

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

[FMCSA Docket No. FMCSA-99-6585]

Hours-of-Service of Drivers; Pilot Program for Drivers Delivering Home Heating Oil**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of final determination.

SUMMARY: The FMCSA announces the initiation of a pilot program to grant an exemption from the weekly hours-of-service restrictions for drivers of commercial motor vehicles (CMVs) making home heating oil deliveries that occur within a 100 air-mile radius of a central terminal or distribution point, during the winter months. The FMCSA will also allow States to grant temporary exemptions from the weekly restrictions in their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under terms and conditions identical to those used in the FMCSA's pilot program. The intrastate carriers will be required by the States in which they operate to report certain accident data to the FMCSA so that the agency can monitor their safety performance, combine the intrastate data with the interstate data, and analyze the results. Under the current regulations, drivers operating in interstate commerce may not drive after being on duty 60 hours in any seven consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). During the pilot program, participating motor carriers will be allowed to "restart" calculations for the 60- or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m. This action is in response to a request from the Petroleum Marketers Association of America (PMAA). The exemption preempts inconsistent State and local requirements applicable to interstate commerce.

DATES: The pilot program begins July 13, 2001. The exemption covers the period between November 1 and April 30 for three consecutive heating seasons, the first of which begins on November 1, 2001.

ADDRESSES: Home heating oil transporters (both interstate and intrastate) interested in participating in the pilot program should submit written, signed requests, containing the information required by this notice to: Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations (MC-PSD)—Home Heating Oil Program, 400 Seventh Street, SW., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366-4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, MC-CC, (202) 366-1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background****PMAA Request for Home Heating Oil Delivery Flexibility Program**

The PMAA requested that the FMCSA implement a three-year Winter Home Heating Oil Delivery Flexibility Program. A copy of the request is included in the docket. The PMAA requested that the new program be available to interstate and intrastate motor carriers operating in any State. The association indicated that elements of the previous heating oil program initiated in response to section 346 of the National Highway System (NHS) Designation Act (Pub.L. 104-59, 109 Stat. 569, at 615, November 28, 1995) could be used to address most of the guidelines for the new program, as well as satisfy most of the rules in 49 CFR 381.505, concerning minimum requirements for a pilot program. (For more information about the previous pilot program see 61 FR 51486, October 2, 1996; and 62 FR 4372, January 29, 1997.) The PMAA believes a home heating oil program would benefit many citizens and help to ensure that consumers are not deprived of an essential product during severe weather, all without compromising safety.

Notice of Proposal to Initiate a Pilot Program

On February 16, 2000 (65 FR 7906), the FMCSA published a notice announcing its proposal to initiate a pilot program in which the agency would grant an exemption from the weekly hours-of-service restrictions for drivers of CMVs making home heating oil deliveries. The notice discussed the

proposed structure of the program and requested public comment.

The agency received comments from: Advocates for Highway and Auto Safety (Advocates); National Propane Gas Association (NPGA); Parents Against Tired Truckers (PATT); Petroleum Marketers Association of America (PMAA); and the National Tank Truck Carriers, Inc. A summary of the comments is presented below.

Comments Opposed to Conducting a Pilot Program

Advocates and PATT were opposed to the initiation of a pilot program for hours of service. Advocates argued that the research cited in the notice proposing a home heating oil pilot program does not support the proposed exemption. Advocates stated that there was no analysis of the actual number or percentage increase in driving hours over different time frames provided in the notice proposing the pilot program. Also, there was no review of the differences in risk exposure that could be produced by granting the exemption and installing a minimum 32-hour restart. Advocates believes the agency did not comply with the requirements of TEA-21 because the agency did not "propose the machinery for conducting the pilot project, including its data collection and safety analysis activities." Advocates states that the program fails to address the TEA-21 requirement that each pilot program include adequate countermeasures to protect the health and safety of study participants and the general public.

PATT expressed concern that the proposed pilot program would have the effect of causing truck drivers to experience a high level of fatigue. PATT states:

Every year when the Petroleum Industry asks the State Police to waive the Hours of Service for their drivers because of a claimed shortage of heating oil, we get many calls from the delivery drivers, explaining that they really don't want to do the extra time that is forced on them because they fear a tragedy that can be caused by fatigue.

Comments Supporting the Pilot Program But Requesting a Revised Program Structure

The NPGA supports the proposal for a home heating oil pilot program but requested that the program be expanded to include transporters of propane, or that the FMCSA establish a separate pilot program for drivers delivering propane. NPGA believes the delivery infrastructure for both fuels is virtually identical. Both fuels are carried by pipeline, railcar, or trucks from the point of production to central

distribution facilities. Smaller local delivery trucks are used to serve each company's customers. NPGA indicated that both industries are busiest during the winter heating season, and sometimes have to respond to supply challenges beyond the industry's control.

