



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0270]

Hours of Service of Drivers: National Tank Truck Carriers; 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 National Tank Truck Carriers, Inc. (NTTC) requesting exemption from the requirement that drivers of commercial motor vehicles (CMVs) obtain a 30-minute rest break. The exemption would enable drivers engaged in the transportation of petroleum-based fuels to use 30 minutes of time attending the load to satisfy the 30-minute rest break requirement. FMCSA requests public comment on NTTC'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-2017-0270 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- 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.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. DOT posts all comments received without change to www.regulations.gov. This includes any personal information contained in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to 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 FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; 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:

Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0270), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2017-0270" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

Legal Basis

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 (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Background

The HOS rules require most interstate drivers to maintain a record of duty status (RODS) on board the CMV at all times. This record, or log, must reflect the driver's duty status on that date and for the preceding 7 (or in some cases, 8) days. However, the HOS rules provide an exception to this rule - the 100 air-mile radius exception (49 CFR 395.1(e)(1)). This provision relieves CMV drivers of the duty to maintain a log if they remain within a 100 air-mile radius of the normal work reporting location during the duty day and return to the work-reporting location and quit work within 12 hours. The motor

carrier must maintain at the principal place of business a record of the time the driver came on duty, the time the driver was released from duty, and the total number of hours the driver was on duty. The HOS rules include a requirement that drivers of property-carrying CMVs take a rest break of at least 30 minutes if 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. However, the requirement to take a minimum 30 minute rest break does not apply to drivers operating within the 100 air-mile radius "short haul" exemption area.

Request for Exemption

Applicant NTTC seeks exemption from the 30-minute rest break provision on behalf of motor carriers and drivers engaged in the transportation of petroleum-based products. While it estimates that 38,000 tractors perform these operations daily, the number that would require the exemption would be much smaller. NTTC explains that most drivers engaged in the transportation of petroleum products by CMV qualify for the 100 air-mile exception and thus are not required to observe a 30-minute break. However, on rare occasions, a driver does not qualify for the 100 air-mile exception, usually because unexpected interruptions to the workday stretch the driver's duty day beyond the 12-hour limit of that exception. When this occurs, the driver is required to go off duty for at least 30 minutes. However, even if the driver parks the CMV, he or she must attend it because it is an HM load, and a driver who is attending a load is not considered off duty. NTTC seeks exemption for these drivers to allow them to proceed without observing a 30-minute off-duty break. It asks that these drivers be able to designate a period of on-duty waiting time of at least 30 minutes duration to satisfy the rest-break requirement, provided the only work performed during that time is attending the HM load. NTTC indicates that the typical workday of these drivers consists of loading petroleum fuel at

one location and then delivering it to 3 or 4 service stations. Some, if not all, of these stops exceed 30 minutes, during which the driver is often only attending the load. NTTC describes this waiting time as restful because the driver is otherwise free to engage in activities such as eating and making personal phone calls.

NTTC asserts that exemption for these drivers will result in a level of safety that is equivalent to that achieved without the exemption. It asserts that considerable time is required to locate a suitably secure location for parking an HM load so that the driver can go off duty. NTTC believes that the considerable, additional movement of the CMV for this purpose increases the risk of a crash. It also asserts that the safest approach is to keep the CMV moving toward its destination and cites two authorities for its position. It first cites the Transportation Security Administration's warning to truckers that vehicles transporting HM are "targets of choice" for terrorists and thus should not be parked en route. Second, NTTC cites a regulation of the Pipeline and Hazardous Materials Safety Administration (US DOT) stating that "[a]ll shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination" (49 CFR 177.800(d)). For these reasons, NTTC believes that its drivers should not be required to take a rest break when they discover that they are no longer eligible for the short-haul exemption.

NTTC seeks exemption for the maximum period of 5 years. A copy of NTTC's application for exemption is available in the docket of this matter.

Issued on: Se

Larry W. Minor,
Associate Administrator for Policy.

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