



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0096]

49 CFR Part 395

Hours of Service of Drivers: Specialized Carriers & Rigging Association (SC&RA); Application for Exemption; Final Disposition

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

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

SUMMARY: FMCSA announces its decision to grant the Specialized Carriers & Rigging Association (SC&RA) an exemption from the 30-minute rest break rule of the Agency's hours-of-service (HOS) regulations for certain commercial motor vehicle (CMV) drivers. The Agency denies SC&RA's further request for exemption from the 14-hour driving window of the HOS rules. All qualifying motor carriers and drivers operating mobile cranes with a rated lifting capacity of greater than 30 tons are exempt from the 30-minute break provision. FMCSA has analyzed the exemption application and 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 November 1, 2016 and expires on November 1, 2018.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-

6477. 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:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 HOS regulations for drivers of property-carrying CMVs. The rule requires most drivers to take a rest break during the workday. Generally, if 8 hours have passed since

the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes, the driver may not operate a CMV until he or she takes at least 30 minutes off duty (49 CFR 395.3(a)(3)(ii)). FMCSA did not specify when drivers must take the 30-minute break. The HOS rules also limit drivers of property-carrying CMVs to a 14-hour driving window each duty day (49 CFR 395.3(a)(2)). The window begins when the driver comes on duty following at least 10 consecutive hours off duty. After the 14th consecutive hour from that point, the driver cannot operate a CMV until he or she obtains at least 10 consecutive hours off duty. The requirements of the HOS rules apply to drivers of CMVs and to their motor carrier employers who direct the drivers to operate the CMVs.

On June 18, 2015, FMCSA granted SC&RA an exemption from the 30-minute rest-break requirement for qualifying drivers operating certain large and heavy vehicles that require an oversize/overweight (OS/OW) permit issued by State or local government (80 FR 34957). The Agency granted this exemption for the maximum period of 2 years permitted by the FMCSRs at that time. On December 4, 2015, the President signed the "Fixing America's Surface Transportation Act" (FAST Act)(Pub.L. 114-94). Section 5206(a)(3) of the FAST Act amended 49 U.S.C. 31315(b) to give FMCSA the authority to grant exemptions for up to 5 years. In addition section 5206(b)(2)(A) extended any HOS exemption in effect on the date of enactment for a period of 5 years from the date it was issued. While that provision automatically extended SC&RA's June 2015 exemption for drivers of vehicles requiring an oversize/overweight permit , FMCSA is using its authority under 49 U.S.C. 31315(b)(2)(1) to issue the exemption from the 30-minute break requirement for mobile crane operators for 2 years from the date of this notice.

SC&RA advises that there are approximately 85,000 trained and certified mobile crane operators in the United States, and, of these, approximately 65,000 operate cranes with a lifting capacity over 30 tons. While some of these cranes require a permit due to their size or weight, others do not. SC&RA seeks an exemption from the 14-hour rule and the requirement for a 30-minute break for drivers operating mobile cranes with a rated lifting capacity of greater than 30 tons. SC&RA states that the HOS rules create complications because it is difficult to find suitable parking when crane drivers are required to go off duty. SC&RA cites data indicating that there is a shortage of parking places for CMVs in the United States and notes ongoing Federal and State efforts to address this problem. Parking for cranes is even more limited because of their size. SC&RA asserts that these two HOS rules often require crane drivers to stop operating a CMV to avoid violating their provisions. The result is that cranes are often parked on the shoulder of public roads. SC&RA states the width of some cranes means they cannot be parked entirely off the travel lanes, creating a safety hazard for their own drivers and others.

SC&RA describes the unpredictable nature of the typical workday of a crane operator. It lists a variety of variables that can complicate the scheduling of operations, including delays waiting for the item to be lifted to arrive at the work site or to be rigged for lifting. Unexpected inclement weather can also trigger delays. SC&RA asserts that the primary result is that the workday may be extended unexpectedly. Thus, timing a crane's movement from the worksite and onto public roads at the end of the day is highly problematic. It notes that State and local restrictions limit the hours of the day, and sometimes the days of the week, that cranes may move on public roads. In addition, the

movement of cranes may require a pilot car, the display of signs and lights, and even a police escort. Cranes normally move much slower than the posted speed limit, and are highly susceptible to weather and traffic conditions.

