

Heavy Vehicle Driver Fatigue Regulation Exemption for livestock carriers



Transport
Roads & Maritime
Services

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The *Ministerial Exemption (Extension of Driver Work Time to Ensure Livestock Welfare) Order 2009*, commenced on 26 June 2009 for an initial six month period. It has now been extended indefinitely.

Under the Exemption, solo drivers working under standard hours or Basic Fatigue Management (BFM) Hours are permitted to exceed regulated work time limits if their trip is delayed due to unexpected livestock welfare issues.

When can the Exemption be used?

The Exemption applies to solo drivers of regulated heavy vehicles carrying livestock, where the welfare of the livestock is at risk due to circumstances which were 'not reasonably foreseeable'. This may include risks to livestock welfare which:

- Become apparent after the livestock are loaded, or
- Arise due to unexpected delays during the trip.

It should be noted that livestock owners and carriers are subject to animal welfare laws and relevant national standards and codes for the transport of livestock. These include requirements to ensure livestock are fit to travel and are properly prepared, loaded and secured for travel.

How much extra work time is available?

Standard hours driver:

- May work for up to two (2) hours above the regulated limit of 12 hours work time in any period of 24 hours.
- Are not permitted to exceed 14 hours work time in any period of 24 hours.

BFM hours drivers:

- May work for up to one (1) hour beyond the regulated limit of 14 hours work time in any period of 24 hours.
- Are not permitted to exceed 15 hours work time in any period of 24 hours.

This extra time is intended to provide adequate time for drivers to address the risks to the welfare of the livestock, including:

- Finding a suitable place to unload livestock if required.
- Arrange emergency assistance.

How much extra rest time must be taken after using the Exemption?

Drivers working extra time in accordance with this Exemption are required to take **additional** rest time before resuming work.

Standard hours driver:

- Must have a minimum of 10 hours continuous rest time before resuming work (i.e. add 3 hours to the regulated 7 continuous hours rest time in any period of 24 hours).

Exemption for livestock carriers - Maximum work time and minimum rest time

Hours option	Maximum work time in any 24 hr period		Minimum rest time	
	Regulated limit	Permitted under this Exemption	Regulated limit in any 24 hr period	Required if this Exemption used
Standard hours	12 hours	14 hours	7 hours (continuous)	10 hours (continuous)
BFM hours	14 hours	15 hours	7 hours (continuous)	Up to 9 Hours (continuous)

BFM hours drivers:

- Must have additional rest time equal to twice the amount of extra work time. For example, if a driver works an extra 45 minutes, they must add 1½ hours to the regulated 7 continuous hours rest time in any period of 24 hours.
- BFM drivers may not take a 'split rest break' after the exemption is used.

When calculating extra rest time, a period of work time of less than 15 minutes work time must be counted as 15 minutes work time.

How often may the Exemption be used?

The Exemption is intended to ensure drivers are not unfairly penalised if it is necessary to exceed regulated work time limits because unforeseen circumstances require action to address risks to livestock welfare.

When the Exemption is used, it is expected that forward work schedules will be reviewed to ensure compliance with maximum work time limits for 7 and/or 14 day periods.

This is consistent with the duties of employers, operators and consignors to take all reasonable steps to ensure their business practices do not cause drivers to drive if impaired by fatigue, or in breach of their work and rest time limits. Drivers also have a duty not to drive while impaired by fatigue.

While there is no limit to how often the exemption may be used, maximum limits on work time in any 7 and 14 day period still apply.

However, drivers will not be penalised if they exceed the maximum limit on work time in a 7 or 14 day period, if they worked extra time in accordance with this Exemption on the last day of that period.

For example, if the Exemption is used on the last day of a 14 day period:

- A standard hours drivers may work up to 146 hours in that 14 day period, or
- A BFM hours driver may work up to 145 hours in that 14 day period.

What records must drivers make?

Drivers using this Exemption must ensure that accurate records of their work and rest times are:

- Recorded in their work diary (if applicable) and
- Provided to their record keeper.

If using a work diary, the driver should tick the 'work/rest hours exemption' box, as well as ticking the relevant work/rest hours option.

In addition, the driver must make a brief written record which includes the following information:

- The circumstances which resulted in risks to the welfare of the livestock.
- The time, date and location when the driver became aware of these circumstances.
- The nature of the risks to the welfare of the livestock.

This written record must be made the first time a driver stops for a rest break or to inspect the livestock, after becoming aware of the circumstances that may require extra work time.

Driver's record of reasons for using exemption

Example 1

- Delayed for 2 hours at flooded creek.
- Newell Hwy, 40km north of Moree, 10am 12/7/2009.
- Unloaded stock to allow rest in shade to prevent heat stress.

Example 2

- Stopped and unloaded to dispose of two seriously injured lambs.
- Riverina Hwy Berrigan, 2.30pm 7/08/2009.
- Suspected crush injuries.

This information may be recorded on a Travelling Stock Statement or Waybill or in a note book.

The driver must provide this written record to the driver's record keeper within 21 days.

Notification to RMS

The driver's record keeper must notify RMS within 28 days of the exemption being used. This will enable RMS to monitor the use of the Exemption and identify possible improvements to fatigue management laws for livestock carriers.

The notification to RMS must include:

- The driver's name and licence number.
- The date the driver worked under the exemption and the amount of time worked.
- The location and circumstances of the livestock welfare risks as recorded by the driver.

A simple one-page notification form is available on the RMS website. The use of this form is optional. The required information can be forwarded to the RMS in any format, as long as all relevant details are included.

Notifications may be forwarded to the RMS by:

Fax: 02 8588 4141

Post: Compliance & Enforcement Branch
Locked Bag 928
NORTH SYDNEY NSW 2059

Penalties

Failure to comply with the requirements for extra rest time, driver record keeping and notification to the RMS may result in penalties for unlawfully exceeding work time limits.

Additional information

The full text of the Exemption Order is available on the RMS website.

Heavy vehicle driver fatigue regulation

- RMS Customer Contact Centre on 13 22 13
- www.rms.nsw.gov.au/heavy-vehicle/

Animal welfare laws and standards

- NSW Department of Primary Industries
Animal Welfare Branch, Tel (02) 6391 3149
- www.dpi.nsw.gov.au/agriculture/livestock
- New national animal welfare standards for transport of livestock are being developed. They can be obtained from www.animalwelfarestandards.net.au

Disclaimer: This fact sheet does not constitute legal advice. Details are subject to amendment. Check the legislation or contact RMS for more information.