



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[FMCSA-2013-0283]

49 CFR Part 395

Hours of Service; Limited 90-Day Waiver from the 30-Minute Rest Break Requirement for the Transportation of Livestock

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

ACTION: Notice; grant of waiver.

SUMMARY: FMCSA grants a limited 90-day waiver from the 30-minute rest break provision of the Federal hours-of-service (HOS) regulations for the transportation of livestock. Several associations representing various segments of the livestock industry raised concerns about the risks to the health of animals from rising temperatures inside livestock trucks during drivers' mandatory 30-minute break, especially in light of long-range weather forecasts for above-normal temperatures for July, August and September 2013. The industry requested relief, and the Agency has determined that it is appropriate to grant a limited 90-day waiver for this period to ensure the well-being of the Nation's livestock during interstate transportation. The Agency has determined that the waiver, based on the terms and conditions imposed, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such waiver. This waiver preempts inconsistent State and local requirements.

DATES: The waiver is effective (INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER). The waiver expires on (INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. E-mail: MCPSD@dot.gov. Phone (202) 366-4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under section 31136 or chapter 313 of title 49, United States Code, to a person(s) seeking regulatory relief. (49 U.S.C. 31136, 31315(a)) The Secretary must make a determination that the waiver is in the public interest, and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may only be granted to a person for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule included several changes to the HOS regulations

including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive only if 8 hours or less have passed since the end of the driver's last off-duty period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty period of that length or longer to take that break. Drivers that already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

National Pork Producers Council Waiver Request

On June 19, 2013, FMCSA received a request for a 90-day waiver and application for an exemption from the National Pork Producers Council (the Council) on behalf of the following organizations:

- Agricultural and Food Transporters Conference of the American Trucking Associations;
- American Farm Bureau Federation;
- American Feed Industry Association;
- American Meat Institute;
- Livestock Marketing Association;
- National Cattlemen's Beef Association;
- National Chicken Council;
- National Milk Producers Federation;
- National Pork Producers Council;
- National Turkey Federation;

- North American Meat Association;
- Professional Rodeo Cowboys Association; and,
- U.S. Poultry and Egg Association.

The Council stated that complying with the 30-minute rest break rule will cause livestock producers and their drivers irreparable harm, place the health and welfare of the livestock at risk, and provide no apparent benefit to public safety, while forcing the livestock industry and their drivers to choose between the humane handling of animals or compliance with the rule.

The Council explained that the process of transporting livestock, whether to slaughter, transfer of ownership, or for purposes of breeding or simply finding forage for feed, is a significant concern to the agricultural industry. The animals face a variety of stresses including temperature, humidity, and weather conditions.

During the summer months, exposure to heat is one of the greatest concerns in maintaining the animals' well-being. This is especially challenging for the transportation of pigs because these animals do not sweat and are subject to heat stress. When heat stress occurs, a pig's body temperature rises to a level that it cannot control through its normal panting mechanisms. Under the industry's guidelines, drivers are directed to avoid stopping in temperatures greater than 80 degrees. Drivers are advised to stop only when animals will be immediately unloaded or when safety becomes an issue. If the vehicle must be stopped, drivers are required to stay with the animals and provide them with water to help keep them cool.

When temperature and humidity result in a heat index greater than or equal to 100 degrees Fahrenheit, cattle are also placed at significant health risk. When cattle are stressed under extreme heat conditions, they are more likely to become non-ambulatory,

sick, and even die. Non-ambulatory cattle are banned from entering the food system. Current industry guidelines recommend that drivers avoid stopping as internal trailer temperatures will then increase rapidly because of the loss of airflow through the trailer and heat production from the animals. A copy of the Council's waiver request is included in the docket referenced at the beginning of this notice.

Long-Range Weather Forecasts

The FMCSA reviewed information from the National Oceanic and Atmospheric Administration's National Weather Service (NOAA). The NOAA posts long-range weather forecasts at its website, <http://www.nws.noaa.gov>. NOAA forecasts for the Western half of the United States for July, August and September predict above normal temperatures. Above normal temperatures are also forecast for the northeastern part of the Nation as well as the southern half of Florida. FMCSA believes the weather forecasts increase the need to protect livestock during transportation this summer.

Population of Drivers and Carriers Engaged in Livestock Transportation

Although the Council did not provide information on the number of carriers and drivers to be included in the waiver it requested, FMCSA reviewed its Motor Carrier Management Information System (MCMIS) to determine this information. MCMIS includes the information reported to the Agency by carriers submitting the Motor Carrier Identification Report (FMCSA Form MCS-150), required by 49 CFR 390.19. As of July 3, 2013, MCMIS lists 64,892 motor carriers that identified livestock as a type (though not necessarily the only type) of cargo they transported. These carriers operate 187,606 vehicles and employ 242,676 drivers. And 126,471 of these drivers operate within a 100 air-mile radius of their work-reporting location – a fact that is important because existing statutory exemptions provide relief from the HOS requirements for these drivers. A final

rule published on March 14, 2013, extended the 100 air-mile radius previously in effect to 150 air miles (see 49 CFR 395.1(k), 78 FR 16189). Therefore, the waiver would not be applicable to them, leaving fewer than 116,205 drivers likely to utilize this relief from the 30-minute rest break provision.

Section 345 of the National Highway System Designation Act of 1995 (the NHS Act) (Pub. L. 104-69, 109 Stat. 613), enacted on November 28, 1995, implemented by 49 CFR 395.1(k), provided relief from the HOS requirements for drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if “the transportation is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies and is during the planting and harvesting seasons within such State, as determined by the State.”

