



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0166]

Hours of Service of Drivers: Application for Exemption; MBI Energy Services

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

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

SUMMARY: FMCSA announces that MBI Energy Services (MBI) 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. MBI requests the exemption for all of its vehicles equipped with a single-passenger cab, which are used in applications where travel is incidental to normal work activities and which require special oversize/overweight permits to travel on public roads. These vehicles are classified in the State of North Dakota as Special Mobile Equipment (SME). According to MBI, single cabs have reduced space for installing rough-terrain-capable automatic on-board recording devices (AOBRDs) or ELDs. MBI believes that the exemption, if granted, would not have any adverse impacts on operational safety, as drivers would remain subject to the standard HOS limits and maintain a paper record of duty status (RODS). The term of the requested exemption is 5 years. FMCSA requests public comment on MBI'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-2017-0166 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-2017-0166), 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-2017-0166” 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

MBI (USDOT 261829) is a provider of water management logistics and well-intervention services in North Dakota, South Dakota, Wyoming, Montana, and Colorado. The requested exemption would affect 65 MBI Energy Services drivers operating 42 single-cab vehicles classified in North Dakota as Special Mobile Equipment (SME). These vehicles meet the definition of a commercial motor vehicle (CMV) in 49 CFR 390.5 and therefore are subject to the ELD or AOB RD mandate. These specialized vehicles perform various work activities in an environment where connectivity is limited, working and road conditions are rough, and the necessity for driving on public roads is sporadic and incidental to the overall work being performed. The vehicles may sit on work locations for long periods of time, up to weeks or even months. These vehicles are typically oversize and overweight requiring special permits for transport. Many States do not require registration, as they build the registration fees into the permit process.

Examples of SMEs meeting the definition of a CMV having a single cab include cranes, workover rigs, and swab units. Single cabs have reduced space for installing rough-terrain-capable AOB RDs or ELDs. The devices used must be capable of satellite communication where cell communication is poor to non-existent. The installation of rugged logging units, weighing more than typical units used in highway applications, would reduce driver visibility in an already large vehicle due to the limited space found in single-cab vehicles. Additionally, the installation and rough terrain upon which the vehicles travel may require a unit being installed over the driver's head,

increasing the risk of the unit falling on the driver resulting in injury or a vehicle accident involving the travelling public.

While these vehicles normally travel little, business demand may require MBI vehicles to move more often than 8 days in a 30-day period, the maximum frequency allowed by 49 CFR 395.8(a)(1)(iii)(A)(1) for the use of paper RODS instead of ELDs. According to MBI, the current regulations do not address circumstances where the vehicle's exemption status is sporadic in nature, thus requiring MBI to install an ELD to remain compliant during times not covered by the exemption. While alternatives exist to industrial-grade logging units, the alternatives usually involve cell phones or cell-capable tablets where the terrain or remote locations of work may inhibit logging device communication for extended periods of time. Many worksites prohibit cell phone usage due to safety concerns. Additionally, installations in special vehicles will increase costs substantially due to the unusual configurations of single cab vehicles requiring specialized wiring harnesses and custom installation kits.

MBI states that the exemption would involve no additional costs since current regulations require drivers to manually record duty status, and that would not change under the exemption. Companies operating single-cab special mobile equipment would realize savings compared to the costs incurred to install custom hardware required for industrial-grade logging units meeting the ELD mandate and the subsequent monthly communication costs. MBI requests a 5-year exemption.

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

MBI states that it would continue to use paper logs if granted the exemption and would require the driver to document on-duty and driving times to ensure compliance

with the requirements of 49 CFR Part 395. According to MBI, paper logs would be reviewed daily by supervisory personnel to ensure regulatory compliance and appropriate fatigue management. Because the vehicles are rarely driven and highly regulated by States when being transported, with minimal highway exposure, the driving public would not be adversely affected, and the safety of these specialized vehicles would not be compromised due to unwieldy device installations in an already cramped operator's compartment.

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

Issued on: July 3, 2017.

Larry W. Minor
Associate Administrator for Policy

[FR Doc. 2017-14377 Filed: 7/7/2017 8:45 am; Publication Date: 7/10/2017]