

HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
“HIGHWAY TO HEADACHE: FEDERAL REGULATIONS ON THE SMALL TRUCKING
INDUSTRY”

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Chairman Chabot, Ranking Member Velazquez, and Members of the Small Business Committee, thank you for the invitation to join you today to discuss the impact of federal regulations on the small trucking industry.

I am testifying today on behalf of the National Ready Mixed Concrete Association, which represents an industry with more than 2,250 companies and subsidiaries and employs more than 135,000 American workers who manufacture and deliver ready mixed concrete. While the Association represents both national and multinational companies that operate in every congressional district in the United States, roughly 85 percent all ready mixed concrete companies are family-owned and operated small businesses. The industry includes more than 70,000 ready mixed concrete trucks and of 6,000 ready mixed concrete plants.

Ready mixed concrete companies produce a construction material vital to our built environment. From roads to 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 course aggregates, cement and water. In 2016 alone, the ready mixed concrete industry is estimated to have produced more than 342 million cubic yards of ready mixed concrete, representing a value in excess of \$35 billion. Virtually every construction project in America uses at least some ready mixed concrete.

Once ready mixed concrete is loaded into a truck, it must be poured within 60 to 90 minutes, or it will harden and render the truck useless. The perishable nature of our product means that our industry is intensely local, and deliveries are often made just miles from the closest plant. As a result, ready mixed concrete delivery vehicles typically travel very short distances before offloading their product.

Because of the uniqueness of our product, and, consequently, our industry, the ready mixed concrete industry is often adversely impacted by federal trucking regulations intended to apply to the trucking industry more broadly, both because of the differences in industry and because of the differences in the size of our companies. While large companies can more easily muster the resources necessary to keep up, understand and comply with federal regulations, small companies are disproportionately affected by these regulations.

Regulations should not be one-size-fits-all, because it is rarely the case that one size does in fact fit all. The small trucking industry and industries it supports are examples of the potential for the adverse effects of unintended consequences to small businesses.

Electronic Logging Device

One of the most obvious examples of this is the mandate that all commercial motor vehicles (CMV) be equipped with electronic logging devices (ELD) for House of Service (HOS) compliance. In a rule finalized December 16, 2015 by the Federal Motor Carrier Safety Administration (FMCSA), all CMVs will be required to install and operate ELDs.

While NRMCA appreciates FMCSA's recognition of the difference between short-haulers and long-haulers in the final rule, the rule complicates compliance with the ELD mandate. The rule states that short-haulers (those that can take advantage of the 100 air-mile logging exemption) will not be required to purchase, install and use ELDs. However, there is a caveat to the provision. The rule states that if a short-haul operator, not using an ELD, ends up coming out of compliance with the 100 air-mile logging exemption, and thus needs to fill out a record of duty status retroactively for that day, this occurrence (logging) can only be allowed "8 days in any 30-day period", after which that driver will need to use an ELD.

This is unachievable in the ready mixed concrete industry. Often, there are large construction jobs that occur throughout the year, particularly during busy months, that necessitate mixer drivers working longer days and needing to fill out a record of duty status daily during until the job or the busy period settle down. Under the rule, mixer drivers will be required to find the resources, make the investment to install the ELD and undergo training to comply with the ELD mandate for a brief period of time each year. The effect of this provision on the ready mixed concrete industry will be overly burdensome, both logistically and financially.

The rule fails to take into account the industry specific circumstances of ready mixed concrete truck drivers. Ready mixed concrete delivery drivers typically only drive an average of 14 miles from a concrete plant, drive only 4-6 hours per day, start and end at the same location, are routinely released from duty within 12 hours from the start of their shift, spend 60% of their on-duty time engaged in non-strenuous, non-driving related activities, and are not subject to fatigue inducing situations that long-haul drivers often experience.

