



Motor Carrier Attachment –FMCSA Emails

dated August 23, 2022 and February 6, 2023

Phoenix, Arizona

HWY21MH008

(6 pages)

Fox Michael

From: Jordan, Michael (FMCSA) [REDACTED]
Sent: Tuesday, August 23, 2022 3:27 PM
To: Becic Ensar; Fox Michael; Beckjord Michele; Marshall Rafael; Allen Benjamin
Cc: Lambert, Kimberly (FMCSA)
Subject: RE: FMCSA Data / DART Meeting

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Good afternoon Dr. Becic.

Please find FMCSA's response to your questions in *red* below.

1. To verify: The "Exempt For-Hire" under Question 23 on MCS-150 does not refer to exemptions from HOS regulations; is that correct? *Correct.*
 - a. A few questions regarding obtaining an exemption from HOS and ELD regulations: Does a carrier:
 - i. request the HOS exemption from the FMCSA; *A carrier that wants an exemption not otherwise available through statute or regulation can request an exemption. FMCSA then has to publish the request in the Federal Register for public comment and ultimately to approve or deny the request. Note - the HOS exemption for "agricultural operations" in 49 CFR 395.1(k) is statutory and does not require an application.*
 - ii. simply inform the agency that the carrier will operate under conditions that grant HOS exemption; or, *Operating under the HOS exemption in 49 CFR 395.1(k) does not require the carrier to notify FMCSA that it is using that exemption.*
 - iii. not inform the FMCSA at all when it starts operating under conditions that the carrier believes grant HOS exemption? *This is typically what happens pursuant to 49 CFR 395.1(k).*
2. Does the FMCSA have to approve a carrier's request to be exempt from HOS and ELD regulations? *The HOS exemption in 49 CFR 395.1(k) does not require prior approval. A carrier that wants an ELD exemption broader than that provided by 49 CFR 395.8(a)(1)(iii)(A)(1) must submit a request which will be published for notice and comment in the Federal Register. Additionally, 49 CFR 390.21 gives carriers providing emergency relief under the circumstances outlined there an automatic exemption from 49 CFR parts 390-399, which includes HOS.*
3. Do any of the FMCSA databases show which motor carriers have (or may operate with) HOS exemptions? *FMCSA databases do not track motor carriers operating under an HOS exemption, with the exception of the COVID-19 emergency HOS exemption that was put in place for carriers to voluntarily self-report use of that specific exemption.*
4. Does a carrier (or a driver for an individual load) have any documentation showing that it is exempt from HOS regulations? *Our rules don't require any documentation, but FMCSA has told carriers that they have the burden of proof to demonstrate to roadside enforcement officers that they meet the requirements for any particular HOS exemption.*
 - a. For example, if a vehicle is undergoing roadside inspection, what proof does the driver have that s/he is exempt from HOS? *Optional documents could include a copy of the Federal Register publication for when the exemption was formally granted or a bill of lading that documents locations for the commodity carried.*

We hope this information is helpful.

Michael Jordan, Management & Program Analyst
Strategic Planning and Program Evaluation Division
Federal Motor Carrier Safety Administration
Phone: [REDACTED]
E-mail: [REDACTED]



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

From: Jordan, Michael (FMCSA)
Sent: Tuesday, August 23, 2022 9:12 AM
To: Becic Ensar [REDACTED]; Fox Michael [REDACTED]; Beckjord Michele [REDACTED]; Marshall Rafael [REDACTED]; Allen Benjamin [REDACTED] >
Cc: Lambert, Kimberly (FMCSA) [REDACTED] >
Subject: RE: FMCSA Data / DART Meeting

Good morning/afternoon Dr. Becic.

Questions received. I'll forward these items to the ag exemption subject matter experts and let you know when I have their response.

Thank you!

Michael Jordan, Management & Program Analyst
Strategic Planning and Program Evaluation Division
Federal Motor Carrier Safety Administration
Phone: [REDACTED]
E-mail: [REDACTED]



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

From: Becic Ensar [REDACTED]
Sent: Tuesday, August 23, 2022 7:14 AM
To: Jordan, Michael (FMCSA) [REDACTED] >; Fox Michael [REDACTED]; Beckjord Michele [REDACTED]; Marshall Rafael [REDACTED] >; Allen Benjamin [REDACTED] >
Cc: Lambert, Kimberly (FMCSA) [REDACTED]
Subject: Re: FMCSA Data / DART Meeting

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Michael,

thank you and Olu very much for the data.

And thank you for your explanation of the MCS-150 form and the meaning of Exempt for hire question. As you can imagine, that has prompted some additional questions from us.

Could you please address the following:

1. To verify: The "Exempt For-Hire" under Question 23 on MCS-150 does not refer to exemptions from HOS regulations; is that correct?
2. A few questions regarding obtaining an exemption from HOS and ELD regulations:

- Does a carrier (1) request the HOS exemption from the FMCSA, (2) simply inform the agency that the carrier will operate under conditions that grant HOS exemption, or (3) not inform the FMCSA at all when it starts operating under conditions that the carrier believes grant HOS exemption?
 - Does the FMCSA have to approve a carrier's request to be exempt from HOS and ELD regulations?
- 3. Do any of the FMCSA databases show which motor carriers have (or may operate with) HOS exemptions?
- 4. Does a carrier (or a driver for an individual load) have any documentation showing that it is exempt from HOS regulations?
 - For example, if a vehicle is undergoing roadside inspection, what proof does the driver have that s/he is exempt from HOS?

thank you,

/ Ensar

From: Jordan, Michael (FMCSA) [REDACTED]
Sent: Thursday, August 18, 2022 4:30 PM
To: Fox Michael [REDACTED] >; Beckjord Michele [REDACTED] >; Becic Ensar [REDACTED] >; Marshall Rafael [REDACTED] >
Cc: Lambert, Kimberly (FMCSA) [REDACTED] >
Subject: RE: FMCSA Data / DART Meeting

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Good afternoon Mike, et al.