NPGA believes there will be significant confusion within companies that serve both fuel oil and propane customers if the FMCSA covers only home heating oil. NPGA argues that " * * * it would be unfair for FMCSA to grant regulatory relief to one fuel over another, when companies are competing within an increasingly deregulated energy marketplace."

NTTC noted that its members compete economically with PMAA members. Both groups of motor carriers operate cargo tanks and both transport home heating oil. The difference is that NTTC members do not make deliveries to residences and PMAA members focus heavily on such deliveries. NTTC explained that residential deliveries are made by single-unit or straight trucks while deliveries to large commercial customers are made by combination units (i.e., towing unit and a trailer).

NTTC argues that the pilot program should be more rigidly controlled to avoid giving a marketplace advantage to PMAA members. It requested that the program be applicable to deliveries to terminals and distribution points, and be limited to vehicles with gross weights between 10,001 pounds and 40,000 pounds. The NTTC believes the weight range would ensure that only straight trucks are used in the program.

PMAA Comments

PMAA requested that the FMCSA not limit the number of States in the pilot program. They believe the program will become a regional program because of the use of home heating oil in certain parts of the country. PMAA does not believe the number of participants should be limited because weather patterns will limit the amount of data gathered.

PMAA submitted additional comments in response to Advocates and PATT comments. PMAA explained that all home heating oil delivery drivers work daytime hours. Customers do not want drivers delivering heating oil at nighttime. Also, it is not safe for drivers to fill tanks in the dark. During the winter months, drivers generally begin delivering oil at 7 a.m. and complete their deliveries by 5 p.m.

The PMAA stated that drivers sleep at home every night. The drivers work within a 100 air-mile radius of the normal work-reporting location. On

average, the typical driver spends nine hours on duty, not driving, and two and one-half hours driving. The PMAA argues that sleep debt is not relevant to these drivers since they are working and resting on a "synchronous circadian rhythm shift rotation."

FMCSA Response to Commenters

The FMCSA has considered the comments submitted and decided to exercise its authority under TEA-21 to initiate a pilot program.

The agency has carefully reviewed the comments from Advocates and PATT. Although Advocates explained its reasons for arguing that none of the studies cited by the FMCSA in the notice of proposal supports the initiation of a pilot program, the agency does not agree. The agency did not claim that the research reports cited in the proposal support conducting this specific pilot program. However, the research is a strong indicator that under certain conditions, it is more likely than not that motor carriers could use an alternative to the current rule concerning a restart of the 60-/70-hour rule, and achieve a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The agency believes an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m. is an appropriate restart period for drivers delivering home heating oil to consumers.

Under the current regulations the time required to restart the 60-/70-hour "clock" may vary depending on the driver's schedule. In an example of a worse-case scenario, if a driver using the 70-hour rule worked an intensive schedule starting at 12:01 a.m. on Monday morning and alternated non-stop between 15 consecutive hours on-duty (10 hours driving time and 5 hours on-duty, not driving) and 8 hours off duty, the driver would be prohibited from driving a CMV from 6 a.m. on Friday until 12:01 a.m. the following Tuesday (a period of 90 consecutive hours). If the driver started at the same time on Monday but alternated non-stop between 10 consecutive hours driving and 8 hours off-duty, the driver would be prohibited from driving a CMV from 10 p.m. on Friday until 12:01 a.m. the following Tuesday.

Under the alternative restart that will be used for the pilot program, the driver in both of these examples could return to work as early as 7 a.m. on Sunday, approximately 41 hours earlier than the current regulations allow. The driver would basically be restarting the 70-hour clock two days earlier than the

current regulations allow. Therefore, if the driver continued to operate on an equally intensive schedule, the next work week would begin on Sunday and end around Thursday afternoon for a driver alternating between 15 hours on-duty and 8 hours off duty. The work week would end early Friday morning for the driver alternating between 10 hours driving and 8 hours off duty.

These worst-case scenarios, however, are not representative of the home heating oil industry's scheduling practices. The information presented in the PMAA's comments make it clear that the drivers' schedules would be far less intensive than the ones described above. Advocates and PATT did not present any information suggesting that the restart provision used for this program would reduce the level of safety for the home heating oil residential-delivery segment of the motor carrier industry.

While it is clear that drivers will be allowed to work more hours over the course of seven or eight consecutive days than under the 60- or 70-hour rule, the scheduling practices for delivering heating oil to residential customers combined with the alternative restart provision will ensure a level of safety that is equal to, or greater than, that achieved by using a minimally compliant scheduling system (i.e., either one of the worse-case scenarios described above).