Section 32101(d) of “Moving Ahead for Progress in the 21st Century Act” (MAP-21) (Pub. L. 112-141, 126 Stat. 405), enacted on July 6, 2012, expanded that 100 air-mile radius provided by the NHS Act to 150 air miles; FMCSA implemented the provision with a final rule published on March 14, 2013 (78 FR 16189).

In addition, section 32934 of MAP-21 provides statutory exemptions from most of the FMCSRs, including those pertaining to HOS, the commercial driver’s license and driver qualification requirements, for drivers of “covered farm vehicles” (CFVs), a term defined in detail by MAP-21. Among other things, CFV drivers must be owners or operators of farms or ranches, or their employees or family members; for-hire motor carriers are not eligible for the exemptions provided by section 32934. These exemptions are explained in the March 14, 2013, final rule mentioned above.

Analysis of Fatal Crashes Involving Carriers Transporting Livestock

FMCSA reviewed “Trucks Involved in Fatal Accidents Factbook 2008” (UMTRI-2011-15, March 2011) published by the University of Michigan Transportation Research Institute’s Center for National Truck and Bus Statistics to determine the prevalence of crashes involving the transportation of livestock. A copy of this publication is included in the docket referenced at the beginning of this notice.

In 2008, there were 4,352 trucks involved in fatal crashes and 20 of those vehicles were transporting live animals, with 13 of the vehicles reported as having a livestock cargo body. There were 13 other vehicles with an empty livestock cargo body involved in fatal crashes. Overall, trucks transporting live animals represent less than one half of one percent of the trucks involved in fatal crashes.

The Trucks Involved in Fatal Accidents (TIFA) report showed that 26 livestock cargo body vehicles, all of them tractor-semitrailer combinations, were involved in fatal crashes. Of that number, 13 livestock vehicles were transporting live animals at the time of the crash. Seven instances of vehicles transporting live animals being at the time of the fatal crash involved CMVs with a body type reported as something other than livestock, based on the information above.

About one-third of the 2008 crashes involving livestock transporters occurred on trips of 100 miles or less so the driver probably was exempt from the HOS requirements. With the recent expansion of the HOS exemption from 100 air-miles to 150 air-miles, any crashes that occur in the future are even more likely to occur within the exempt radius.

Fatal Truck Involvements by Trip Type and Livestock Cargo Body Type

Trip Type (Distance in Miles)	Cargo body: Livestock, Tractor Combination	Statutory Exemption from HOS Rules (< 150 miles)
Local	3	Yes.
51-100	2	Yes.
101-150	3	Yes.
151-200	3	No. Drivers may be able to achieve compliance with the 30-minute break requirement because of limited distance.
201-500	10	No.
>500 miles	4	No.
Unknown	1	Unknown.
Total	26	—

Given this information, FMCSA does not believe a limited 90-day waiver from the 30-minute rest break requirement would decrease the level of safety on the Nation’s highways.

FMCSA Determination

In consideration of the above, FMCSA has determined that it is in the public interest to provide a limited waiver from the 30-minute break requirement in the Federal HOS regulations for interstate motor carriers transporting livestock. A review of the most recent MCMIS and TIFA data provides a basis for determining that a limited waiver, based on the terms and conditions imposed, would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

Terms and Conditions of the Waiver

The FMCSA provides a limited 90-day waiver from the 30-minute break provision of the HOS rules for drivers transporting livestock as defined in the Emergency Livestock Feed Assistance Act of 1988, as amended (the 1988 Act) [7 U.S.C. 1471(2)]. The term “livestock” as used in this waiver means “cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring, or are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Act].”

The waiver is further limited to motor carriers that have a “satisfactory” safety rating or are “unrated;” motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from utilizing this waiver.

Safety Rating

Motor carriers that have received compliance reviews are required to have a “satisfactory” rating. The compliance review is an on-site examination of a motor carrier’s operations, including records on drivers’ hours of service, maintenance and inspection, driver qualification, commercial driver’s license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The assignment of a “satisfactory” rating means the motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are appropriate for the size and type of operation of the motor carrier.

The FMCSA will also allow “unrated” carriers to take advantage of the waiver. Unrated motor carriers are those that have not received a compliance review. It would be unfair to exclude such carriers simply because they were not selected by for a compliance review, especially since carriers are prioritized for compliance reviews on the basis of known safety deficiencies.

The Agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate that the carrier has safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions of the waiver.

Accident Reporting Requirement

Within 10 business days following an accident (as defined in 49 CFR 390.5), irrespective of whether the CMV was being operated under the this waiver, the motor carrier must submit the following information:

- a) Date of the accident;
- b) City or town in which the accident occurred, or city or town closest to the scene of the accident;
- c) Driver’s name and license number;
- d) Vehicle number and State license number;
- e) Number of injuries;
- f) Number of fatalities;
- g) The police-reported cause of the accident;

h) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge; and

i) Whether the driver was operating under the waiver, and if so, an estimate of the total on-duty and driving time between the last break of at least 15 minutes and the accident.

Duration of the Waiver

The waiver is effective upon publication in the Federal Register and is valid until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless revoked earlier by the FMCSA. The exemption preempts inconsistent State or local requirements.

Safety Oversight of Carriers Operating Under the Waiver

The FMCSA expects that any motor carrier operating under the terms and conditions of the waiver will maintain its safety record. However, should any deterioration occur, the FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Use of the waiver is voluntary, and the FMCSA will immediately revoke the waiver for any interstate motor carrier or driver for failure to comply with the terms and conditions of the waiver

Issued on: July 5, 2013

Anne S. Ferro
Administrator

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