

DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0283]

Hours of Service of Drivers: National Pork Producers Council; Granting of Application for Exemption

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

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

SUMMARY: FMCSA announces the granting of a limited one-year exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers transporting livestock. FMCSA has analyzed the exemption application submitted by the National Pork Producers Council (NPPC) on behalf of all livestock transporters and the public comments received in response to the Agency's August 12, 2013, notice announcing the application and requesting public comment. The Agency has determined that it is appropriate to grant a limited one-year exemption to ensure the well-being of Nation's livestock during interstate transportation by CMV. 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. This conclusion is supported by the real-world experience of the industry's operations under the limited 90-day waiver FMCSA granted in 2013. This exemption preempts inconsistent State and local requirements.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires on [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver, and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Legal Basis

Section 4007(a) of the Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107, 401, June 9, 1998) provided the Secretary of Transportation (the Secretary) the authority to grant exemptions from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under chapter 313 or section 31136 of title 49 of the United States Code, to a person(s) seeking regulatory relief (49 U.S.C. 31136, 31135(b)). Prior to granting an exemption, the Secretary must request public comment and make a determination that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption. Exemptions may be granted for a period of up to 2 years and may be renewed.

The FMCSA Administrator has been delegated authority under 49 CFR 1.87(e)(1) and (f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and subchapters I and III of chapter 311, relating, respectively, to the commercial driver's license program and to commercial motor vehicle (CMV) programs and safety regulation.

Background Information

On December 27, 2011, FMCSA published a final rule amending its HOS regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule included a new provision requiring drivers to take a rest break during the work

day under certain circumstances. Drivers may drive a CMV only if a period of 8 hours or less has passed since the end of their last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the minimum 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. The new requirement took effect on July 1, 2013.

On August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion on petitions for review of the 2011 HOS rule filed by the American Trucking Associations, Public Citizen, and others [American Trucking Associations, Inc., v. Federal Motor Carrier Safety Administration, 724 F.3d 243 (D.C. Cir. 2013)]. The Court upheld the 2011 HOS regulations in all respects except for the 30-minute break provision as it applies to short haul drivers.

The Court vacated the rest-break requirement of 49 CFR 395.3(a)(3)(ii) with respect to any driver qualified to operate under either of the "short haul" exceptions outlined in 49 CFR 395.1(e)(1) or (2). Specifically, the following drivers are no longer subject to the 30-minute break requirement:

- All drivers (whether they hold a commercial driver's license (CDL) or not) who operate within 100 air-miles of their normal work reporting location and satisfy the time limitations and recordkeeping requirements of 49 CFR 395.1(e)(1), and
- All non-CDL drivers who operate within a 150 air-mile radius of the location where the driver reports for duty and satisfy the time limitations and recordkeeping requirements of 49 CFR 395.1(e)(2).

On October 28, 2013, the Agency published a final rule codifying the court decision (78 FR 64179).

Application for Exemption

On June 19, 2013, the National Pork Producers Council (NPPC) requested a limited 90-day waiver and a limited two-year exemption from the rest-break requirement for drivers of CMVs engaged in the transportation of livestock. A copy of the request is included in the docket referenced at the beginning of this notice.

The NPPC submitted its application on behalf of itself and the following organizations:

- Agricultural and Food Transporters Conference of the American Trucking Associations;
- American Farm Bureau Federation;
- American Feed Industry Association;
- American Meat Institute;
- Livestock Marketing Association;
- National Cattlemen's Beef Association;
- National Chicken Council;
- National Milk Producers Federation;
- National Turkey Federation;
- North American Meat Association;

- Professional Rodeo Cowboys Association; and,
- U.S. Poultry and Egg Association.

The NPPC stated that complying with the 30-minute rest break rule would cause livestock producers and their drivers irreparable harm, place the health and welfare of the livestock at risk, and provide no apparent benefit to public safety, while forcing the livestock industry and its drivers to choose between the humane handling of animals or compliance with the rule.

The NPPC explained that the process of transporting livestock, whether for slaughter, transfer of ownership, or purposes of breeding or simply finding forage for feed, is a significant concern to the agricultural industry. The animals face a variety of stresses including temperature, humidity, and weather conditions.

During the summer months, exposure to heat is one of the greatest concerns in maintaining the animals' well-being. This is especially challenging for the transportation of pigs because the animals cannot sweat and are subject to heat stress. When heat stress occurs, a pig's body temperature rises to a level that it cannot control through its normal panting mechanisms. Under the industry's guidelines, drivers are directed to avoid stopping in temperatures greater than 80 degrees. Drivers are advised to stop only when animals will be immediately unloaded or when a safety issue arises. If the vehicle must be stopped, drivers are required to stay with the animals and provide them with water to help keep them cool.

When temperature and humidity result in a heat index greater than or equal to 100 degrees Fahrenheit, cattle are also placed at significant health risk. When cattle are stressed under extreme heat conditions, they are more likely to become non-ambulatory,

sick, and even die. Non-ambulatory cattle are banned from entering the food system. Current industry guidelines recommend that drivers avoid stopping, as internal trailer temperatures will then increase rapidly because of the loss of airflow through the trailer and heat production from the animals.