As for PATT's comment that drivers are being forced to work longer hours than they consider safe, the FMCSA is not aware of drivers' concerns about working additional hours. The agency requested comments from all interested parties but received no comments from current or former drivers responsible for delivering home heating oil, or organizations or groups representing the drivers. Therefore, the FMCSA can neither confirm nor refute the statement.

However, the pilot program does not diminish in any way Federal protection of drivers' rights to a safe workplace. Current Federal regulations prohibit motor carriers from requiring or permitting a driver to operate a CMV while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause that it is unsafe for the driver to begin or continue to operate the CMV (49 CFR 392.3). This rule applies to the pilot program. Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms,

conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. This means that the participating drivers may contact the FMCSA at any time they are being forced to violate safety regulations or the terms and conditions of this pilot program. Drivers may use the FMCSA's toll free telephone number: 1-800-DOT-SAFT to report unsafe operations.

With regard to the Advocates' comment about compliance with TEA-21 requirements for pilot programs, the FMCSA published a detailed description of the program, including the exemption being considered. The notice discussed the safety measures (i.e., criteria for participating drivers and carriers, accident reporting requirements) intended to achieve a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The FMCSA discussed each of the following elements of its proposed design of the pilot program as required by section 4007 of TEA-21:

1. A scheduled life of not more than 3 years for the pilot program.
2. A data collection and safety analysis plan that identifies a method for comparison.
3. A "reasonable" number of participants to yield statistically valid findings.
4. An oversight plan to ensure that participants comply with the terms and conditions of participation.
5. Adequate countermeasures to protect the health and safety of study participants and the general public.
6. A plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

The agency indicated that the exemption offered as part of the pilot program would be in effect during the period between November 1 and April 30 for three consecutive heating seasons, the first of which would have begun on November 1, 2000. The agency explained its plan to perform a before-and-after comparison of the accident experiences and hazardous materials incidents for each of the participating motor carriers. The agency also explained why a more scientifically rigorous data collection and analysis scheme was not used, such as a comparison of the safety performance of participating carriers with that of a control group (i.e., home heating oil transporters operating under the current regulations) and requested comments.

Although the agency did not propose a minimum number of participating carriers to ensure that the results are statistically valid or meaningful, the agency requested comments. None of the commenters provided suggestions or recommendations for a minimum or maximum number of motor carriers. Therefore, the agency will use its discretion to determine whether the number of motor carrier applicants, the number of drivers employed by these motor carriers, and the number of States in which they operate would form the basis for initiating a pilot program.

On the subject of an oversight plan, the agency proposed requirements for accident and hazardous materials incident reporting. The agency could conduct random visits to participating carriers, in addition to periodic reviews of each interstate motor carrier's accident experience reported by State officials through SAFETYNET, and Hazardous Materials Incident Reports (DOT Form F 5800.1) (see 49 CFR 171.16) filed with the Research and Special Programs Administration (RSPA) by the motor carriers. The participating motor carriers would continue to be subject to compliance reviews and investigations conducted independently of their involvement in the pilot program.

The FMCSA does not believe it would be appropriate at this time to expand the pilot program to include transportation of propane as requested by the NPGA. Although residential demand for propane is significant, it does not appear to be as urgent as the demand for home heating oil.

The FMCSA has reviewed information from the U.S. Department of Energy's Energy Information Administration (EIA) to determine the number of households that rely on home heating oil and propane. Of the 101.5 million households in the U.S., approximately 7.7 million use heating oil. Residential space heating is the primary use for heating oil, making the demand highly seasonal. The area of the country most reliant on heating oil is the Northeast. Approximately 4.6 million households rely on propane for their primary heating fuel. Propane is most commonly used to provide energy to areas not serviced by the natural gas distribution system. Therefore, it competes mainly with heating oil for space heating purposes. Homeowners in the Midwest use it predominantly for heating, while Northeast residences rely on it more for cooking.

The FMCSA believes that the motor carrier and driver populations required to service residential users of home heating oil provide a better opportunity

for conducting a pilot program. The agency does not believe that limiting the program to home heating oil will adversely impact motor carriers transporting propane, or consumers relying on propane as their primary means of residential space heat. It is very unlikely that residential propane customers would switch or alter their heating systems to use heating oil simply because the agency is conducting a pilot program for three consecutive winter seasons. This is especially the case given that there are no guarantees that the regulatory alternative allowed during the pilot program will become part of the Federal hours of service rules. Nor is it clear that any cost savings realized by companies delivering home heating oil under the pilot program would be passed along to consumers. Therefore, the implementation of a pilot program should not, in and of itself, place propane distributors at an economic disadvantage compared to transporters of home heating oil.

