



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0097]

**Hours of Service (HOS) of Drivers: Small Business in Transportation Coalition (SBTC)
Application for Exemption from ELD and Certain HOS Requirements**

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 Small Business in Transportation Coalition's (SBTC) request for an exemption from the electronic logging device (ELD) requirements for commercial motor vehicle (CMV) drivers traveling with domestic animals in interstate commerce. Additionally, FMCSA denies SBTC's request for an exemption from the hours-of-service (HOS) requirements to allow these drivers to drive up to 13 hours during a work shift and to operate within a 16-hour window within which all driving tasks would be completed. FMCSA has analyzed the exemption application and public comments and has determined that it cannot ensure that granting the requested exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemptions.

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

FOR FURTHER INFORMATION CONTACT: Ms. La Tonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-9220 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. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 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)).

When the Agency denies a request for an exemption, the applicant may be allowed to resubmit the application if the applicant can reasonably address the basis for denial (49 U.S.C. 31315(b)(3)).

II. Background

Generally, individuals may not drive a property-carrying CMV more than 11 hours during a work shift, following 10 consecutive hours off duty. Under the current regulations all driving must be completed within 14 hours of the beginning of the work shift, with certain

alternatives for drivers who use sleeper berths. Most drivers who are required to prepare and maintain records of duty status (RODS) to document their HOS are subject to the Electronic Logging Devices (ELD) Rule and must use an ELD.

III. Request for Exemptions

SBTC requests that drivers of property-carrying CMVs, when accompanied by any domestic animal, be exempt from the requirement to use an ELD for their RODS and be allowed to prepare and maintain paper RODS as an alternative.

SBTC also requests that drivers of property-carrying vehicles accompanied by any domestic animal be granted an exemption from 49 CFR 395.3(a)(2) and (3)(i), allowing them to drive up to 13 hours during a work shift, following 10 consecutive hours off-duty. The requested exemption would allow them a 16-hour driving window within which to use the 13 hours of driving time.

IV. Methodology to Ensure Safety

To ensure a level of safety that is equivalent to or greater than the level that would be achieved absent such exemptions, SBTC offers the use of paper RODS in lieu of ELDs. SBTC asserts that paper logs provide the level of safety already assured by the pre-existing HOS rule as opposed to using an ELD. SBTC compares the two-hour extension of driving time to the two driving hours allotted for adverse driving conditions. Lastly, SBTC believes its exemption request is no different than the other ELD exemptions FMCSA has granted.

V. Public Comments

On March 11, 2020, FMCSA published notice of this application and requested public comments (85 FR 14289). The Agency received more than 165 comments, approximately 130 of which favored the exemption. Mr. Jeffrey Anderson said, "I agree with being exempt because I

also have a pet onboard and it should be fair for [all].” Ms. Deborah Carly wrote: “I am in favor of this exemption. . . . Pets are family. There needs to be consideration for their needs; and currently there is nothing. Pets are, sometimes, the only family drivers have. There needs to be rules in place to make sure their needs are met.” Many of the commenters simply wrote, “I support this exemption.” Some comments focused more on the HOS rules than the exemption application; a few comments were not germane.

A total of 35 commenters opposed the exemption application, including the American Trucking Associations (ATA), the Commercial Motor Vehicle Safety Alliance (CVSA), and the Truckload Carriers Association (TCA). Ms. Suzanne Pehl wrote the following:

Drivers traveling with pets should [not]be exempt from ELDs or any other regulation. If such an exemption is allowed, drivers will get a pet just to be exempt from regulations. That would create numerous problems for pets as well as safety problems for other drivers on the road. If you keep creating exemptions, there will be no regulations.

ATA wrote the following:

SBTC’s application asks FMCSA to extend driver hours-of-service for up to 13 hours during the duty day following ten consecutive hours off duty, and exempt drivers traveling with domestic animals from the ELD mandate. FMCSA approval of this application would, in essence, apply an overbroad category of exempted individuals to an insufficiently defined class of exemption. Despite some research that shows how domestic animals can improve driver feelings of companionship, and, anecdotally, safety, SBTC’s application does not support the agency’s obligation of ensuring an equivalent or greater level of safety than exists under the current regulation.

CVSA wrote the following:

In their application, SBTC requests that drivers traveling with pets be exempt from the electronic logging device (ELD) requirement and that they be allowed to extend the 14-hour period to 16 hours and the maximum allowed driving time from 11 hours to 13 hours. If granted, the requested additional driving and on-duty time will expose drivers to a greater risk of fatigue, putting themselves and the public at risk and the ELD exemption would make adherence to the hours-of-service rules much more difficult to verify. The hours-of-service framework is put in place to prevent this type of excessive driving that causes fatigue.

TCA wrote as follows:

We appreciate the immense value these beloved ‘family members’ bring to those drivers, and we see individual carriers’ pet policies as a significant way for them to differentiate themselves and recruit talent which may find that benefit attractive. However, while we are supportive of the driver’s right to have a pet in the truck, TCA opposes both exemptions requested by SBTC.

V. Safety Analysis

When FMCSA published the rule mandating ELDs, it relied upon research indicating that the rule improves CMV safety by improving compliance with the HOS rules. The rule also reduces the overall paperwork burden for both motor carriers and drivers. When the FMCSA established the HOS rules, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and alert while driving and to help reduce the possibility of driver fatigue. The Agency reaffirmed the “core” HOS provisions in the HOS final rule published on June 1, 2020 [85 FR 33396]. The revisions adopted in that rule do not allow truck drivers any additional driving time beyond the current 11-hour limit, and subject to a limited exception concerning adverse driving conditions, the 14-hour duty day. None of the final rule provisions increases the maximum allowable driving time, as the available data does not support any additional driving time. Based on the current scientific information and its own experience with HOS regulations, the Agency concluded that the changes made by the final rule are safety- and health-neutral.

VI. FMCSA Decision

FMCSA denies SBTC’s application because it does not meet the regulatory standards for an exemption. SBTC failed to identify an individual or motor carrier that would be responsible for the use or operation of CMVs under the exemptions, as required by 49 CFR 381.310(b)(2). SBTC failed to provide an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemptions, as required by section

381.310(c)(3). Lastly, SBTC proposed no countermeasures to ensure an equivalent or greater level of safety than would be achieved under compliance with the current rules, as required by section 381.310(c)(5).

James W. Deck,

Deputy Administrator.

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