within 12 hours [49 CFR 395.1(e)(1)(ii)(A)].

ACPA requested the first exemption from the HOS rest break provision to allow drivers transporting ready-mixed concrete and related materials in vehicles other than those outfitted with rotating mixer drums, to 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. According to ACPA, concrete mixtures are extremely perishable, as all steps in the process of a typical mainline paving project are time-critical. Employees must coordinate and direct a complex series of logistical steps, one of the most important elements of which is the delivery of the concrete within a time frame specified by the transportation agency or owner. The concrete is essentially made

to order, then delivered by end-dump trucks so there is a steady and constant delivery of material that keeps pace with the paving equipment. Any issue that delays the well-orchestrated, just-in-time delivery of concrete can result in batches being turned away by inspectors, the paving operation being shut down temporarily, and ultimately, cause time and cost overruns. The criticality of concrete delivery from plant to paving site is arguably one of the most important factors in a paving process, according to ACPA.

ACPA requested the second exemption to allow the same drivers to use the short-haul RODS exception, but with a 14-hour duty period instead of 12 hours. ACPA advises that while some short-haul drivers will be able to take advantage of the exception from the 30-minute break, other drivers are often required to be on duty more than 12 hours in a day and therefore are not eligible to use the short-haul exception.

ACPA pointed out that FMCSA granted drivers of ready-mixed concrete delivery vehicles an exemption from the minimum 30-minute rest break provision (80 FR17819, April 2, 2015).¹ Section 5206(b)(1)(A) of the Fixing America's Surface Transportation Act made that exemption permanent (Pub. L. 114-94, 129 Stat. 1312, 1537, Dec. 4, 2015). Similarly, on January 26, 2018, FMCSA granted an exemption to the National Asphalt Pavement Association (NAPA) for drivers transporting asphalt and related materials and equipment from 1) the 30-minute rest break requirement, and 2) the 12-hour daily on-duty limit on the short-haul exception, which was expanded to 14 hours [83 FR 3864]. ACPA states that the reasoning supporting the NAPA exemption is equally applicable to drivers of ready-mixed concrete vehicles. The ACPA stated that the same reasoning supporting the exemptions from the 30-minute break time rule and allowing a

¹ The hours-of-service regulations define "ready mixed concrete delivery vehicle" to mean "a vehicle designed to deliver ready-mixed concrete on a daily basis and equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site." 49 CFR 395.2.

14-hour daily on-duty period for drivers engaged in the transportation of asphalt and related materials and equipment applies to drivers of ready-mixed concrete vehicles.

ACPA stated that drivers would remain subject to all other HOS regulations and would receive sufficient rest due to the nature of their operations that limit driving to an average of 80-100 miles per day during the paving season. ACPA believes that granting these exemptions would achieve the same level of safety provided by compliance with the two HOS rules. The requested exemptions are for 5 years. A copy of ACPA's application for exemptions is available for review in the docket for this notice.

V. Public Comments

On September 6, 2018, FMCSA published notice of this application and requested public comment (83 FR 45300). The Agency received 29 comments. Nearly all the respondents supported the requested exemptions, including the Associated General Contractors of America (AGC), the American Road and Transportation Builders Association (ARTBA), Koss Construction Company (Koss), trucking companies, and individuals affiliated with the concrete paving industry.

AGC said, "In further recognition of the unique nature of construction operations and its outstanding safety record, Congress in the FAST Act provided the same two exemptions ACPA is seeking to drivers of ready-mixed concrete delivery vehicles. Both are perishable products that are not usable if they are not dropped and spread within a brief delivery window. Because of this short delivery window, the routes from the production facility to the delivery site for both products are limited to less than 40 miles, and the time spent driving a CMV is typically only a few hours per day. Thus, in both cases, the drivers do not face the same fatigue factors as drivers of long-haul trucks, and therefore do not pose the same risk of a fatigue-related accident as long-haul drivers."

ARTBA commented: “Transportation construction industry drivers are not long-haul operators who consistently spend many consecutive hours on the road in a given day. They are short-haul drivers who typically travel less than 20 miles one way. Many of our drivers spend substantial amounts of time off the road during the work day, loading and unloading materials or equipment. Others may be responsible for positioning a piece of mobile equipment at the beginning of the work day, but may not be back behind the wheel until day’s end, so that their daily drive time is actually minimal.”

Koss echoed that comment: “Concrete being delivered to our jobsites is time sensitive and the 30-minute rest period impacts the ability of our drivers to deliver our highly perishable material to the jobsite within the required time frame to meet each owner’s stringent quality requirements. This needless loss of material is frustrating since production and delivery methods create significant rest periods throughout the day for our drivers that exceed the 30-minute DOT rest requirement.... Due to the limited construction season, we must maximize every available hour of daylight. Limiting our drivers to 12 hours of on duty time creates additional cost by carrying extra resources to deploy creative shifts to maximize up time of our fleet.”

One anonymous respondent opposed the requested exemptions. According to this individual, “I ask that the 30-minute break remain a requirement. Further, I ask that the department consider revising the rules so that drivers engaged in physically demanding unloading within a 100-air mile radius are limited to 12 hours on duty rather than 14 or 16.”

VI. FMCSA Decision

FMCSA has evaluated ACPA's application and the public comments and decided to grant the exemptions. The Agency believes that all drivers transporting ready-mixed concrete and related materials and equipment in vehicles other than those outfitted with rotating mixer drums, will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemptions [49 CFR 381.305(a)].

The first exemption from the HOS 30-minute break provision will allow drivers transporting ready-mixed concrete and related materials to 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 second exemption will allow drivers to use the short-haul RODS exception but with a 14-hour duty period instead of the usual 12 hours.

VII. Terms and Conditions for the Exemptions

- Drivers must have a copy of this notice or equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemptions. The exemption document must be presented to law enforcement officials upon request.
- Drivers must return to the work reporting location and be released from work within 14 consecutive hours.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period these exemptions are 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 exemptions.

Notification to FMCSA

Exempt motor carriers must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of its CMVs operating under the terms of the exemptions. The notification must include the following information:

- (a) Name of the exemption: “ACPA”
- (b) Name of the operating motor carrier,
- (c) Date of the accident,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver’s name and license number,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- (k) The driver’s total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

Termination

FMCSA does not believe the drivers covered by these exemptions will experience any deterioration of their safety record.

Interested parties or organizations possessing information that would show that any or all of these motor carriers are not achieving the requisite level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if

safety is being compromised or if the continuation of the exemptions is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemptions of the company or companies and drivers in question.

Issued on: January 30, 2019.

Raymond P. Martinez,
Administrator.

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