



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0342]

Hours of Service of Drivers: American Concrete Pumping Association (ACPA);

Application for Exemption

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the American Concrete Pumping Association (ACPA) exemption from the 30-minute rest break requirement in the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The exemption enables all concrete pump operators, concrete pumping companies, and drivers who operate concrete pumps in interstate commerce to count on-duty time while attending equipment but performing no other work-related activity toward the 30-minute rest break provision of the HOS regulations. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The renewed exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and will expire October 9, 2024. Comments must be received [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2016-0342 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online 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., between 9 a.m. and 5 p.m. E.T., 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, 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 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 FDMS is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4225. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0342) indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2016-0342” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you

submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain 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 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)).

Because this document renews without substantive change an exemption previously granted after public notice and consideration of the comments received, FMCSA finds, pursuant to the good-cause exception in 49 U.S.C. 553(b), that additional notice and opportunity for comment are unnecessary. Since this notice grants an exemption and relieves a restriction, 49 U.S.C. 553(d)(1) allows the exemption to be made effective upon publication.

III. Background

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.

IV. Request for Exemption

On March 21, 2017, FMCSA granted ACPA an exemption from the 30-minute break rule in 49 CFR 395.3(a)(3)(ii) (82 FR 14595). On November 1, 2018, the Agency granted ACPA an exemption from the requirements of 49 CFR 395.1(e)(1)(ii)(A) concerning the 12-hour limit in the short-haul exception, allowing drivers up to 14 hours to return to the work-reporting location. At that time, the Agency believed the short-haul exemption eliminated the need for a separate exemption from the 30-minute rest break provision. Subsequently, the Agency learned that some ACPA members continue to need relief from the 30-minute rest break despite the newly granted exemption from the short-haul 12-hour limit. Therefore, ACPA applied for renewal of an exemption from the 30-minute rest break provision [49 CFR 395.3(a)(3)(ii)].

The previously granted exemption excused qualifying concrete pump operators, concrete pumping companies, and drivers who operate concrete pumps in interstate commerce from the requirement to take the 30-minute break. The ACPA represents more than 600 member

companies who employ over 7,000 workers nationwide. The renewed exemption applies to all interstate operations of concrete pumper trucks and their operators, regardless of the motor carrier or membership in ACPA. Although many of the trucks operate intrastate and would therefore not be covered by an FMCSA exemption, an unknown number of the pumping trucks are operated in metropolitan areas and do cross State lines routinely.¹

ACPA requests the exemption because it states that the mandatory 30-minute rest break increases the risk of technical complications and potentially costly problems at job sites. A mandatory 30-minute break during which the concrete pump operator is “off duty” would require the pump to be shut down and likely cleaned out. Stopping the flow of concrete through the pump creates the risk of introducing air in the pump’s pipe system, which, in turn, could cause hose-whipping that can injure the pump operator and any personnel within reach of the hose. According to ACPA, concrete pump operators take rest breaks throughout the day; therefore, an additional 30-minute rest break does not enhance job safety.

ACPA added that concrete is a perishable product which creates difficult schedule coordination issues since it is needed on a just-in-time basis. ACPA continues to explain that concrete pump operators cannot plan the timing of the 30-minute break, as they cannot interrupt their work activity without the threat of failure – failure to accept and deliver concrete within its perishable limits and failure to comply with their contracts. Once the ingredients of ready-mixed concrete have been combined, there is a brief window during which the product can be pumped (roughly 90 minutes before the concrete hardens). Should the concrete pump operator be required to take the 30-minute rest break, it would cause a ripple effect on the ready-mixed concrete trucks in line to supply the pump. Per ACPA, such a delay could cost thousands of

¹ FMCSA does not have jurisdiction over intrastate transportation; however, most States have commercial motor vehicle statutes and regulations that are compatible with Federal regulations. An FMCSA exemption only applies to interstate transportation, although some States honor them for intrastate traffic.

dollars to rectify and could potentially violate a delivery contract. Once the concrete pump starts to receive a delivery, it must be completed without disruption to conduct a safe and structurally sound pour.

ACPA asserts that renewing this exemption would achieve the same level of safety provided by the rule requiring the 30-minute rest break. The Association stated that the concrete pumping industry has a “solid” safety record. ACPA’s Operation Certification Program ensures, encourages, and educates the industry on safe pumping and placement procedures. These safety practices allow concrete operators to maintain their safety record through careful training and well-developed safety guidelines.

V. FMCSA Decision

FMCSA has received no reports of accidents attributable to the previous 30-minute exemption. The renewal of the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. It is important to note that the Agency is not granting a complete exemption from the 30-minute rest break provision required by 49 CFR 395.3(a)(iii)(2). Instead, FMCSA is granting an exemption for concrete pump operators and drivers who remain with the CMV (*i.e.*, wait) while not performing any other work-related activities to count that time toward the 30-minute break. The only subject of the exemption is the duty status of the driver while “waiting” with the vehicle during a required rest break. The Agency grants the exemption request subject to the terms and conditions in this notice.

VI. Terms and Conditions of the Exemption

- Drivers who deliver, set up, and operate concrete pumps in interstate commerce across the United States, and all concrete pump operators and concrete pumping companies and

drivers, are exempt from the requirement for a 30-minute rest break in Section 395.3(a)(3)(ii), in that they may count “waiting” periods when they are performing no work activity as the required 30-minute break.

- Drivers must possess a copy of this exemption while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- 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.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) has a retroactive effective date of March 17, 2019 through March 17, 2024, 11:59 p.m. local time.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply with all other applicable provisions of the FMCSRs.

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.

Notification to FMCSA

Any motor carrier utilizing this exemption 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) Identity of the exemption: "ACPA";
- (b) Name of operating motor carrier and USDOT number;
- (c) Date of the accident;
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene;
- (e) Driver's name and license number and State of issuance;
- (f) Vehicle number and State license plate number;
- (g) Number of individuals suffering physical injury;
- (h) Number of fatalities;
- (i) The police-reported cause of the accident;
- (j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations; and
- (k) The driver's total driving time and total on-duty time prior to the accident.

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

VII. 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 of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: September 17, 2019

Raymond P. Martinez
Administrator

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