



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0090]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption from the Automobile Carriers Conference of the American Trucking Associations

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

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant the Automobile Carriers Conference (ACC) of the American Truck Associations (ATA) for a limited 5-year exemption to relieve motor carriers operating stinger steered automobile transporter equipment from the requirement to place warning flags on projecting loads of new motor vehicles. The Federal Motor Carrier Safety Regulations (FMCSR) require any commercial motor vehicle (CMV) transporting a load which extends more than 4 feet beyond the rear of the vehicle be marked with a single red or orange fluorescent warning flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags if the projecting load is wider than 2 feet, located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle. The Agency has determined that the lack of warning flags on stinger steered automobile transporter equipment when transporting motor vehicles would not have an adverse impact on safety and that adherence to the terms and conditions of the exemption would achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending February 15, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to 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 on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

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)).

ACC's Application for Exemption

The ACC applied for an exemption from 49 CFR 393.87 requesting that motor carriers operating "stinger steered" automobile transporter equipment be relieved from the requirement to place warning flags on projecting loads of new motor vehicles. Stinger steered vehicles are those with the fifth wheel hitch located on a drop frame behind and below the rear-most axle of the power unit. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.87 of the FMCSRs requires any CMV transporting a load which extends beyond the sides by more than 4 inches, or more than 4 feet beyond the rear, to have the extremities of the load marked with red or orange fluorescent warning flags. Each warning flag must be at least 18 inches square. There must be a single flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags are required if the projecting load is wider than 2 feet. The flags must be located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle.

In its application, the ACC states "With the enactment of the FAST [Fixing America's Surface Transportation] Act in December 2015, stinger steered automobile transporter equipment are permitted a rear vehicular overhang allowance of not less than six feet. [49 USC

31111(b)(1)(G)] Prior to the enactment of the FAST Act, the minimum rear overhang allowance for all automobile transporters was a minimum of four feet. [23 CFR Sec. 658.13(e)(ii)]

The ACC states:

The transportation of new motor vehicles poses a dilemma in adhering to the flag requirements. Affixing flags or anything else to the surfaces of the vehicles is not allowed by vehicle manufacturers as it can lead to scratches and other damage to the vehicle. Auto transporters have attempted to adhere to the intent of the regulations by affixing flags at the end of the trailers (see attachments). This in itself can still lead to vehicle damage by virtue of the flag rubbing on the vehicle surface. However, this attempt to comply with the regulatory intent does not adhere to the letter of the regulations and has resulted in carriers receiving numerous citations for being in violation of the flag requirements.

The ACC states that motor vehicles are the only commodity to be transported that must adhere to the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, “*Lamps, reflective devices and associated equipment*,” and that FMVSS No. 108 has required motor vehicles to be equipped with side-facing reflex reflectors in addition to amber reflectors in the front of the vehicle and red reflectors in the rear of the vehicle since 1968. The ACC contends that the reflective devices that are required to be on the vehicles being transported, along with the required lighting and conspicuity treatments on the trailer “more than adequately adhere to the intent of Sec. 383.87 in notifying the motoring public that a load extends more than four feet beyond the rear of the trailer.” In addition, ACC states that FMVSS No. 108 imposes specific performance criteria for the required reflectors, whereas there are no such performance requirements for the flags required by the FMCSRs.

The ACC states that the automobile transporter vehicle population is a fraction of the overall CMV population, consisting of approximately 16,000 units, and that the stinger steered vehicle population is a subset of that. Further, ACC notes that since the enactment of the FAST Act, the industry has not experienced an increase in collisions into the rear end of trucks with the

additional 2 feet of allowable overhang. The ACC states that “Statistics show that the accident frequency of collisions into the rear end of auto transporters is miniscule with a rate of less than 0.05%.”

The exemption would apply to all motor carriers operating stinger steered automobile transporter equipment. The ACC believes that the reflex reflectors that are required to be installed on the new motor vehicles being transported, in conjunction with the various marking and conspicuity requirements required on the trailer transporting the new vehicles, provide a level of safety that is greater than that achieved by the warning flags required by the FMCSRs.

