

## Observation #13

The team identified a concern about TxDOT's approach to training and its training plan. Information gained in interviews indicated that the initial TxDOT training plan relied heavily on a training model employed by the California Department of Transportation (Caltrans), because Caltrans is the only State that has assumed NEPA responsibilities for the entire highway program. The FHWA does not believe the Caltrans training model can replicate its current form to meet the needs of TxDOT, because TxDOT has fewer NEPA staff, State environmental laws that differ in scope, and a different business "culture." There are other States (Idaho, Michigan, North Dakota, Ohio, and Wyoming) that have established training plans that TxDOT could draw upon as examples. These examples may benefit TxDOT and TxDOT should consider evaluating components of these State's training plans in their future annual updates of their own training plan.

## Observation #14

The team found evidence that some aspects of training tasks were either unattended and/or appear to have been forgotten based on the training plan information provided to the team. The TxDOT has a section of their Web site devoted to training, that the team learned from interviews, is out of date. Some courses are no longer taught and several classes are in need of updating, all of which provided for training of non-TxDOT staff (*i.e.* local governments and consultants). The team urges TxDOT to assess whether the proposed training approach for non-TxDOT staff (relying heavily upon the annual environmental conference) is adequate and responsive enough to address a need to quickly disseminate newly developed procedures and policy.

## Observation #15

The TxDOT training plan is currently silent on whether certain subjects and topics are mandatory or required for certain job responsibilities. The TxDOT staff told the team they would be developing a "progressive training plan" that will identify the range of training necessary for each job classification. District Environmental Coordinators, and particularly District managers who allocated training resources, indicated in interviews that they needed to know which training was required for various TxDOT job categories, to set budgeting priorities. The team recognized the important connection between getting District staff

trained and a clear statement whether training was required for a certain job. Due to the connection potentially being tenuous, this may explain the inconsistency the team heard in interview responses to questions on training commitments from District managers. The team suggests that the progressive training plan clearly identify training required for each job classification.

## Observation #16

From the perspective of the MOU, training planning and implementation is a partnership effort amongst TxDOT, FHWA, and other agencies. Training should be an ongoing task that follows an up-to-date and mid-to-long range training plan. The current training plan includes mostly TxDOT self-identified training needs and addresses those needs. The MOU (Part 12.2) allows for 3 months after the MOU is executed, to develop a training plan in consultation with FHWA and other agencies. The TxDOT has committed in the MOU to consider the recommendations of agencies in determining training needs, and to determine with FHWA, the required training in the training plan MOU (Part 12.2). The TxDOT considered and will address the specific comments from the U.S. Army Corps of Engineers in the current training plan. However, the team learned through interviews that individuals responsible for training planning were unaware of the coordination between TxDOT subject matter experts and other agencies related to training. It may be useful for the TxDOT training coordinator to be fully involved and aware of the range of coordination other TxDOT staff performs so that the training plan benefits from this coordination.

*Next Steps*

The FHWA provided this draft audit report to TxDOT for a 14-day review and comment period. The team has considered TxDOT comments in developing this draft audit report. As the next step, FHWA will publish a notice in the **Federal Register** to make it available to the public and for a 30-day comment period review [23 U.S.C. 327(g)]. No later than 60 days after the close of the comment period, FHWA will respond to all comments submitted in finalizing this draft audit report [pursuant to 23 U.S.C. 327(g)(B)]. Once finalized, the audit report will be published in the **Federal Register**.

