Paperwork Reduction Act

This rule does not initiate any new information collection requirements. This rule does not affect any existing information collection requirements which are assigned the clearance number 1010–0090 and are administered by the ONRR. Accordingly, no analysis or action is necessary under the Paperwork Reduction Act.

National Environmental Policy Act

The BLM has determined that this rule is not a major Federal action within the meaning of 40 U.S.C. 4332(2)(C). This rule removes regulations that established two programs that have been terminated. The removal of the regulations merely clarifies the programs' current status, and is thus a ministerial act. No analysis is required under the National Environmental Policy Act.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The BLM has determined that this rule does not have "tribal implications" within the meaning of Executive Order 13174.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, a "significant energy action" is one that is "significant" under Executive Order 12866 and is likely to have a significant adverse energy effect. The BLM has determined that this rule is not "significant" within the meaning of Executive Order 12866. Moreover, the BLM has determined that this rule is not likely to have a significant adverse energy effect, in view of the price data that led to the termination of royalty reduction benefits for stripper well properties and heavy oil properties. Accordingly, the BLM has determined that this rule is not a "significant energy action" requiring a "Statement of Energy Effects" within the meaning of Executive Order 13211.

Author

The principal author of this final rule is Rudy Baier, Minerals and Realty Management, with the assistance of Jean Sonneman of the Division of Regulatory Affairs, Bureau of Land Management, Washington, DC.

List of Subjects in 43 CFR Part 3100

Mineral royalties, Oil and gas exploration and production, Public lands—mineral resources, Reporting and recordkeeping requirements, and Surety bonds.

■ For the reasons stated in the preamble, and under the authorities cited below, part 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, is amended as set forth below:

Ned Farquhar,

Deputy Assistant Secretary, Land and Minerals Management.

PART 3100—OIL AND GAS LEASING

■ 1. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 189 and 359; 43 U.S.C. 1732(b), 1733, and 1740; and the Energy Policy Act of 2005 (Pub. L. 109–58).

Subpart 3103—Fees, Rentals and Royalty

§ 3103.4–1 [Amended]

■ 2. Section 3103.4–1(b)(1) is amended by removing the phrase "on other than stripper oil well leases or heavy oil properties" and the sentence "(Royalty reductions specifically for stripper oil well leases or heavy oil properties are discussed in § 3103.4–2 and § 3103.4–3 respectively.)".

§ 3103.4–2 [Amended]

■ 3. Section 3103.4–2 is amended as follows:

■ a. Remove paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1)and (b)(2), the introductory text of paragraph (b)(3), and paragraphs (b)(3)(i), (b)(3)(ii), (b)(3)(iii), (b)(3)(iv), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), and (b)(10).

■ b. Redesignate paragraphs (b)(3)(v), (b)(3)(vi), and (b)(3)(vii) as paragraphs (a), (b), and (c).

■ c. Amend redesignated paragraph (a) by removing the term "MSS" and adding in its place the term "ONRR".

§ 3103.4–3 [Amended]

■ 4. Section 3103.4–3 is amended as follows:

■ a. Remove paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1), (b)(2), (b)(3), and (b)(4), the introductory text of paragraph (b)(5), and paragraphs (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), (b)(5)(v), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11).

■ b. Redesignate paragraphs (b)(5)(vi) and (b)(5)(vii) as paragraphs (a) and (b).

■ c. Amend redesignated paragraph (a) by removing the phrases "authorized by this paragraph (b)," and "of this paragraph (b)".

[FR Doc. 2010–25154 Filed 10–5–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2010–0230]

Hours of Service; Limited Exemption for the Distribution of Anhydrous Ammonia in Agricultural Operations

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

ACTION: Notice of final disposition; granting of exemption.

SUMMARY: FMCSA grants a 2-year, limited exemption from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. This exemption extends the agricultural operations exemption established by section 345 of the National Highway System Designation Act of 1995, as amended by sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA–LU), to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the carriers and drivers operate. The Agency believes that the exemption will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed. The exemption preempts inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemption is effective October 6, 2010. The exemption will remain in effect until October 9, 2012 unless revoked earlier by FMCSA.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

E-mail: MCPSD@dot.gov. Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

Section 4007(a) of the Transportation Equity Act for the 21st Century (TEA–

21) (Pub. L. 105–178, 112 Stat. 107, 401, June 9, 1998) provided the Secretary of Transportation (the Secretary) the authority to grant exemptions from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under chapter 313 or section 31136 of title 49 of the United States Code, to a person(s) seeking regulatory relief (49 U.S.C. 31136, 31315(b)). Prior to granting an exemption, the Secretary must request public comment and make a determination that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption. Exemptions may be granted for a period of up to 2 years and may be renewed.

