



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

**Federal Motor Carrier
Safety Administration**

APR 04 2018

Refer to: MC-PSD

Mr. Richard P. Schweitzer, PLLC
National Asphalt Pavement Association, Inc.
1717 K Street, NW, Suite 900
Washington, DC 20006

Dear Mr. Schweitzer:

In response to your May 15, 2017, letter the Federal Motor Carrier Safety Administration (FMCSA) has granted the National Asphalt Pavement Association, Inc. (NAPA) two exemptions from the from the hours-of-service (HOS) requirements in 49 CFR part 395 for drivers engaged in the transportation of asphalt and related materials and equipment. The exemptions are valid from January 26, 2018, through January 25, 2023. A notice granting the exemptions was published in the Federal Register on January 26, 2018 (83 FR 3864). A copy of that notice is enclosed.

The FMCSA has determined that granting NAPA exemptions from the HOS 30-minute break requirement and the short-haul record of duty status exception is in the public interest, and that the exemptions are likely to achieve a level of safety equivalent to the level of safety that would be obtained in the absence of the exemptions. The terms and conditions of the exemptions are specified on the attached pages.

We have received several inquiries regarding the extent of this exemption as it applies to work away from the actual paving site. In particular, questions have been raised about the transportation of liquid asphalt to a mixing plant. We believe that this would be included in the exemption if the transportation is "time sensitive" in relation to an ongoing paving project.

Should you have any questions, please contact Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, at (614) 942-6477 or by email at tom.yager@dot.gov.

Sincerely,

Larry W. Minor
Associate Administrator for Policy

Enclosure

**Federal Motor Carrier Safety Administration
Hours-of-Service Exemptions for the
National Asphalt Pavement Association, Inc.
And Other Asphalt Paving Contractors
TERMS AND CONDITIONS OF THE EXEMPTION**

PERIOD OF THE EXEMPTIONS

The exemptions from the hours-of-service (HOS) 30-minute break requirement in 49 CFR 395.3(a)(3)(ii) and the (HOS) short-haul exception in 49 CFR 395.1(e)(1) are approved for the period from **12:01 a.m. on January 26, 2018, through 11:59 p.m. on January 25,, 2023.**

EXTENT OF THE EXEMPTIONS

1. The first exemption from the HOS 30-minute break provision allows drivers engaged in the transportation of asphalt and related materials on asphalt paving jobs to use 30 minutes or more of on-duty "waiting time" to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break.
2. The second exemption allows such drivers to use the short-haul record of duty status exception but with a 14-hour duty period instead of 12 hours. Drivers must return to the work reporting location and be released from work within 14 consecutive hours.
3. Drivers must have a copy of the Federal Register notice or this equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemptions. The notice or this document must be presented to law enforcement officials upon request.

All drivers and vehicles must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations.

PREEMPTION

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period these exemptions are in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with these exemptions with respect to a firm or person operating under the exemptions. States may, but are not required to, adopt the same exemptions with respect to operations in intrastate commerce.

TERMS AND CONDITIONS

Under these exemptions, motor carriers must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Name of the exemption: "NAPA"
- (b) Name of the operating motor carrier,
- (c) Date of the accident,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver's name and license number,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,

- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Accident notifications shall be e-mailed to MCPSD@dot.gov.

TERMINATION

The FMCSA does not believe the drivers covered by these exemptions will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemptions. The FMCSA will immediately revoke the exemptions for failure to comply with its terms and conditions. Motor carriers and each driver may be subject to periodic monitoring by FMCSA during the period of the exemptions.