



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0114]

Hours of Service of Drivers: Application for Exemption; Werner Enterprises

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

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Werner Enterprises' (Werner) application for an exemption from the requirement that certain data fields be included in electronic records of duty status (RODS) files presented by electronic logging devices (ELDs). Due to incompatibility issues between Werner's current ELD supplier and its new supplier, Platform Science, Werner requests that, during the first eight days that each of its drivers transitions to Platform Science, the company be permitted to leave blank five specific data fields in the RODS file. The Agency has determined that the limited exemption would likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires [INSERT DATE ONE YEAR FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Pearlle Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4325; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

I. SUPPLEMENTARY INFORMATION:

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2020-0114” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions 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. Background

On December 16, 2015 (80 FR 78292), FMCSA published a final rule requiring most drivers who are required to prepare hours-of-service (HOS) RODS to use ELDs instead of paper logs to document their RODS. The final rule also established minimum performance and technical design standards for ELDs. Appendix A to subpart B of 49 CFR part 395 (appendix A) provides requirements for data fields that must be included in electronic RODS files generated by ELDs. Generally, if more than one ELD is used to record a driver's records, the ELD in the vehicle the driver most recently operates must produce a complete ELD report for the driver on demand, reflecting the current 24-hour period and the previous 7 consecutive days.

IV. Werner's Exemption Application

Werner requests that during the first eight days that each of its drivers makes the transition from Werner's current ELD supplier to its new supplier, Platform Science, five specific data fields required within the ELD Outputs, as listed in Section 4.8 of appendix A be excluded in the RODS files accessed through the in-cab ELD unit. The files generated by the current ELDs used by Werner include all the required information. The files generated by the Platform Science ELDs that Werner began using in 2020 include all the required information. Due to incompatibilities between Werner's current ELD supplier and its new supplier, 5 data elements will not be available on the ELD during the transition, which will last no more than the first 8 days each driver uses the new ELD system. The affected fields in section 4.8 of appendix A are as follows:

- Co-driver information;
- Odometer Elapsed - vehicle elapsed miles/kilometers in given ignition power on cycle;
- Engine Hours Elapsed - elapsed time of engine operation in the given ignition power on cycle;
- Engine Hours Total - total engine hours at time of event; and
- Odometer Total (decimal) - total at time of the event.

Consequently, during the first eight days a driver is operating a Werner vehicle equipped with the new Platform Science ELD, the electronic RODS file accessible in the vehicle will not include the five data elements specified for the full required time prior to the installation of the new ELD; however, all other information needed to determine compliance with the HOS rules will be available. The inspector would review the electronic RODS via FMCSA's eRODS software which would detect the missing data elements in the Platform Science ELD presentation of the previous eight days of RODS. This problem will affect Werner's entire fleet which consists of roughly 10,000 drivers and 8,000 power units as the transition takes place.

Werner notes that its drivers would have electronic RODS files available for review using FMCSA's eRODS software providing accurate duty status information for the current day and the previous seven days at any inspection location. While the files would not include the five data elements listed, HOS information can still be verified at the roadside, and the information would be available for an on-site investigation conducted at a Werner facility. The remaining data elements would provide a means for identifying non-compliance with the underlying HOS requirements. Werner is requesting a one-year exemption to complete the transition.

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

According to Werner's application, "[p]aper logbooks can be lost, falsified, illegible, etc. We know due to our extensive log audit system, which includes 100% real-time monitoring of hours of service records, that the Omnitrac's hours of service records are accurate. Having the ability to upload this electronic data for the 8 days preceding the transition to the new Platform Science system is a safer option for our drivers to prevent fatigue and helps roadside enforcement be assured that the information is accurate." However, certain fields identified by Werner cannot be accurately transferred onto the new devices from its prior ELD data.

A copy of the exemption application is included in the docket referenced at the beginning of this notice.

VI. Public Comments

On April 13, 2020 (85 FR 20566), FMCSA published a Federal Register notice requesting public comment on Werner's exemption application. The Agency received 19 comments from the public, six in favor and 12 in opposition.

The six supporters were: The American Trucking Associations (ATA), California Trucking Association, Commercial Vehicle Training Association (CVTA), Florida Trucking Association, Nebraska Trucking Association and Truckload Carriers Association. For example, ATA wrote:

The application merely presents a specific means to allow the interoperability of two ELD systems—not to exempt its drivers from the broader ELD requirements that ATA has long supported. Consequently, ATA believes this application meets FMCSA's requirement under 49 CFR § 381.210(c)(4) to establish an equivalent or greater level of safety. As discussed, the application's limited time and scope provide Werner with the flexibility its staff and engineers need to monitor fleet compliance with HOS rules. Werner's desire to use RODS generated from an ELD—as compared to reverting to manually created paper records—will also undoubtedly eliminate the ability for falsification and inaccurate records.