The mandated use of ELDs in CMVs is to ensure HOS compliance. As noted above, due to the working conditions of mixer drivers and the exemptions/exceptions to HOS compliance that are provided, making use of ELDs by mixer drivers is a technical inapplicability. ELDs cannot accurately determine HOS compliance since mixer drivers are only in the CMV or driving a small amount of the time they're on-duty. In the case of the 100 air-mile exemption, mixer drivers and their employers only have to keep records of when the drivers started and ended their shifts, not a log of each individual duty status. Requiring a mixer driver to use ELDs cannot practically determine HOS compliance or productivity.

Further complicating the issue, is the application of the 100 air-mile logging exemption to the ready mixed concrete industry and the industry-specific change to the 100 air-mile logging exemption. Currently, the threshold for ready mixed concrete truck drivers on-duty time is 14 hours, instead of the standard 12 hours, as detailed in Title 49 of the Code of Federal

Regulations, Section 395.1(e)(1)¹. This change, which was brought about by the passage of the 2015 *Fixing America's Surface Transportation Act (FAST Act)*², brings the on-duty threshold of the 100 air-mile logging exemption for ready mixed drivers in line with the 14-hour driving window³. What this means is that drivers of ready mixed concrete delivery vehicles are only required to install and use ELDs once a driver has worked beyond 14 hours more than 8 days in any 30-day period. This change, however, now creates the scenario where needing ELDs wouldn't be required until a period where a mixer driver can no longer even operate a CMV. The one-size-fits-all approach to the ELD mandate will result in ready mixed drivers using ELDs year round, regardless of whether the rule applies.

The underlying issue remains the penchant for federal regulations to be crafted in a one-size-fits-all manner. Because of the significant differences between industries impacted by this mandate, NRMCA strongly believes that the December 17, 2017 ELD effective date should be placed on hold until the rule can be comprehensively reviewed by FMCSA to determine the unforeseen, adverse impacts to the numerous unique trucking industry facets, including the ready mixed concrete industry.

Phase 2

A second regulation impacting the small trucking industry and by extension industries like the ready mixed concrete industry is a regulation commonly referred to as "Phase 2." On October 25, 2016, the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) finalized a joint rule titled, "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2."⁴

Among the issues related to Phase 2 that impact the small trucking industry are the added costs, technology sufficiency and suitability, and impacts on heavy-duty, class 8, straight truck weight challenges. Currently, the vast majority (98 percent) of American ready mixed concrete markets employ single-unit concrete mixer trucks operating on between 2- to 7-axels⁵ to deliver ready mixed concrete to its point of placement. Under this regulation, these trucks would fit into the definition of vocational, heavy-duty, class 8 trucks.

NRMCA supports maintaining the flexibility of ready mixed concrete producers to utilize their already purchased assets to their fullest capacity, such as with "glider kits". To this end, NRMCA opposes the rule's suggestion to require glider kits contain Phase 2 compliant engines. Continuing to allow ready mixed concrete producers the opportunity to utilize refurbished trucks, truck parts and engines is an entrepreneurial inventiveness affording industry members economic and productivity advantages and competitiveness. Changing the current glider kit system will undoubtedly cause undue harm and hardship for many ready mixed concrete companies that base their business model on glider kits instead of purchasing brand new trucks.

¹ 49 CFR 396.1(e)(1)

² Public Law 114-94

³ 49 CFR 395.3(a)(2)

⁴ 81 *Federal Register* 73478

⁵ NRMCA, 2017 Fleet Benchmarking Survey

Depending on the current glider kit system, it serves as an unnecessary coercion on market forces that alone will inevitably pressure the phase out of pre-Phase 2 engines. Requiring glider kits to be Phase 2 compliant would be redundant, unnecessary, and unfairly expeditious on the ready mixed concrete industry.