As for the NTTTC, the agency does not believe the program should be expanded to include deliveries to terminals and distribution points. The purpose of the program is to test an alternative to the current 60-/70-hour rule for a segment of the trucking industry responsible for delivering heating fuel to residential customers. To include terminals and distribution points would shift the focus away from the potential needs of residential customers, and towards business and/or commercial activities that may not be as much of a factor in making certain consumers have an adequate supply of heating fuel.

The FMCSA does not consider it necessary to include a restriction on the size of the vehicles used in the pilot program. Since the program limits participation to motor carriers making residential deliveries, the maximum size of the vehicles used would be governed by the residential street configuration, and applicable local rules restricting certain classes of CMVs from residential neighborhoods. While NTTTC members may compete with PMAA members, both groups can participate in the program provided they are delivering home heating oil within a 100 air-mile radius of a central terminal or distribution point. Membership in the PMAA is not a prerequisite for participation in the pilot program.

FMCSA Determination

The FMCSA is exercising its authority under TEA-21 to initiate a pilot program in which the agency will grant an exemption from the weekly (but not the daily) limitation in the Federal

hours-of-service regulations for drivers of CMVs making home heating oil deliveries in interstate commerce. The program would cover deliveries that occur within a 100 air-mile radius of central terminals or distribution points, during the winter months (November 1 to April 1). Deliveries between terminals and distribution points would not be covered by the exemption. The exemption to enable interstate motor carriers to participate in the pilot program would preempt inconsistent State hours-of-service requirements applicable to interstate commerce.

The FMCSA will include drivers making intrastate deliveries of home heating oil in the pilot program and is therefore requesting assistance from the States in which these drivers operate. The agency is allowing States to grant temporary exemptions from the weekly limitations provisions of their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under State-established terms and conditions identical to those used by the FMCSA. The States may grant the intrastate exemptions without jeopardizing MCSAP funding to those States.

Intrastate motor carriers transporting home heating oil in States that have established identical terms and conditions for the temporary hours-of-service exemption must submit all required information to the FMCSA. The FMCSA will, in turn, provide the respective States with lists of the intrastate motor carriers and drivers the FMCSA believes should be considered eligible for the States' approval for participation. The States may allow the intrastate motor carriers and drivers to operate under the terms and conditions of the study based on recommendations from the FMCSA. This process is necessary because the FMCSA does not have the authority to grant intrastate exemptions.

Unlike the previous pilot program for drivers delivering home heating oil, this one does not require the States to meet any criteria (e.g., having an approved plan for monitoring the motor carriers, or having a substantial number of citizens relying upon home heating oil, etc.) before being allowed to grant the temporary exemptions.

The FMCSA has determined that the proposed eligibility requirement for motor carriers and drivers is, with one exception (concerning carriers currently under investigation), appropriate for use in the pilot program. The agency is requiring that interstate motor carriers

meet three eligibility criteria discussed below for participating in the pilot program. The States granting temporary exemptions must require that intrastate carriers meet the same eligibility requirements in order to take advantage of the exemption. The purpose of the eligibility criteria for motor carriers is to keep entities with questionable safety performance and/or safety management controls out of the program.

The first criterion is that participating motor carriers be either "unrated," or have a current safety rating of "Satisfactory." Unrated motor carriers are those that have not received compliance reviews or audits. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The FMCSA is allowing unrated motor carriers to participate since it would be unfair to exclude them simply because they were not selected by the agency for a compliance review. The absence of a compliance review is in no way an indication that the carrier has done anything wrong or has safety problems.

Motor carriers that have received compliance reviews are required to have a "satisfactory" rating. This means that a motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are appropriate for the size and type of operation of the motor carrier. The agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate there are safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions for participating in the pilot program.

The second criterion is that motor carriers must not have been the subject of a Federal or State investigation resulting in penalties or fines for violations of motor carrier safety, or hazardous materials transportation, regulations or laws within the last three years. If a motor carrier's operating practices are such that an investigation followed by penalties or fines was necessary, its safety management controls are not adequate for the purposes of the pilot program. This

criterion will be used irrespective of a motor carrier's safety rating.

The third criterion involves accidents. A motor carrier cannot participate in the program if the cause of, or a contributing factor to, any of its accidents in the past three years was determined to be (1) a CMV owned or operated by the carrier that was in unsafe operating condition or (2) a driver for the carrier who violated Federal or State regulations. For purposes of this criterion, "accidents" are the incidents specified in 49 CFR 390.5. An unsafe operating condition is typically one that is likely to cause an accident or a breakdown of the vehicle (which could also trigger an accident). A Federal, State, or local official responsible for investigating the cause of CMV accidents must make the determination of causation.

