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**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2012-0370]**

**Hours of Service of Drivers: U.S. Department of Energy (DOE); Application for Renewal of 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 Energy's (DOE) request for a renewal of its 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 will enable DOE's contract motor carriers and their employee-drivers transporting security-sensitive radioactive materials to be treated the same as drivers transporting 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:** This exemption is effective from June 30, 2015 through June 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

Docket. For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to

[www.regulations.gov](http://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 Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

## **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**

Under 49 CFR 395.3(a)(3)(ii), a property-carrying CMV driver is prohibited from operating a CMV on a public road if more than eight hours have passed since the end of the driver's last off duty or sleeper-berth period of at least 30 minutes.

The initial DOE exemption application for relief from the HOS rule was submitted in 2012; a copy of that application is in the docket. That application fully described the nature of DOE's security-sensitive operations. On May 31, 2013, the Agency granted DOE's current exemption [78 FR 32700]. That exemption expires on June 30, 2015.

Certain motor carriers under contract to DOE transport "security-sensitive radioactive materials." DOE requested a renewal of an exemption from the HOS regulation pertaining to rest breaks [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). Section 395.1(q) allows drivers of CMVs carrying Division 1.1, 1.2, or 1.3 explosives who are subject to the requirement for a 30-minute off-duty rest break in § 395.3(a)(3)(ii) to use 30 minutes or more of on-duty "attendance time" to meet the requirement for a rest break, provided they perform no other work.

In its exemption request, DOE contended that shipments of security-sensitive radioactive materials require a team of two drivers and the use of a sleeper berth to minimize risk and expedite delivery in a safe and secure manner. DOE asserted that

granting the exemption would allow team drivers to manage their enroute rest periods efficiently and also perform mandated shipment security surveillance, resulting in a safe and secure driving performance during a long distance trip.

DOE states that it has instituted several technical and administrative controls to ensure the effective use of driver on-duty and rest-break time, which would remain in effect under the requested exemption. 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 is contractually required for motor carriers involved in the Waste Isolation Pilot Plant to ensure compliance with driver HOS rules.
- Continuous monitoring of the safety 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 exemption, which can be accessed in the docket identified at the beginning of this notice. DOE contends that these controls enable it to achieve a high level of safety and security for transportation of security-sensitive radioactive materials.

DOE anticipates no safety impacts from this exemption and notes that in the preamble to the FMCSA final rule on the "Hours of Service of Drivers," dated December 27, 2011 (76 FR 81134), the Agency addressed concerns from commenters regarding rest breaks for carriers of hazardous materials. The Agency cited a recent

study showing that on-duty breaks reduce the risk of crashes after the break (76 FR 81154).

DOE believes that its contract employee drivers should continue to be allowed to follow the requirements in § 395.1(q) when transporting shipments of security-sensitive radioactive materials. DOE believes that shipments made under the 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).

DOE estimated that 30 power units and 53 drivers would currently be eligible for the exemption, if renewed. The exemption will be effective from June 30, 2015 through June 30, 2017, the maximum period allowed by § 381.300. A copy of DOE's exemption application is available for review in the docket for this notice.

### **Public Comments**

On March 27, 2015, FMCSA published notice of this application, and asked for public comment (80 FR 16506). There were no comments submitted to the docket.

### **FMCSA Decision**

The FMCSA has evaluated DOE's application for renewal of the exemption. The Agency believes that DOE's contract carriers 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)].

### **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, 2015, through 11:59 p.m. on June 30, 2017.

### 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](mailto: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:** June 8, 2015

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T. F. Scott Darling, III  
Chief Counsel

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