



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0166]

Hours of Service of Drivers: Application for Exemption; MBI Energy Services (MBI)

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

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application of MBI Energy Services (MBI) from the requirement that a motor carrier install and require each of its drivers to use an electronic logging device (ELD) to record the driver's hours of service (HOS) no later than December 18, 2017. MBI had requested the exemption for all of its vehicles equipped with a single-passenger cab, which are used in applications where travel is incidental to normal work activities and which require special oversize/overweight permits to travel on public roads. FMCSA has analyzed the exemption application and public comments, and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore denies MBI's application for exemption.

DATES: FMCSA denies this application for exemption effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas 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:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain 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.

FMCSA 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 reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

MBI is a provider of water management logistics and well-intervention services in North Dakota, South Dakota, Wyoming, Montana, and Colorado. The requested exemption would affect 65 MBI Energy Services drivers operating 42 single-cab vehicles

classified in North Dakota as Special Mobile Equipment (SME). These vehicles meet the definition of a commercial motor vehicle (CMV) in 49 CFR 390.5 and therefore are subject to the ELD or AOB RD mandate. These specialized vehicles perform various work activities in an environment where connectivity is limited, working and road conditions are rough, and the necessity for driving on public roads is sporadic and incidental to the overall work being performed. The vehicles may sit on work locations for long periods of time, up to weeks or even months. These vehicles are typically oversize and overweight, requiring special permits for transport. Many States do not require registration, as they build the registration fees into the permit process.

Examples of SMEs meeting the definition of a CMV having a single cab include cranes, workover rigs, and swab units. Single cabs have reduced space for installing rough-terrain-capable AOB RDs or ELDs. The devices used must be capable of satellite communication where cell communication is poor to non-existent. The installation of rugged logging units, weighing more than typical units used in highway applications, would reduce driver visibility in an already large vehicle due to the limited space found in single-cab vehicles. Additionally, installation may require a unit being positioned over the driver's head, increasing the risk of the unit falling on the driver resulting in injury given the rough terrain upon which the vehicles travel or a vehicle accident involving the travelling public.

While these vehicles normally travel little, business demand may require MBI vehicles to move more often than 8 days in a 30-day period, the maximum frequency allowed by 49 CFR 395.8(a)(1)(iii)(A)(1) for the use of paper RODS instead of ELDs. According to MBI, the current regulations do not address circumstances where the

vehicle's exemption status is sporadic in nature, thus requiring MBI to install an ELD to remain compliant during times not covered by the exemption. While alternatives exist to industrial-grade logging units, the alternatives usually involve cell phones or cell-capable tablets where the terrain or remote locations of work may inhibit logging device communication for extended periods of time. Many worksites prohibit cell phone usage due to safety concerns. Additionally, installations in special vehicles will increase costs substantially due to the unusual configurations of single cab vehicles requiring specialized wiring harnesses and custom installation kits. MBI requested a 5-year exemption.

Public Comments

On July 10, 2017, FMCSA published MBI's application for exemption and requested public comment (82 FR 31798). The Agency received five comments to the docket, from CMV drivers, a Commercial Vehicle Safety Alliance (CVSA) inspector, and the Owner-Operator Independent Driver's Association (OOIDA). All of the commenters opposed the MBI application for exemption. According to commenters, MBI's request would place a burden on law enforcement officers in tracking exceptions from the regulations and open the door for other oil field service companies and crane operating companies to request similar exception status. Commenters stated that the purpose of the ELDs is to force drivers and carriers to record their HOS accurately due to years of abuse by the industry.

All comments are available for review in the docket for this notice.

FMCSA Decision

When FMCSA published the rule mandating ELDs, it relied upon research indicating that the rule improves commercial motor vehicle (CMV) safety and reduces the overall paperwork burden for both motor carriers and drivers by increasing the use of ELDs within the motor carrier industry, which will in turn, improve compliance with the HOS rules. The primary reason for denial of this exemption is that MBI did not demonstrate how, without using ELDs, they would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

For these reasons, FMCSA has denied the applicant's request for exemption.

Issued on: September 28, 2017.

Daphne Y. Jefferson
Deputy Administrator

[FR Doc. 2017-22834 Filed: 10/19/2017 8:45 am; Publication Date: 10/20/2017]