



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0186]

Hours of Service: Application for Exemption; Clym Environmental

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

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

SUMMARY: FMCSA denies the application from Clym Environmental Services LLC (Clym) requesting an exemption from the hours-of-service (HOS) regulations to allow its drivers up to 14 hours of drive time within the work shift or, in the alternative, up to 12 hours. Clym indicated that, due to the nature of its operations, complying with the 11-hour driving time limit in the HOS regulations places a strain on the company's drivers and its overall operating costs. FMCSA analyzed the application and determined that the exemption would not likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-2722; richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number "FMCSA-2023-0186" in the keyword box, and click "Search." Next, sort the results by

“Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2023-0186” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations 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., ET, 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 Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from 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 the applicant’s safety analyses. The Agency must 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 maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the Federal Register (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)).

III. Background

Current Regulatory Requirements

To reduce the possibility of driver fatigue, FMCSA's HOS regulations in 49 CFR 395 place limits on the amount of time drivers of commercial motor vehicles (CMV) may drive. Under 49 CFR 395.3(a)(3)(i) a CMV operator may drive a maximum of 11 hours within a 14-hour period before taking the required 10 consecutive hours off duty, or the regulatorily permitted equivalent.

Applicant's Request

Clym seeks an exemption from the prohibition in 49 CFR 395.3(a)(3)(i) against driving, or allowing an operator to drive, a CMV more than 11 hours within a 14-hour period before taking the required 10 consecutive hours off duty or the equivalent. Clym specifically requested an exemption to extend the allotted driving time to 14 hours or, in the alternative, to extend the drive time to a maximum of 12 hours within the 14-hour period. Clym made this HOS exemption request for three contingencies: (1) when commercial driver's license (CDL) drivers are taking unscheduled time off for illness or injury, in which case a relief driver is needed to transport the waste along the supply chain; (2) when there is an unexpected increase in material and a trailer needs to be moved sooner than scheduled; and (3) when there is an upcoming issue with local and state health codes for the storage of regulated medical waste. Clym indicated the exemption would apply only to drivers operating on the long-haul route between Clym's office in New Castle, PA and its ozone destruction plant in Greenfield, IN. It would not apply to any drivers operating on the company's local routes.

Applicant's Method to Ensure Equivalent Level of Safety

Clym believes there would be a minimal impact on safety, as the exemption sought would allow its drivers to have more than the one mandatory 30-minute break after 8 consecutive hours of driving. Clym's internal policy provides a one-hour company lunch break and strongly encourages its drivers to take as many breaks as

necessary. Clym further stated that the round trip from the Greenfield office to the ozone destruction plant and back takes about 11 hours to complete without traffic, and it considers the run to be “very easy” as its CMVs typically operate at approximately half of the 80,000-pound legal limit.

IV. Public Comments

On November 15, 2023, FMCSA published Clym’s application and requested public comment [88 FR 78450]. The Agency received two comments to the notice, both opposed to Clym’s request for an exemption. The Advocates for Highway and Auto Safety (Advocates) stated the following: “Granting the application would disregard well established science on driver fatigue. Numerous researchers have stressed that long consecutive driving hours, long duty weeks, and inadequate and interrupted sleep are directly related to increased crash risks.” Specifically, Advocates cited a study showing that these risks increase when “driving towards the end of the 14-hour shift, that is, more than 10 hours after reporting for duty (i.e., during hours 10 through 14 in a driver’s work day).” Advocates further argued that Clym’s application fails to meet the statutory requirements:

The basis for seeking the exemption is no more than the normal daily logistical issues presented by Clym’s daily operations. Furthermore, the Petitioner indicates that it has already identified an alternative solution to the exemption by providing hotel rooms for its drivers when they reach their HOS limit.

AWM Associates, LLC (AWM) also opposed granting the exemption. AWM noted that Clym appears to be a “150 air-mile carrier or could set up operations to utilize the 150 air-mile exception using hotels close to the job sites.” AWM commented that Clym “has asked that its drivers may drive for up to 14 hours per shift; however, there’s no mention of relief from the 14-hour rule. Is [Clym] implying that drivers have zero on-duty hours for loading, unloading, fueling, pre-trip inspections, etc?” and raised safety concerns.

V. FMCSA Safety Analysis and Decision

FMCSA evaluated Clym's application and public comments and denies the exemption request. The applicant failed to establish that it would likely maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. The Agency established and enforces the HOS regulations to keep fatigued drivers off the public roadways. Research studies demonstrate that long work hours reduce sleep and harm driver health, and that crash risk increases with work hours. The HOS regulations impose limits on when and how long an individual may drive, including the 11-hour driving and 14-hour "driving window" limits, to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue. Granting Clym an exemption from 49 CFR 395.3(a)(3)(i) without any evidence that doing so would not have detrimental effects on safety would be inconsistent with a primary goal of the HOS regulations.

For the above reasons, Clym Environmental LLC's exemption application is denied.

Vincent G. White,
Acting Administrator.

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