CVTA said:

For the reasons as outlined by the American Trucking Associations, Truckload Carriers Association, the Florida Trucking Association, California Trucking Association, and Nebraska Trucking Association, CVTA also believes that granting this exemption makes sense. Because we believe granting this exemption poses no risk to highway safety, we encourage the FMCSA to move forward and grant the application for exemption.

The 12 opponents were: Jesse Cole, Mark Rawn, Michael Groff, Larry Gump, Michael Glenn, George Thornton, David Battiest, Darrin Atkinson, Michael Crites, John Smith, John Haynes, and Caelan Helsel. Larry Gump stated, “[p]lease deny this request it is unnecessary and [sic] Werner can afford to ensure the fields are provided.” Mr. Michael Crites wrote, “[a]bsolutely no exemption should be granted to any carrier. Especially one that pushed for the ELD mandate. They need to be held responsible for not having their act together. If this was any other carrier they would be held liable. Many other outfits have done exactly what was required of them. This is a [multi-million] dollar company. They have no excuse for this.”

VII. FMCSA Safety Analysis and Decision

FMCSA has evaluated the application for exemption and the public comments submitted. Based on the information presented in Werner’s request, the Agency believes it is appropriate to grant the exemption covering the appendix A requirement for the specific data fields discussed above during the 8-day period following the installation of the Platform Science ELD. We have determined, as required by 49 U.S.C. 31315(b)(1) and the implementing regulations under 49 CFR part 381, that the exemption 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 exemption.

From a safety equivalency perspective, all of Werner’s drivers would have electronic RODS files available for review at any inspection location using FMCSA’s eRODS software providing accurate duty status information for the current day and the previous seven days. While the files would not include the specific data elements discussed above, HOS information

can still be verified at the roadside, and the information would be available for an on-site investigation conducted at a Werner facility. The remaining data elements would provide more than sufficient means for identifying non-compliance with the underlying hours-of-service requirements.

For the reasons cited above, we grant Werner Enterprises a limited waiver from the appendix A requirements for the specific data elements listed above with terms and conditions provided below.

VIII. Terms and Conditions for the Exemption

This exemption is limited to Section 4.8 of appendix A to subpart B of part 395 concerning the requirements for the following data fields in electronic RODS files generated by Omnitrac's ELDs and retrieved via a Platform Science ELD:

- Information to be included in the Print/Display as required by 4.8.1.3(b):
 - Co-Driver: Co-Driver's Last Name, Co-Driver's First Name
 - Co-Driver ID: ELD username for the co-driver
 - Total Vehicle Miles
 - Total Engine Hours
 - Accumulated Vehicle Miles, and
 - Elapsed Engine Hours;
- Co-driver information as required in 4.8.2.1.1 of the Header Segment;
- ELD Event List records data elements required by 4.8.2.1.4 and the ELD Event Log List for the Unidentified Driver Profile 4.8.2.1.10:
 - Accumulated Vehicle Miles, and
 - Elapsed Engine Hours;

- Data elements for Malfunction and Data Diagnostic Events 4.8.2.1.7, ELD Login/Logout Report 4.8.2.1.8 and CMV's Power-Up and Shut Down Activity 4.8.2.1.9:
 - Total Vehicle Miles, and
 - Total Engine Hours.

During the period of the exemption:

1. Werner must ensure that each of its drivers continues to use ELDs that meet all the technical specifications required by 49 CFR part 395;
2. Each driver operating under the exemption must maintain a copy of this notice and documentation of the date of installation of the Platform Science ELD to establish the 8-day period for which the exemption is applicable;
3. Werner must maintain all electronic files generated by Omnitrac's ELDs for each of its drivers for at least 6 months from the date the records were created and ensure that each of those files contains all the data elements specified by Section 4.8 of appendix A to subpart B of part 395.

PREEMPTION OF STATE LAWS AND REGULATIONS

During the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption (49 U.S.C. 31315(d)).

Notification to FMCSA

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

- (a) Identity of the exemption: "Werner Enterprises";

- (b) Name of operating motor carrier;
- (c) Date of the accident;
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene;
- (e) Driver's name and license number;
- (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, motor carrier safety regulations; and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to MCPSD@DOT.GOV.

TERMINATION

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. Interested parties or organizations possessing information that would otherwise show that Werner is not achieving the requisite statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption.

James A. Mullen,
Deputy Administrator.

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