



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0370]

Hours of Service of Drivers: U.S. Department of Energy (DOE); Application for Exemption

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

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

SUMMARY: FMCSA announces its decision to grant the U.S. Department of Energy (DOE) an exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle drivers. The exemption would enable DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exempted drivers would be allowed to use 30 minutes or more of "attendance time" to meet the HOS rest break requirements providing they do not perform any other work during the break.

DATES: This exemption is effective from July 1, 2013 through June 30, 2015.

FOR FURTHER INFORMATION CONTACT:

Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail:

MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

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

Request for Exemption

Certain motor carriers under contract to the U.S. Department of Energy (DOE) transport security-sensitive radioactive materials. DOE notes that the term includes transuranic waste; spent nuclear fuel; radioactive sources classified as category 1 and 2 materials by the International Atomic Energy Agency, including “Highway route controlled quantities,” as defined in 49 CFR 173.403; or known radionuclides in forms listed as RAM-QC by the Nuclear Regulatory Commission.

DOE requests a limited exemption from the hours-of-service (HOS) regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)], to allow contract driver-employees transporting security-sensitive radioactive materials to be treated the same as drivers

transporting explosives, as provided in § 395.1(q). Section 395.1(q) states that operators of commercial motor vehicles (CMVs) carrying Division 1.1, 1.2, or 1.3 explosives subject to the requirement for a minimum 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of “attendance time” to meet the requirement for a rest break. Compliance with § 395.3(a)(3) is required by July 1, 2013.

DOE contends that shipments of security-sensitive radioactive materials require a team of two drivers and the use of a sleeper berth to minimize risk and expedite delivery in a safe and secure manner. DOE asserts that granting the exemption would allow team drivers to manage their en route rest periods efficiently and also perform mandated shipment security surveillance, resulting in a safe and secure driving performance during a long distance trip.

DOE states that it has instituted several technical and administrative controls to ensure the effective use of driver on-duty and rest-break time, which would remain in effect under the requested exemption. They include the following:

- R
real-time tracking and monitoring of transuranic waste and security-sensitive shipments using DOE’s satellite-based systems.
- U
use of electronic on-board recorders on trucks, which is contractually required for motor carriers involved in the Waste Isolation Pilot Plant to ensure compliance with driver HOS rules.
- C
continuous monitoring of the safety performance of DOE-qualified motor carriers

using the FMCSA Compliance Safety Accountability Program's Safety Measurement System, and DOE's Motor Carrier Evaluation Program.

Further details regarding DOE's safety controls can be found in its application for exemption, which can be accessed in the docket identified at the beginning of this notice. DOE contends that these controls enable it to achieve a high level of safety and security for transportation of security-sensitive radioactive materials.

DOE anticipates no safety impacts from this exemption and notes that in the preamble to the FMCSA final rule on the "Hours of Service of Drivers," dated December 27, 2011 (76 FR 81134), the Agency addressed concerns from commenters regarding rest breaks for carriers of hazardous materials. Section 395.1(q) allows drivers who are required by § 397.5 to attend a motor vehicle transporting certain types of explosives but perform no other work, to log at least a half-hour of their attendance time toward the break. The Agency cited a recent study showing that on-duty breaks reduce the risk of crashes after the break (76 FR 81154).

DOE believes that its contract employee drivers should be allowed to follow the requirements in § 395.1(q) when transporting shipments of security-sensitive radioactive materials. DOE believes that shipments made under the requested exemption would achieve a level of safety and security that is at least equivalent to that which would be obtained by following the normal break requirement in § 395.3(a)(3)(ii).

DOE estimates that 30 power units and 53 drivers would currently be eligible for the exemption, if granted. The proposed exemption would be effective from July 1, 2013 through June 30, 2015, the maximum period allowed by § 381.300. A copy of DOE's exemption application is available for review in the docket for this notice.

Public Comments

On January 13, 2013, FMCSA published notice of this application, and asked for public comment (78 FR 2711). Three comments were submitted. One individual opposed the exemption without stating a reason. Another individual also opposed the exemption, stating that if truck drivers who are not working for a Federal agency must observe the rule, then those who are working for a Federal agency should also be required to observe it. The Commercial Vehicle Safety Alliance (CVSA) also commented. Its members include representatives of Federal, State and local governments, as well as representatives of private industry. CVSA commented briefly that it did not oppose or support the exemption. Comments are available for review in the docket for this notice.

FMCSA Response

The DOE did not base its request for an exemption on its status as a Federal agency. Rather, it provided the same justification for the request that would be required of any non-governmental agency.

FMCSA Decision

The FMCSA has evaluated DOE's application for exemption and the public comments. The Agency believes that DOE will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)].

Terms of the Exemption

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3 (a)(3)(ii) is granted for the period from 12:01 a.m. , July 1, 2013, through 11:59 p.m. on June 30, 2015.

Extent of the Exemption

The exemption is restricted to DOE’s contract driver-employees transporting security-sensitive radioactive materials. This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii) to allow contract driver-employees transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives, as provided in § 395.1(q). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is 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 exemption.

Notification to FMCSA

The DOE must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s CMVs operating under the terms of this exemption. The notification must include the following information:

- a. D
ate of the accident,
- b. C
ity or town, and State, in which the accident occurred, or closest to the
accident scene,

- | | | |
|----|--|---|
| c. | river's name and driver's license number and State of issuance | D |
| d. | ehicle number and State license plate number, | V |
| e. | umber of individuals suffering physical injury, | N |
| f. | umber of fatalities, | N |
| g. | he police-reported cause of the accident, | T |
| h. | hether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and | W |
| i. | he driver's total driving time and total on-duty time period prior to the accident. | T |

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

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: May 22, 2013

Anne S. Ferro,
Administrator

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05/31/2013]**