



**STATEMENT OF
JEFFREY HINKLE**

**MANAGER OF TRANSPORTATION,
CHANDLER CONCRETE COMPANY, INC.**

**ON BEHALF OF THE
NATIONAL READY MIXED CONCRETE ASSOCIATION**

BEFORE THE

**COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS & TRANSIT**

ON

COMMERCIAL DRIVERS' HOURS OF SERVICE RULES

JUNE 18, 2013

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Chairman Petri, Ranking Member DeFazio and other members of the committee, thank you for this opportunity to share the ready mixed concrete industry's concerns with the new changes to the Federal Hours of Service (HOS) regulations put forth by the Federal Motor Carrier Safety Administration (FMCSA).

My name is Jeff Hinkle, I'm the Manager of Transportation for the Chandler Concrete Company, a family owned and operated ready mixed concrete company based out of Burlington, NC. Chandler Concrete Company was founded in 1946 and currently employs 380 people. We operate 40 ready mixed concrete plants, 256 commercial motor vehicles, deliver 655,000 yards of concrete annually, and have operations in North Carolina, Virginia, and Tennessee.

As well, I am also the former chairman of the National Ready Mixed Concrete Association's (NRMCA) Operations, Environment and Safety Committee Task Group on Operations, and I am the current Vice Chairman of NRMCA's full Operations, Environment and Safety Committee.

The NRMCA, which I'm here on behalf of today, was founded on December 26, 1930, and today represents more than 2,000 member 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 is currently estimated to include more than 70,000 ready mixed concrete trucks.

Background:

In November 1996, the Federal Highway Administration (FHWA) announced its intention to review federal regulations on drivers' HOS by issuing an Advanced Notice of Proposed Rulemaking (ANPRM), thus beginning a twelve year ordeal in revising the regulations, which had remained relatively unchanged since their establishment by the Interstate Commerce Commission in 1937. In May 2000, the FMCSA issued a Notice of Proposed Rulemaking (NPRM) outlining significant and sweeping proposed changes for drivers of all types. Opposition to the proposed changes was immediate and fierce. Not only did the proposal seek to severely diminish the total number of hours drivers could be on-duty, it sought to eliminate the

24-hour clock reset exception enjoyed by the construction and other industries and to eliminate the tolerance guidelines enacted in some states that provide additional flexibility for intrastate drivers. It was immediately evident that, should the regulations included in the NPRM move forward, prices on everything from toothpaste to groceries to concrete would dramatically increase and an already well-documented driver shortage would be exacerbated.

NRMCA took immediate action to defeat the proposed changes and engaged the entire ready mixed concrete industry to take action against the rule. NRMCA members and staff participated in all of the hearings held by the FMCSA throughout the country and submitted comprehensive comments including a recommendation for establishing a construction industry type driver. NRMCA worked in coalitions with several trucking and construction industry groups that ultimately secured congressional support in keeping the proposed regulations from moving forward.

In April 2003, after receiving over 50,000 comments on the proposal, the FMCSA issued a final drivers' HOS rule that is vastly different from the original proposal. Although the ready mixed concrete industry scored significant victories in retaining the 24-hour clock reset exception and intrastate tolerance guidelines, the regulations made several changes to which the ready mixed concrete industry is subject. The regulations were challenged a year later and a second final rule was issued in October 2005 with very minor changes to only the sleeper berth requirements.

In December 2006, public safety advocacy groups challenged the October 2005 rule in the DC Circuit Court of Appeals. In July 2007, the DC Circuit court issued an opinion striking down certain provisions of the 2005 HOS rule because their implementation had not been fully subject to notice and comment. A stay was then filed with the court which was granted for a 90-day period. At the end of the stay in December 2007, the FMCSA issued an interim final rule (IFR) that retained the vacated provisions. FMCSA issued the IFR after they had obtained new data showing that the vacated provisions have actually helped to improve highway safety. NRMCA commented, in April 2008 on the IFR, advocating for the retention of the provisions.

Then, in November 2008, the FMCSA issued a final rule on HOS. The new rule left the regulations unchanged, with all HOS provisions taken advantage of by the ready mixed concrete industry remaining intact.

Following the November 2008 final rule however, public safety advocacy groups again filed their third suit challenging the rule in the DC Circuit Court of Appeals. In response, just one day before FMCSA was scheduled to file its court brief, in October 2009, at the direction of the new Administration, FMCSA entered into an agreement with the public safety advocacy groups to re-review the final rule. FMCSA was given nine months to propose its changes, if any, to the White House and an additional 12 months to issue a new final rule.