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**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2015-0012]

**Hours of Service of Drivers: Application for Exemption; American Trucking Associations, Inc.**

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

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

**SUMMARY:** FMCSA announces its decision to grant motor carriers transporting security-sensitive hazardous materials (HM) requiring a security plan an exemption from the Federal hours-of-service (HOS) regulations that prohibit commercial motor vehicle (CMV) drivers from driving a CMV if more than 8 consecutive hours have passed since the driver's last off-duty or sleeper-berth period of 30 minutes or more. American Trucking Associations, Inc. (ATA) requested the exemption on behalf of all motor carriers that transport certain HM shipments requiring security plans under regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA). These plans normally require a driver to attend such cargo while the CMV is stopped, which is an on-duty activity under the HOS rules. Exempt drivers may now count their on-duty attendance of HM cargo toward the required 30-minute rest break requirement provided they perform no other on-duty activity. This exemption parallels § 395.1(q) of the Federal Motor Carrier Safety Regulations (FMCSRs) that allows drivers who are attending loads of certain explosives to count on-duty attendance time toward their rest break so long as they engage in no other on-duty activity.

**DATES:** The exemption is effective August 21, 2015 and expires on August 21, 2017.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325; Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**SUPPLEMENTARY INFORMATION:****Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the 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 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 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

#### **Driver Attendance and Rest Breaks**

Some shipments of property by CMV require that the vehicle be attended at all times, such as shipments of explosives, weapons, or radioactive materials. Constant attendance of the CMV may be explicitly required by Federal or State law, or by the terms of the shipment contract. For example, Section 397.5 of the FMCSRs requires drivers transporting cargo classified as Division 1.1, 1.2, or 1.3 (explosive) materials to attend the cargo at all times.

On December 27, 2011, FMCSA published a final rule amending the HOS rules (76 FR 81134). The Agency added a new requirement that drivers obtain a rest break: "After June 30, 2013, driving is not permitted if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes." (§ 395.3(a)(3)(ii)). Thus, drivers must expand a fueling stop or other break to ensure that they go off duty (or into the sleeper berth) for at least 30 consecutive minutes to satisfy this requirement. The drivers must make an entry on their record of duty status (RODS) showing the off-duty time.

By definition, on-duty time includes all time ". . . [p]erforming any other work in the capacity, employ, or service of, a motor carrier" (§ 395.2). A driver attending a CMV is on duty. During the 2011 HOS rulemaking, motor carriers of hazardous materials identified the conflict between HM attendance under § 397.5 and the rest-break requirement. As a result, FMCSA included § 395.1(q) in the 2011 HOS amendments. This section permits drivers who are

attending a motor vehicle transporting Division 1.1–1.3 explosives, but performing no other work, to log a period of at least 30 consecutive minutes of the time spent attending the CMV toward the break. The driver annotates his log to indicate when the § 395.1(q) break was taken. The time is on-duty time, and counts against the driver's maximum time on duty of 60 hours in 7 days (in some cases, 70 hours in 8 days).

#### **Request for Exemption**

Another Federal agency, PHMSA, requires motor carriers transporting materials requiring placarding under 49 CFR part 172, subpart F, or certain agents and toxins identified in § 172.800(b)(13) that do not require placarding, to develop special plans that account for personnel, cargo, and en route security (49 CFR 172.800–804). Most carriers include constant attendance on cargo in these security plans. Because attendance on a CMV is considered on-duty time under the HOS rules, drivers who are required by their carrier's HM security plan to attend the CMV at all times cannot go off duty to satisfy the HOS rest-break requirement.

ATA filed this exemption request on behalf of all motor carriers whose drivers transport HM loads subject to the PHMSA security plan requirement. ATA asserts that allowing these drivers to count up to 30 minutes of their attendance time as the required rest break if they perform no other on-duty activities during the break would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. It asserts that attendance is unlikely to contribute to driver fatigue and that allowing these drivers to maintain their attendance of these loads provides better security than if the driver has to leave the vehicle to obtain 30 minutes off duty.

#### **Public Comments**

The FMCSA published a notice announcing and requesting public comment on ATA's exemption request on May 1, 2015 (80 FR 25004). Thirteen comments were submitted. Three individuals expressed concern that the exemption was only of value to large trucking firms and that the Agency should deny all applications for exemption. Advocates for Highway and Auto Safety thought the exemption was overly broad, permitting motor carriers engaged in qualifying HM shipments to use the exemption for their shipments of non-HM cargo. Several trade groups and two drivers favored the application as a

necessary solution to a regulatory dilemma.