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 cranes being parked along public roads. It points out that its members generally drive a crane less than 2 hours a day and have low crash rates.

Public Comments

FMCSA published the SC&RA exemption application for comment on March 16, 2016 (81 FR 14052). The Agency received 13 comments, most supporting the exemption. These commenters asserted that crane operators actually drive very little on public roads, and thus are less likely to suffer from driving fatigue than long-haul CMV drivers. Commenters also described the typical duty day of crane operators at the work site, and pointed out that there are substantial periods when they have to wait for others to complete preparations for the lift. These commenters also described the relatively short distances cranes are driven on public roads at the beginning and end of the day. NationsBuilders Insurance Services, Inc. commented that the drive unit of a crane generally logs only 60,000 miles in 9 years.

Commenters opposing the exemption suggest that motor carriers could avoid or ameliorate their scheduling difficulties by employing a second crane driver. Advocates for Highway and Auto Safety (Advocates) found the application for exemption fatally deficient because it “fails to include any analysis of the safety impacts of the requested

exemption.” Advocates also stated that SC&RA ignored the requirement that it “carefully review the regulation to determine whether there are any practical alternatives already available” that would allow it to conduct its operations and comply with the HOS rules. Advocates also believes that SC&RA carriers could overcome the numerous variables affecting these operations by stronger management of their CMV fleets.

FMCSA Decision

FMCSA has evaluated SC&RA’s application and the public comments and has decided to grant an exemption from the 30-minute rule but to deny an exemption from the 14-hour rule. The Agency believes that the exempt crane drivers 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 schedules of these CMV drivers are characterized by daytime hours, low-stress periods of waiting during the workday, and very limited hours of actual driving on public roads. In addition, these loads are sometimes escorted by other vehicles and operate at low speeds.

The unpredictable workday of a mobile-crane operator, with its frequent interruptions and down time, reduces the risk of cumulative fatigue and thus the urgency of a 30-minute break. Providing an exemption from the break will also reduce the number of situations where a crane operator has to park at roadside midway through a move between job sites in order to comply with the 30-minute break rule. The Agency is concerned with parking shortages, especially for very large vehicles. It is highly undesirable to have cranes parked on the shoulders of highways, much less extending into the travel lanes. No matter how well marked, trucks parked at roadside, especially at

night, are too easily mistaken for moving vehicles and struck at full speed, with serious consequences.

However, the Agency is not granting exemption from the 14-hour rule. The absence of this limit would allow drivers to operate without any restriction on the length of their duty day. The risk that safety would deteriorate in the absence of this requirement is high. While we agree that the 30-minute break rule is unnecessarily restrictive for operators of large mobile cranes, the 14-hour window is far less restrictive. It is a critical factor in containing fatigue that might otherwise develop. The 14-hour rule is a limit that should be built into the planning of mobile crane operations.

For these reasons, the Agency grants an exemption from the 30-minute rest-break requirement, subject to the terms and conditions in this **Federal Register** notice, but denies an exemption from the 14-hour rule.

Terms of the Exemption

1. All motor carriers and drivers operating mobile cranes with a rated lifting capacity of greater than 30 tons are exempt from the 30-minute break requirement of 49 CFR 395.3(a)(3)(ii). The lifting capacity of the crane must be displayed on a manufacturer's certification plate on the crane or in manufacturer's documentation carried on the vehicle.
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. 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.

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., November 1, 2016 through 11:59 p.m., November 1, 2018.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These motor carriers and drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

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 Exemption: “SC&RA cranes”

- 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 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 prior to the accident.

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

Termination

FMCSA believes motor carriers conducting crane operations under this

exemption will continue to maintain their safety record while operating under this exemption. However, should safety be compromised, 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 20, 2016

T.F. Scott Darling, III
Administrator

[FR Doc. 2016-26333 Filed: 10/31/2016 8:45 am; Publication Date: 11/1/2016]