



This document is scheduled to be published in the Federal Register on 08/12/2013 and available online at <http://federalregister.gov/a/2013-19396>, and on [FDsys.gov](http://FDsys.gov)

**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 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 an exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The exemption would enable SDDC's contract motor carriers and their employee-drivers engaged in the transportation of weapons, munitions, and sensitive/classified cargo to have the same regulatory flexibility that § 395.1(q) provides for drivers transporting explosives. The exempted drivers would be allowed 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 exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2013-0275 by any of the following methods:

- Federal eRulemaking Portal: [//www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- 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.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov), and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**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**

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours of service (HOS) regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive only if no more than 8 hours have passed since the end of the driver's last off-duty period of at least 30 minutes.

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 that break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

The Military Surface Deployment and Distribution Command (SDDC) manages the motor carrier industry contracts for the Department of Defense (DOD). Certain motor carriers under contract to the SDDC provide protective services while transporting weapons, munitions, and sensitive/classified cargo.

SDDC requests a 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). Section 395.1(q) states that 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).

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 en-route 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 40 contract carriers with 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.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on SDDC's application for an exemption from certain provisions of 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:** August 2, 2013

---

Larry W. Minor  
Associate Administrator for Policy

**[FR Doc. 2013-19396 Filed 08/09/2013 at 8:45 am; Publication Date: 08/12/2013]**