



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0460]

Hours of Service of Drivers: Farruggio's Express, Application for Exemption

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Farruggio's Express (Farruggio) for an exemption from timecard requirements for its drivers who may not meet all of the conditions for utilization of the 100 air-mile radius log book exemption in that section. The request would exempt Farruggio's drivers who stay within the 100 air-mile radius, but may occasionally exceed the 12 hour limitation, from having to complete a daily record of duty status (RODS). Farruggio states that its entire fleet of commercial motor vehicles (CMVs) is equipped with Global Positioning System (GPS) vehicle tracking devices, which it believes justifies the request for this exemption and provides an equivalent or greater level of safety than would be obtained by complying with the regulations. FMCSA requests public comment on Farruggio's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2015-0460 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

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 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: For information concerning this notice, contact Mr. Richard Clemente, 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.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2015-0460), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, “FMCSA-2015-0460” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. An option to upload a file is provided. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will

consider all comments and material received during the comment period in deciding whether to grant or deny this application.

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-2015-0460” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed 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.

II. 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. 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. Request for Exemption

Farruggio provides service to railroad ramps and maritime piers in the eastern United States. Its regional programs also include truckload and less-than-truckload service (dry van, flat bed and reefers) as well as piggyback and container service. Farruggio expects that all of their drivers -- approximately 95 to 100 -- and CMVs would operate under the terms of the requested exemption.

According to Farruggio, virtually all of its drivers operate within a 50- to 60-mile radius of their home terminal. They are home every day and for the most part meet the current exemption requirements and conditions of the 100 air-mile radius driver (49 CFR 395.1(e)(1)). Some of these drivers record their hours worked on an “exempt” record of duty status (RODS), while others record time in and time out and total hours worked for the day on a worksheet provided by Farruggio. This exemption request would enable Farruggio’s drivers who stay within the 100 air-mile radius, but occasionally exceed the 12-hour limitation, from having to complete a daily RODS on days when they exceed the 12-hour limit. On a weekly basis, Farruggio averages about 12% of their drivers exceeding the 12-hour limitation, primarily due to waiting times at rail yards and piers. The drivers who occasionally exceed the 12-hour limitation return to the terminal within the 14-hour work limit. On average Farruggio sees less than .03% of its drivers exceeding the 14-hour limit. In the exemption request, Farruggio states that these drivers will not exceed the 14-hour rule limit.

While Farruggio meets the requirements of the 100 air-mile radius exemption, and believes that its drivers' hours are being recorded accurately, the company has embarked on the use of a vehicle recording device called the Geo Tab 7 that it says exceeds the recording requirements of the exempt RODS. Farruggio states that the use of this device further increases the safety performance of its drivers and accurately records all of their activities including on-duty and driving time as well as total hours for that day. The Geo Tab 7 has been installed in all of Farruggio's CMVs. According to the application, this system will exceed the requirements of FMCSA's final rule on Electronic Logging Devices published on December 16, 2015 (80 FR 78292). It allows Farruggio to track vehicles through the use of GPS positioning, monitors all vehicle activities through connection to the engine control module and accurately reports hours driven and hours worked daily.

Farruggio states that the use of a daily RODS or exempt log book does not enable the company to monitor and respond to certain events in a timely manner, since it is unaware of them until the RODS are audited when turned in by the drivers at the end of the week. Conversely, with the use of the electronic system, Farruggio sees events as they occur in real time and can respond immediately.

Farruggio believes that the use of the electronic system, along with its increased focus on driver training and education, goes beyond simple compliance with the Federal regulations and raises the company's efforts to more than basic compliance. The system has allowed and will continue to allow Farruggio to provide additional timely oversight of safety issues and has improved and will enable it to enhance safety and reduce fatigue. Farruggio believes that the request for exemption goes beyond what is minimally

required by the present exempt RODS provisions, and will increase safety, compliance and protect the motoring public.

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

Farruggio states that it is committed to a partnership with FMCSA that will enhance overall vehicle safety and protect the lives of all that company drivers interact with.

If this exemption is granted, Farruggio proposes to implement the following conditions on the use of this exemption:

- Allow FMCSA and the State enforcement partners access to its data as both a monitoring and training tool. This would be provided to the Agency and State partners by granting them access at any time through Farruggio's web portal or conducting an on-site Compliance Review of the carrier;
- Farruggio will maintain a Satisfactory safety rating;
- Farruggio's drivers will carry a copy of the exemption with them when operating the CMV;
- Farruggio will conduct a minimum of four safety meetings per year at each of their individual terminals;
- Farruggio will continue its ongoing immediate notification and training for any of its drivers who exceeds a speed limit; and
- Farruggio will continue its ongoing immediate notification and training for any of its drivers who may exceed the HOS limits.

Relating to some of these conditions listed, the electronic reporting system further enables Farruggio to track and advise its CMV drivers of the following events:

(1) idling over 5 minutes, (2) speeding, (3) dangerous driving including hard braking, harsh cornering and harsh acceleration, and (4) seat belt use. Every time a driver exceeds posted speed limits an email alert is sent to Farruggio's safety department, and company and terminal management. Drivers are notified via email and phone when safe to do so, advising them of the need to slow down. Drivers also receive email notifications, letters, and phone calls for instances of harsh cornering and hard braking. When notified of these critical events, Farruggio's drivers receive critical information on why and how to improve vehicle handling to avoid rollovers, and how to better judge following distance and other issues to avoid hard braking. Since implementation of the electronic system and Farruggio's notification of speeding events, speeding has been decreased over 95%.

A copy of Farruggio's application for exemption is available for review in the docket for this notice.

Issued on: February 3, 2016

Larry W. Minor
Associate Administrator for Policy

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