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(e)(1) and (g) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and subchapters I and III of chapter 311, relating, respectively, to the commercial driver's license program and to commercial motor vehicle (CMV) programs and safety regulation.

Background

On July 14, 2010, FMCSA published a notice in the **Federal Register** proposing a 2-year limited exemption from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point (75 FR 40765). The Agency explained its rationale for proposing the exemption, set forth the proposed terms and conditions to be imposed on motor carriers and drivers operating under the exemption, and requested public comments on the proposal.

Discussion of Public Comments

The FMCSA received 28 comments to the public docket, with 2 of the comments submitted on behalf of multiple organizations. The comments included a letter signed by 23 members of the United States House of Representatives who expressed support for the exemption. Only 3 of the commenters (including 1 anonymous individual) opposed the exemption. A list of the commenters is provided below:

1. Agricultural and Food Transporters Conference of the American Trucking Associations (with the following organizations listed in its submission to the docket): Agricultural Retailers Association; American Sugarbeet Growers Association; National Agricultural Aviation Association; National Association of Wheat Growers; National Barley Growers Association; National Corn Growers Association; National Cotton Council; National Council of Farmer Cooperatives; National Farmers Union; National Sunflower Association; North American Equipment Dealers Association; The Fertilizer Institute; USA Rice Federal; U.S. Canola Association.
2. Agricultural Retailers Association.
3. Agriculture Education Group.
4. Agrium.
5. Cabery Fertilizer Company.
6. Commercial Vehicle Safety Alliance (CVSA).
7. Cooperative Network.
8. Denis Brandon.
9. Donovan Farmers Co-Op Elevator, Inc.
10. E. Albert Allen.
11. Far West Agribusiness Association.
12. Growmark.
13. Huellinghoff Brothers, Inc.
14. Illinois Department of Agriculture.
15. Illinois Fertilizer and Chemical Association.
16. Kohlbrecher Truck Service, Inc.
17. Kova Fertilizer (with the following organizations listed in its submission to the docket): Agricultural Education Group; Agricultural Food and Transporters Conference; Agricultural Retailers Association; The Fertilizer Institute; National Council of Farmer Cooperatives.
18. Missouri Agribusiness Association.
19. North American Equipment Dealers Association.
20. Northern Partners Cooperative.
21. Oregon Wheat Growers League.
22. Patrick W. Herbert.
23. Perry Feed and Fertilizer.
24. Raymond J. Schroeder.
25. Transport America.
26. United Farmers Cooperative.

A list of the Members of Congress who signed a joint docket submission is provided below, in alphabetical order:

Rep. Leonard Boswell; Rep. Howard Coble; Rep. Jerry Costello; Rep. Jo Ann Emerson; Rep. Sam Graves; Rep. Deborah Halvorson; Rep. Phil Hare; Rep. Lyn Jenkins; Rep. Tim Johnson; Rep. Steve King; Rep. Tom Latham; Rep. Dave Loebsack; Rep. Blaine Luetkemeyer; Rep. Cynthia Lummis; Rep. Donald Manzullo; Rep. Betsy Markey; Rep. Jerry Moran; Rep. Collin Peterson; Rep. Aaron Schock; Rep. John Shimkus; Rep. Ike Skelton; Rep. Adrian Smith; Rep. Lee Terry.

Comments in Support of the Exemption

Generally, the comments in favor of the exemption either categorically supported the exemption, requested that it be expanded to include liquid and dry fertilizers, or asked that it include all agricultural products. For example, the North American Equipment Dealers Association stated:

We believe Congress, when it authorized the HOS agricultural exemptions in 1995, intended to address the special needs of the nation's agricultural industry and rural communities. The HOS agricultural exemption is critical for the timely delivery and transportation of agricultural inputs during peak planting and harvesting seasons defined by each state.