With regard to the proposed criterion that motor carriers must not currently be the subject of any Federal or State investigation of alleged violations of motor carrier safety or hazardous materials transportation regulations or laws, the agency has reconsidered this requirement and has determined that it is inappropriate. The proposed criterion implied wrongdoing on the part of the motor carrier whenever allegations of regulatory violations are made. This approach would be fundamentally unfair to motor carriers. Allegations are not evidence. They are sometimes based on a misunderstanding of the regulations; in rare cases, they may even be made in bad faith. The FMCSA (or a State applying the same standards) will not bar a motor carrier from the program unless it has evidence that the carrier fails to meet the criteria for eligibility.

The FMCSA has determined that drivers must also meet criteria to participate in the pilot program. Participating drivers must not have committed, during the past three years, any disqualifying offenses listed in (1) 49 CFR 383.51 concerning commercial driver's license disqualifications and penalties, (2) 49 CFR 391.15 concerning disqualification of drivers operating CMVs in interstate commerce, or (3) comparable State regulations or laws concerning disqualifications of individuals operating vehicles with a gross vehicle weight rating/gross combination weight rating or gross weight of 10,001 pounds or more. The disqualifying offenses include regulatory violations such as driving a commercial motor vehicle while under the influence of alcohol, driving under the influence of a controlled substance, leaving the scene of an accident, and using a commercial motor vehicle in the

commission of a felony involving manufacturing, distributing, or dispensing a controlled substance. The driver criteria are intended to prevent unsafe drivers from participating in the pilot program. This determination will be made independent of any decision concerning the motor carrier's eligibility. If the driver has been convicted of a disqualifying offense within the last three years, the driver cannot be included in the participating carrier's pool of drivers that use the alternative restart.

Structure of the Home Heating Oil Pilot Program

The FMCSA's Home Heating Oil Pilot Program is a simplified version of the intrastate program established in 1997 in response to the NHS Designation Act. The program will include interstate and intrastate motor carriers delivering home heating oil within a radius of 100 air-miles of a central terminal or distribution point, during the winter. Deliveries between terminals or distribution points are not covered by this exemption. The exemption covers three consecutive winters, beginning with November 1, 2001, through April 30, 2002, and followed by two successive winters. The length of the exemption period is intended to accommodate motor carriers operating in regions of the country where there is a significant demand for heating oil before the first official day of winter, or after the first day of spring. Through this notice of final determination, the FMCSA is establishing the criteria for motor carriers to participate in the study. The agency will collect and analyze data concerning the safety performance of these carriers during the study.

The FMCSA believes the terms and conditions of the pilot program will ensure that the program achieves a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The terms and conditions, or safety measures, presented below are designed to ensure that the program does not adversely affect safety.

Alternative Hours-of-Service Restart

The FMCSA is allowing participating motor carriers to "restart" calculations for the 60- or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. However, if the driver reached the 60- or 70-hour limit without having taken any such off-duty period, he or she is required to do so at that time. Drivers

are required to comply with the 10-hour driving limit in § 395.3(a)(1).

The FMCSA continues to believe there is sufficient scientific information to justify a limited pilot program allowing drivers for motor carriers that deliver home heating oil to "restart" their calculations for the 60-hour or 70-hour rule, whichever is applicable, after having an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m.

The FMCSA believes an off-duty period that includes two consecutive midnight to 6 a.m. periods to obtain restorative sleep would ensure these carriers a level of safety that is equivalent to, or greater than, the level of safety that they would achieve by complying with the current weekly limitations in the hours-of-service regulations. A minimum 32 to 56-hour break that includes the minimum of two consecutive nights of sleep would provide drivers a full day off with two sleep periods between the hours of midnight and 6 a.m.

The minimum off-duty periods are intended to afford the drivers the opportunity for restorative sleep. The "weekend" may be longer depending on when the motor carrier releases the driver from duty on the last workday of the workweek. However, the alternative "restart" in the pilot program would allow drivers to take as few as 32 consecutive hours off-duty on a "weekend," if the time period includes two consecutive midnight to 6 a.m. periods and the driver is released from work at exactly 11 p.m. on the last workday of the workweek.

It is unreasonable to expect that a driver will get full advantage of two consecutive midnight to 6 a.m. sleep periods if he/she is released at or just before midnight, and required to return to work at or just after 6 a.m. Therefore, the FMCSA has chosen 11 p.m. as the latest time drivers could get off work and still get to sleep for the first full midnight to 6 a.m. period on the first night of a "weekend." Likewise, the agency has chosen 7 a.m. as the earliest time drivers could start a new workweek and still sleep the last full midnight to 6 a.m. period on the last night of a "weekend."

