



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0370]

Hours of Service (HOS) of Drivers; U.S. Department of Energy (DOE); Application for Renewal of Exemption

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

ACTION: Notice of application for renewal of exemption; request for comments.

SUMMARY: FMCSA has received an application from the U.S. Department of Energy (DOE) for a renewal of its exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. DOE currently holds an exemption for the period June 30, 2015, through June 29, 2020, which enables DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exemption allows the drivers to use 30 minutes or more of "attendance time" to meet the HOS rest break requirements provided the drivers do not perform any other work during the break. FMCSA requests public comment on the renewal of the exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.] The requested exemption renewal would be effective from June 30, 2020 through June 29, 2025.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2012-0370 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.
- Mail: Send comments to Docket Operations ; 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: Deliver comments to Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, 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. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

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: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. 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:

I. 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-2012-0370), 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-2012-0370" 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 continue this exemption or not based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from 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 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)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

From 2013 to 2015, DOE held a limited exemption from the mandatory 30-minute rest break requirement of 49 CFR 395.3(a)(3)(ii) that allowed DOE contract carriers and their drivers transporting security-sensitive radioactive materials to be treated

the same as drivers transporting explosives pursuant to § 395.1(q). As that exemption neared expiration, DOE applied for its renewal. FMCSA reviewed DOE's request and the public comments and reaffirmed its previous conclusion that allowing these drivers to count on-duty time "attending" their CMVs toward the required 30-minute break, would provide a level of safety equivalent to what would be achieved by the break. The notice renewing the DOE exemption was published on June 22, 2015 (80 FR 35703).

On July 25, 2016 (81 FR 48495), FMCSA announced the extension of the DOE exemption notice that was published on June 22, 2015. The Agency extended the expiration date of the exemption to June 29, 2020 in response to section 5206(b)(2)(A) of the "Fixing America's Surface Transportation Act" (FAST Act). That section extends the expiration date of all HOS exemptions in effect on the date of enactment to five years from the date of issuance of the exemptions.

DOE has now requested a renewal of the exemption that would be effective from June 30, 2020 through June 29, 2025. A copy of DOE's request is in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on DOE's request for a renewal of its exemption from the 30-minute rest break rule. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the "Addresses" section of this notice. Comments received after the comment closing date will be filed in

the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor

Associate Administrator for Policy

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