



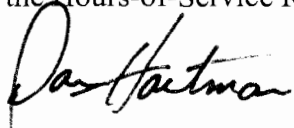
U.S. Department
Of Transportation
Federal Motor Carrier
Safety Administration

Memorandum

Subject: **ACTION:** SAFETEA-LU Sections
4130-4133 and 4146 Guidance: Certain
Exemptions to the Hours-of-Service Rules
(ECE-016-06)

Date:

APR 4 2006

From: Dan Hartman 
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Reply to
Attn. of: MC-ECE

To: Chief Safety Officer
Associate Administrator for Field Operations
Field Administrators
MC-E Office Directors and Division Chiefs
Division Administrators/State Directors
National Enforcement Team
National Training Center

PURPOSE

This memorandum provides guidance to employees of the Federal Motor Carrier Safety Administration (FMCSA) based upon enactment of Public Law 109-59, the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

The SAFETEA-LU sections addressed in this memorandum are:

- Section 4130 - Operators of Vehicles Transporting Agricultural Commodities and Farm Supplies
- Section 4131 - Maximum Hours of Service for Operators of Ground Water Well Drilling Rigs
- Section 4132 - Hours of Service for Operators of Utility Service Vehicles
- Section 4133 - Hours of Service Rules for Operators Providing Transportation to Movie Production Sites
- Section 4146 - Exemption During Harvest Periods.

BACKGROUND

SAFETEA-LU was signed into law by the President on August 10, 2005. SAFETEA-LU includes several specific exemptions to FMCSA's hours of service (HOS) rules. These exemptions became effective upon the date of enactment of SAFETEA-LU, August 10, 2005, and are currently in effect with respect to drivers operating commercial motor vehicles (CMVs) even though 49 CFR Part 395 has not yet been changed to include them.

On September 06, 2005, the FMCSA Associate Administrator for Enforcement and Program Delivery issued preliminary guidance regarding specific hours of service exemptions outlined in SAFETEA-LU. This memorandum augments the September 06, 2005 guidance and provides guidance regarding implementation of SAFETEA-LU exemptions found in Sections 4130, 4131, 4132, 4133, and 4146.

During compliance reviews, safety audits, or roadside inspections, FMCSA staff should determine whether any of these exemptions apply and to what extent. Each of the below-described exemptions have specific elements which must be reviewed in order to determine whether the exemption applies to specific operations, transportations, and/or circumstances.

POLICY

1. SAFETEA-LU Section 4130 - Operators of Vehicles Transporting Agricultural Commodities and Farm Supplies

SAFETEA-LU Section 4130 expands the existing hours of service exemption for agricultural commodities and farm supplies in 49 CFR 395.1(k) by adding a year round exemption for transporters of livestock feed and specific definitions of "agricultural commodity" and "farm supplies for agricultural purposes."

Please note: Prior to 1996, FMCSA exempted these drivers only from maximum driving and on duty time, which is also the language used in SAFETEA-LU. However, FMCSA subsequently extended the exemption to include all provisions of 49 CFR Part 395 and will continue to do so.

The current agricultural exemption in 49 CFR 395.1(k) reads as follows:

(k) *Agricultural operations.* The provisions of this part **shall not apply** to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

- (1) Is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies, and
- (2) Is conducted during the planting and harvesting seasons within such State, as determined by the State (emphasis added).

SAFETEA-LU Section 4130 expands and clarifies the agricultural exemption by defining "agricultural commodity" and "farm supplies for agricultural purposes."

Agricultural commodity.-The term ‘agricultural commodity’ means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).

[Livestock is defined in the Emergency Livestock Feed Assistance Act as “cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, fish used for food, and other animals designated by the Secretary....”]

Farm supplies for agricultural purposes.-The term ‘farm supplies for agricultural purposes’ means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and **livestock feed at any time of the year** (emphasis added).

Prior to SAFETEA-LU, FMCSA did not extend the agricultural exemption to transporters of livestock and livestock feed. The following guidance in 49 CFR 395.1 summarizes FMCSA’s application of the exemption prior to SAFETEA-LU:

395.1 Question 31: Does the exception in §395.1(k) for “drivers transporting agricultural commodities or farm supplies for agricultural purposes” cover the transportation of poultry or poultry feed?

Guidance: No. The exception was created by Sec. 345(a)(1) of the National Highway System Designation Act of 1995 [Public Law 104-50, 109 Stat. 568, at 613], which provides in part that the hours of service regulations “shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes...” The terms “agricultural commodities or farm supplies for agricultural purposes” were not defined, but the context clarifies their meaning. Because the statute made the exception available only “during the planting and harvesting seasons” in each State, Congress obviously intended to restrict it to agriculture in the traditional (and etymological) sense, i.e., the cultivation of fields. “Agricultural commodities” therefore means products grown on and harvested from the land, and “farm supplies for agricultural purposes” means products directly related to the growing or harvesting of agricultural commodities.

Drivers transporting livestock or slaughtered animals, or the grain, corn, hay, etc., used to feed animals, may not use the “agricultural operations” exception.

SAFETEA-LU Section 4130, supersedes the earlier FMCSA interpretation of agricultural commodity. SAFETEA-LU extends the hours of service exemption to include transporters of livestock and livestock feed. Therefore, **Field staff are directed to disregard the above interpretation (49 CFR 395.1, Question 31), and extend the agricultural exemption to carriers of livestock and livestock feed.**

Staff should further note that the SAFETEA-LU definition of “farm supplies for agricultural purposes” **allows transporters of livestock feed to take advantage of the hours of service**

exemption year round. FMCSA staff, therefore, should not limit the exemption for livestock feed transporters to the “harvest season” as defined by the State.

