



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0420]

Hours of Service of Drivers: Specialized Carriers & Rigging Association (SC&RA); 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 renew the exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations requested by the Specialized Carriers & Rigging Association (SC&RA) for certain commercial motor vehicle (CMV) drivers. The exemption covers drivers for all specialized carriers transporting loads that exceed normal weight and dimensional limits – oversize/overweight (OS/OW) loads – and require a permit issued by a government authority. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely 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 applicable from June 18, 2020 through June 17, 2025.

ADDRESSES:

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 Federal Docket

Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

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, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4225. 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

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2020-0420” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey

Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) 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)).

III. Background

The SC&RA requested a renewal of the exemption from the mandatory rest break requirement of 49 CFR 395.3(a)(3)(ii) on behalf of all specialized carriers and drivers

responsible for the transportation of loads exceeding standard legal weight and dimensional limits—oversize/overweight (OS/OW) loads—that require a permit issued by a government authority. The exemption was first granted on June 18, 2015 (80 FR 34957) and later extended through June 17, 2020 (81 FR 79556, Nov. 14, 2016).

According to SC&RA the 30-minute break uniquely affects OS/OW loads and has exacerbated the number of instances in which drivers have had to park these loads at roadside, consequently impacting the safety of both the public and the driver. The renewed exemption would apply to all specialized carriers and drivers responsible for the transportation of loads that exceed maximum legal weight and dimensional limits -- OS/OW loads -- that require a permit issued by a government authority. The hours of operation in which a driver may move an OS/OW load on a valid permit vary tremendously from State to State, and even among local jurisdictions within a State, differ in terms of the days of the week and hours of the day when transit is allowed. Because hours in which an OS/OW load can travel are restricted by permit requirements, those hours will often conflict with the timing of the required 30-minute rest break.

SC&RA specifically cites four instances demonstrating this conflict. As less space is available for parking OS/OW trucks, specialized tractor/trailer combinations transporting OS/OW loads will increasingly be parked alongside interstate or other highways and ramp shoulders, further compromising their safety and the safety of the public on the roadways.

SC&RA states that the industry has been diligent in ensuring that its drivers are safety compliant by identifying, deploying, analyzing and monitoring best practices. The effectiveness of the industry's efforts is substantiated through its safety record. By

demand and due to the type and nature of the size and weight involved, these drivers tend to be more experienced and skilled than many drivers in the motor carrier industry.

Safety is achieved through rigorous, mandated training for all drivers on a regular basis, in conjunction with annual safety checks, and self-imposed random safety audits.

Furthermore, most specialized transportation carriers conduct weekly – or sometimes more frequent – meetings with drivers to ensure that they are current on information with regard to operating OS/OW loads in their industry.

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 drivers resorting to less than ideal parking options, thereby reducing the frequency of lanes being partially or fully blocked.

A copy of SC&RA's request is in the docket referenced at the beginning of this notice.

IV. Public Comments

On April 30, 2020, FMCSA published notice of this application, and asked for public comment (85 FR 24086). The Truckload Carriers Association and 19 individuals submitted comments in favor of the exemption renewal; there were no opposing comments.

TCA wrote:

Inadequate truck parking already presents a problem for truckload carriers, but our members which haul OS/OW loads face even more overwhelming obstacles. As SC&RA pointed out in its request, the only option for drivers is often to park these loads on the shoulders of interstates, highways, and ramps. Drivers are required to protect and alert the motoring public by employing traffic control measures, but sometimes, the OS/OW load cannot be completely parked off the roadway. This situation clearly presents a heightened safety risk for the general motoring public, the driver, and public and emergency personnel. FMCSA agreed

that these safety concerns are too significant to ignore and granted SC&RA's initial exemption request on June 18, 2015. Now, we encourage FMCSA to renew this exemption to protect safety through ensuring necessary flexibility in the federal regulations.

One individual, Dave Wittwer stated "We encourage FMCSA to renew the 30-minute exemption that expires on June 18. The basis of this recommendation is safety for the drivers and the public at large."

V. FMCSA Decision

FMCSA has evaluated SC&RA's application and the public comments. The Agency believes finding suitable parking for trucks with OS/OW loads is particularly difficult, as SC&RA pointed out, and the default option is likely to be parking on the shoulder of a highway, with the load sometimes extending into the lanes of traffic. No matter how well marked, trucks parked at roadside, especially at night, are too often mistaken for moving vehicles and struck, frequently with fatal consequences, before an inattentive driver can correct his or her mistake. FMCSA has therefore decided to grant the exemption, subject to the terms and conditions outlined below.

Terms of the Exemption

1. Drivers of specialized loads moving in interstate commerce that exceed normal weight and dimensional limits – oversize/overweight (OS/OW) loads – and require a permit issued by a government authority, are exempt from the requirement for a 30-minute rest break in § 395.3(a)(3)(ii). Drivers of loads not moving in interstate commerce are not eligible for this exemption.
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. All 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 effective June 18, 2020 through June 17, 2025, 11:59 p.m. local time.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). 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

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”;
- 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 carriers transporting OS/OW loads under permit will continue to maintain their previous safety record while operating under this exemption. However, should problems 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.

James A. Mullen,
Deputy Administrator.

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