Farmers and ranchers expect their equipment dealers to provide parts, repairs and service of planting and harvesting equipment and, as such, should also be included in a HOS agricultural exemption.

The Illinois Fertilizer and Chemical Association also expressed an interest in expanding the scope of the proposal. The association stated:

While the exemption for the movement of anhydrous ammonia is very critical due to the extra scrutiny placed on ammonia transporters and the permit requirements for this product, the HOS exemption is also critically essential for the timely movement of non-hazardous fertilizers.

If FMCSA is willing to grant an HOS exemption for the delivery of ammonia, which is DOT regulated as an extremely hazardous substance and an inhalation hazard, then it makes even more sense to apply the exemption to the shipments of bulk non-hazardous fertilizers which are equally important to the growth of Illinois crops.

Cooperative Network indicated that the exemption is a more appropriate means of addressing the agricultural industry's needs than the use of FMCSA's emergency relief provision under 49 CFR 390.23(a). It offered the following comment:

For the past three years, Cooperative Network has requested and received a declaration of emergency in each instance following the provisions of § 390.23(a) to increase anhydrous ammonia supply during periods of extremely high demand. The repeated acts of the governors of Minnesota and Wisconsin in issuing emergency declarations, and thereby lifting the hours-of-service requirements for farm supply shipments, demonstrates the supply challenges farmers and their suppliers endure during the planting and harvesting seasons.

The CVSA supports the exemption but suggests that, in evaluating the proposal, FMCSA look for data in addition to that which the Agency discussed in the July notice. The CVSA also requested that the Agency consider more stringent terms and conditions for the exemption.

CVSA believes the terms and conditions should be strengthened so that a more robust safety determination can be made during and after this 2-year exemption period. CRs [compliance reviews] should be conducted on all carriers seeking to take advantage of the exemption so a current Safety Rating can be assigned; carriers must maintain a "Satisfactory" safety rating. FMCSA should require that the carrier have a credential to be carried on the vehicle.

The CVSA also suggested that FMCSA monitor carriers' safety performance during the exemption.

FMCSA Response

First, FMCSA acknowledges the concerns of commenters that believe the scope of the exemption should be expanded to include either dry and liquid fertilizers, or all agricultural products. The Agency, however, continues to believe that would be inappropriate at this time.

The FMCSA is committed to being responsive to the needs of the agricultural community in delivering products for American consumers, but the Agency must also fulfill its safety mission. The safety mission requires that the Agency exercise sparingly its authority to grant exemptions. No matter what the substance being shipped, the Agency must be extremely sensitive to the number of drivers and trucks that it allows to operate outside of the HOS regulations, for any period of time.

By granting of the proposed exemption, FMCSA extends to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia the agricultural operations exemption established by section 345(a) of the National Highway System Designation Act of 1995 (NHS Act) (Pub. L. 104–59, November 28, 1995, 109 Stat. 568, 613, 49 U.S.C. 31136 note, as amended by section 4130, redesignated by section 4115(a)(2) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005, 119 Stat. 1144, 1726) and implemented by 49 CFR 395.1(k)).

The July 14 notice proposing this exemption indicated that FMCSA had been contacted by Members of Congress on behalf of their constituents concerning the Agency's interpretation of the agricultural exemption provided by section 345(a)(1) of the NHS Act. Motor carriers engaged in the transportation of farm supplies—particularly anhydrous ammonia—argued that FMCSA's reading of the agricultural exemption denied certain distribution activities the regulatory relief intended by Congress. At the time the Agency was contacted, the emphasis was on the transportation of anhydrous ammonia rather than all fertilizers or all agricultural commodities. Therefore, the Agency focused its attention on anhydrous ammonia.

Second, with regard to the interpretation of the NHS Act exemption, the Agency acknowledges that the legislative history adds an explanation of the sponsors' intent that was not incorporated into the statutory language itself. The Agency has consistently held that the agricultural operations exemption applies to the transportation of farm supplies from the local farm retailer to the ultimate consumer within a 100 air-mile radius. The FMCSA's interpretation, however, has not extended the HOS exemption to deliveries from wholesalers to either local farm retailers or farms. (*See* Question 33, 49 CFR 395.1 on the Agency's Web site: *http://www.fmcsa.dot.gov.*) Question 33 reads as follows:

> *Question 33:* How is "point of origin" defined for the purpose of § 395.1(k)?
>
> *Guidance:* The term "point of origin" is not used in the NHS Designation Act; the statutory term is "source of the [agricultural] commodities." The exemption created by the Act applies to two types of transportation. The first type is transportation from the source of the agricultural commodity—where the product is grown or raised—to a location within a 100 air-mile radius of the source. The second type is transportation from a retail distribution point of the farm supply to a location (farm or other location where the farm supply product would be used) within a 100 air-mile radius of the retail distribution point.
>
> The legislative history of the agricultural exemption indicates it was intended to only apply to retail store deliveries. Thus, it is clear Congress intended to limit this exemption to retail distributors of farm supplies.
>
> Second-stage movements, such as grain hauled from an elevator (or sugar beets from a cold storage facility) to a processing plant, are more likely to fall outside the exempt radius. Similarly, the exemption does not apply to a wholesaler's transportation of an agricultural chemical to a local cooperative because this is not a retail delivery to an ultimate consumer, even if it is within the 100 air-mile radius.

There is substantial controversy about the weight to be assigned to legislative history in the interpretation of statutes. Because the exemption being granted today responds to the most immediate needs of the agricultural community, FMCSA will not revisit its previous guidance at this time.

Third, in response to Cooperative Network's reference to States' emergency declarations, FMCSA cautions all interstate motor carriers subject to the FMCSRs to adhere to safety regulations unless the declaration by a State or local official is for an "emergency" as defined under 49 CFR 390.5. The FMCSA does not question the authority of State and local officials to make declarations about matters within their jurisdiction.

Motor carriers subject to the FMCSRs, however, have a responsibility for determining whether the "emergency" referenced by the State or local official is one that "* * * interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, * * *"[1] Also, any motor carrier that intends to operate under the emergency relief provision must ensure that it is engaged in providing "direct assistance," as defined in 49 CFR 390.5, in responding to the emergency. Therefore, motor carriers that have exceeded the applicable HOS requirements for the purpose of applying fertilizer during the planting and harvesting seasons should cease such practices as they clearly do not fall within scope of FMCSA's emergency relief provision.

Finally, FMCSA acknowledges the CVSA's concerns. As explained in the July notice, however, the Agency has considered the data available, including its experience from the 90-day limited waiver granted earlier this year. On March 22, 2010, FMCSA published a notice in the **Federal Register** announcing a limited 90-day waiver from the Federal HOS regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point (54 FR 13441). As explained in the Agency's July notice, there were no crashes or incidents reported as a result of the waiver. FMCSA also sought information from the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Hazardous Materials Incident Reporting Systems and from FMCSA field offices concerning the safety performance of anhydrous ammonia transporters and received no negative reports. In addition, none of the commenters responding to the July notice provided information suggesting safety performance problems associated with the motor carriers and drivers engaged in the transportation of anhydrous ammonia.

Based on a review of the available information, the Agency believes it is appropriate to grant the exemption.

With respect to CVSA's recommendation that FMCSA impose more stringent terms and conditions for motor carriers and drivers that would operate under the exemption, the

[1] See definition of the term "emergency" in 49 CFR 390.5.

Agency does not believe such action is warranted at this time. There is no basis for requiring that each carrier undergo a compliance review prior to being allowed to operate under the exemption. If the carrier's safety performance were suspect, it is likely that it would be considered a "high-risk" carrier under the current Agency safety monitoring system, which takes into account roadside inspection data and crash data. The Agency would have prioritized the carrier for a compliance review or investigation, and would take appropriate enforcement action to address the safety performance problems. If the problems were such that the carrier receives a rating of "conditional" or "unsatisfactory," the carrier would be precluded from operating under the exemption.

Comments in Opposition to the Exemption

Transport America, one of three commenters opposed to the exemption, believes that all motor carriers should operate under the same regulations. Transport America stated:

> It [the exemption] has nothing to do with safety but caters to a large farming special interest group. The just in time justification is no more relevant than retailers would have for Christmas, building products companies would have for construction season, snow blower manufacturers would have for the start of winter and the list goes on and on.

Patrick W. Herbert also expressed opposition to the exemption. Mr. Herbert believes that exceeding the HOS rules increases the risk of fatigue. He bases his views on his experience as a truck driver who has operated within a 100 air-mile radius for 30 years.