Generally, drivers would be off duty for more than the minimum 32 consecutive hours, but fewer than the 63 consecutive hours in a "normal weekend" (5 p.m. Friday to 8 a.m. Monday). A driver completing a workweek at 11 p.m., for example, could take the minimum 32 hours before beginning the next workweek. A driver completing a workweek at 11:10

p.m., though, would have to be off-duty for approximately 56 hours before beginning the next workweek.

The FMCSA is not suggesting that participating motor carriers provide only 32 hours that include the two consecutive midnight to 6 a.m. periods. That is the minimum off-duty time. The FMCSA expects the participating motor carriers to provide, and drivers to take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

Drivers and motor carriers utilizing the "restart" provisions will, of course, continue to operate as their customers insist, generally making home heating oil deliveries only between the hours of 7:00 a.m. and 5:00 p.m. That fact, combined with the 10- and 15-hour rules which remain applicable to the pilot program [§§ 395.3(a)(1) and 395.3(a)(2), respectively] and the "weekend" requirements discussed above, ensures that drivers should have enough daily rest to avoid a significant sleep debt and enough time periodically off duty to eliminate any cumulative fatigue that may occasionally develop despite these precautions.

Management of the Program

The FMCSA is managing the home heating oil program, including the collection and analysis of all data, and the monitoring of all motor carriers participating in the program. However, we are requesting that the States make compliance with the FMCSA's monitoring requirements a condition of their waiving the intrastate hours-of-service requirements. The agency has developed a pilot program plan which includes the elements specified in 49 CFR 381.505.

Pilot Program Plan

The FMCSA will review participating carriers' accident data from the three-years prior to entering the pilot program, and compare this pre-pilot program safety performance data with data collected during the program. This before-and-after comparison will provide a practical and effective means of determining whether the alternative restart provision affects safety performance, provided there are no other significant changes in the operating practices of the participating carriers that could also affect safety performance.

Eligibility Criteria for Motor Carriers To Participate

The FMCSA is requiring that interstate motor carriers meet all of the eligibility criteria listed below for

participating in the pilot program. The States granting temporary exemptions must require that intrastate carriers meet the same eligibility requirements in order to take advantage of the exemption. The purpose of the eligibility criteria is to keep motor carriers with questionable safety performance and/or safety management controls out of the program. Participating motor carriers—

1. Must be either “unrated,” or have a current safety rating of “Satisfactory” issued, by the FMCSA (or the FHWA or OMCS) prior to the establishment of the FMCSA, or a State;

2. Must not have been the subject of a Federal or State investigation resulting in penalties or fines for violations of motor carrier safety or hazardous materials transportation regulations or laws within the last three years;

3. Must not have had, during the last three years, any accidents (as defined in 49 CFR 390.5) in which a determination was made by a Federal, State, or local official responsible for investigating the cause of CMV accidents, that the motor carrier’s CMV was in unsafe operating condition (i.e., a condition likely to cause an accident, or breakdown of the vehicle) and the mechanical condition was a contributing factor in the accident, or that the driver was cited for violation of Federal or State motor carrier safety regulations or laws (whichever were applicable at the time of the accident) and the driver’s violation of those regulations or laws was a contributing factor in the accident.

Participating drivers must not have committed, during the past three years, any disqualifying offences listed in (1) 49 CFR 383.51 concerning commercial driver’s license disqualifications and penalties, (2) 49 CFR 391.15 concerning disqualification of drivers operating CMVs in interstate commerce, or (3) comparable State regulations or laws concerning disqualifications of individuals operating vehicles with a gross vehicle weight rating/gross combination weight rating or gross weight of 10,001 pounds or more.

Process for Motor Carriers To Apply for Participation in the Pilot Program

In order to be considered for the pilot program interstate motor carriers (or intrastate motor carriers operating in States that agree to grant exemptions consistent with the requirements and conditions of this program) must submit, in writing, the following to the FMCSA:

(1) The name of the motor carrier;

(2) USDOT Number, MC Number, and State-issued motor carrier identification number;

(3) The address for the principal place of business, telephone number, and fax number;

(4) Name and title of company official who will serve as the carrier’s point of contact for inquiries from the FMCSA;

(5) A driver roster consisting of names and driver license numbers and State of licensure for all participating drivers;

(6) The number of home heating oil delivery vehicles that will be operated by drivers using the alternative restart;

