



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0420]

Hours of Service of Drivers: Specialized Carriers & Rigging Association (SC&RA); 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 Specialized Carriers & Rigging Association (SC&RA) 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 all specialized carriers and drivers responsible for the transportation of loads that exceed normal weight and dimensional limits – oversize/overweight (OS/OW) loads – and require a permit issued by a government authority, to be exempt from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). 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 exemption is effective June 18, 2015 and expires on June 18, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, 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 of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The SC&RA is an international trade association of nearly 1,300 member companies from 43 nations. SC&RA members are involved in specialized transportation, machinery moving and erecting, industrial maintenance, millwrighting, and crane rigging, operation, manufacturing, and rental.

SC&RA requests an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). The exemption would apply industry-wide to all specialized carriers and drivers responsible for the transportation of loads exceeding standard legal weight and dimensional limits – oversize/overweight (OS/OW) loads – that require a permit issued by a government authority. According to SC&RA, the 30-minute break uniquely affects OS/OW loads and has exacerbated the number of instances in which drivers have had to park these loads at roadside, impacting the safety of both the general public and the driver. The hours of operation in which a driver may move an OS/OW load on a valid permit vary from State to State, and among local jurisdictions within a State. Because hours in which an OS/OW load can travel are restricted by permit requirements, often those hours are in conflict with the timing of the required 30-minute rest break.

According to SC&RA, as less space is available for parking OS/OW vehicles, specialized tractor/trailer combinations transporting OS/OW loads will increasingly be parked alongside interstate or other highways and ramp shoulders, further compromising safety. An average OS/OW load may measure approximately 15-16 feet wide and high and in excess of 100 feet in length. Occasionally, the safest option for drivers is to park such loads on the shoulders of interstate routes and other highways, and on ramps leading to and from those highways. This decision requires the driver to protect and alert the motoring public by employing traffic control measures such as setting up safety cones. In some instances, the OS/OW load is so large and/or the shoulder width is so limited, that the tractor-trailer combination cannot be properly parked off the roadway and therefore occupies an entire lane of the road.

SC&RA states that the industry has been diligent in ensuring that its drivers are safety-compliant by identifying, deploying, analyzing and monitoring best practices. The effectiveness of the industry's efforts is substantiated through its safety record. By demand and due to the type and nature of the size and weight involved, these drivers tend to be more experienced and skilled than many drivers in the industry. Safety is achieved through rigorous, mandated training for all drivers on a daily, weekly, monthly and quarterly basis in conjunction with annual safety checks, and self-imposed random safety audits. Furthermore, most specialized transportation carriers conduct weekly – or sometimes more frequent – meetings with drivers to ensure that they are current on information with regard to operating OS/OW loads in their industry.

Further details regarding SC&RA'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. SC&RA does not foresee any negative impact to safety from the requested exemption. It believes that granting the exemption would have a favorable impact on overall safety by reducing the frequency of drivers resorting to less than ideal parking options, thereby reducing the frequency of lanes being partially or fully blocked.

The proposed exemption would be effective for 2 years, the maximum period allowed by § 381.300.

Public Comments

On November 24, 2014, FMCSA published notice of this application, and asked for public comment (79 FR 69983); 79 responses were submitted. Comments in favor of the proposed exemption were submitted by the California Construction Trucking Association (CCTA); Dawes Rigging & Crane Rental Inc.; Mammoet USA South Inc.;

Miller Transfer; the Owner-Operator Independent Drivers Association (OOIDA); Suit-Kote Corporation; and 42 individuals and truck drivers.

CCTA stated that it “encourages FMCSA to grant the exemption from the 30-minute break requirement (49 CFR 395.3(a) (3) (ii)) requested by SC&RA because we believe granting the exemption request will achieve the same level of safety benefit when compared to those drivers still mandated to take the break.”

OOIDA concurred “with the request for exemption of the 30-minute break requirement submitted by the SCRA. The exemption request, which addresses a number of concerns raised by OOIDA members with the 2013 changes to the hours-of-service regulations, would provide a level of safety equal to or greater than that achieved without the exemption. Oversize/Overweight loads present challenges for the driver and all other parties involved in the movement of the load.”

Ms. Tiffany Myhre commented that “I support the exemption filed by SC&RA regarding the 30 minute break requirement for carriers hauling oversize/overweight loads under a permit. This break can cause concerns when we have DPS escorts that are trying to push us through the 30 minute break.”

