



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

October 28, 2015

The Honorable T. F. Scott Darling, III
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE, 6th Floor
Washington, DC 20590-9898

RE: Petition for Rulemaking – Remove Title 49 C.F.R. § 395.3(a)(3)(ii) Rest break.

Dear Administrator Darling:

Pursuant to Title 49 Code of Federal Regulations (C.F.R.) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend Title 49 C.F.R. § 395.3, Maximum driving time for property-carrying vehicles., by striking § 395.3(a)(3)(ii) Rest breaks.

Justification

In December 2011, FMCSA published a final rule amending its hours of service (HOS) regulations for drivers of property-carrying commercial motor vehicles (CMV). The final rule included a provision, Title 49 C.F.R. § 395.3(a)(3)(ii), requiring drivers to take a rest break during the workday 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.

At that time, CVSA expressed concerns over the enforceability of the provision and the possible impacts it could have on consistency in enforcement and safety. The 30-minute rest break provision is difficult to effectively enforce, as the inspector has no way of verifying whether or not the driver was legitimately off duty during that time or if he/she used the time to perform other work-related duties, such as fueling, inspection, or loading and unloading times. This provision gives problem drivers, and motor carriers, an opportunity to falsify their record of duty status (RODS) in an attempt to disguise, or conceal, on-duty hours. Enforcing this proposed rule is impossible without supporting documents to either verify, or refute, such entries. Further, CVSA does not believe there is evidence that the requirement improves a driver's overall CMV operational capabilities or increases safety. The 30-minute rest break creates more difficulty for roadside inspectors and law enforcement officers to verify compliance. Since the rule has been implemented, CVSA members continue to have concerns with the enforceability and effectiveness of the requirement.

Since that time, FMCSA has issued a number of exemptions to the 30-minute rest break requirement, to various sectors of the industry. As of October 2015, the agency has issued nine exemptions from the requirement, including hazardous materials transporters, livestock haulers, concrete haulers, and the Departments of Defense and Energy. In each of these instances, FMCSA has indicated that an equivalent level of safety can be maintained under the exemption.

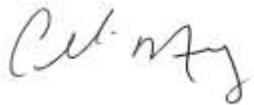
While CVSA does not object to these exemptions on an individual basis, exemptions complicate the enforcement process, causing confusion and inconsistency in enforcement, which undermines the very foundation of the federal commercial motor vehicle enforcement program—uniformity. The regulations are only effective if they are clear and enforceable. Given CVSA’s original concerns with the 30-minute rest break provision, the challenges that exemptions cause, and the fact that FMCSA has determined that for so many in industry, an equivalent level of safety can be maintained despite not taking the rest break, CVSA petitions the agency to consider removing the rest break requirement all together.

Removing the requirement would eliminate confusion and inconsistency in enforcement, which benefits both industry and the enforcement community, while also saving both industry and the agency time and resources currently being spent on the petition process. All without negatively impacting safety, as FMCSA has already indicated in the many exemptions granted from the requirement.

The Alliance works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at collinm@cvsa.org.

Respectfully,

A handwritten signature in black ink, appearing to read "Collin B. Mooney".

Collin B. Mooney
Acting Executive Director