



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0370]

Hours of Service (HOS) of Drivers; U.S. Department of Energy (DOE); Application for Renewal of Exemption

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the application of the U.S. Department of Energy (DOE) for a renewal of its exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. DOE currently holds an exemption for the period through June 29, 2020, which enables DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exempted drivers will be allowed to use 30 minutes or more of on-duty "attendance time" to meet the HOS rest break requirements providing they do not perform any other work during the break.

DATES: The requested exemption renewal is effective from June 30, 2020, through September 29, 2020.

FOR FURTHER INFORMATION 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. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (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 and insert the docket number, “FMCSA-2012-0370” 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from 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 the safety analyses and the public comments, 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 reason for the

grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

From 2013 to 2015, DOE held a limited exemption from the mandatory 30-minute rest break requirement of 49 CFR 395.3(a)(3)(ii) that allowed DOE contract carriers and their drivers transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives pursuant to § 395.1(q). As that exemption neared expiration, DOE applied for its renewal. FMCSA reviewed DOE's request and the public comments and reaffirmed its previous conclusion that allowing these drivers to count on-duty time "attending" their CMVs toward the required 30-minute break, would likely provide a level of safety equivalent to what would be achieved by the break. The notice renewing the DOE exemption was published on June 22, 2015 (80 FR 35703).

On July 25, 2016 (81 FR 48495), FMCSA announced the extension of the 2015 DOE exemption notice to June 29, 2020 in response to section 5206(b)(2)(A) of the "Fixing America's Surface Transportation Act" (FAST Act). That section extends the expiration date of all HOS exemptions in effect on the date of enactment (Dec. 4, 2015) to five years from the date of issuance of the exemptions. DOE has now requested a renewal of the exemption. A copy of DOE's request is in the docket referenced at the beginning of this notice.

IV. Method to Ensure an Equivalent or Greater Level of Safety

DOE has implemented several technical and administrative controls to ensure the continued effective use of driver on-duty and rest-break time,

which would remain in effect under the requested exemption renewal. They include the following:

- Real-time tracking and monitoring of transuranic waste and security-sensitive shipments using DOE's satellite-based systems;
- Use of electronic on-board recorders on trucks, which are contractually required for motor carriers involved in the Waste Isolation Pilot Plant to ensure compliance with driver HOS rules; and
- Continuous monitoring of the performance of DOE-qualified motor carriers using the FMCSA Compliance Safety Accountability Program's Safety Measurement System, and DOE's Motor Carrier Evaluation Program.

Further details regarding DOE's safety controls can be found in its application for a renewal of the exemption. The application can be accessed in the docket identified at the beginning of this notice. DOE contends that these controls enable them to achieve a high level of safety and security for transportation of security-sensitive radioactive materials.

V. Public Comments

On April 23, 2020, FMCSA published notice of this application, and requested public comment (85 FR 22785). Two comments were submitted, one by an individual, Garrett Chaffey, and the other by the Commercial Vehicle Safety Alliance (CVSA). Both supported the exemption.

Garrett Chaffey wrote:

“In conclusion, the DOE should be granted the continued exemption as requested because the DOE is best situated to evaluate its needs, there is a lack of evidence of negative consequences to the exemption, the transport of radioactive materials provides similar risks that explosives drivers also are granted exemption for, and after five years

of this exemption the exemption appears to be having the desired impact without creating additional risks.”

CVSA wrote the following:

“CVSA believes that DOE drivers have demonstrated an ability to maintain an equivalent level of safety under this exemption and does not oppose the renewal.

However, FMCSA recently released a final rule that makes changes to the hours-of-service requirements that addresses DOE’s scenario, by allowing all drivers to satisfy the 30-minute rest break requirement with any non-driving time. As a result, the Alliance supports extending DOE’s exemption through the implementation date of the new hours-of-service regulations, at which time the exemption will no longer be necessary.”

VI. FMCSA Decision

In reviewing the DOE request, FMCSA considered a wide range of studies, including the 2011 Blanco study,¹ coupled with the analysis of the safety performance data and information for the motor carriers that have been granted exemptions similar to DOE’s. The Agency continues to believe that on-duty breaks from the driving task provide safety benefits essentially equivalent to those produced by an off-duty break (as well as productivity benefits). The Blanco study demonstrates that breaks of at least 30 minutes—whether on or off-duty—reduce safety critical events in the hour after driving resumes. This conclusion is consistent with the safety rationale presented in the preamble to the June 1, 2020 in the recent HOS final rule (85 FR 33396, 33452) which revised 49 CFR 395.3(a)(3)(ii).

¹ Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011) “The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations.” Available in this rulemaking docket.

The Agency has analyzed DOE's application for renewal and comments filed to the docket and believe the application for exemption renewal is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

VII. Terms of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., June 30, 2020, through 11:59 p.m. on September 29, 2020. Thereafter, revised § 395.3(a)(3)(ii) will make this exemption unnecessary.

Extent of the Exemption

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

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is 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 DOE 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. Exemption Identity: "DOE";

- 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 driver's 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 period prior to the accident.

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

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

James A. Mullen,
Deputy Administrator.

[FR Doc. 2020-14497 Filed: 7/2/2020 8:45 am; Publication Date: 7/6/2020]