FMCSA Response

FMCSA acknowledges the concerns of the commenters. The Agency continues to believe the exemption is appropriate because local retailers and farms have limited storage capacity and therefore must constantly replenish certain supplies during the planting and harvesting seasons. They are part of the "just in time" distribution system that extends from a wholesaler to the ultimate consumer of the supplies. Because of storage constraints and the demand for the transportation of anhydrous ammonia to support agricultural operations, and the likelihood that such conditions will continue for some time, FMCSA believes the 2-year, limited exemption is necessary to provide regulatory relief for the transportation of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the anhydrous ammonia transporters operate. The Agency emphasizes that the exemption provides limited regulatory relief to facilitate planting activities that will ultimately result in the production of agricultural commodities at prices to which consumers have become accustomed, with no foreseeable degradation of safety. The Agency will continue to monitor the safety performance of motor carriers and drivers engaged in the transportation of anhydrous ammonia. It will take appropriate action at any time it appears that a motor carrier or driver should be prohibited from operating under the exemption or that the entire exemption should be reconsidered because of poor safety performance.

Safety Determination for Granting the Exemption

FMCSA is committed to ensuring high standards of motor carrier safety. As explained in the July notice, the Agency has considered the available data concerning the safety performance of agricultural operations in general and the safety performance of anhydrous ammonia transporters during the 90-day, limited waiver referenced above. FMCSA compared safety performance data for agricultural carriers currently operating under the statutory HOS exemption provided by the NHS Act, as amended, with the data for non-agricultural carriers that are not exempt from HOS regulations to determine whether the exemption would be likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption. The data were collected as part of a study, "Agricultural Commodity and Utility Carriers Hours of Service Exemption Analysis," May 2010, FMCSA–RRA–10–448. A copy of the report has been placed in the public docket identified at the beginning of this notice.

The study was conducted in two phases. Phase 1 compares the safety performance of agricultural and non-agricultural carriers for the period 2005 through 2008, and also examines two additional industries, livestock and utility carriers, whose operations were not exempt from HOS regulations prior to the passage of SAFETEA–LU.[2] The Phase 1 analysis used carrier registration, inspection and crash data from FMCSA's Motor Carrier Management Information System (MCMIS). The study used cargo classification information on the FMCSA Motor Carrier Identification Report (Form MCS–150) in MCMIS to identify the carrier's industry group (agricultural, livestock, or utility carrier), and used MCS–150 information to identify carriers operating within and beyond a 100-air-mile radius. The operating radius information was used to create two agricultural carrier subgroups: (1) Agricultural carriers with 100 percent of drivers operating within a 100-air-mile radius; and (2) agricultural carriers with 100 percent of drivers operating beyond a 100-air-mile radius. The analysis used the first subgroup as representative of agricultural carriers exempt from the HOS requirements, and the second subgroup as representative of agricultural carriers not exempt from the HOS requirements.

For the Phase 2 analysis, inspection data of agricultural commodity and utility carriers (which are also exempt from HOS regulations) were collected during an FMCSA special study of a sample of States. These data included only those inspections occurring during the States' planting and harvesting seasons and indicated both the commodity being transported and whether the driver was operating within or beyond the 100-air-mile radius exempt from HOS regulations. The Phase 2 analysis assessed the safety performance of the HOS exempt agricultural commodity and utility service carriers identified in the survey in comparison with non-HOS-exempt carriers based on their out-of-service (OOS) violation rates and crash rates.

The Agency did not place as much emphasis on the OOS rates because there were no HOS violation data to consider, given that the agricultural carriers for which data were available were operating under a statutory exemption from the HOS rule. Differences between the OOS rates for other issues such as driver qualifications and vehicle defects and deficiencies, while important in considering overall safety management controls of the carriers, were not necessarily related to the potential safety impact of the exemption.

The Phase 1 analysis indicates that nationally, agricultural carriers operating within a 100-air-mile radius had lower crash rates per 100 power units than those operating beyond this radius, except for in 2008, when there was no difference in the crash rates.

To provide additional validation of the crash analysis, which uses power unit data reported on the Form MCS–150, a separate analysis was performed using data only for carriers domiciled in States participating in FMCSA's Performance and Registration Information Systems Management (PRISM) program that enforces MCS–

[2] Section 4130(a).

