



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

Administrator

August 8, 2016

1200 New Jersey Avenue, SE
Washington, DC 20590

Mr. Colin Mooney
Executive Director
Commercial Vehicle Safety Alliance
6303 Ivy Lane, Suite 310
Greenbelt, MD 20770

Dear Mr. Mooney:

The Federal Motor Carrier Safety Administration (FMCSA) has completed its review of the Commercial Vehicle Safety Alliance (CVSA) petition for rulemaking of October 28, 2015. You requested that the Agency amend 49 CFR 395.3, "Maximum driving time for property-carrying vehicles" by deleting § 395.3(a)(3)(ii); Rest breaks. For the reasons explained in the enclosure, FMCSA denies your petition.

The Agency has reviewed the preamble to its December 27, 2011, final rule concerning truck drivers' hours of service and believes there is no basis for rescinding the 30-minute rest break requirement. Neither the scientific studies that were relied upon nor the roadside inspection data reviewed for calendar years 2013, 2014 and 2015 support the contention that the safety benefits are questionable or that enforcement is particularly difficult, even after granting limited exemptions for certain industry segments.

Additionally, on August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit upheld the revised HOS rules, including the rest break requirement, with one exception: the Court decided the rest break provisions should not apply to "short haul" operators. The Court found no merit to the petitioner's claim in this case, ruling that FMCSA had more than adequately supported its choice by referencing the 2011 studies concluding that off-duty breaks provided the greatest safety benefit. The Court ruled that the Agency had made a "... reasoned decision based on reasonable extrapolations from some reliable evidence."

The Agency stands by its 2011 preamble and finds no merit in CVSA's challenge to the value of the 30-minute rest break requirement. The fact that CVSA believes the provision may be difficult to enforce does not negate its safety benefit.

Should you need additional information or assistance, please contact Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Carrier, Driver and Vehicle Safety Standards, at (614) 942-6477 or by email at tom.yager@dot.gov.

Sincerely,

T.F. Scott Darling, III

Enclosure

Commercial Vehicle Safety Alliance (CVSA)
October 28, 2015, Petition for Rulemaking to Rescind the 30-Minute Rest Break
Requirement, 49 CFR 395.3(a)(3)(ii)

FMCSA Decision

The Petition:

CVSA (the Petitioner) believes the 30-minute rest break requirement is difficult to effectively enforce, as the inspector has no way of determining whether the driver was legitimately off duty during the rest break. Petitioner argues that the provision gives problem drivers and motor carriers an opportunity to falsify their records of duty status in an attempt to disguise or conceal on-duty hours. Further, Petitioner believes there is no evidence that the 30-minute rest break requirement contributes to safety.

In addition, Petitioner argues that FMCSA's exemptions under 49 CFR Part 381 have made the enforcement of the 30-minute break more difficult for roadside inspectors. CVSA specifically referenced nine exemptions for industry segments including hazardous materials, livestock, concrete mixer trucks, and the Department of Energy and the Department of Defense. CVSA does not object to the individual exemptions but believes that, cumulatively, they complicate the enforcement process and undermine the foundation of the motor carrier safety program.

FMCSA Analysis

The Agency has reviewed the preamble to its December 27, 2011, final rule concerning truck drivers' hours of service and believes there is no basis for rescinding the 30-minute rest break requirement. Neither the scientific studies that were relied upon nor the roadside inspection data reviewed for calendar years 2013, 2014 and 2015 support the contention that the safety benefits are questionable or that enforcement is particularly difficult, even after granting limited exemptions for certain industry segments. The Agency stated in its response to the public comments that:

"The Blanco and Jovanis (2011) studies demonstrate that breaks reduce the risk of crashes after the break, findings that are consistent with research on the impact of breaks on accident risks in other industrial sectors. Blanco analyzed SCEs in the hour preceding and after a break. This research found that any break from driving reduces risk in the hour following the break, but off-duty breaks produced the largest reduction. This study also showed that when non-driving activities (both work- and rest-related) were introduced during the driver's shift—creating a break from the driving task—these breaks significantly reduced the risk of being involved in an SCE [Safety Critical Event] during the 1-hour window after the break. The benefits of breaks from driving ranged from a 30- to 50-percent reduction in risk of SCEs (depending on the type of break from driving), with the greatest benefit occurring for off-duty (non-working) breaks. Jovanis (2011) studied the effect of breaks from driving on crash risk. That analysis was unable to distinguish between on-duty breaks from driving and off-duty breaks. The analysis looked at the effects of one, two, or three breaks from driving in a day on the likelihood of crash involvement. The inclusion of any break was found to reduce the risk of a crash, and the effect of two breaks was found to be statistically significant.