With regard to transporting livestock during the winter months, NPPC described the complications of keeping the animals warm without having them potentially overheat when the vehicle is stopped.

FMCSA analyzed the request and on July 11, 2013, granted, subject to specific terms and conditions, a waiver from the rest break requirement for drivers transporting livestock. The waiver ended by its terms on October 9, 2013.

Population of Drivers and Carriers Engaged in Livestock Transportation

Although NPPC did not provide information on the number of carriers and drivers to be included in the exemption it requested, FMCSA reviewed its Motor Carrier Management Information System (MCMIS) to determine this information. MCMIS includes the information reported to the Agency by carriers submitting the Motor Carrier Identification Report (FMCSA Form MCS-150), required by 49 CFR 390.19. As of May 13, 2014, MCMIS listed 66,316 motor carriers that identified livestock as a type (though not necessarily the only type) of cargo they transported. These carriers operate 196,398 vehicles and employ 252,540 drivers. And 130,896 of these drivers operate within a 100 air-mile radius of their work-reporting location – a fact that is important because previous statutory exemptions provided complete relief from the HOS requirements for these drivers. A final rule published on March 14, 2013, extended the 100 air-mile radius previously in effect to 150 air miles (see 49 CFR 395.1(k), 78 FR

16189). Therefore, these 131,000 drivers would not need the exemption, leaving fewer than 122,000 drivers likely to utilize this relief from the 30-minute rest break provision. Of these, an unidentified portion may consist of team drivers, who would not need to take the required minimum 30-minute break, even without the exemption.

Public Comments in Response to the Exemption Application

On August 12, 2013, FMCSA published notice of the NPPC application for an exemption and requested public comment (78 FR 48928). By the closing of the comment period, twenty-two commenters had responded. Twenty of these commenters supported the application for exemption and two opposed it.

The two comments opposing the application were from individuals. One opposed the 30-minute break rule in general, and the other questioned how farmers keep livestock under proper climate conditions when they are not being transported. The latter indicated that if one commodity deserved an exemption, all did.

The 20 comments favoring the application were submitted by various parties (mostly trade associations and livestock carriers) familiar with the transportation by CMV of various types of livestock, including cattle, pigs, and sheep. Several of these commenters submitted supporting data. In his comment to the docket, Scott George, President of the National Cattlemen's Beef Association, submitted data from the Livestock Marketing Information Center (LMIC). Six sub-agencies of the U.S. Department of Agriculture are members of LMIC, including the Agricultural Marketing Service, the Animal and Plant Health Inspection Service, and the Grain Inspection, Packers and Stockyards Administration. Many State extension services and land grant universities are also LMIC members.

The comments favoring the application explain the importance of the safe, timely transportation of livestock. This transportation originates in all regions of the U.S. and the ultimate product is often shipped to global markets. The comments detail the various risks to the health and welfare of livestock being transported that are inherent in stopping during extreme hot or cold temperatures. Data in the docket show that the temperature inside a stopped livestock trailer can rise rapidly during hot summer days, and can drop rapidly on winter days, especially in windy conditions. Current industry standards strongly discourage drivers from stopping a CMV loaded with pigs when the temperature exceeds 80 degrees. Cattle are affected adversely if the vehicle stops when the heat and humidity have raised the heat index to 100 degrees or more.

Substandard transportation of livestock elevates the risk that the physical condition of the animals will deteriorate and that food products derived from the animals, if they accidentally remained in the human food chain, may be unsafe for human consumption. Comprehensive industry guidelines governing the safe movement of livestock have been submitted to the docket. These guidelines and comments describe stops of up to 30 minutes as problematic for many animals, even in favorable weather. Industry guidelines encourage drivers of livestock to keep the CMV moving "if at all possible." For most livestock, the driver stopping a CMV en route is directed to offload the animals from the vehicle immediately. However, an appropriate facility for offloading is often not available. In these situations, the guidelines recommend that the stop be as brief as possible. Some commenters asserted that even under ideal conditions drivers transporting livestock should not stop the CMV for as long as 30 minutes because the risk of jeopardizing the health of the animals is too great.

On September 11, 2013, and November 21, 2013, NPPC submitted supplemental comments to the docket for this matter. Although the November 21 submission was outside the comment period that ended on September 11, FMCSA determined that it did not differ in substance from the original application or the September 11 comments from NPPC, and therefore no need existed to reopen the comment period.

FMCSA Response

FMCSA has evaluated NPPC's application for exemption, and reviewed the data, safety analyses, and public comments submitted. Stakeholders in this industry have provided substantial data supporting this application for exemption, and have outlined in detail the various risks associated with stopping a CMV transporting livestock.

The Agency finds the arguments and data submitted by commenters supporting the application to be persuasive. Stopping a CMV with livestock on board in extreme weather conditions can seriously jeopardize the health and welfare of the animals, even when the CMV is stopped for as little as 10 minutes. The Agency recognizes that in many cases it is impractical for drivers to offload livestock in order to obtain the 30-minute break required by 49 CFR 395.3(a)(3)(ii).

