



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0268]

Hours of Service of Drivers: Trailways Companies Application for Exemption

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA has received an application from Trailways companies identified below (“Trailways”) for an exemption from the hours-of-service (HOS) record of duty status provision in 49 CFR 395.8(c) that requires every commercial motor vehicle driver to record his or her duty status for each 24-hour period using methods prescribed in that section. FMCSA considers the request to be on behalf of all regular-route passenger carrier drivers. Trailways requests that these drivers be exempted from the requirement to enter a change in duty status on the daily log for breaks in driving time of 10 minutes or less, for the limited purpose of picking up or setting off passengers, baggage, or small express packages. Such time would not be considered a change of duty status for the purposes of 49 CFR 395.8(c). FMCSA requests public comment on Trailways’ application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2012-0268 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at www.dot.gov/privacy or the complete Privacy Act Statement in the Federal Register published on December 29, 2010 (75 FR 82133).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and

guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division;
Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail:
MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and

the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Trailways (Adirondack Trailways, Pine Hill Trailways, and New York Trailways) offers scheduled passenger-carrier service throughout New York State and to the nearby Canadian cities of Montreal and Toronto. Trailways states that its exemption application is for fixed-route carriers and their drivers who are often away from the controls of the vehicle for brief periods of time of less than 10 minutes to assist passengers or make one of several passenger pick-ups and drop-offs along the route.

Trailways advises that until March 2011 they and other motor carriers had been operating in accordance with a 1996 interpretation of 49 CFR 395.8(c) issued by the Federal Highway Administration (FHWA). The 1996 interpretation excluded regular-route passenger carrier CMV drivers from having to record a location entry on the driver's record of duty status (RODS) for non-driving periods of less than 10 minutes. The RODS simply showed the stop as driving time. In March 2011, New York State officials began enforcing a literal interpretation of the rule, requiring that a change in duty status be entered on the log any time the driver leaves the operating controls of the CMV. Trailways is concerned that the violations will have a negative effect on the companies' and the drivers' Compliance Safety Accountability ratings, as well as schedules and passenger service because of the delays needed to make the entries.

Instead of complying with the provisions in 49 CFR 395.8(c), Trailways requests that their drivers with regularly scheduled routes be exempted from changing their duty

status from “driving” to “on-duty not driving” when making stops of less than 10 minutes.

Trailways notes that the 1996 rule interpretation reduces the amount of total time a driver can drive in a duty period. Without the 1996 interpretation, the times drivers spend at stops to load passengers, freight, etc. would be logged as on-duty / not driving, increasing the driving time available, but creating an additional administrative distraction every time the driver leaves the controls regardless of the reason or the limited amount of time away from the vehicle controls. Trailways further advises that their carriers provide flag stops and that having to update the log at each flag stop increases the amount of time that the motorcoach may be delaying traffic while waiting for the pick-up and/or discharge of passengers and luggage, and then waiting for the driver to update the log before continuing the route. According to Trailways, in many instances the large number of brief stops will not fit on the log if the driver makes all of the required entries.

Trailways notes that the maximum possible driving time would be reduced and that traffic congestion could be reduced. FMCSA believes this would ensure that operations under the exemption would be at least as safe as operations that comply with the requirements on change of duty status.

FMCSA is extending Trailways’ request to be on behalf of all regular-route for-hire passenger-carrier drivers because the same need for the exemption likely applies to them as well as Trailways. Including all regular-route for-hire passenger carrier drivers in the exemption will preclude the need for other carriers to file identical exemption requests, and will provide for consistent enforcement because the same provisions would

be applied to all similar scenarios involving brief stops by drivers of these carriers during their regular-route operations.

A copy of Trailways' exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on the Trailways application for an exemption from certain provisions of the driver's record of duty status rules in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: September 21, 2012

Larry W. Minor
Associate Administrator for Policy

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