



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2012-0183]

Hours of Service of Drivers of Commercial Motor Vehicles; Regulatory Guidance for Oilfield Exception

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

ACTION: Notice of regulatory guidance; request for public comment.

SUMMARY: FMCSA announces its revision of regulatory guidance to clarify the applicability of the “Oilfield operations” exceptions in 49 CFR 395.1(d) to the “Hours of Service of Drivers” regulations, and requests comments on the revision. The regulatory guidance is being revised to ensure consistent understanding and application of the regulatory exceptions.

DATES: This regulatory guidance is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2012-0183 by any of the following methods:

- **Web site:** www.regulations.gov. Follow the instructions for submitting comments on the Federal electronic docket site.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, Room W-12-140, 1200 New Jersey Avenue, SE, 20590-0001.

- Hand Delivery: Ground Floor, Room W12-140, DOT Building, 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 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 www.regulations.gov at any time or to the ground floor, room W12-140, DOT Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

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 the DOT’s complete Privacy Act Statement in the **Federal Register** published on December 29, 2010 (75 FR 82133), or you may visit www.regulations.gov.

Public Participation: The www.regulations.gov Web site is generally 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 www.regulations.gov Web site and also at the DOT’s <http://docketsinfo.dot.gov> Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or

postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, phone (202) 366-4325, e-mail MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 provides that “The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation” [49 U.S.C. 31502(b)].

The Motor Carrier Safety Act of 1984 (MCSA) confers on the Secretary the authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and, after the national

registry maintained by the Department of Transportation under section 31149(d) is established, are listed on such registry; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)]. The Act also grants the Secretary broad power to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate" [49 U.S.C. 31133(a)(8) and (10)].

The Administrator of FMCSA has been delegated the authority to carry out the functions vested in the Secretary by the Motor Carrier Act of 1935 [49 CFR 1.73(l)] and the MCSA [§ 1.73(g)]. The provisions affected by this Notice of Regulatory Guidance are based on these statutes.

Background

The Interstate Commerce Commission (ICC), which originally had jurisdiction over CMV highway safety, first heard requests for an oilfield exemption when the earliest HOS rules were issued in 1939. The Commission declined to grant the request, however, stating that "...important as these considerations are, they do not overcome our primary duty to prescribe maximum hours which will be reasonably safe" (Ex Parte No. MC-2, 11 M.C.C. 206, January 27, 1939).

In 1962, the ICC revisited the HOS rules. The Commission considered testimony from oilfield equipment operators in a discussion of specialized oilfield equipment requiring special training, and approved a 24-hour restart provision for operators of these vehicles. The record indicates that this same restart provision was intended to apply to operators employed exclusively in the transportation of equipment for use in servicing the well operations. In other words, both descriptive clauses were intended to apply to the

same group of drivers [Ex Parte No. MC-40 (Sub-No.1), 89 M.C.C. 28, March 29, 1962]. This restart provision was codified on April 13, 1962 (27 FR 3553) as § 195.3(d), and later recodified as § 395.1(d)(1). Neither the original nor the recodified text mentioned specially designed vehicles or specially trained drivers.

Approximately 5 months following the March 29, 1962, decision to grant the 24-hour restart, the ICC also granted without any comment the “waiting time” exception as it now stands, using the “specially constructed” and “specially trained” phrases (27 FR 8119; August 15, 1962). There was no discussion in the notice, but 27 FR 8119 includes a long list of petitions from industry and equipment manufacturers that were filed after the March 29 decision. The duties and functions of the ICC were terminated in December 1995 (see the ICC Termination Act of 1995); the petitions themselves, filed nearly 50 years ago, are not readily available.

In the August 15, 1962, **Federal Register** notice, the oilfield “waiting time” exception (referring to specially constructed vehicles and specially trained drivers) was part of the definition of “on duty time” in (then) 49 CFR 195.2(a)(9). The 24-hour restart exception, referring to the broader group servicing the oilfield sites, was placed under the section regarding duty time.

In a “technical amendment” published in the **Federal Register** as part of a broader final rule, the 24-hour restart and waiting-time provisions were merged to become today’s § 395.1(d)(1) and (2) [57 FR 33638; July 30, 1992].

