



Utility Service Vehicle Special Provision Process

History –

The Federal Motor Carrier Safety Administration (FMCSA) adopted as final regulations required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Public Law 109-59, 119 Stat. 1144 that was signed into law by President George W. Bush August 10, 2005.

At the time it was generically referred to as the "Highway Bill" and was also the legislation responsible for the "Bridge to Nowhere" pork barrel project in Gravania Island, Alaska.

These regulations were established to govern State compliance plans under the Motor Carrier Safety Assistance Program by withholding of Federal-aid highway funds based on noncompliance with:

- The Commercial Driver's License Program;
- Intrastate operations of interstate motor carriers;
- Civil penalties and disqualifications for violations of out-of-service orders;
- Civil penalties for denial of access to records and property and for violations of statutes and regulations governing hazardous materials transportation;
- Exemption from the Federal hours-of-service regulations for operators of commercial motor vehicles engaged in certain defined operations;***
- Exemption of drivers of propane service or pipeline emergency vehicles during emergency conditions requiring immediate response;
- Interstate transportation of household goods.

Definition –

395.2 and 395.1(n)

FMCSA adopted as a final rule September 7th 2007

“ § 395.2. FMCSA defines a Utility Service Vehicle (USV) as a CMV Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service; and

While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.”

“§ 395.1 (n) states, “Utility service vehicles. The provisions of this part shall not apply to a driver of a utility service vehicle as defined in § 395.2.”

Application –

To date there remains a lot of confusion about the applicability of this rule to subcontractors of utility companies. The transportation industry had adopted the position that the rule only applied to the utility companies by focusing on the terminology of “ultimate delivery” in the definition to mean the utility provider. Over time TSCI maintained a dialogue with state trucking agencies and with FMCSA Safety Investigators and Liaisons and the position of each entity varied. The understanding ranged from the rule having no application, to only applying during the act of service in the field, but not for the transportation of private heavy machinery to and from the job site.

Knowing that were working in an unprecedented area of compliance, we established a plan. The goal was to request an exemption from Hours of Service as a subcontractor during periods of emergency repair work needed to restore the delivery of a utility as established by our customer’s contracts. We understood that this effort could risk an increase in CSA-SMS safety scores from roadside inspections and could result in an eminent audit from FMCSA to review all areas of USDOT compliance. We made the decision that before we could request a review for this exemption from the FMCSA that our CSA-SMS scores in all categories would have to be within extreme compliance levels.

Prior to rolling out our Utility Service Vehicle exemption plan we implemented the following changes.

- 1.) Driver Qualification auditing and management system
- 2.) Maintenance recordkeeping program
- 3.) Driver DOT Training
 - a. Understanding CSA
 - b. Pre-trip/Post-trip inspection process and recordkeeping
 - c. New Entry Training
 - d. Hours of Service training
 - e. Substance & Alcohol Abuse Awareness
 - f. Roadside Inspections
- 4.) Supervisor / Management DOT Training programs
- 5.) Internal mock DOT compliance audits

Over the period of 18-24 months we reduced our safety scores to levels that on unregistered on the CSA safety management system and began the process of drafting our Utility Service Vehicle policy.

Clarification –

Prior to contacting the FMCSA with our request, as part of our due diligence we prepared data as it related to:

- 1.) Percentage of utility company customers
- 2.) Percentage of all work completed for utility customers
- 3.) Percentage of revenue generated by utility customers
- 4.) Construction office locations (permanent and temporary)
- 5.) Service area maps of each utility customer
- 6.) Copies of agreements from each utility customer

After working with various parts of the agency we then got in touch with the FMCSA Office of Enforcement for the Midwest Region Center. After some conversation we received a letter from their office that provided the following clarification.

- 1.) The exemption is applied on a trip by trip basis
- 2.) It can apply to any company or division of a company
- 3.) It is intended for repair, operation, or maintaining
- 4.) It is not eligible for new construction such as a new building or service area
- 5.) It does apply to Interstate transit

Additionally we received a letter from the FMCSA State Program Manager who acts as the conduit between the FMCSA state office and the Missouri Highway Patrol who stated that as a subcontractor we are eligible for the exemption.

Implementation–

A draft of our USV Handbook was drafted and submitted to the Missouri Highway Patrol Commercial Enforcement division for their input on how the policy would be enforced from their offices position. They approved the data in the handbook and advised it should assist during a roadside inspections.

USV Handbook Contents:

- 1.) Utility Service Vehicle Guidance
 - a. Definitions
 - b. Application
 - c. Roadside Q&A
- 2.) Letter from the Midwest Enforcement Center
- 3.) Letter from the State Program Manager
- 4.) TSCI Requirements for additional safety paperwork and equipment
- 5.) DOT Annual Inspection
- 6.) Registration or Cab Card
- 7.) Insurance

The USV Handbooks were printed and provided for each power unit that will be used as a Utility Service Vehicle. For the purpose of conformity, annual inspections, registrations, cab cards, and insurance were also included with each power units handbook.

The handbooks were distributed during Q4 2013 so that they would have less impact on operations during the roll out and provide time to address any hiccups with roadside enforcement that might occur. Along with the distribution, all drivers were trained on the handbook contents, the exemption, how it applies, and most importantly what to do and not do.

To date we have not had a driver that has been reviewed for Hours of Service during a roadside inspection.