



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2013-0470]**

**Hours of Service of Drivers: American Trucking Associations (ATA); Denial of Application for Exemption**

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

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its denial of the application of ATA for an exemption from the 14-hour provision of the Agency's hours-of-service regulations to enable certain drivers to exclude waiting time at a natural gas or oil well site from their calculations of on-duty time. Currently, only specially trained drivers of commercial motor vehicles (CMVs) that are specially constructed to service oil and natural gas extraction sites may employ this provision. ATA proposed that FMCSA issue a limited 2-year exemption to permit exclusion of such waiting time by drivers of CMVs who are exclusively engaged in servicing oil and natural gas extraction sites and have the opportunity to obtain rest while waiting at such sites. FMCSA concluded that ATA did not demonstrate how the CMV operations under such an exemption would achieve a level of safety equivalent to or greater than the level of safety obtained in the absence of the exemption.

**DATES:** FMCSA denied the application for exemption by letter dated February 4, 2016, after notice and opportunity for public comment.

**ADDRESSES:** 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.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Pearlie Robinson, Driver and Carrier Operations Division 202-366-4325 or: [MCPSD@dot.gov](mailto:MCPSD@dot.gov), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. If you have questions on viewing material in the docket, contact Docket Services at (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number, “FMCSA-2013-0470 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

### **II. Legal Basis**

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 (FMCSRs). 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 specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Background**

Part 395 of the FMCSRs contains the hours of service (HOS) rules for drivers of CMVs in interstate commerce. Section 395.8 requires most interstate CMV drivers to maintain a handwritten or electronic record of duty status, or log, on a 24-hour grid. They must record their duty status as either “off duty,” “sleeper berth,” “on duty/not driving,” or “on duty/driving.” Drivers must keep their log up to date to the most recent change of duty status and have their log for the current date and the preceding 7 days on board the CMV.

Generally, a driver may not record time as “off duty” unless he or she has been relieved of all duty and responsibility for the care and custody of the CMV, its accessories, and its cargo, and is free to pursue activities of his or her own choosing. Thus, drivers who are waiting, whether at a loading dock or at a natural gas or oil well site, are generally considered to be “on duty.” Section 395.3(a)(2) provides that “a driver

may drive only during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty.” However, the FMCSRs provide an exception to the 14-hour rule for the waiting time of a specific classification of driver. Section 395.1(d)(2) provides, “In the case of specially trained drivers of commercial motor vehicles that are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site” (waiting-time rule). These drivers may record such waiting time as off duty time, making note of the waiting-time rule on their log. Section 395.1(d)(2) also provides that the waiting time of these drivers “shall not be included in calculating the 14-hour period ....”

#### **IV. Request for Exemption**

ATA requested a limited 2-year renewable exemption to permit similar treatment of waiting time at such locations to drivers “exclusively engaged in servicing oil and natural gas extraction sites” who are able to establish “a method to adequately ensure a rest opportunity while waiting.” ATA suggested that “trucks equipped with sleeper berths” and “on-site bunking or resting facilities” would satisfy the “rest opportunity” standard. ATA believes the proposed exemption would encourage these drivers to obtain quality rest at extraction sites and would provide an improved standard for State officials enforcing waiting time requirements.

#### **V. Public Comments and Agency Decision**

On May 23, 2014, FMCSA published notice of this application and asked for public comment (79 FR 29837). The Agency received 37 comments representing various transportation interests in response to the proposed exemption. Twenty-one commenters expressed support for the ATA’s request for the exemption. Among the supporters were individuals and companies such as the American Exploration & Production Council and

the National Association of Manufacturers. Eleven commenters opposed granting the exemption as requested. The commenters included Advocates for Highway and Auto Safety and the Commercial Vehicle Safety Alliance. Five individuals provided comments that neither opposed nor supported the proposed exemption.

The Agency reviewed ATA's application and the public comments. By letter dated February 4, 2016, FMCSA denied the application because the Agency concluded that CMV operations under the proposed exemption were not likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved in the absence of the exemption [49 CFR 381.310(c)(5)]. Fatigue during the work day represents the greatest safety risk because the 60- and 70-hour rules would remain in effect if the exemption or petition were granted. The proposed relief from the 14-hour rule would enable miscellaneous off-duty periods at the oil or natural gas work sites to be excluded when determining whether the individual may operate the CMV during the work day. This creates the potential for extremely long work days provided the individual has not accumulated 14 hours of on-duty time prior to completing his/her driving tasks for the day. This may represent an extreme condition but the current waiting time exception does not include a limit and the ATA's request would extend this potentially risky option to a wider population of oil and natural gas workers.

A copy of the denial letter is in the docket referenced at the beginning of this notice.

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Larry W. Minor  
Associate Administrator for Policy

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