Comments

FMCSA published a notice of the application in the **Federal Register** on February 27, 2018, and asked for public comment (83 FR 8569). The Agency received four comments: Rick Earl from United Road; Brian Suhre from Cassens Transport Company; Kirk Welch from Toyota Logistics Services, Inc.; and Shaun Kildare and Peter Kurdock from Advocates for Highway and Auto Safety (Advocates).

Mr. Earl, Mr. Suhre, and Mr. Welch each provided comments supporting the ACC application. Mr. Earl stated that the reflex reflectors on the passenger vehicles being transported provide significantly higher visibility than the flags required by section 393.87 of the FMCSRs, and that the “flags can damage the valuable passenger vehicles we carry, causing significant waste and discord with our customers and their customers.” In addition, Mr. Earl stated:

The rule itself is sound and makes sense, but in the specific case of auto hauling it becomes burdensome and does not add to the safety of the motoring public. It further adds confusion from an enforcement perspective. Our car haulers often find themselves cited by local law enforcement, have been forced to turn on lights on the cars we carry before being allowed to leave the scale or other such measures employed by the states in an effort to comply with this unnecessary rule.

Mr. Suhre stated that “the vehicles we transport, by their very nature, meet Federal conspicuity requirements in both daytime and nighttime,” and also noted that “vehicle manufacturers prohibit us from attaching any items to the vehicles during transport.” Like Mr. Earl, Mr. Suhre noted that drivers “have even been required to climb up on the trailer to turn on the headlights and/or taillights of a cargo unit before being allowed to leave an inspection site.” Mr. Welch stated:

The flag requirements on loads extending beyond four feet from the rear of a trailer makes perfect sense when that load consists of a telephone pole, a ladder, or some other object, in order to alert the motoring public to its existence. ...As ACC stated in its petition request, the current flag placing requirement is impractical when dealing with motor vehicles. Attaching flags on the vehicle at the rear of the transporter and to the side of the vehicle being transported will ultimately result in unacceptable damage to the finish of the new vehicle.

Mr. Welch, like Mr. Earl, noted that attaching flags on the vehicle at the rear of the transporter and to the side of the vehicle being transported will result in vehicle damage. In addition, Mr. Welch stated:

The fact that our vehicles must meet NHTSA lighting standards, including those for reflex reflectors, in addition to the lighting and conspicuity of the trailers is more than enough to alert the motoring public that a load extension exists. As the petition request states, NHTSA requirements are quantifiable standards whereby no such reflective standards exist for flags, as required by the FMCSA. This ultimately results in providing for a safer highway environment for the traveling public.

Advocates opposed the ACC application because it believes (1) that the requirement for warning flags in the FMCSRs and the requirement for reflex reflectors in the FMVSSs are intended to address two distinct areas of public safety, (2) increasing the overhang length for stinger steered automobile transporters significantly heightens the need for proper warnings to the public of these new longer loads, and (3) there has not been enough time to determine the real world on-road effects of the new overhang standard. Specifically with respect to its concerns about the adequacy of reflex reflectors to provide warning of an overhanging load, Advocates stated:

The reflectors required by FMVSS 108 are intended to ensure that passenger motor vehicles operated by the public can be identified by other road users. They are not designed not would the public be expected to understand that the reflectors (required since 1968 for this sole purpose) are also intended to indicate that a CMV is carrying an unusually wide or overhanging load off and well above the surface of the roadway. Compliance with a FMVSS by an automobile manufacturer is in no way a substitute for a motor carrier complying with an FMCSR. These two sets of separate regulations are intended to address two distinct areas of public safety. In addition, there is no data presented in the Application that shows that reflectors installed on a passenger motor vehicle provide the intended effect of warning flags placed on a CMV carrying overhanging freight.