#### **FMCSA Response**

FMCSA has evaluated ATA's application for exemption and the public comments submitted. Opponents of the exemption did not address the regulatory dilemma described in the application for exemption and echoed by the comments of drivers and trade organizations supporting the exemption. The Agency finds the arguments in favor of the exemption persuasive. FMCSA believes it has designed terms and conditions for this exemption sufficient to relieve this dilemma while preventing its abuse. Motor carriers may only use this exemption when their drivers are actually transporting HM that requires placarding or includes a select agent or toxin identified in § 172.800(b)(13), and for which a security plan has been filed under §§ 172.800–804. If a driver is not transporting qualifying HM materials, he or she is not entitled to substitute attendance for the required off-duty break. Drivers operating under this exemption may count up to 30 minutes of their on-duty attendance time toward a required rest break, if they perform no other on-duty activities during the rest-break period.

It should be noted that there is no motive for a driver or carrier to claim this exemption when not entitled to it. A driver who is not required to constantly attend his or her vehicle must take the minimum 30-minute rest break as off-duty time, which does not count against the 7 or 8-day limit of 60 or 70 hours on-duty. A driver claiming this exemption unnecessarily would be required to take the same rest breaks, but would be on-duty and the time would count against the 60 or 70-hour limit.

#### **FMCSA Decision**

In consideration of the above, FMCSA has determined that it is appropriate to provide a two-year exemption from the 30-minute break requirement for carriers whose drivers transport HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in § 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with §§ 172.800–804. Drivers must annotate their RODS to show the on-duty time claimed as a rest break to satisfy a security plan requiring attendance of HM loads.

Under these terms and conditions described below, the application for exemption is likely to achieve a level of

safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. Motor carriers utilizing the exemption will be required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. The exemption is eligible for renewal at the end of the two-year period.

### Terms and Conditions of the Exemption

#### Extent of the Exemption

This exemption is limited to drivers transporting HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in § 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with §§ 172.800–804. This exemption is 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. Drivers must have a copy of the exemption document in their possession while operating under the terms of the exemption and must present it to law enforcement officials upon request.

#### Accident Reporting

Motor carriers must notify FMCSA by email addressed to [MCPSD@DOT.GOV](mailto: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. Identifier of the Exemption: “HM”
- b. Name of operating 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,
- f. Name of co-driver, if any, and license number
- g. Vehicle number and state license number,
- h. Number of individuals suffering physical injury,
- i. Number of fatalities,
- j. The police-reported cause of the accident,
- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- l. The total driving time and total on-duty time prior to the accident.

### 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: August 6, 2015.

**T.F. Scott Darling, III,**  
Chief Counsel.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0268]

#### Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Motor Carrier Identification Report

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

**ACTION:** Notice and request for information.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an ICR entitled, “Motor Carrier Identification Report,” which is used to identify FMCSA regulated entities, help prioritize the agency’s activities, aid in assessing the safety outcomes of those activities, and for statistical purposes. This ICR is being revised due to a Final Rule titled, “Unified Registration System,” (78 FR 52608) dated August 23, 2013 which will require regulated entities to file for registration via a new online Form MCSA–1 and eliminate the Forms MCS–150B and MCS–150C contained in the ICR. The Form MCS–150 will be retained for use by the small number of Mexico-domiciled motor carriers that

seek authority to operate beyond the United States municipalities on the United States-Mexico border and their commercial zones because they are not included within the scope of the Unified Registration Final Rule.

**DATES:** We must receive your comments on or before *October 20, 2015*.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2015–0268 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and follow the online instructions for accessing the dockets, or go to the street address listed above.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-794.pdf>.

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you