Analysis of Fatal Crashes Involving Carriers Transporting Livestock

FMCSA reviewed "Trucks Involved in Fatal Accidents Factbook 2008" (UMTRI-2011-15, March 2011) published by the University of Michigan Transportation Research Institute's Center for National Truck and Bus Statistics to determine the prevalence of crashes involving the transportation of livestock. In 2008, there were 4,352 trucks involved in fatal crashes and 20 of those vehicles were transporting live animals, with 13 of the vehicles reported as having a livestock cargo body. There were 13 other vehicles

with an empty livestock cargo body involved in fatal crashes. Overall, trucks transporting live animals represent less than one half of one percent of the trucks involved in fatal crashes.

The Trucks Involved in Fatal Accidents (TIFA) report showed that 26 livestock cargo body vehicles, all of them tractor-semitrailer combinations, were involved in fatal crashes. Of that number, 13 livestock vehicles were transporting live animals at the time of the crash. Seven instances of vehicles transporting live animals being involved in a fatal crash involved CMVs with a body type reported as something other than a livestock body, based on the information above.

About one-third of the 2008 crashes involving livestock transporters occurred on trips sufficiently short that the driver probably was exempt from the HOS requirements. With the recent expansion of the HOS exemption from 100 air-miles to 150 air-miles, any crashes that occur in the future are even more likely to occur within the exempt zone.

Fatal Truck Involvements by Trip Type and Livestock Cargo Body Type

Trip Type	Cargo body: Livestock, Tractor Combination	Statutory Exemption from HOS Rules (< 150 miles)
Local	3	Yes.
51-100	2	Yes.
101-150	3	Yes.
151-200	3	No. Drivers may be able to achieve compliance with the 30-minute break

		requirement because of limited distance.
201-500	10	No.
>500 miles	4	No.
Unknown	1	Unknown.
Total	26	—

Given the low number of fatal crashes involving carriers transporting live animals (e.g., 20 crashes for an industry sector that currently includes 66,316 active carriers), FMCSA believes there would be no decrease in safety for the traveling public associated with an exemption from the 30-minute rest break requirement.

FMCSA Determination

In consideration of the above, FMCSA has determined that it is appropriate to provide a limited one-year exemption from the 30-minute break requirement in the FMCSRs for interstate motor carriers transporting livestock. A review of the most recent MCMIS and TIFA data provides a basis for determining that a limited exemption, based on the terms and conditions imposed, would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

The Agency has decided to limit the exemption to a one-year period in order to gather additional data about the highway safety of operations under the exemption. As noted below, carriers utilizing the exemption will be required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. The exemption would be eligible for renewal consideration at the end of the one-year period.

Terms and Conditions of the Exemption

Extent of the Exemption

This exemption is limited to drivers engaged in the interstate transportation of livestock by CMV. The exemption from the 30-minute rest-break requirement is applicable during the transportation of livestock and does not cover the operation of the CMVs after the livestock are unloaded from the vehicle.

This exemption is only available to drivers transporting livestock as defined in the Emergency Livestock Feed Assistance Act of 1988, as amended (the 1988 Act) [7 U.S.C. § 1471(2)]. The term “livestock” as used in this exemption means “cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring, or are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Act].”

The exemption is further limited to motor carriers that have a “satisfactory” safety rating or are “unrated;” motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from utilizing this exemption.

Safety Rating

Motor carriers that have received compliance reviews are required to have a “satisfactory” rating to qualify for this exemption. The compliance review is an on-site examination of a motor carrier’s operations, including records on drivers’ hours of service, maintenance and inspection, driver qualification, commercial driver’s license requirements, financial responsibility, accidents, hazardous materials, and other safety

and transportation records to determine whether a motor carrier meets the safety fitness standard. The assignment of a “satisfactory” rating means the motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are appropriate for the size and type of operation of the motor carrier.

The FMCSA will also allow “unrated” carriers to use the exemption. Unrated motor carriers are those that have not received a compliance review. It would be unfair to exclude such carriers simply because they were not selected by for a compliance review, especially since carriers are prioritized for compliance reviews on the basis of known safety deficiencies.

The Agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate that the carrier has safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions of the exemption.

Accident Reporting

Motor carriers must notify FMCSA by email addressed to MCPSD@DOT.GOV with 5 business days of any accident (as defined in 49 CFR 390.5) that occurs while its driver is operating under the terms of this exemption. The notification must include:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver’s name and license number,
- d. Vehicle number and state license number,

- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- i. The total driving time and total on-duty time prior to the accident.

Period of the Exemption

FMCSA provides an exemption from the 30-minute break requirement [49 CFR 395.3(a)(3)(ii)] during the period of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Safety Oversight of Carriers Operating Under the Exemption


FMCSA expects each motor carrier operating under the terms and conditions of this exemption to maintain its safety record. However, should safety deteriorate, FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Authorization of the exemption is discretionary, and FMCSA will immediately revoke the exemption of any motor carrier

or driver for failure to comply with the terms and conditions of the exemption.

Preemption

During the period the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption [49 U.S.C. 31315(d)].

Issued on:



Anne S. Ferro
Administrator