2. SAFETEA-LU Section 4131 – Maximum Hours of Service for Operators of Ground Water Well Drilling Rigs

FMCSA rules allow operators of ground water well drilling rigs to restart their 60 or 70 hour clock by taking 24 consecutive hours off duty. SAFETEA-LU Section 4131 reaffirms this provision.

FMCSA defines “Ground water well drilling rig” in 49 CFR 395.2:

Ground water well drilling rig means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

The exemption for ground water well drilling operators reads as follows (49 CFR 395.1(l)):

Ground water well drilling operations. In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

FMCSA staff should continue to allow a 24-hour restart when reviewing ground water well drilling operators. SAFETEA-LU does not offer any additional regulatory exemptions for these drivers.

3. SAFETEA-LU Section 4132 – Hours of Service for Operators of Utility Service Vehicles

Please note: This guidance supersedes the Chief Safety Officer’s memorandum entitled, “Hours of Service Enforcement Guidance under Section 131 of the 2004 Omnibus Appropriations” issued on February 17, 2004, and any similar guidance, to the extent such guidance conflicts with the exemption provisions of SAFETEA-LU Section 4132 which prohibits Field staff from enforcing hours of service regulations regarding operators of utility service vehicles.

Prior to the implementation of SAFETEA-LU, FMCSA allowed operators of utility service vehicles to restart their 60 or 70 hour clock after 24 hours or more off duty. (49 CFR 395.1(n)). However, SAFETEA-LU Section 4132 exempts operators of utility service vehicles from all provisions of 49 CFR Part 395. Therefore, FMCSA shall not enforce hours of service rules against drivers of utility vehicles.

SAFETEA-LU Section 4132 does not alter the 49 CFR 395.2 definition of utility service vehicle.

Utility service vehicle means any commercial motor vehicle:

- (1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;
- (2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and
- (3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

SAFETEA-LU Section 4132 also prohibits a State or political subdivision from enacting or enforcing any hours of service laws or regulations similar to the Federal hours of service regulations contained at 49 CFR Part 395. Therefore, after analysis of this SAFETEA-LU provision, FMCSA has determined that States or political subdivisions are prohibited from imposing hours of service requirements upon either interstate or intrastate utility service drivers.

4. SAFETEA-LU Section 4133 – Hours of Service Rules for Operators Providing Transportation to Movie Production Sites

Please note: This guidance supersedes the Chief Safety Officer's memorandum entitled, "Hours of Service Enforcement Guidance under Section 131 of the 2004 Omnibus Appropriations" issued on February 17, 2004, and any similar guidance, to the extent such guidance conflicts with the exemption provisions of SAFETEA-LU Section 4133 which prohibits Field staff from enforcing hours of service regulations regarding certain operators of CMVs providing transportation of property or passengers to or from motion picture production sites.

Under Section 4133, drivers who provide transportation

- of property or passengers involved in making a movie;
- to or from a movie production site (including a television movie); and
- within a 100 air-mile radius of a driver's work reporting location

are subject to the hours-of-service rules in effect on April 27, 2003 (i.e., are exempt from the new hours-of-service rules). Unlike the 100-air mile radius exemption under 49 CFR 395.1(e)(1), SAFETEA-LU Section 4133 does not require that these drivers start from, or return to, their work reporting location.

FMCSA staff should review these operations for violations of the 10, 15, and 60/70-hour rules for the days drivers operate within the 100 air-miles. While operating under these circumstances, drivers may not take advantage of the 34-hour restart or any other provisions of the new hours of service rules.

FMCSA staff should review hours of service for violations of the 11, 14, and 60/70-hour rules on days when drivers operate outside the 100 air-mile radius. Drivers may, during this period, utilize the 34-hour restart provision.

Staff should use the old hours of service rules ONLY on days the driver operates within 100 air-miles of the work reporting location. For example, eight hour rest periods apply only BETWEEN consecutive days the driver operates under the old rules. Ten hour rest periods apply both BEFORE AND AFTER days the driver operates under the current hours of service rules.

Example:

A driver regularly operates outside 100 air-miles. He takes 34 hours off duty (taking advantage of the restart under the new hours of service rules) then operates within 100 air-miles. He drives five hours, has four hours on duty not driving, three hours off duty then drives another five hours returning to his work reporting location. He takes eight hours off duty and repeats the schedule. At this point the driver is in compliance with the hours of service rules. He then takes eight hours off duty and operates beyond 100 air-miles the next day. The driver is in violation of the 14-hour rule as soon as he starts driving and the 11 hour rule after driving more than one hour because he was not off duty for ten consecutive hours prior to operating under the new hours of service rules.

In addition, a driver who transports equipment and passengers to or from motion picture production sites may be required to operate under the current hours of service rules on some days and under the old hours of service rules on other days, depending on whether the driver stays within a 100-air mile radius.

5. SAFETEA-LU Section 4146 –Exemption During Harvest Periods.

SAFETEA-LU creates an exemption for transporters of grapes during harvest season in the State of New York. Specifically, Section 4146 exempts drivers from hours of service regulations under 49 CFR Part 395 for those operations entirely:

- within State of New York;
- west of Interstate 81;
- within 150 air-miles from where the grapes were picked or distributed; and
- during the harvest period as defined by the State of New York.

Note: Unlike the other exemptions described in this memorandum, this exemption expires at the end of Fiscal Year 2009 (i.e., September 30, 2009).

IMPLEMENTATION DATE

These exemptions became effective upon the date of enactment of SAFETEA-LU, August 10, 2005, and are currently in effect with respect to drivers operating CMVs.

If you have any questions or need additional information, please contact the Enforcement and Compliance Division at (202) 366-9699.