



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0116]

Hours of Service of Drivers: Pronto.ai, Inc., Application for Exemption

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

ACTION: Notice of final disposition; denial of exemption.

SUMMARY: FMCSA announces its decision to deny Pronto.ai, Inc.'s ("Pronto") application for an exemption from the 11-hour driving limit and the prohibition against driving after the 14th hour after coming on duty. Under the exemption, drivers of commercial motor vehicles (CMVs) equipped with the Copilot by Pronto advanced driver assistance systems (ADAS), the SmartDrive® Video Safety Program, and operating under certain other safeguards, would be allowed to drive up to 13 hours during a work shift within 15 consecutive hours after coming on duty following 10 consecutive hours off duty. FMCSA has analyzed the exemption application and the public comments and determined that the applicant has not demonstrated that the requested exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption.

DATES: This decision is applicable [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

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 Federal Docket Management System (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: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division: Telephone: (202) 366-4225. 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

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-2020-0116" 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 online 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. 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 provide an opportunity for public comment on the request.

The Agency reviews the 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 Agency's decision 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 specify the effective period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The hours-of-service (HOS) regulations for interstate drivers of property-carrying commercial motor vehicles (CMVs) allow a period of 14 consecutive hours (49 CFR 395.3(a)(2)) in which to drive up to 11 hours (49 CFR 395.3(a)(3)) after being off duty for 10 or more consecutive hours. The 14-consecutive-hour "driving window" begins when the driver starts any kind of work. Once the driver reaches the end of this 14-consecutive hour period, the driver cannot drive again until he/she has been off duty for another 10 consecutive hours, or, in the case of drivers using sleeper berths, the equivalent of at least 10 consecutive hours off duty.

Pronto requests an exemption from the 11-hour limit and the 14-hour “driving window” on behalf of its customers operating CMVs equipped with the Copilot by Pronto advanced driver assistance systems (ADAS), the SmartDrive® Video Safety Program, and operating with certain other safeguards discussed in the application. The exemption would allow drivers operating these CMVs to drive up to 13 hours within 15 hours after the beginning of the work shift, following 10 consecutive hours off duty. According to Pronto, its distinctive combination of advanced safety technologies would help reduce physical and mental driver stress, thereby allowing a modest increase in certain HOS parameters. Pronto believes that the same technologies would provide additional levels of safety by reducing the risk of the driver becoming drowsy or distracted and assist the driver in maintaining safe and proper control of the CMV.

IV. Pronto’s Discussion of the Equivalent Level of Safety

Pronto stated that drivers and carriers operating under the exemption would achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained by complying with the current regulation, as a result of safety improvements from: (1) mandatory use of the most sophisticated ADAS system on the market, coupled with SmartDrive’s best-in-class video-based safety program and intelligence platform; (2) a significant increase in a driver’s physical comfort, resulting in less physical fatigue during a shift; (3) an active management approach to the technology roll-out with carriers and drivers, achieved through Pronto’s compulsory, full-day driver training program and the ability of SmartDrive’s platform to enable rapid identification of drivers needing additional training; (4) Pronto’s unique “Safe Landing” feature that identifies highly inattentive or non-responsive drivers, and attempts to safely and gradually bring the truck to a complete stop; and (5) SmartDrive’s fatigue-monitoring

and alerting system, SmartSense, which provides real-time in-cab alerts to the driver and triggers a video for immediate verification and intervention by the carrier.

V. Public Comments

On April 20, 2020, the Agency published a notice requesting public comment on Pronto's exemption application (85 FR 21915). The Agency received more than 300 comments, primarily from individuals, but also from prominent industry trade groups. A total of 294 commenters opposed the exemption request. Opponents included the Advocates for Highway and Auto Safety; California Highway Patrol; Commercial Vehicle Safety Alliance; Insurance Institute for Highway Safety; Institute for Safe Trucking/Road Safe America; International Brotherhood of Teamsters; Owner-Operator Independent Driver's Association; Transportation Trades Department American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); Transport Workers Union of America AFL-CIO; Truckload Carriers Association; and the United States Transportation Alliance.

Commenters that opposed the exemption believe the lack of safety metrics for ADAS poses a risk to the public. The commenters also noted the lack of a Federal framework to ensure that any transition to automated driving system technologies is done in a measured, secure, and responsible manner to protect people traveling on our roadways.

Opponents of Pronto's request also emphasized that the application would result in a needless threat to public safety by increasing the driving hours and extending the workday of CMV operators, and that the applicant failed to provide the required analysis and supporting information required by statute. Lastly, the opposing commenters believed that granting the exemption would give Pronto an unfair competitive advantage to carriers that utilize its product.

Six commenters supported the exemption request, including Scopelitis Transportation Consulting. Supporters believe the exemption would be in line with the recent HOS changes proposed on August 22, 2019 (84 FR 44190) and adopted on June 1, 2020 (85 FR 33396). Another point emphasized by a supporting commenter was that the Agency could impose a list of conditions, if the exemption were granted, in addition to the conditions listed in Pronto's own application.

VI. FMCSA Decision

The FMCSA's HOS regulations set driving time limits for the work shift and prohibit driving after the 14th hour after coming on duty, following 10 consecutive hours off duty. The requirements are intended to reduce the risk of individuals experiencing fatigue during the work shift. FMCSA is not aware of data or information that would enable the Agency to determine whether the advanced technology described by Pronto reduces the workload for CMV drivers to such an extent that additional driving time during the work shift should be allowed, or that individuals should be allowed to operate an extended work shift. Neither Pronto nor commenters supporting the exemption application provided data or information that would help to explain why this exemption would not reduce safety.

Based on the numerous research studies concerning fatigue and hours of service that the Agency has reviewed in recent years, we do not believe there is a basis for allowing individuals to drive up to 13 hours during a work shift, or operate after the 14th hour after coming on duty (except during adverse driving conditions). The premise that the use of advanced technology should reduce the workload on drivers appears reasonable on the surface but the absence of data or information to quantify the impact on driver fatigue and alertness leaves the Agency with no choice but to deny the application.

In summary, after reviewing the application for an exemption and all the comments submitted to the public docket, FMCSA cannot ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations.

For these reasons, FMCSA denies the request for exemption.

James W. Deck,
Deputy Administrator.

[FR Doc. 2020-21324 Filed: 9/25/2020 8:45 am; Publication Date: 9/28/2020]