Please find:

- **Attached** - the data you requested during the meeting with Olu Ajayi earlier this week.
- **Below** - notes from Olu concerning the data provided by DART.

If you have any questions about the data provided, please let me know.

Have a great rest of your day!

Michael Jordan, Management & Program Analyst
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Federal Motor Carrier Safety Administration
Phone: [REDACTED]
E-mail: [REDACTED]



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

From: Ajayi, Olu (FMCSA) [REDACTED]
Sent: Thursday, August 18, 2022 10:00 AM
To: Jordan, Michael (FMCSA) [REDACTED] >
Cc: Lambert, Kimberly (FMCSA) [REDACTED] >; Lee, Joung-Won (FMCSA) [REDACTED] >; Mahorney, Bill (FMCSA) [REDACTED] >; Clemente, Richard (FMCSA) [REDACTED] >; Medalen, [REDACTED] >

Charles (FMCSA) [REDACTED] >
Subject: RE: FMCSA Data / DART Meeting

Hi Michael,

Please see attached for the Milk Hauler registration and crash data that NTSB requested. I provided them with an extract of all carriers that checked the "Other" cargo classification field and entered text that contained the word "milk".

A few things to note:

- The **MCMIS_STATUS** flag shows whether the carrier is currently active or inactive in MCMIS. Some of the carriers are currently inactive in MCMIS. In their analysis, NTSB can decide if they want to use the data for all carriers or just the active ones.
- We included a flag for the "**Exempt For-Hire**" operation classification. There seems to be a slight mix-up in NTSB's understanding of the role of this field. Rather than filter the data to exclude carriers that are not exempt-for-hire as requested, I decided to use a flag that NTSB can filter if they eventually decide to exclude those carriers. It would be helpful to include Charles Medalen's text clarifying the meaning of the exempt-for-hire field in your response to NTSB (see sub-bullet immediately below).
 - There was some discussion of item 23.B on the MCS-150 form, "Exempt For-Hire." This doesn't refer to the HOS agricultural exemption, but rather to 49 U.S.C. 13506, "Miscellaneous motor carrier transportation exemptions." Some of the (highly miscellaneous) exemptions listed there are agricultural in nature, but § 13506 provides an exemption only from the requirement for operating authority, not from any of the safety requirements. That's because § 13506(a) says that "Neither the Secretary [of Transportation] or the [Surface Transportation] Board has jurisdiction under *this part* over . . ." the various things listed in § 13506. The term "this part" means Part B of Subtitle IV of title 49, United States Code, i.e., 49 U.S.C. chapters 131-149. The safety statutes are codified in Part B of Subtitle VI of title 49, i.e., 49 U.S.C. chapters 311-317. So a carrier that checked the "Exempt For-Hire" box is not referring to the HOS or other safety rules.
- We included a flag for **CARRIER_OPERATION** to allow NTSB filter of **interstate vs. intrastate carriers**.
- We provided **total crash, fatal crash and power unit counts for 2019, 2020 and 2021**. NTSB can calculate the crash rates from these fields.
- You will notice that there is a **raw power unit field** and a **screened power unit field** in the report. The screened power unit field excludes raw power unit counts that failed our filter for spurious records. NTSB can use the screened power unit field as the denominator.

Let me know if there are other questions.

Olu

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RE: NTSB Investigation docket request

Jordan, Michael (FMCSA) <[REDACTED]>
 To Beckjord Michele
 Cc Becic Ensar; Fox Michael; Lambert, Kimberly (FMCSA)

Reply Reply All Forward ...

Mon 2/6/2023 11:15 AM

You replied to this message on 2/6/2023 11:29 AM.

Emergency.Exemption.Narrowed.NPRM.Dec.8.2022.pdf
 307 KB

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Good morning Michele.

Thank you for the opportunity to review the draft item for the Phoenix, AZ investigation's public docket.

FMCSA's Office of Chief Counsel identified that 1 citation in the previous response submitted to NTSB was off slightly:

- In the August 23, 2022, e-mail to Dr. Becic, in the red response under Q.2, "390.21" should read "**390.23**."

We hope it is not too late and an easy edit to make in any draft reports referencing that citation.

Additionally, FMCSA would like NTSB to be aware that the following change has been proposed:

- "Our response to Q. 2 says that § **390.23** provides an automatic exemption from parts 390-399. That's true for now, but we just published an NPRM to narrow the emergency exemption to the hours-of-service rules in part 395 (unless there's a presidentially declared emergency) [87 FR 75206, Dec. 8, 2022 (attached)]."

Otherwise, FMCSA has no objection to including prior e-mail correspondence or the correction noted in this response in the public docket.

Don't hesitate to yell should you have any questions/concerns. Have a great rest of your week!

Michael Jordan, Management & Program Analyst
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 Federal Motor Carrier Safety Administration
 Phone: [REDACTED]
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