Reason for This Notice of Regulatory Guidance

This notice revises regulatory guidance to clarify which CMV drivers are subject to the HOS exceptions in 49 CFR 395.1(d), “Oilfield operations.” A significant increase

in oil and gas drilling operations in many States has resulted in a major increase in CMV traffic to move the oilfield equipment, and to transport large quantities of supplies, such as water and sand, to the sites. The operators of many of these vehicles have raised questions about the applicability of § 395.1(d) to them.

Section 395.1(d) provides two separate exceptions to the HOS rules, with the two exceptions applying to different operators. Section 395.1(d)(1) states that for drivers of CMVs used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. This is commonly referred to as a “24-hour restart” of the 70 hours in 8 days total on-duty time limit in § 395.3(b).

Section 395.1(d)(2) states, in part, that in the case of specially trained drivers of CMVs that are specially constructed to service oil wells, “on-duty time shall not include waiting time at a natural gas or oil well site.” Under the definition of “On duty time” in § 395.2, drivers who are standing by at an oil well site until their services are needed would normally be considered on-duty, thereby constraining the hours that they would have available to legally drive a CMV within the HOS-rule limits. This exception is often referred to as the “oilfield waiting time” provision.

Request for Comments

Refer to the **ADDRESSES** section above for instructions on submitting comments to the public docket concerning this regulatory guidance. The FMCSA will

consider comments received by the closing date of the comment period to determine whether any further clarification of these regulatory provisions is necessary.

For the reasons explained above, FMCSA revises Regulatory Guidance, Questions 6 and 8 to 49 CFR 395.1 (62 FR 16420, April 4, 1997) as follows:

PART 395 – HOURS OF SERVICE OF DRIVERS

Section 395.1(d). “Oilfield operations.”

“Question 6: What does "servicing" of the field operations of the natural gas and oil industry cover?

Guidance: The “24-hour restart” provision of § 395.1(d)(1) is available to drivers of the broad range of commercial motor vehicles (CMVs) that are being used for direct support of the operation of oil and gas well sites, to include transporting equipment and supplies (including water) to the site and waste or product away from the site, and moving equipment to, from, or between oil and gas well sites. These CMVs do not have to be specially designed for well site use, nor do the drivers require any special training other than in operating the CMV.

Question 8: What kinds of oilfield equipment may drivers operate while taking advantage of the special “waiting time” rule in §395.1(d)(2)?

Guidance: The “waiting time” provision in § 395.1(d)(2) is available only to operators of those commercial motor vehicles (CMVs) that are (1) specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle. In many instances, the operators spend little time driving these CMVs because "leased drivers" from driveaway services are brought in to move the heavy equipment from one site to

another. These operators typically may have long waiting periods at well sites, with few or no functions to perform until their services are needed at an unpredictable point in the drilling process. Because they are not free to leave the site and may be responsible for the equipment, they would normally be considered “on duty” under the definition of that term in § 395.2. Recognizing that these operators, their employers, and the well-site managers do not have the ability to readily schedule or control these driver’s periods of inactivity, § 395.1(d)(2) provides that the “waiting time” shall not be considered on-duty (i.e., it is off-duty time). During this “waiting time,” the operators may not perform any work-related activity. To do so would place them on duty.

Examples of equipment that may qualify the operator/driver for the “waiting time exception” in § 395.1(d)(2) are vehicles commonly known in oilfield operations as heavy-coil vehicles, missile trailers, nitrogen pumps, wire-line trucks, sand storage trailers, cement pumps, “frac” pumps, blenders, hydration pumps, and separators. This list should only be considered examples and not all-inclusive. Individual equipment must be evaluated against the criteria stated above: (1) specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle infrequently.

Operators of CMVs that are used to transport supplies, equipment, and materials such as sand and water to and from the well sites do not qualify for the “waiting time exception” even if there have been some modifications to the vehicle to transport, load, or unload the materials, and the driver required some minimal additional training in the operation of the vehicle, such as running pumps or controlling the unloading and loading processes. It is recognized that these operators may encounter delays caused by logistical

or operational situations, just as other motor carriers experience delays at shipping and receiving facilities. Other methods may be used to mitigate these types of delays, which are not the same types of waiting periods experienced by the CMV operators who do qualify for the waiting time exception.”

Issued on: May 30, 2012

Anne S. Ferro
Administrator

[FR Doc.
2012-13584
Filed
06/01/2012 at
8:45 am;
Publication
Date:
06/05/2012]