



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0175]

Hours of Service of Drivers: Application for Exemption; Rail Delivery Services (RDS)

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

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

SUMMARY: FMCSA announces that it has received an application from Rail Delivery Services (RDS) for an exemption to spare its drivers who stay within a 100 air-mile radius of their normal work-reporting location but may occasionally return to that location more than 12 hours later, from the requirement to complete a record of duty status (RODS) for that day. RDS states that its fleet of commercial motor vehicles (CMVs) are all equipped with a Global Positioning System (GPS) vehicle tracking device, which they believe justifies their request for this exemption and provides an equivalent or greater level of safety than would be obtained by complying with the regulations. FMCSA requests public comment on the RDS 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 (FDMS) Number FMCSA-2017-0715 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- 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., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division;

Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0175), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, "FMCSA-2017-0175" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-

addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions for up to 5 years from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). 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)).

III. Request for Exemption

RDS is, according to its website at www.raildelivery.com, a “California-based intermodal trucking company moving freight, trailers and containers between railroads,

ports, consignees and shippers, reliably and efficiently throughout California and adjacent states.” RDS believes that all of its drivers – approximately 100-120 – would operate under the terms of the requested exemption from the 12-hour limitation in the log-book exception in 49 CFR 395.1(e)(1). On a weekly basis, RDS expects that about 15% of its drivers will return to their work reporting location more than 12 hours after coming on duty, due to waiting times at rail yards and shipper locations, while still operating within the required 100 air-mile radius. The drivers who occasionally exceed the 12-hour limitation nearly always return to the terminal within 14 hours.

On average, less than .02% of RDS drivers exceed the daily 14-hour limit. A detailed report of hours worked is generated each morning, which is reviewed daily by dispatchers and the Safety Department. If a CMV is operated beyond the 14th hour, the departments work diligently to determine whether the truck was over the hours-of-service (HOS) limits, or utilized for personal conveyance. In virtually all of these cases, owner-operators are using their vehicles for personal conveyance, which is allowed by the HOS rules.

According to RDS, at the present time, virtually all of its drivers operate within a 70- to 80-mile radius of their home terminal. They are home every day and for the most part meet the exemption requirements of the 100 air-mile radius driver. Some of these drivers record their hours worked on an “exempt” log. Other drivers complete a grid log, even though they meet the 100 air-mile radius exemption. Both types of paper logs are time consuming for the drivers and the Safety Department. For this reason, RDS has embarked on the use of a vehicle recording device, which has helped increase the company’s safety performance. It accurately records all of the drivers’ activities

including on-duty time, driving time, and total hours for the day. RDS is using the Geotab 7 system, a global positioning system (GPS) that tracks the location of the vehicle.

This electronic system allows for accuracy and “real-time” follow up. RDS believes that with this system it is improving the safety of the motoring public by ensuring that the drivers do not falsify their log books or operate when they are tired. Additionally, proactive measures have been implemented by RDS to improve highway safety. RDS states that the use of a daily log book or an “exempt” log does not enable the carrier to monitor and respond to these events in “real-time.” Violations are discovered 12 to 24 hours later. However, with the electronic tracking system all departments see the events in “real-time” and can respond immediately. This GPS system has allowed the Safety Department to reduce the time spent auditing log books after the fact.

RDS believes that the use of the Geotab 7 system, along with their increased focus on driver training and education, goes beyond compliance with the Federal regulations. The system has allowed them to provide “real time” oversight of the company’s safety program. Every time a driver exceeds posted speed limits an email alert is sent to the Safety Department, dispatchers, and terminal management. Drivers are notified via email and phone when safe to do so, advising them of the need to slow down. Drivers also receive email notifications, letters, and phone calls for instances of harsh cornering and hard braking. When notified of these critical events, RDS’s drivers receive critical information on why and how to improve vehicle handling to avoid rollovers, and how to better judge following distance and other issues to avoid hard braking.

RDS states that its procedures are designed to ensure that it leases only the highest caliber of drivers with a proven record of safe driving. RDS is committed to ensuring that its drivers operate in a way that protects the motoring public.

IV. Method to Ensure an Equivalent or Greater Level of Safety

If this exemption is granted, RDS proposes to implement the following conditions on its use of this exemption:

- Allow FMCSA and the State enforcement partners access to its data as both a monitoring and training tool. This would be provided to the Agency and State partners by granting them access at any time through RDS's web portal.
- RDS will maintain a Satisfactory safety rating.
- RDS drivers will carry a copy of the exemption with them when operating the CMV.
- RDS will conduct a minimum of four safety meetings per year.

- RDS will continue their ongoing immediate notification and training for any drivers who exceed a speed limit.
- RDS will continue its ongoing immediate notification and training for any drivers who exceed the HOS limits.

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

Issued on: June 27, 2017

Larry W. Minor
Associate Administrator for Policy

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