In furthering the process of re-reviewing the rule, FMCSA held four listening sessions in January 2010, all of which NRMCA presented comments at. Following the listening sessions, FMCSA published a new proposed HOS rule in December 2010 with suggested changes to the driving window, on-duty time frame, the definition of on-duty, and limits on restarting weekly hour accumulations. FMCSA then held another listening session in February 2011 on the new

proposal, which NRMCA presented at as well. February 2011 also held the due date for comments to be submitted on the rule, which NRMCA submitted. In June 2011 the U.S. House of Representatives Committee on Small Business held a hearing on the new HOS proposal, during which NRMCA provided testimony for an NRMCA member who detailed the erroneous nature of the proposal.

Finally, in December 2011, after missing two court-set dates to finalize a new HOS rule, the FMCSA issued a new final rule on HOS containing drastic changes. Following the rule's finalization, in February 2012, both trucking advocates and public safety advocacy groups filed the fourth law suit against FMCSA and HOS regulations. The groups alleged the rule was over burdensome or didn't go far enough, respectively. The U.S. Court of Appeals for the District of Columbia Circuit heard both groups' arguments in March 2013. Absent a court ruling overturning the December 2011 rule, the new HOS rule changes will go into effect July 1st, 2013.

July 1st changes:

In part, the rule:

- Requires drivers to take a 30-minute break after at most eight consecutive hours; and
- Limits the use of the 34-hour restart provision to just once a week covering "at least two periods between 1 a.m. and 5 a.m."

Looking toward July 1st:

The current HOS regulations our nation's commercial motor vehicles (CMVs) are operating under are not perfect, however they are manageable and much more flexible for operations of the ready mixed concrete industry, than the new impending HOS rule changes.

As with most small businesses, operating a ready mixed concrete company means that you are responsible for everything whether it's ordering inventory, hiring employees, meeting environmental and labor regulations, dealing with an array of mandates from federal, state and local governments, or in the case of HOS, making sure our drivers are compliant with an already complicated and burdensome safety measure while trying to deliver a perishable, just in time, as soon as possible type product. Adding another layer of regulation to this only hinders the ability to run a successful small business, especially during trying economic times.

Chandler Concrete Company, as well as the ready mixed concrete industry, takes issue with a number of the HOS changes slated to go into effect on July 1st. Here's why these changes don't work for the ready mixed concrete industry:

Mandatory break of 30 minutes every 8 consecutive hours:

This new provision is by far the most over burdensome and difficult for the ready mixed concrete industry. Ready mixed concrete drivers typically spend far less than 50% of their on-duty time actually driving (roughly only 2-6 hours per day), the other 50% to 75% is spent at the plant waiting to be dispatched, at the jobsite waiting for the contractor to receive the concrete, unloading concrete, and performing other administrative duties. Companies need to have the flexibility to give breaks as the schedule dictates throughout the day. For example: a concrete delivery often takes more than 2 ½ hours to complete. Concrete is a perishable product needed on a just-in-time basis. Once a delivery is started it must be completed or the concrete may

harden in the truck causing thousands of dollars worth of damage, and potentially violating a delivery contract. Every day is different in the construction field, thus companies need the flexibility to deliver concrete when the customer needs it. Mixer drivers have a flexible start time, where one day they start at 7 a.m. and the next at 12 p.m. Ready mixed concrete deliveries do not happen on a regular 9 a.m. to 5 p.m. schedule, nor do concrete customers always plan deliveries. Often customers order concrete on an “as soon as possible” basis. Another burden associated with the 30-minute rule is attempting to mesh it together with the host of other HOS requirements for intrastate drivers. Many ready mixed concrete operations adhere to different state specific HOS regulations for operations that happen solely within a single state. Trying to reconcile all of these regulations while adding this new piece to the puzzle merely sows confusion and creates a patch work of compliance rules. Further complicating this is the fact that from state enforcement officials, to state departments of transportation, up to the federal government, there is a different practice with recognition of and enforcement of HOS rules. With this impending change, drivers are constantly requiring clarification on exactly when and what regulations will be enforced. As well, by requiring this 30-minute break, which more often than not will be required to be taken as off-duty/non-paid time, this break ultimately keeps drivers away from their families and personal lives longer, and it keeps them away longer with no additional pay. Due to all of these factors, compliance with the 30-minute break is not only arbitrary, capricious and unnecessary; it makes it near impossible to comply with. Compliance with the 30-minute break unfairly affects the effectiveness of delivering ready mixed concrete and the practices of the ready mixed concrete business without improving safety.