likelihood of crash involvement. The inclusion of any break was found to reduce the risk of a crash, and the effect of two breaks was found to be statistically significant. In addition, O'Neill (1999) found that breaks improve performance on driving simulators. The study examined driver simulation performance following active breaks in which loading and unloading of a vehicle was simulated, and rest breaks. The study found that loading and unloading had mixed effects on driving performance, but that off-duty breaks improved performance. The driving simulations showed a decrease in simulator performance from the start of a driving period to the point at which a break was taken. After a break from driving, performance was restored temporarily, and then began to decline as the length of time since the last break increased.”

Additionally, on August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit upheld the revised hours-of-service (HOS) rules, including the rest break requirement, with one exception: The Court vacated the rest break provisions applicable to “short haul” operators. However, the Court found no merit in the litigants’ frontal attack on rest breaks, ruling that FMCSA had more than adequately supported its choice by referencing the 2011 studies concluding that off-duty breaks provided the greatest safety benefit. The Court held that the Agency had made a “. . . reasoned decision based on reasonable extrapolations from some reliable evidence.”

The Agency stands by its 2011 preamble and finds no merit in CVSA’s challenge to the value of the 30-minute rest break requirement. The fact that Petitioner believes the provision may be difficult to enforce does not negate its safety benefit. This is especially true given the lack of data to support the contention that the rule is difficult to enforce, a view CVSA held even before the Agency’s decision to grant limited exemptions to certain industry segments.

FMCSA disagrees with Petitioner’s argument that the current exemptions make enforcement efforts more difficult and increase uncertainties about the overall benefit of the HOS rules. The Agency believes that exemptions provide appropriate relief for specific segments of the industry, and that drivers covered by most of the exemptions do indeed take breaks during the day, though not always in 30-minute increments. The process by which the Agency considered each of these requests was transparent, with all interested parties having the opportunity to provide written comments to a public docket.

FMCSA is required by statute to seek public comment on each complete exemption application and after a review of the comments, issue a decision based on the merits of the request and whether the terms and conditions of the exemption would achieve a level of safety equivalent to or greater than the level of safety provided by the regulations. We are not aware of any information that would suggest the terms and conditions of any of the exemptions that have been granted would have an adverse impact on safety. While it is possible that some inspectors may be reluctant to enforce a rule because certain motor carriers have been granted an exemption, irrespective of the fact that most interstate carriers remain subject to the rule, we believe the majority of enforcement officials continue to provide thorough inspections each and every time they stop a commercial motor vehicle.

Any inspector that is prepared to enforce the rules could quickly and efficiently determine whether there is a relevant exemption. For example, approximately half of the exemptions in question pertain to the 30-minute rest break provision. The covered industry segments represent

And based on our analysis of roadside inspection data, these exemptions from the 30-minute break provision have not appeared to interfere with the enforcement of the 30-minute rule. During calendar year 2013 68,528 violations of the rule were cited. During calendar year 2014 95,523 violations were cited. And there were 69,906 violations cited in calendar year 2015. The 30-minute break violations have been among the top 4 roadside violations cited during the past 3 calendar years. Copies of this information are available to the public via FMCSA's Analysis and Information Online website: <http://ai.fmcsa.dot.gov/SafetyProgram/RoadsideInspections.aspx>.

FMCSA Decision

In consideration of the above, FMCSA denies the Petitioner's request to eliminate the 30-minute rest break provision from the hours-of-service regulations. The petitioner has not provided any data or information that would suggest that the provision places an undue burden either on regulated carriers or the enforcement community. In the absence of data or information, the Agency stands by its analysis as presented in the preamble of the 2011 final rule. Given the number of violations cited during roadside inspections, there is no reason to believe that enforcement officials are having any difficulty documenting these violations.

Issued on:



T. F. Scott Darling, III
Administrator