While acknowledging that the FAST Act extended the rear overhang length for stinger steered automobile transporters, Advocates notes that “Section 5520 of the FAST Act did not include, and Congress did not intend, to permit an exemption from the warning flag requirement of the FMCSRs.” Further, Advocates expressed concern that carriers transporting automobiles have not developed any practical alternatives to comply with the regulation, such as flags that do not damage the surface of an automobile, instead of seeking an exemption from a critical safety regulation.

FMCSA Decision

The FMCSA has evaluated the ACC exemption application, and the comments received. The Agency believes that granting the temporary exemption to relieve motor carriers operating stinger steered automobile transporters from the requirement to place warning flags on projecting loads of new motor vehicles will provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. Section 393.87(b) of the FMCSRs requires loads that extend more than 4 feet beyond the rear of a vehicle be marked with warning flags “*to indicate the maximum width of loads* which extend beyond the sides and/or rear of the vehicle.” [Emphasis added.] The FMCSRs require a single flag if the projecting load

is 2 feet wide or less, and two flags if the projecting load is wider than 2 feet. The flags are critical when the extending load may not be easily identifiable to the motoring public (i.e., logs, building materials), and/or when the load may not extend across the entire width of the vehicle being used to transport the item(s).

However, the Agency believes that the transport of automobiles that are permitted, by statute, to extend up to 6 feet beyond the rearmost portion of a stinger steered auto transporter is a unique situation as compared to the transportation of other items because automobiles extend across virtually the entire width of the stinger steered auto transporter, and are easily identifiable as automobiles to the motoring public. This is especially true if the rearmost automobile being transported faces the front of the auto transporter, as the rear of the automobile is required to be equipped with two reflex reflectors¹, located as far apart as practicable, that meet the photometric requirements specified in FMVSS No. 108. To the contrary, section 387 of the FMCSRs requires extending loads to be marked with “red or orange fluorescent warning flags,” but does not impose any specific photometric requirements for these flags, i.e., required level of visibility from a certain distance, etc. While FMVSS No. 108 does not require the front of automobiles to be equipped with reflex reflectors, FMCSA believes that even if the rearmost automobile being transported is facing the rear of the auto transporter, oncoming motorists will easily identify the extending load as an automobile that extends across the full width of the auto transporter.

FMCSA acknowledges Advocates’ comment that the longer, 6-foot overhang has only been permitted for a relatively short period of time, and as such, it is difficult to determine what – if any – impact the new standard has had on safety. Nonetheless, the FAST Act expressly permits stinger steered automobile transporters to carry loads that overhang the rear by 6 feet.

¹ Reflex reflector is defined in section 393.5 of the FMCSRs as “A device which is used on a vehicle to give an indication to an approaching driver by reflected light from the lamps on the approaching vehicle.”

Regarding Advocates' concern that there has not been enough time to determine the "additional threat to public safety that would result from removing warning flags from these longer loads," the Agency is required to make a determination that it is likely that an equivalent or greater level of safety will be maintained prior to granting any temporary exemption. As discussed above, FMCSA believes that the transport of automobiles via stinger steered auto transporters is a unique situation as compared to the transportation of other items because automobiles extend across virtually the entire width of the stinger steered auto transporter, and are easily identifiable as automobiles to the motoring public. Further, the automobile transporter vehicle population is a very small fraction of the overall commercial vehicle population, consisting of approximately 16,000 units, with the stinger steered vehicle population a subset of those 16,000 vehicles. The very limited exposure of these stinger steered auto transporters, coupled with the fact that the automobiles they are hauling are easily identifiable by oncoming motorists leads FMCSA to believe that granting the temporary exemption is likely to provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending February 15, 2024. During the temporary exemption period, motor carriers operating stinger steered automobile transporter equipment will not have to place warning flags on projecting loads of motor vehicles that extend up to 6 feet from the rear of the automobile transporter.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower

level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating stinger steered automobile transporter equipment with projecting loads of motor vehicles up to 6 feet from the rear of the automobile transporter are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: December 13, 2019.

Raymond P. Martinez,
Administrator.

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