



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0175]

Hours of Service of Drivers: Application for Exemption; Pipe Line Contractors Association (PLCA)

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

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

SUMMARY: FMCSA announces that the Pipe Line Contractors Association (PLCA) has requested an exemption from the requirement that a motor carrier install and require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS) no later than December 18, 2017. PLCA requests the exemption for all pipeline contractor vehicle drivers. These drivers typically utilize the short-haul exception to the logging requirement, which also exempts them from using ELDs. Sometimes, however, they may exceed the conditions of the short-haul exception more than 8 days in a 30-day period, which would subject them to the ELD rule. PLCA's exemption request is addressed to that situation. These drivers would remain subject to the standard HOS limits and maintain a paper record of duty status (RODS) for HOS compliance. PLCA believes that the exemption, if granted, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption. The term of the requested exemption is 5 years. FMCSA requests public comment on PLCA'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-2017-0175 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- 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. Tom 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. 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-2017-0175), 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-2017-0175” 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. 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 and may grant or not grant this application based on your comments.

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 (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)).

III. Request for Exemption

The PLCA is an industry trade association that negotiates labor agreements, encourages safe practices in pipeline construction, and seeks the resolution of problems common to those in the pipeline construction industry. PLCA has been in existence since 1948 and currently has 77 members who employ approximately 30,000 to 40,000 workers depending upon the level of pipeline work in any year.

Pipeline jobs range from construction of major interstate and intrastate pipelines to maintenance and repair work for utilities. In 2016, their contractors worked on over 750 pipeline projects across the U.S. PLCA contractors hire workers on a project-by-project basis, with workers often employed on multiple jobs each year in different states. Pipeline projects are often short-duration projects lasting for only 4-6 weeks. Pipeline contractors hire dozens of different short-term personnel to support any given project.

PLCA contractors own different types of commercial motor vehicles (CMVs), including flatbed trucks that haul heavy equipment, dump trucks, skid trucks, water trucks, pilot cars, and buses that transport workers from the daily assembly points to the pipeline right-of-way. A significant number of the vehicles owned by pipeline contractors require a commercial driver's license (CDL) to operate. The standard practice is for workers to begin each workday at a designated assembly point, which typically is 10-50 miles away from a pipeline right-of-way. The workers who operate heavy equipment typically are transported by bus to the pipeline right-of-way. The drivers of the flatbed trucks move the heavy equipment along the pipeline right-of-way as

they complete work on segments of the pipeline. As pipeline contractor drivers work off-road along the length of the pipelines, they typically do not spend much of their work days operating on public roads.

The employees who work on pipelines and drive the subject vehicles typically stay in hotels or campers at locations along the pipeline right-of-way. They relocate as they advance in their work along the right-of-way. As they complete work on a segment of the pipeline, they sometimes do not return to the assembly point. Instead, they may end the work day where they finish work and spend the night at a new location farther down the right-of-way. The following day they would meet at a new assembly plant.

The drivers who would be covered under the exemption operate flatbed trucks that haul heavy equipment, dump trucks, skid trucks, water trucks, pilot cars and buses that transport workers from the daily assembly point to the pipeline right-of-way. These drivers possess CDLs and almost always operate within 100 miles of their assembly point, and meet the other requirements of the short-haul exception in Section 395.1(e)(1). However, the drivers may not return within the 12 hours required for use of the short-haul exemption.

While pipeline contractor drivers typically do not exceed the requirements of the short-haul exception more than 8 days in a 30-day period, there may be occasions when they do so. Because pipeline contractors typically hire temporary employees to work on short-term jobs, it would be onerous for contractors to have to purchase ELDs, provide them to temporary employees, train the employees in their usage, and monitor and ensure compliance with the ELD requirement. Pipeline contractors would have to monitor the number of days their drivers exceed the requirements of the short-haul

exception, including if a driver exceeded the short haul exception on any days in a rolling 30-day period immediately before the employer hired the driver. PLCA states that ELDs do not offer a safety benefit for pipeline drivers since the drivers spend very little time on public roads and would have to use paper logs to record their duty status in any event. This is in stark contrast to long-haul truck drivers who spend most of their on-duty hours driving their vehicles on public roads.

According to PLCA, exempting pipeline contractors from the ELD requirement would have no impact on safety for several reasons. First, drivers would continue to maintain written RODS on any day that they exceed the requirements of the short-haul exemption. Second, pipeline contractor drivers typically spend very little time operating on public roads. Third, pipeline contractors are required to maintain time records for their drivers. Finally, pipeline contractors and drivers otherwise must comply with all the HOS regulations.

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

PLCA states that granting this exemption will result in a level of safety that is equal to or greater than the level of safety achieved by complying with the ELD rule. The exemption is requested for pipeline contractor drivers of CMVs. Drivers of pipeline contractor CMVs that require HOS compliance represent a small percentage of trucks on the road; however, the requirements of the ELD rule would impose significant burden on the industry and its customers. By allowing pipeline contractor drivers to continue to operate with paper RODS, PLCA's members and their customers would be able to comply with all Federal and State HOS regulations while continuing to operate efficiently and safely.

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

Issued on: June 30, 2017

Larry W. Minor
Associate Administrator for Policy

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