Furthermore, NRMCA would like to highlight comments reported on that were made by Matthew Spears, executive director of EPA's Heavy-Duty Diesel Program at a past session of the American Trucking Association's Technology & Maintenance Council (September 22, 2015), in which he noted that the Phase 2 program changes to glider kits may be left alone when applied to concrete mixer truck chassis. In the final rule, this notion was not reflected. NRMCA would very much support such a carve out for ready mixed concrete trucks. As much, mixer trucks do fall in line with any criteria that would exclude their coverage based on low-mileage and/or vocational use.

In the rule, NHTSA and EPA suggest weight reduction as a viable method to meet the proposal's requirements. While NRMCA does not disagree with this approach, NRMCA objects to its feasibility as applied to ready mixed concrete trucks. Due to the reality of the necessary configuration of trucks hauling ready mixed concrete, combined with current regulations from numerous other U.S. regulatory bodies, weight poses a unique and continuing challenge to the industry.

The necessity for manufacturing ready mixed concrete trucks with the lowest possible weight has existed as a market force since the inception of the federal bridge formula for truck weight restrictions on federal-aid highways. Manufacturing a light-weight mixer truck that meets all regulatory compliance thresholds and can still haul a full load remains a constant challenge of innovation and creativity.

The rule makes assumptions about heavy-duty truck weights in order to make suggestions about how weight reduction can be applied to meeting the rule's requirements. These assumptions, in the case of ready mixed concrete trucks, are incorrect and miss the reality of a mixer truck's true tare and payload weights by thousands of pounds. For example, the maximum weight allowed on federal-aid highways is 80,000 lbs. spread over a calculated number of axles. However, due to structural design and specialized equipment installed on mixer trucks for handling such a heavy payload, under federal weight limits a typical ready mixed concrete truck ends up weighing considerably less than the allowable threshold. The realities of truck weight regulations leave little extra room for carrying payload. According to NHTSA's and EPA's assumptions, these tolerances are roughly 3,000 to 6,000 lbs. lighter than what is true for mixer truck weights.

In addition to the federal weight tolerances, structural designs and necessary specialized industry equipment, along with previous emission regulation requirements that have added weight to mixer trucks, the overall acceptable weight of mixer trucks has reached its limit. Not to mention, this current weight of mixer trucks includes and takes into account the weight changes needed to comply with Phase 1 and all of the alternative material suggestions mentioned in the Phase 2 rule. All of these weight considerations have pushed ready mixed concrete producers to running mixer trucks, in many cases, with a .002% margin of weight threshold. Meaning, under such

weight conditions, a truck merely getting too dirty will put it over legal weight limits and risk non-compliance.

Furthermore, the nature of hauling and delivering ready mixed concrete gives way to various driving conditions, road conditions, weather conditions and construction site conditions. Due to such realities, mixer trucks are designed to meet this inevitable rough-and-tough wear-and-tear atmosphere. Such a design requires materials that can handle these stresses and keep trucks moving; these materials invariably add weight to a ready mixed concrete truck.

Many of the methods NHTSA and EPA suggest in both Phase I and Phase II for complying with the rule are already being implemented by the industry, and numerous other suggestions in Phase II are simply not practical for mixer trucks, leaving technology that has yet to be invented or perfected the method the industry most likely will have left at its disposal for complying with Phase II. To this end, NRMCA recommends that NHTSA abandon this non-attainable rule in its entirety. Short of full repeal of the final rule, instead of pushing weight reductions, NRMCA advocates for increased weight tolerances in amounts large enough to offset the weights of new equipment and technology that will be employed for compliance with Phase II. NRMCA would like to remind NHTSA that such a precedent already exists for auxiliary power units and idling-reduction technology in many states.

NRMCA believes the Phase 2 rule is unduly burdensome and should better take into account cost and technology implications on downstream purchasers of heavy-duty trucks. As well, the new mandates for glider kits should not cover low-mileage, vocational trucks such as concrete mixer truck.