150 updating.[3] PRISM links State motor vehicle registration systems with carrier safety data in order to identify unsafe commercial motor carriers. The PRISM State carriers are required to update their MCS–150 annually. By contrast, non-PRISM State carriers are required by FMCSA to update their MCS–150 biennially. As a result, the PRISM State data are considered more current and reliable than non-PRISM State data where there are no direct consequences for not updating the data. Data from PRISM States that enforce MCS–150 updating show that agricultural carriers operating within a 100-air-mile radius had more varied results, with crash rates higher than carriers operating beyond a 100-air-mile radius in 2008, lower in 2006 and 2007, and nearly the same in 2005.

The Phase 2 analysis indicates that in the four States participating in the survey (Idaho, Kansas, Maryland, Michigan), agricultural carriers that were subject to the HOS requirements had higher crash rates per 100 power units than agricultural carriers exempt from the HOS requirements.

In addition to the study, the Agency considered information from the PHMSA Hazardous Materials Incident Reporting Systems and from FMCSA field offices concerning the safety performance of anhydrous ammonia transporters during the limited 90-day waiver mentioned above.

With regard to information from FMCSA's field offices, the Agency did not receive any information about accidents, as defined in 49 CFR 390.5, involving motor carriers transporting anhydrous ammonia using drivers operating under the limited 90-day waiver. The Agency acknowledges that there is a gap between the date that a crash occurs and the date the States would typically submit crash reports. However, because FMCSA sought information through its field offices rather than relying solely on routine crash reporting by State enforcement agencies, it is unlikely that there have been any crashes resulting in fatalities or injuries, involving a driver operating under the limited 90-day waiver, referenced above.

In the absence of any data or information to the contrary, the Agency continues to believe the real-world experience of anhydrous ammonia transporters during the 90-day limited waiver suggests that the level of safety under an exemption would be equivalent to, or greater than, the level that would be achieved absent such exemption.

FMCSA Decision

In light of the information presented in the July 14, 2010, notice and after considering all the comments submitted in response to the notice, FMCSA grants a 2-year, limited exemption from the Federal HOS regulations for interstate motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons as defined by the States. As indicated in the July 14, 2010, notice, the Agency's review of the available crash data comparing exempt and non-exempt motor carriers, and a review of crash data from anhydrous ammonia transporters operating during the limited 90-day waiver provide a reasonable basis to believe that the limited exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions that rare being imposed.

Terms and Conditions of the Exemption

The FMCSA provides a 2-year, limited exemption from the requirements of 49 CFR part 395 concerning the HOS requirements for drivers of property-carrying vehicles engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as determined by the State(s) in which the transportation takes place. This limited exemption extends the agricultural operations exemption from the Federal HOS regulations to drivers used by motor carriers in the distribution system, provided that: (1) The driver is delivering anhydrous ammonia; (2) none of the transportation movements within the distribution chain exceeds a 100 air-mile radius—whether from the retail or wholesale distribution point; and (3) the motor carrier using the driver has a "satisfactory" safety rating or is "unrated;" drivers for motor carriers with "conditional" or "unsatisfactory" safety ratings are prohibited from taking advantage of the exemption.

The exemption allows drivers for "unrated" motor carriers and those with a satisfactory safety rating to use the HOS exemption when the drivers are delivering anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point.

Safety Rating

Motor carriers that have received compliance reviews and want their drivers to be exempt from the HOS regulations are required to have a "satisfactory" rating. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' HOS, maintenance and inspection, driver qualification, commercial driver's 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 assignment of a "satisfactory" rating means the 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.

FMCSA will allow drivers for "unrated" carriers to take advantage of the exemption. Unrated motor carriers are those that have not received a compliance review. FMCSA is allowing drivers for unrated motor carriers to participate because it is unfair to exclude them simply because these carriers 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.

The Agency will not allow drivers for motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate that the carrier has 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 of the exemption.

Accident and Hazardous Materials Reporting Requirement

Within 10 business days following an accident (as defined in 49 CFR 390.5) or any unintentional discharge of anhydrous ammonia 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 CMVs operated by a motor carrier whose drivers are using the exemption, irrespective of whether the CMV involved in the accident or discharge was being operated by a driver using the exemption, the motor carrier must submit the following information:

[3] Current PRISM States that enforce the MCS–150 updating requirement are Alabama, Arizona, Arkansas, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, and West Virginia.

