



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 final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the U.S. Department of Defense (DOD) Military Surface Deployment and Distribution Command (SDDC) 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 enables 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 49 CFR 395.1(q) provides for drivers transporting explosives. The exempted drivers are 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.

DATES: This exemption is effective from 12:01 a.m., October 22, 2013, through 11:59 p.m., October 21, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver, and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: 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

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. FMCSA analyzed SDDC’s request and on July 23, 2013, granted a limited 90-day waiver for SDDC-contracted motor carriers and drivers from the HOS rest break requirement. The waiver expired on October 22, 2013.

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 U.S. roadways.
- Evaluating carrier compliance with FMCSA’s Compliance Safety Accountability program and 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 approximately 1,942 power units and 3,000 drivers would currently be eligible for the exemption if granted. The proposed exemption would be effective for 2 years, the maximum period allowed by § 381.300.

Public Comments

On August 12, 2013, FMCSA published notice of this application, and asked for public comment (78 FR 48927). Six comments were submitted. An anonymous respondent commented by stating, "If the Federal Motor Carrier Safety Administration approves this exemption for SDDC then they should at least approve the exemption for

all team drivers (if not all drivers) of commercial motor vehicles fleet and owner/operators operating in the FMCSA jurisdiction based on the SDDC exemption document.” Another anonymous respondent opposed the exemption by stating, “I feel as someone who has held a job as a long distance driver it is important to have regular rest breaks.” Mr. Wayne Yoder commented by stating that “If the FMCSA concludes allowing munitions haulers to monitor their vehicles while on their 30 minute break does not detract from highway safety, then all drivers should be allowed to monitor their vehicles while on their 30 minute break.” Mr. David A. Bell provided comments in support of the exemption.

The American Trucking Associations (ATA) and Boyle Transportation also provided comments in support of the exemption. ATA commented by stating “FMCSA should grant the Department of Defense’s request to preserve en route security, just as it did for a previous Department of Energy exemption request. Doing so preserves a well-established cargo security practice in place before the thirty minute rest break requirement took effect.” Boyle Transportation commented by stating “We urge the Federal Motor Carrier Safety Administration to grant this exemption but with more stringent terms and conditions than those identified in the 90-day waiver dated July 23, 2013.” Additionally, Boyle Transportation made recommendations for FMCSA to place in the terms and conditions for this exemption. All comments are available for review in the docket for this notice.

FMCSA Decision

The FMCSA has evaluated SDDC’s application for exemption and the public comments. The Agency believes that SDDC will likely achieve a level of safety that is

equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. The exempted drivers will receive the 30 minutes or more of rest when required since they will be free of all duties other than “attending” the vehicle during the break periods. The safety objectives of the break requirement will be met; the only subject of the exemption is the duty status of the driver while attending the vehicle during a required rest break. Therefore, the Agency grants the exemption request subject to the terms and conditions in this **Federal Register** notice.

Terms of the Exemption

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rivers authorized by SDDC to utilize this exemption must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

2. 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.
3. All motor carriers operating under this exemption must have Safety Measurement System (SMS) scores below FMCSA’s intervention thresholds, as displayed at <http://ai.fmcsa.dot.gov/sms/>.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., October 22, 2013, through 11:59 p.m., October 21, 2015.

Extent of the Exemption

The exemption is restricted to SDDC's contract driver-employees transporting security-sensitive materials. This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii) to allow contract driver-employees transporting security-sensitive 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 SDDC 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. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and driver's license number and State of issuance
- d. Vehicle number and State license plate number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

i. 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.

Issued on: October 23, 2013.

Anne S. Ferro,
Administrator.

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10/28/2013]**