The consequence of adding more weight to mixer trucks for Phase 2 compliance results in achieving the opposite goal of Phase 2. Simply put, if the industry is forced to reduce payload to meet low weight tolerances, the industry will then be forced to use more trucks, making more trips to deliver the same amount of ready mixed concrete. More trips mean increased emissions, increased fuel consumption, more trucks sitting in traffic, and longer hours for industry drivers.

Truck Weights

A third set of federal regulations that adversely impact the small trucking industry and small businesses that rely on it is the confusing, frustrating rules regarding truck weights. We have long advocated that federal truck weight regulations be updated to increase gross weights limits on the Eisenhower Interstate System (EIS). Research shows that increased weight limits would alleviate traffic congestion, increase safety, save millions of dollars annually on pavement and bridge maintenance and increase the productivity of large trucks used by businesses in the small trucking industry, such as ready mixed concrete trucks.

In 1956 Congress passed legislation aimed at protecting the pavement and bridges on the EIS. Those protections came in the form of axle and gross weight limits. The federal law also authorized states to allow operation on the EIS beyond the specified limits, but only if operation was legal in the state prior to July 1, 1956. In response to energy use concerns, the Federal Aid Highway Amendments of 1974 increased the weight limits to allow larger and heavier trucks to utilize the EIS. As a balance to this concession, Congress created the Federal Bridge Formula

(FBF), which limits the size and weight of trucks by calculating the gross weight over the spacing and number of axles; the heavier the weight, the greater the required spacing between axles.

Federal weight limits⁶ are set at 20,000 lbs. for a single axle, 34,000 lbs. for tandem axles, and 80,000 lbs. gross weight. In addition, the current FBF is overly cautious and no practical basis is given for the overstress criteria used to limit weights and configurations. These limits are the most restrictive of any developed nation. By comparison, though comparable U.S. trucks are limited to a maximum 80,000 lbs., the maximum weight for a six-axle truck in Canada is 95,900 lbs., in Mexico it is 106,920 lbs., and the European Commission has set the limit at 97,000 lbs.

Ready mixed concrete trucks are heavy duty trucks and have relatively heavy empty (or tare) weights due to the nature of the work they must perform. This is attributed to structural design and specialized equipment installed on the vehicle for handling the load. Due to the relatively heavy weight of the empty vehicle, the limits imposed by federal weight laws, especially the FBF, leave little extra weight for carrying payload. As well, the majority of ready mixed concrete trucks have only three or four axels to maximize maneuverability for on- and off-road use, and to deliver product under often challenging circumstances. For example, (not including states with higher grandfathered weight tolerances) under federal weight limits a three-axle ready mixed concrete truck could weigh a maximum of 48,000 lbs. Only 18,000 lbs. (out of a potential 40,000 lbs. in the mixer drum) would be the productive payload, since approximately 30,000 lbs. is the tare weight of the truck.

As a result, federal weight laws essentially force fully loaded ready mixed concrete trucks off the EIS and onto local and state roads that are generally built to lower standards. While this congestion, makes for potentially unsafe driving conditions, and prematurely degrades secondary roadways, it also impacts the small trucking industry by drastically cutting efficiency and requiring extra miles to be traveled to deliver the product, resulting in increased fuel use and costs. Since ready mixed concrete trucks typically only travel a distance of 14 miles from their reporting plant, and average less than four miles per gallon, these realities are both a product of and exacerbated by the current federal truck weight laws.

Increasing federal truck weight limits will allow ready mixed concrete trucks to be more productive, will help reduce congestion and will also tend to decrease greenhouse gas emissions through reduced fuel consumption. This in turn helps achieve greater sustainability within the transportation and construction industry sectors through annual reductions of CO₂ and other greenhouse gas emissions. Addressing federal truck weight regulations will provide relief to the small trucking industry and benefits for the environment.

Sleep Apnea

The first set of proposed regulations that would adversely impact the small trucking industry and small businesses like ready mixed concrete companies, is a regulation related to evaluation of truck drivers for sleep apnea. On March 10, 2016, FMCSA and Federal Railroad Administration

⁶ 23 CFR 658.17

(FRA) published a joint advanced notice of proposed rulemaking (ANPRM) titled “Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea”⁷ (OSA).