(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;

(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; and

(j) Whether the driver was operating under the exemption, and if so, an estimate of the total driving time, on-duty time for the day of the accident and each of the seven calendar days prior to the accident.

Duration of the Exemption

The exemption is effective October 6, 2010 and will remain in effect until October 9, 2012 unless revoked earlier by FMCSA. The exemption may be renewed by the Agency; the Agency will provide notice and an opportunity for public comment prior to renewing the exemption. The exemption preempts inconsistent State or local requirements applicable to interstate commerce.

Safety Oversight of Carriers Operating Under the Exemption

FMCSA expects that any drivers and their employing motor carrier operating under the terms and conditions of the exemption will maintain their safety record. Should any deterioration occur, however, FMCSA will, consistent with the statutory requirements of TEA–21, take all steps necessary to protect the public interest. Use of the exemption is voluntary, and FMCSA will immediately revoke the exemption for any interstate driver or motor carrier for failure to comply with the terms and conditions exemption.

Issued on: September 30, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–25207 Filed 10–5–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–FHC–2010–0002; 71490–1351–0000–L5–FY10]

RIN 1018–AW94

Marine Mammal Protection Act; Deterrence Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: These guidelines set forth best practices that we, the Fish and Wildlife Service, find are appropriate for safely and nonlethally deterring polar bears from damaging private and public property and endangering the public. Anyone deciding to carry out the deterrence measures or practices set out in this rule may do so without our written authorization or supervision. As discussed in the background section of the proposed rule (75 FR 21571) as well as in our responses to public comments, we authorize other, more aggressive deterrence activities through separate provisions of the Marine Mammal Protection Act. This rule is being promulgated to better inform the public on the safe deterrence of polar bears as directed under the MMPA and not because of specific or recurring incidences.

DATES: This rule becomes effective on November 5, 2010.

ADDRESSES: The final rule and associated environmental assessment are available for viewing at *http://regulations.gov.* Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907/786–3800; facsimile 907/786–3816.

FOR FURTHER INFORMATION CONTACT: Charles S. Hamilton, Wildlife Biologist, Office of Marine Mammals Management (*see* **ADDRESSES** section). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the deterrence of the polar bear as provided for in the 1994 amendments to the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*). For more information on the polar bear, including its status as a threatened species under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), refer to the final listing rule published on May 15, 2008 (73 FR 28212), the final special rule published on December 16, 2008 (73 FR 76249), the proposed designation of critical habitat published on October 29, 2009 (74 FR 56058), and the May 5, 2010 (75 FR 24545) notice of availability of the draft Economic Analysis for the polar bear proposed designation of critical habitat.

As discussed in our notice of April 26, 2010 (75 FR 21571), the 1994 amendments to the MMPA provide an exception to otherwise prohibited acts, allowing the use of measures that may deter a marine mammal from, among other things, damaging private property or endangering personal safety [16 U.S.C. 1371(a)(4)(A)(ii) and (iii), respectively]. These acts of deterrence must not result in the death or serious injury of a marine mammal. Section 101(a)(4)(A) of the MMPA specifically identifies the circumstances when the deterrence of a polar bear may be undertaken and by whom. These include the owner of fishing gear or catch (or his or her employee or agent) when deterring a polar bear from damaging that gear or catch and the owner (or his agent, bailee, or employee) of private property (other than fishing gear or catch) when deterring a polar bear from damaging their property. In addition, under section 101(a)(4)(A) of the MMPA any person may deter a polar bear from endangering personal safety and a government employee may also deter a polar bear from damaging public property. Separate from this authorization, section 101(a)(4)(B) of the MMPA directs the Fish and Wildlife Service (Service) to recommend specific measures that the public may use to safely, nonlethally deter marine mammals, including those listed as endangered or threatened under the ESA. Section 101(a)(4)(C) of the MMPA provides for the prohibition of certain forms of deterrence if the Service determines, using the best scientific information available, and subsequent to public comment, that the deterrence measure has a significant adverse effect on marine mammals.

We have developed these guidelines based on information gained over the past twenty years from our Incidental Take program and cooperative agreements with Alaska Native organizations. Additionally, we received