(7) The total number of accidents, as defined in § 390.5, for each of the previous three calendar years, and the number of accidents that occurred during each of the previous winter seasons (November 1 through April 30);

(8) The following certification signed by a motor carrier official:

I certify that (*Name of the motor carrier*) operates CMVs used to deliver home heating oil, and is not currently rated “Unsatisfactory” or “Conditional” by the FMCSA (or the FHWA prior to the establishment of the FMCSA), or a State. I certify that each of the drivers listed on the roster is eligible to participate in the project, that each operates a CMV used predominantly to transport home heating oil, and that we have verified that the driving record of each driver does not include any convictions within the past three years of any disqualifying offense. I have read and agree to be bound by the requirements for notification and submission of information to the FMCSA outlined in the section entitled “The Agreement” in the notice of final determination for this project. I certify under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct. Executed on ____ (Date)

Signature _____
Name _____
Title _____
Name of Motor Carrier _____

Intrastate motor carriers operating in States that provide a temporary exemption must also submit their requests for participation to the FMCSA. The FMCSA will provide the State with a list of the motor carriers and drivers for the State’s approval for participation in the Study. If the State agrees with the FMCSA’s recommendation, the carriers and drivers will be allowed to participate in the study and must agree to submit required accident information to the FMCSA during the study.

If the FMCSA determines that a motor carrier applicant is qualified to participate in the pilot program, the agency will notify the carrier by letter. The agency will notify intrastate motor carriers after the State in which they operate approves their participation in the study. A copy of the letter must then

be made available by the motor carrier to each driver and carried onboard the vehicle at all times the vehicle is being operated under the terms and conditions of this program.

The Agreement

All motor carriers participating in the pilot program must limit participation in the program to only those drivers predominantly engaged in the delivery of home heating oil to residential customers within a 100 air-mile radius of central terminals or distribution points, during winter months. A driver is not “predominantly engaged” in residential deliveries if more than 20 percent of his or her deliveries, on a weekly basis, are to non-residential customers. Motor carriers and drivers must meet the eligibility requirements to be accepted into the pilot program, and to remain in the program.

Participating motor carriers are allowed to “restart” calculations for the 60- or 70-hour rule (§ 395.3(b)(1) or (b)(2), respectively), whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. However, if the driver reaches the 60- or 70-hour limit without having taken any such off-duty period, he or she is required to do so at that time. Drivers must comply with the 10-hour driving limit in § 395.3(a)(1), and the 15-hour on-duty limit in § 395.3(a)(2).

The off-duty period used to “restart” the calculations for the 60- or 70-hour rule must not begin any later than 11 p.m. for the first full midnight to 6 a.m. period on the first night of a “weekend.” The earliest time drivers may start a new workweek and still sleep the last full midnight to 6 a.m. period on the last night of a “weekend” is 7 a.m. Participating motor carriers must provide, and driver must take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

Participating drivers must comply with § 395.3(b)(1) or (b)(2), whichever is applicable, while performing driving tasks other than delivering home heating oil to residential customers within 100 air-miles of central terminals or distribution points.

By agreement, participating motor carriers must do the following:

1. Within 10 business days following an accident (as defined in 49 CFR 390.5) or any unintentional discharge of home heating oil that requires the submission of the Department of Transportation Hazardous Materials Incident Report (DOT Form F 5800.1) (see 49 CFR

171.16) involving any of the motor carrier's CMVs, irrespective of whether the CMV was being operated by a participating driver, the motor carrier must submit the following information:

- (a) Date of the accident,
- (b) City or town in which the accident occurred, or city or town closest to the scene of the accident,
- (c) Driver's name and license number,
- (d) Vehicle number and State license number,
- (e) Number of injuries,
- (f) Number of fatalities, and
- (g) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released,
- (h) The police-reported cause of the accident,
- (i) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge.
- (j) Whether the driver was participating in the pilot program, and if so, the total driving time, on-duty time since the last restart period prior to the accident, and the length of the last restart period.

2. Notify the FMCSA of the addition of a new driver operating under the alternative restart pilot program within 10 business days, providing the name, driver license number, and date of employment of the new driver.

3. Notify the FMCSA within 10 business days after a participating driver ceases to be employed by the motor carrier providing the driver's name, license number, and date of termination.

4. Notify the FMCSA within 10 business days after a participating driver leaves the pilot program, providing the driver's name, license number, and date participation ended.