Currently, the vast majority (98%) of American ready mixed concrete markets employ single-unit concrete mixer trucks operating on 2- to 7-axels⁸ to deliver ready mixed concrete to its point of placement. As noted, the average one-way distance a ready mixed concrete truck travels for a delivery is roughly 14 miles away from the ready mixed concrete plant and concrete mixer truck drivers spend less than 50% of their total on-duty time actually driving. Due to the perishable nature of ready mixed concrete⁹ and the distance traveled, the time a driver spends behind the wheel is extremely limited. Consequently, mixer truck drivers are strictly short-haul operators and not subject to certain fatigue inducing circumstances that exist for long-haul operators and other types of CMV drivers.

As NRMCA previously testified at the May 25, 2016 OSA listening session in Los Angeles, CA¹⁰, NRMCA believes it is important to again, reiterate that many different factors can lead to fatigue beyond OSA, and many different factors can lead to crashes involving large trucks beyond OSA.

In a survey of NRMCA’s membership covering all geographic regions of the country and involving all sizes of businesses, NRMCA found that medical insurance coverage for OSA testing, treatment and required equipment is severely limited and would result in out-of-pocket costs to drivers and small businesses of between \$1,000 and \$3,000 annually per driver. Write-in responses to the same survey indicated costs as high as \$12,000 to \$15,000.

The financial burden associated with this proposed regulation may dissuade drivers from the small trucking industry or from working for small businesses, potentially exacerbating the driver shortage currently stalking the industry. Within the ready mixed concrete industry alone, as the economy continues to grow, firms have had to refuse business simply because they do not have enough drivers to handle the workload. Prospective drivers that may want to enter this profession, under a new rule, would likely be faced with having to cover certified medical examiner costs, testing costs and treatment out of their own pocket before being employed and likely even before being considered for employment.

Speed Limiters

The second proposed regulation that would adversely affect the small trucking industry that I would like to draw your attention to relates to speed limiters. On September 7, 2016, the Federal Motor Carrier Safety Administration (FMCSA) and National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (proposal) titled “Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices”¹¹.

⁷ 81 *Federal Register* 12642

⁸ NRMCA, 2017 Fleet Benchmarking Survey

⁹ American Society for Testing and Materials, Standard C94, 2016

¹⁰ 81 *Federal Register* 25366

¹¹ 81 *Federal Register* 61941

Regardless of the merit of the proposed regulation, it highlights again the failure of the one-size fits-all mentality to account for the very real differences between and variances within industries. While there are real concerns about the unsafe environment that may be created on our nation's roadways by the potential of a speed differential between large trucks travelling slower than the smaller, faster motoring public, the rule as applied to the ready mixed concrete industry is unnecessary and would impose a burden disproportionate its benefits.

Ready mixed concrete mixer truck drivers do not often reach the three speed limits listed as potential thresholds in the proposal (60 miles per hour, 65 and 68). Industry experience suggests that crashes within the industry generally occur at lower speeds and regularly do not involve other vehicles, making such a regulation when applied to the ready mixed concrete industry unlikely to increase safety on our nation's roadways for the industry and the motoring public, while imposing a disproportionately high burden on the small trucking industry and the small businesses in related industries, including the ready mixed concrete industry.

In conclusion, I would like to thank the Committee for the opportunity to discuss federal regulations adversely impacting the small trucking industry. The regulations addressed in this testimony are representative of a one size fits all approach to trucking regulations. NRMCA urges this Committee and federal regulators to carefully weigh the implications for regulations to all industries, including the small trucking industry and those associated with it like the ready mixed concrete industry, as well as consider the disproportionate weight of compliance on small businesses.

I look forward to the testimony presented by my fellow panelists and taking any questions you may have regarding my own.

Thank you.