



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0319]

**Parts and Accessories Necessary for Safe Operation; Agricultural and Food Transporters
Conference of American Trucking Associations Application for Exemption**

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

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

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant a limited 5-year exemption to the Agricultural and Food Transporters Conference (AFTC) of American Trucking Associations (ATA) to allow certain alternate methods for the securement of agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, as well as hay, straw, and cotton bales that are grouped together into large singular units. The Agency has determined that the use of certain alternate cargo securement methods will likely maintain a level of safety that is equivalent to, or greater than the level of safety achieved without the exemption. This conclusion is based on the results of a comprehensive test program conducted by FMCSA in collaboration with the California Highway Patrol (CHP), the California Department of Food and Agriculture and the California Trucking Association.

DATES: This exemption is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and ending **[INSERT DATE FIVE YEARS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676,

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 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

Under 49 CFR part 381, FMCSA has authority to grant exemptions from some of the Federal Motor Carrier Safety Regulations (FMCSRs). Pursuant to 49 CFR 381.315(a), FMCSA must publish a notice of each exemption request in the Federal Register. The Agency must provide the public with 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 the safety analyses and the public comments 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory

provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

AFTC's Application for Exemption

AFTC applied for an exemption from 49 CFR 393.102, 393.106, 393.110, and 393.114 to allow alternate methods for the securement of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and (2) hay, straw, and cotton bales that are grouped together into large singular units. A copy of the application is included in the docket referenced at the beginning of this notice.

AFTC states that "For the past several years, Agricultural haulers in California have been utilizing annual exemptions granted by the CHP to continue to allow the use of previously existing cargo securement methods for hauling agricultural products. The California annual exemptions were granted because the strict application of the cargo securement requirements that FMCSA identified in a Final Rule in 2002 and became effective in 2004 would have resulted in a less secure agricultural commodity cargo securement environment."

In support of its application, AFTC states that "We are requesting this exemption after the Federal Motor Carrier Safety Administration (FMCSA) performed testing and evaluation of various methods utilized in securing a wide variety of agricultural products for transport that occurred in 2007 and 2008. Many cargo securement methods were tested including those used to secure plastic and wood bins, large fiberglass tubs, and hay and cotton bales. The study with FMCSA was a collaborative effort with the California Highway Patrol, California Department of Food and Agriculture, California Trucking Association and several of our carrier members." A copy of the draft report has been included in the docket at the beginning of this notice.

AFTC notes that the requested alternate securement methods for boxes, bins, and tubs are intended to apply only to the transportation of agricultural products from the field or storage to the first point of processing and the return or delivery of empty containers to field or storage location. Additionally, loads transported in vans or that are contained on four sides by racks, or for other than agricultural operation as described above must be transported in accordance with the general cargo securement rules of §§ 393.100-393.114. AFTC states “The reason for the requested variances is because these agricultural commodities are ‘grouped’ into larger singular ‘units’ and these larger grouped units of cargo behave differently when tested to the performance requirements under 49 CFR 393.102.”

Without the proposed exemption, AFTC states that commercial motor vehicle operators nationwide would not be allowed to use the alternative cargo securement techniques that have been tested by the John A. Volpe National Transportation Systems Center (Volpe) in cooperation with FMCSA and the California Highway Patrol, and that carriers in California would continue to request to operate under cargo securement exemptions from California that require less cargo securement than that proposed under the requested FMCSA exemption.

The exemption would apply to all CMV operators nationwide that transport agricultural commodities in interstate commerce as described in the attachment to the exemption application which is available in the docket noted at the beginning of this document. Further AFTC notes that granting the exemption “will provide an increased level of safety as the alternate securement methods require more cargo securement than is currently required under the California exemptions the industry has been operating under for the past few years.”

Comments

FMCSA published a notice of the application in the **Federal Register** on January 5, 2018, and asked for public comment (82 FR 28930). No comments were received.

Background of Regulations

On September 27, 2002, FMCSA published new cargo securement rules (67 FR 61212). The rules were based on the North American Cargo Securement Standard Model Regulation, reflecting (1) the results of a multi-year research program to evaluate U.S. and Canadian cargo securement regulations; (2) the motor carrier industry's best practices; and (3) recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State, and Provincial enforcement officials, and other interested parties. Motor carriers were required to comply with the new requirements beginning January 1, 2004.

The cargo securement rules include general securement rules applicable to all types of articles or cargo, with certain exceptions (§§ 393.100-393.114), and commodity-specific rules for cargoes that require specialized means of securement (§§ 393.116-393.136). The commodity-specific requirements take precedence over the general rules for a commodity listed in those sections. This means all cargo securement systems must meet the general requirements, except to the extent a commodity-specific rule imposes additional requirements that prescribe in more detail the securement method to be used. Specifically with respect to AFTC's exemption application, there are no commodity-specific rules applicable to the transportation of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, or (2) hay, straw, and cotton bales that are grouped together into large singular units.

Overview of Testing

In response to concerns raised by shippers of agricultural commodities, FMCSA contracted with Volpe to develop a detailed test plan to determine if use of current State regulations and industry best practices are capable of meeting the minimum performance criteria of FMCSA's September 2002 cargo securement final rule for the transportation of agricultural commodities and protection against shifting and falling agricultural cargo. Volpe conducted a nationwide review of State regulations and industry practices related to the transportation of fruits, vegetables, nuts, baled hay and straw, and other agricultural commodities by CMVs engaged in interstate and intrastate commerce. Most information was gathered from commercial agricultural commodity transport operations in California, Washington, Nevada, and New Mexico, and sources contacted included State farm bureaus, trucking associations, and State law enforcement agencies.

