



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0428]

**Hours of Service; Electronic Logging Devices; Limited 90-Day Waiver;
Truck Renting and Leasing Association, Inc.**

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

ACTION: Notice; grant of waiver.

SUMMARY: FMCSA grants a limited 3-month waiver from the Federal hours-of-service (HOS) requirements for electronic logging devices (ELDs) to motor carriers and drivers operating property-carrying commercial motor vehicles (CMVs) that are rented for a period not exceeding 30 days. The Agency takes this action in response to a waiver request from the Truck Renting and Leasing Association, Inc. (TRALA). The Agency has determined that granting this waiver is in the public interest and will likely achieve a level of safety that is equivalent to the level that would be achieved absent the waiver, based on the terms and conditions imposed.

DATES: This waiver is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. E-mail: MCPSD@dot.gov. Phone : (614) 942-6477.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107, sec. 4007(a) June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. 31136, to a person(s) seeking regulatory relief (49 U.S.C. 31136(e), 31315(a)). The Secretary must make a determination that the waiver is in the public interest and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may be granted only for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without prior notice or request for public comment.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(e) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulations.

Background

TRALA is a national trade association representing companies that engage in commercial truck renting and leasing as well as consumer truck rentals. Its membership encompasses major independent firms such as Ryder System, Penske Truck Leasing, U-Haul, Budget, and Enterprise Truck Rental, as well as small and medium-size businesses that generally participate as members of four leasing group systems: Idealease, NationaLease, PACCAR Leasing company, and Mack Leasing System-Volvo Truck Leasing. In total, its nearly 500 member companies operate more than 5,000 commercial leasing and rental locations, and more than 20,000 consumer rental locations throughout the United States, Mexico, and Canada. “Renting” is a term of art in the vehicle leasing industry, generally

meaning a transaction granting the exclusive use of a vehicle for 30 days or less, whereas a lease generally means a transaction granting the exclusive use of a vehicle for more than 30 days.

In November 2016, TRALA submitted a petition requesting a 5-year exemption on behalf of operators of property-carrying commercial motor vehicles rented for 30 days or fewer from the requirement that motor carriers whose drivers are required to keep records of duty status (RODS) under the HOS rules generally must employ ELDs beginning December 18, 2017, in lieu of paper logs, pursuant to an FMCSA rule published December 16, 2015 (80 FR 78292). While TRALA stated that it supported the ELD mandate, it was concerned about unintended technical and operational consequences that would unfairly and adversely affect short-term rental vehicles, namely, lack of interoperability between the motor carrier's ELD technology and the rental company's platform, potentially precluding data transfer between the two systems. TRALA also raised concerns about data liability, particularly if the rental companies needed to bear the burden of safeguarding data on behalf of the motor carrier.

In accordance with 49 CFR 381.315, FMCSA sought public comment on TRALA's exemption request (82 FR 14789 (Mar. 22, 2017)). FMCSA evaluated TRALA's application and the public comments and granted a limited exception, subject to specified terms and conditions, but only for rentals not exceeding 8 days (82 FR 47306 (Oct. 11, 2017)).

Waiver Request

After FMCSA granted TRALA's exemption in part, TRALA filed a request for a 90-day waiver from the ELD requirement for truck rentals not exceeding 30 days. TRALA indicated that a 90-day waiver would allow rental companies and their customers "critical additional time to develop compliance strategies" to address "unique issues relating to the use

of ELDs in short-term rental vehicles” and allow time for TRALA to consider whether to petition for reconsideration of FMCSA’s action on its exemption.

TRALA described unique challenges faced by operators of short-term rentals, namely the lack of interoperability between ELD device platforms, a situation that requires rental companies to address how their customers’ drivers might record their HOS using ELDs as efficiently as possible. TRALA described several steps its members have taken since FMCSA’s October 11, 2017, decision granting a partial exemption for rental trucks, including building cloud-based portal systems between ELD providers and purchasers of ELDs. Nevertheless, TRALA states that additional time is required and that a 90-day waiver would allow its members to continue working through the issues presented by the required technology and the need for individual customer-based compliance strategies.

TRALA stated that the waiver would not result in any adverse impact on safety as drivers of rental vehicles would remain subject to HOS regulations and the requirement to keep paper records of duty status under 49 CFR 395.3 and 395.8. Furthermore, TRALA stated that planned enforcement activities would not be compromised, given the decision that CMVs will not be placed out-of-service and carriers’ Safety Measurement System scores will not be impacted for failure to employ ELDs through April 1, 2018.

Finally, TRALA explained why the waiver would not serve as a safe harbor for carriers seeking to avoid compliance with the HOS regulations, given the increased cost of operating under short-term rental arrangements.

FMCSA Determination

Given the obstacles to ELD implementation unique to short-term CMV rentals and the impact on carriers renting trucks for a period not exceeding 30 days, FMCSA finds it is in the

public interest to grant a limited 3-month waiver from the requirement that carriers and drivers operating rental CMVs in interstate commerce employ ELDs effective December 18, 2017. This waiver will avoid business disruptions for carriers required to employ short-term rentals, regardless of the reason, and allow businesses renting CMVs to continue their work to reconcile the ELD requirement with the needs of their individual customers. Given the brief time frame during which the waiver will be in effect and the terms and conditions applicable to drivers operating under its provisions, FMCSA finds that a level of safety is likely to be achieved that is equivalent to the level that would be obtained absent the waiver. Because this waiver applies to all short-term truck rentals not exceeding 30 days, during a time period both the previous exemption and this waiver are in effect, this waiver supersedes the exemption granted to TRALA on October 11, 2017 (82 FR 47306) to the extent there is any inconsistency.

Terms and Conditions of the Waiver

(1) This waiver from the requirements of 49 CFR 395.8(a)(1)(i) is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

(2) This exemption covers rental of any property-carrying CMV for a period of 30 days or less, regardless of the reason for the rental. Evidence that a carrier has replaced one rental CMV with another on 30-day cycles or attempted to renew a rental agreement for the same CMV for a period beyond 30 days will be regarded as a violation of the waiver.

(3) Carriers and drivers operating under this waiver must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations, including the preparation of paper records of duty status (RODS) for operations which are currently

considered to be subject to the HOS rules and the record retention requirements associated with those RODs and supporting documents.

(4) Motor carriers operating under this waiver must have a “satisfactory” safety rating from FMCSA or be unrated; motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from taking advantage of the waiver.

(5) Carriers operating under this waiver must ensure that their drivers carry a copy of this **Federal Register** notice in the vehicle and present it to motor carrier safety enforcement officials upon request.

(6) ***Crash Notification to FMCSA***

Carriers operating under this waiver must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s drivers operating under the terms of this waiver. The notification must include the following information:

- (a) Identity of Waiver: “TRALA,”
- (b) Date of the accident,
- (c) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (d) Driver’s name and license number,
- (e) Co-driver’s name and license number (if applicable),
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,

(j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

(k) The total driving time and total on-duty time period prior to the accident.

Accident notifications must be e-mailed to MCPSD@dot.gov.

(7) FMCSA expects that any drivers and their employing motor carrier operating under the terms and conditions of this waiver will maintain their safety record. Should any safety problems be discovered, however, FMCSA will take all steps necessary to protect the public interest. Use of this waiver is voluntary, and FMCSA will immediately revoke the waiver for any interstate driver or motor carrier for failure to comply with the terms and conditions of the waiver.

Preemption of State Requirements

Consistent with 49 U.S.C. 31315(d), this waiver preempts inconsistent State or local requirements applicable to interstate commerce.

Issued on: January 12, 2018

Cathy F. Gautreaux
Deputy Administrator

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