



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0460]

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

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

ACTION: Notice of final disposition; grant of application for exemption

SUMMARY: FMCSA announces its decision to grant Farruggio's Express (Farruggio), an exemption from the timecard requirements for its drivers who may not meet all of the conditions for use of the logbook exception for operations within a 100 air-mile radius of the normal work reporting location. This exemption enables 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). Instead, the drivers would at all times use an electronic logging system called Geotab to track HOS data, including real-time vehicle locations. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE FIVE YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from 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 the safety analyses and the public comments, 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 reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

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

Virtually all of Farruggio's 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 requirements and conditions for the logbook exception in 49 CFR 395.1(e)(1). Some of these drivers record their hours worked, while others record time in and out and total hours worked for the day on a worksheet provided to Farruggio. The company's application would exempt company drivers who stay within the 100 air-mile radius, but who may occasionally exceed the 12-hour limitation, from having to complete a daily RODS. These drivers nonetheless return to the terminal within the normal 14-hour driving window.

While Farruggio meets the requirements of the 100 air-mile radius exception, and believes that its drivers' hours are being recorded accurately, it has adopted a vehicle recording device that it claims exceeds the current HOS logbook recording requirements. Farruggio stated that the use of this device – the Geotab7 -- increases safety and accurately records all of the drivers' activities, including on-duty and driving time as well as total hours for that day. This device has been installed in all of Farruggio's CMVs, and, according to the applicant, exceeds even the requirements of FMCSA's Electronic Logging Device (ELD) rule. The Geotab 7's global positioning system (GPS) technology allows Farruggio to track vehicles, monitor all vehicle activities through connection to the engine control module, and accurately report drivers' hours driven and hours worked daily.

Farruggio believes that the use of the Geotab 7 system, along with its increased focus on driver training and education, demonstrates its commitment to more than simple compliance with the Federal regulations. The system has allowed and will continue to

allow Farruggio to enhance timely safety oversight and reduce driver fatigue. Farruggio believes that its exemption application incorporates safety technologies that go beyond minimal compliance, and will enable the company to maintain a level of safety that is equivalent to or greater than the level of safety provided under the rule.

Public Comments

On February 12, 2016, FMCSA published notice of this application and requested public comment (81 FR 7626). The Agency received 17 comments. Supporting the exemption request were four motor carriers (TCW, Inc., Tiger Cool Express, Rail Delivery Services for itself and four other carriers, and Evans Delivery Company), two insurance firms (Baldwin & Lyons and Marsh McLennan Agency), the Intermodal Association of North America, and six individuals (Fred Marsicano, Ron Dorazio, Thomas Michel, Matt Carlton, Charles Bernier, and Val Noel). Opposed were one carrier (Randy Mower) and three individuals (Karl Penner, Lt. Raymond Cook, and Robert Vice).

Those supporting the request believe the ongoing and diligent use of Farruggio's telematics system is superior to a manual "honor system" to record driver work day information because it automates data collection and is therefore more precise and less error prone than a paper RODS system. They further believe the use of the Geotab7 system for safety management through identification of driving events is better at reducing crashes than a system which depends on citations, public reports of reckless driving, or actual crashes as indicators of inappropriate driving behaviors. Farruggio's proposed terms indicate a strong commitment to safety, compliance, and transparency as indicated by its willingness to give FMCSA and our State enforcement partners access to

its data to use as a training and monitoring tool. Lastly, the use of this technology will aid Farruggio to proactively identify safety and compliance issues and to address them before they become more serious. ELD technology is a better means to record and maintain driver HOS, as well as the standard FMCSA will soon require motor carriers to meet.

Commenters opposing the request stated that extending the work day for a local or regional driver but not an over-the-road driver does not improve safety, as these rules are in place for safety reasons, not for convenience. Others said that studies consistently point to driver fatigue as a major safety concern because it contributes to a significant percentage of fatal truck crashes in this country. The HOS rules are designed to prevent crashes and save lives. Motor carriers across the country face wait times at rail yards, warehouses, and other locations, and each has found ways to adjust its operations in anticipation of these expected operational delays. Granting Farruggio's request would establish a bad precedent and necessitate the extension of this recordkeeping relief to others. Therefore, granting this or any other exemption to the HOS rules only serves to diminish their efficacy.

All comments are available for review in the docket for this notice.

FMCSA Decision

FMCSA has evaluated Farruggio's application for exemption and the public comments and decided to grant the exemption. The Agency believes that Farruggio's overall safety performance as reflected in its Safety Management System (SMS) ratings and its adoption of several fatigue and crash counter-measures, will enable it to achieve a

level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

FMCSA believes that Farruggio's use of the Geotab 7 system raises the company's efforts to more than basic compliance. With the use of the electronic system, Farruggio's management is notified of safety-critical events as they occur so that they can take immediate corrective action.

This exemption would not extend the driving window beyond the basic limit of 14 hours. It substitutes a technological HOS recordkeeping system for a system using only time cards, and provides additional safety measures stated in the terms of the exemption. FMCSA has therefore decided to grant the exemption, subject to the terms and conditions outlined below.

Terms and Conditions of the Exemption

Terms of the Exemption

- Farruggio's drivers who stay within the 100 air-mile radius, but may occasionally exceed the 12 hour limitation are exempt from having to complete a daily record of duty status (RODS) at those times if, at all times, their hours of service data is being recorded by the Geotab system.
- This exemption does not permit driving past the 14-hour limit.
- The exemption is contingent upon Farruggio maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any "imminent hazard" or other out-of-service (OOS) order issued by FMCSA.
- Drivers must have a copy of this notice or equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemption.

The exemption document must be presented to law enforcement officials upon request.

- Farruggio must have a “Satisfactory” safety rating with FMCSA, or be “unrated.” (Void if FMCSA discontinues this type of ratings.)
- Farruggio must not have an “alert” in the SMS “BASIC” for HOS, as displayed at <http://ai.fmcsa.dot.gov/sms/>.
- Drivers operating under the exemption must comply with all other applicable provisions of the FMCSRs, including those pertaining to Automatic Onboard Recording Devices and Electronic Logging Devices.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.1(e)(1) is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE FIVE YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.1(e)(1) (Short haul operations; 100 air-mile radius driver). These drivers must comply with all other applicable provisions of the FMCSRs, including those pertaining to Automatic Onboard Recording Devices and Electronic Logging Devices.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this

exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

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

- (a) Identity of Exemption: "FARRUGGIO"
- (b) Date of the accident,
- (c) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (d) Driver's name and license number,
- (e) Co-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 total driving time and total on-duty time period prior to the accident.

Accident notifications shall be e-mailed to MCPSD@dot.gov.

Termination

FMCSA believes that Farruggio's drivers will continue to maintain their previous safety record while operating under this exemption. However, should problems occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: July 29, 2016

T.F. Scott Darling, III
Administrator

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