



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2013-0275]**

**Hours of Service of Drivers: U.S. Department of Defense (DOD); Application for Renewal of Exemption**

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

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from the U.S.

Department of Defense (DOD) Military Surface Deployment and Distribution Command (SDDC) for a renewal of its exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. SDDC currently holds an exemption for the period October 22, 2013, through October 21, 2015. The exemption renewal would allow these drivers to use 30 minutes or more of attendance time to meet the HOS rest break requirements, provided they do not perform any other work during the break. FMCSA requests public comment on SDDC's application for renewal of the exemption.

**DATES:** If granted, this exemption would be effective from October 22, 2015, through October 21, 2017. Comments must be received on or before [INSERT DATE 30 DAYS

PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2013-0275 using any of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as

described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice contact Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**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 Renewal**

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its HOS regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS regulations including a new provision requiring drivers to take a rest break of at least 30 minutes during the work day under certain circumstances.

FMCSA did not specify when drivers must take the break, but the rule requires that they wait no longer than 8 hours after the last off-duty period of 30 minutes or more to take it if they want to drive a CMV. Drivers who already take shorter breaks during the work day could comply with the rule by extending one of those breaks to 30 minutes. The new requirement took effect on July 1, 2013.

The SDDC manages the motor carrier industry contracts for the DOD. Certain motor carriers under contract to the SDDC provide protective services while transporting weapons, munitions, and sensitive/classified cargo.

SDDC's initial exemption application for relief from the HOS rest break requirement was submitted in 2013; a copy of the application is in the docket identified at the beginning of this notice. That 2013 application describes fully the nature of the operations of SDDC's contracted drivers. The exemption was granted on October 28, 2013 (78 FR 64265).

SDDC requests a renewal of its limited exemption from the HOS regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow SDDC-contracted drivers

providing dual driver-protective services to be treated the same as drivers transporting explosives. As provided in § 395.1(q), operators of 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. SDDC believes that shipments moved under the requested exemption would achieve a level of safety and security that is at least equivalent to what would be obtained by following the normal break requirements in § 395.3(a)(3)(ii).

### **Method to Ensure an Equivalent or Greater Level of Safety**

SDDC states that it requires continuous attendance and surveillance of such shipments until they reach their final destination. SDDC states that it has instituted several technical and administrative controls to ensure the efficient transportation of cargo requiring protective services, controls that would remain in effect under the requested exemption. They include the following:

- Conducting review of carrier compliance requirements and procedures for moving hazardous cargo.
- Evaluating carrier authority to operate on United States roadways.
- Evaluating carrier compliance with the Federal Motor Carrier Safety Administration’s Compliance Safety Accountability program Safety Measurement System standards.
- Providing over-the-road vehicle surveillance.
- Inspecting carrier facilities and corporate headquarters for compliance with DOD and DOT standards.

Further details regarding SDDC’s safety controls can be found in its application for exemption. The application can be accessed in the docket identified at the beginning

of this notice. SDDC asserts that granting the exemption would allow driver teams to manage their enroute rest periods efficiently and also perform mandated shipment security surveillance, resulting in both safe driving performance and greater security of cargo during long-distance trips.

SDDC anticipates no safety impacts from this exemption and believes that its contract employee drivers should be allowed to follow the requirements in § 395.1(q) when transporting shipments of sensitive DOD cargo. SDDC 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).

SDDC indicated that approximately 1,942 power units and 3,000 drivers would be covered by the exemption. The proposed exemption would be effective for 2 years, the maximum period allowed by § 381.300. SDDC reported two crashes in 2014 in which drivers were cited. Neither crash was connected to fatigue that was related to the 30 minute break.

### **Terms of the Exemption**

1. Drivers authorized by SDDC to utilize the exemption, if granted, must have a copy of the exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
2. All motor carriers operating under this exemption must have a “Satisfactory” safety rating with FMCSA, or be “unrated;” motor carriers with “Conditional” or “Unsatisfactory” FMCSA safety ratings are prohibited from using this exemption.

3. Motor carriers operating under this exemption must have Safety Measurement System (SMS) scores that are all below FMCSA's intervention thresholds, as displayed at <http://ai.fmcsa.dot.gov/sms/>.

#### Period of the Exemption

The requested exemption from the requirements of 49 CFR 395.3(a)(3)(ii) would be effective from 12:01 a.m., October 22, 2015, through 11:59 p.m., October 21, 2017.

#### Extent of the Exemption

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

#### Preemption

During the periods this exemption would be 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 SDDC would be required to 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. Date of the accident,

- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and driver's license number and State of issuance
- d. Vehicle number and State license plate number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision would be e-mailed to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

#### Termination

The FMCSA does not believe the drivers covered by this exemption, if granted, 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.

#### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on the SDDC's application for an exemption from certain provisions of the HOS rules in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE

**FEDERAL REGISTER.**] Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

**Issued on: April 10, 2015.**

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Larry W. Minor,  
Associate Administrator for Policy.

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