The American Trucking Associations (ATA) and the International Union of Operating Engineers (IUOE) were among 26 respondents that did not explicitly support or oppose the proposed exemption. Many of the individual respondents commented on the impracticality of the 30-minute rule and the unintended consequences it entails.

The ATA wrote that “The safety of the industry and the driving public is better served by rules that encourage flexibility to drive when alert and to make decisions to reduce risk. Furthermore, by crafting and enforcing a rigid rule that doesn’t account for

diversity of trucking operations, FMCSA is forced to expend additional valuable resources to address the myriad of exemption requests seeking the additional flexibility that should have been addressed during the rulemaking process.”

A commenter who identified himself as Arthur P. stated that “Most routes on 2 lane roads have no parking for trucks let alone a truck with an OS load. States like Ohio and Pennsylvania will not allow you off your route for fuel or food let alone a DOT required break. If you stop before you enter Ohio for your 30 minute break, you might not have enough time to cross Ohio. Then you will be in violation of Ohio law because you have nowhere to stop.”

The IUOE recommended that “the FMCSA undertake a study of the safety and health benefits of a 30-minute break for operators of specialized CMVs in the construction industry before making a determination on the SCRA’s request for an exemption.” IUOE also urged “the FMCSA to study the extent to which the SCRA’s primary justification for the exemption from the rule – i.e., the alleged greater danger created by the limited availability of commercial vehicle parking spaces – is factually accurate for most OS/OW loads for which a permit is required given the distances typically travelled. Without this, information, the FMCSA is in no position to evaluate whether the SCRA has met its burden of proof.”

The Advocates for Highway and Auto Safety (Advocates) were among the five respondents who opposed the exemption. The Advocates commented that “None of the measures described by SCRA are related in any way to the need to combat the acute fatigue of working and driving a vehicle for up to eight hours straight. The FMCSA itself made the case that safety requires a one-half hour break after eight hours on duty, and the

Application provides no information to either refute or countermand the need for that break time as it applies to OS/OW operators.”

A commenter identified only as Trish said that “All drivers are faced with the challenge of finding refuge for the required 30 minute break, whether it’s from traffic or fear of life in some instances. Continuing to grant exemptions defeats the purpose of the rule and is unfair to grant on the basis of someone’s business model. Choosing to haul cattle, household OR oversize should not exempt carriers from the rules and regulations enacted to promote safety.”

FMCSA Decision

FMCSA has evaluated SC&RA’s application and the public comments and decided to grant the exemption. The arguments against the exemption are not trivial. While livestock may be physically endangered if the vehicle transporting them has to stop while the driver takes a 30-minute break – as recognized in the exemption granted to livestock haulers (79FR 33634, June 11, 2014) – the same cannot be said of OS/OW loads. It is also true that parking shortages affect drivers of many types of vehicle. Nonetheless, finding suitable parking for trucks with OS/OW loads is particularly difficult, as SC&RA pointed out, and the default option is likely to be parking on the shoulder of a highway, with the load sometimes extending into the lanes of traffic. No matter how well marked, trucks parked at roadside, especially at night, are too often mistaken for moving vehicles and struck, frequently with fatal consequences, before an inattentive driver can correct his mistake. Based on available information, the number of such crashes likely to occur during a 30-minute break cannot be estimated, but the Agency has concluded that drivers of OS/OW vehicles are at least as likely to be

involved in a crash while parked at roadside during a 30-minute break as while driving during that same period and the hour or so thereafter, where the break typically has the greatest benefit. FMCSA has therefore decided to grant the exemption, subject to the terms and conditions outlined below.

Terms of the Exemption

1. Drivers of specialized loads moving in interstate commerce that exceed normal weight and dimensional limits – oversize/overweight (OS/OW) loads – and require a permit issued by a government authority, are exempt from the requirement for a 30-minute rest break in § 395.3(a)(3)(ii). Drivers of loads not moving in interstate commerce are not eligible for this exemption.
2. Drivers 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.
3. 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.
4. 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., June 18, 2015 through 11:59 p.m., June 18, 2017.

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. 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

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 CMV drivers operating under the terms of this exemption. The notification must include the following information:

- a. Name of operating motor carrier and USDOT number,
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or closest to the accident scene,
- d. Driver's name and license number and State of issuance
- e. Vehicle number and State license plate number,
- f. Number of individuals suffering physical injury,
- g. Number of fatalities,
- h. The police-reported cause of the accident,
- i. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

- j. 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 believes carriers transporting OS/OW loads under permit will continue to maintain their previous safety record while operating under this exemption. However, should problems 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: June 8, 2015

T. F. Scott Darling, III
Chief Counsel

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