On September 12–14, 2007, representatives from FMCSA and Volpe conducted site visits in California to inspect a variety of agricultural securement methods and gather firsthand information on how certain commodities are transported from the field to the processing plant. State and industry representatives contacted included the California Department of Food and Agriculture, the CHP, local farmers, and trucking companies. A series of full-scale tests was performed at the California Highway Patrol (CHP) Academy in West Sacramento between October 30, 2007, and November 8, 2007, to determine the adequacy of current industry practices when compared with the FMCSA cargo securement regulations. Existing State regulations and industry transportation methods were reviewed and tests were conducted simulating the minimum longitudinal and lateral acceleration and deceleration cargo securement performance requirements. Cargo securement methods were tested on plastic bins, wooden bins, fiberglass tomato tubs, small and big bales of hay, and cotton bales.

The testing of the cargo securement systems was done by lifting a semitrailer to simulate the g forces that act on the cargo when the vehicle suddenly accelerates or decelerates or the lateral forces acting on the cargo when the trailer goes around a curve. Commercial semitrailers and semitrailers with converter dollies were used for each cargo securement method tested. The tests were conducted to compare the performance of the different securement methods with the minimum performance criteria identified in §§ 393.102(a)(1) and 393.102(a)(2) of the FMCSRs. During testing, strain-gauge-based load cells were installed to provide data on the loads applied to the cargo securement devices. An accelerometer was used to measure the angle to which each trailer was raised during test lifts. The load cells and accelerometer data output from each test configuration were recorded on a laptop computer. Three types of full-scale securement tests were performed with plastic and wooden fruit bins, tomato tubs, and cotton and hay bales to determine (1) coefficient of friction, (2) securement device tension, and (3) longitudinal and lateral acceleration and longitudinal deceleration.

A summary of the findings of the testing is provided as follows:

- The industry standard agricultural commodity cargo securement practices are effective in “unitizing” the individual components (hay bales, plastic/wood bins, cotton bales) into a single “unit” of cargo. The addition of welded or bolted blocking at the front of the trailer to inhibit the sudden movement of the “unitized” cargo during a hard brake application appears to be highly effective for plastic and wooden bins. The addition of a lateral cargo securement device generated significant improvement in the longitudinal and lateral cargo securement testing for maintaining the cargo on the trailer.
- The best method for securing agricultural commodities hauled in plastic bins involves utilizing a combination of perimeter 3/8-inch wire rope tiedowns (previous industry

standard practice) combined with corner irons, and in specific conditions lateral cargo securement devices were included to control lateral movement of the cargo.

- The corner irons and wire rope technique serves to unitize the bins and reduce their movement as individual units. Additional blocking consisting of 2.5-inch angle iron secured with four 9/16-inch Grade 8 bolts was evaluated during testing to restrict movement of the cargo during longitudinal testing. Equivalent blocking techniques utilizing welding of blocking bars, or bars secured in stake pockets should be considered equally effective.
- The addition of lateral cargo securement devices is necessary to minimize the amount of movement at the center of the unitized load. During longitudinal testing, it was shown that the Washington Wrap style of securement at the rear of the load can damage the structural integrity of the plastic bins. During lateral testing, it was shown that the Washington Wrap style of securement allowed significant lateral movement of the unitized load along almost the entire length of the trailer (which could adversely affect the vehicle's stability or maneuverability in real-world driving conditions).
- The industry practice of securing loads of cotton bales, while not tested, appeared to unitize the bales together, and wire rope was used longitudinally to secure the load, and the addition of ½ inch rope laterally was estimated to be sufficient to secure the cotton bales to the trailer and meet the cargo securement performance requirements at 49 CFR 393.102.

A copy of the full report is included in the docket.

FMCSA Decision

The FMCSA has evaluated the AFTC exemption application. The Agency believes that granting the temporary exemption to allow alternate methods for the securement of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and (2) hay, straw, and cotton bales that are grouped together into large singular units will likely provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. The testing of these cargo securement methods in 2007 and 2008 in collaboration with CHP, California Department of Food and Agriculture, California Trucking Association and several member carriers of AFTC proved that the cargo securement performance requirements of 49 CFR 393.102 were met. FMCSA notes that the cargo securement techniques for large and small hay and straw bales, which were evaluated in the draft cargo securement testing report in the docket, were previously addressed in a “Technical Review of Industry Cargo Securement Practices for Baled Hay and Straw, Revision1,” dated July 7, 2008. A copy of the technical review has been included in the docket referenced at the beginning of this notice.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption from 49 CFR §§ 393.102, 393.106, 393.110, and 393.114 to allow alternate methods for the securement of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and (2) hay, straw, and cotton bales that are grouped together into large singular units for a 5-year period, beginning **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** and ending **[INSERT DATE FIVE YEARS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. During the temporary exemption period, motor carriers will be allowed to use the alternate methods for the securement of agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and hay, straw, and cotton bales that are grouped

together in large singular units as proposed by AFTC in its exemption application. A copy of the alternate cargo securement methods that must be used by motor carriers during the exemption period has been placed in the docket noted at the beginning of this document, and is available on the FMCSA website at www.fmcsa.dot.gov/insert.specific.link.when.finalized.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers using the alternate cargo securement methods for the securement of agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and hay, straw, and cotton bales that are grouped together in large singular units, are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31315(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.

Issued on: April 9, 2019.

Raymond P. Martinez,

Administrator.

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