Limiting 34-hour restarts of the 60/70 hour clock to once a week:

Weather plays a huge factor in the placement of concrete. Many companies operate on a very busy summer schedule and use a reduced workforce for the winter months. A rainy day will often stop deliveries for an entire day, more than once a week. Many ready mixed concrete drivers use this period to reset their weekly clock more than once in a 7 or 8 day period thus allowing construction schedules to continue when the weather improves. However, this change would eliminate the industry’s current and much needed restart practice which has not had any adverse effects on safety or compliance. Drivers should have the flexibility to restart their weekly clock as they see fit instead of only once per week. Construction schedules fluctuate and companies need the ability to stay compliant with the regulations and still service their customers.

Include at least two periods between 1 a.m. and 5 a.m. within a 34 hour restart period:

Many ready mixed concrete producers, especially those in the southern tier and desert southwest, work exclusively at night during the hot summer months. The cooler temperatures are better for the placement of concrete along with reduced traffic congestion. By mandating a driver’s off-duty time to include at least two consecutive periods between 1 a.m. and 5 a.m. reduces the numbers of hours available to meet construction and delivery schedules to an unacceptable level. Not every work day takes place during daylight hours, making this change overly restrictive.

Hours of Service regulations erroneously use a one-size-fits all method:

Local short-haul operators (SHO), such as ready mixed concrete truck drivers, have not been adequately recognized in the process of establishing regulations that are generally meant for a category of commercial motor vehicle (CMV) drivers other than local SHOs. Ready mixed

concrete truck drivers are truly local short-haul operators, as noted above and in our comments to FMCSA on the original HOS proposal; industry studies show that a concrete mixer driver's average delivery is only 14 miles from the ready mixed concrete plant and drivers are actually only driving about 2 to 6 hours per day. As FMCSA noted in the final HOS rule, such situations make local SHOs not as prone to fatigue and allow for "...frequent non-driving breaks..." This begs the question then, why would local SHOs, such as concrete mixer drivers, be mandated to take a 30-minute break at any point during their shift or be off-duty for two consecutive nights, when FMCSA clearly recognizes the safety and fatigue realities of local SHOs as sufficiently meeting positive safety and fatigue standards? Ready mixed concrete truck drivers take frequent breaks, in fact, in many situations drivers are required to take a break such as resting during meal time, and remain on-duty but not performing any work related tasks. NRMCA recognizes FMCSA's reluctance to address "segment-specific" HOS regulations or accept the "one-size-fits-all" argument, as noted in the final rule; however it is undeniable that there are inherent flaws that exist in the current rule and in the new changes. FMCSA's acknowledgement of SHOs being different from long-haul operators underscores the need to regulate such groups differently. FMCSA affording SHOs exemptions and exceptions in recognition of their difference from long-haulers and then suggesting that such a differentiation is not needed is both confusing and counterintuitive.

The cost to the ready mixed concrete industry:

In August 2011, the Obama Administration, in response to a request from House Speaker John Boehner (R-8-OH), stated that this new HOS rule is among 7 other rules that will cost industry upwards of at least \$1 billion.

The ready mixed concrete industry has estimated industry wide compliance with the HOS rule changes to cost roughly \$268 million in the first year alone. This cost in part, includes driver training, purchasing new technology to monitor and log these new changes, additional administrative expenses, customer complaints, additional fuel, hiring of more drivers to fill the numerous 30-minute gaps that will be created, and buying more equipment for times when a 30-minute break needs to occur away from a ready mixed concrete plant thus tying up necessary equipment.

In conclusion, the easiest, clearest, and most immediate solution to the problems outlined above is to reinstate the pre-December 2011 HOS regulations. The less time ready mixed producers spend having to comply with arbitrary, capricious and unnecessary rules not applicable to the industry, the more time they can spend pouring concrete, employing more workers, and helping to grow America's economy. We should be smart enough to recognize unique industries and how these types of regulations unnecessarily adversely affect them.

Again, thank you for the opportunity to comment on how FMCSA's HOS rule changes will affect the Chandler Concrete Company and the ready mixed concrete industry.

I'd be happy to answer any questions the committee members may have.