Removal From the Project

The FMCSA expects that any motor carrier satisfying the eligibility criteria of this project will maintain its safety record. However, should any deterioration occur, the FMCSA will, consistent with the statutory requirements of TEA-21, take all steps necessary to protect the public interest, as well as the integrity of the program. Participation in this program is voluntary, and the FMCSA will immediately revoke participation of an interstate motor carrier or driver for failure to comply with the terms and conditions of the pilot program, or immediately terminate the pilot program if its continuation proves to be inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

With regard to intrastate motor carriers and drivers, the FMCSA will notify State officials immediately if the agency determines that the carrier or driver has failed to comply with the terms and conditions of the pilot program. The FMCSA will request that the State agency granting the temporary exemption immediately revoke participation of the intrastate motor carrier or driver.

FMCSA Use of Data

The FMCSA plans to carefully review the data collected as a result of the program in preparing a report to the Congress, as required by the TEA-21. The agency will document findings, conclusions, and recommendations of the program, including any suggested amendments to laws and regulations that would enhance motor carrier and driver safety and improve compliance with the hours-of-service regulations.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this program is subject to the PRA and the required clearance documents were submitted to the OMB for its approval of this information collection requirement.

This **Federal Register** notice establishes a voluntary pilot program for participation by certain motor carriers that transport home heating oil. In return for receiving an exemption from the weekly limitations in the Federal hours-of-service regulations, or comparable State hours-of-service requirements, each program motor carrier is required to develop and/or furnish certain information about its operations, determine the eligibility of its drivers to participate in the program, provide information about past accidents, and agree to provide detailed information about accidents that occur during the pilot program. It is anticipated that the initial application will require on average, about one hour to complete. This document is necessary to identify those motor carriers that believe they are eligible to participate in the project, and to indicate their desire to be included in the project.

Participating motor carriers are required to submit to the FMCSA: (1) The total number of CMVs that will be operated by a driver using the alternative to the 60-/70-hour restart; (2) the names and driver license numbers

for all drivers using the alternative restart; (3) the total number of accidents (as defined in 49 CFR 390.5) for each of the three years prior to participating in the project, including the total number of injuries and fatalities; (4) information about all accidents that occur while the carrier is participating in the program; and (5) information about the addition or removal of drivers from the project.

The most likely respondents to this information collection will be motor carriers operating CMVs transporting home heating oil during the winter, with a safety rating of satisfactory or unrated. The FMCSA does not have a precise count of the total number of carriers that would be eligible to participate in the program. However, the PMAA represents approximately 8,000 motor carriers that supply home heating oil. For the purposes of estimating the information collection burden, the FMCSA used an estimate of 8,000 motor carriers.

Each accident involving project drivers must be reported to the FMCSA within 10 calendar days. This information is necessary in order to detect immediately those motor carriers whose safety performance is declining during the project and will also be used to assist in making the before-and-after comparison of each carrier's safety performance. The reporting and recordkeeping burden for this information is estimated to be 15 minutes per accident.

With regard to the total reporting requirement, if 8,000 motor carriers participate, a total of 8,000 hours would be expended by these carriers to apply for the project. If each of the motor carriers averages two accidents per winter, the burden for each year would be 4,000 hours (0.25 hours per accident \times 2 accidents per year \times 8,000 motor carriers) = 4,000 hours per year. The total burden for submitting accident data during the three-winter period would be 12,000 hours. Therefore, the FMCSA estimates approximately 20,000 burden hours during the pilot project.

The FMCSA requested public comment on the collection of information discussed above as part of the February 16, 2000, notice of proposal to conduct the pilot program. None of the commenters to the docket discussed the information collection burden. Therefore, the FMCSA is using the estimates included in the proposal for the pilot program.

Issued on: July 9, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 01-17573 Filed 7-12-01; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD-2001-10094]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TONYA LEE.

SUMMARY: As authorized by Pub. L. 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD-2001-10094. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of

Transportation, Maritime Administration, MAR-832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105-383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* Tonya Lee. Owner: Thomas E. Weske and Judith A. Weske.

(2) Size, capacity and tonnage of vessel. According to the applicant: “* * * Gross Tons 10, Net Tons 8, Length 28 ft, Breadth 10 ft, Depth 5.5 ft”

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: “Coastwise passenger: Charter Fishing, Sightseeing, Whale Watching. Southeast Alaska: Juneau to Skagway to Cross sound to Sitka to Ketchikan to Juneau.”

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1978. Place of construction: Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: “This waiver will have no more or less impact on the charter fleet or any other commercial operators than other vessel licensed to operate in this geographic area.”

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: “This vessel * * * will have no effect on any U.S. shipbuilders now or in the future.”

Dated: July 10, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01-17582 Filed 7-12-01; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD-2001-10095]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the coastwise trade laws for the vessel ADVENTURE CAT.

SUMMARY: As authorized by Pub. L. 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD-2001-10095. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime