



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 final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application of the Pipe Line Contractors Association (PLCA) 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 had requested the exemption for all pipeline contractor vehicle drivers who typically use 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. FMCSA has analyzed the exemption application and public comments, and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore denies PLCA's application for exemption.

DATES: FMCSA denied the application for exemption by letter dated October 16, 2017, after notice and opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, 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. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain 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.

FMCSA 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 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

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 collectively employ approximately 30,000 to 40,000 workers depending upon the level of pipeline work in any year. 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 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 49 CFR 395.1(e)(1). However, the drivers may not return within the 12 hours required for use of the short-haul exception.

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. PLCA stated that granting this exemption would result in a level of safety that is equal to or greater than the level of safety achieved by complying with the ELD rule. A copy of the PLCA application for exemption is available in the docket for this notice.

Public Comments

On July 10, 2017, FMCSA published notice of PLCA's application for exemption and requested public comment (82 FR 31796). The Agency received 156 comments to the docket. The predominance of the commenters – over 96% - supported the granting of the PLCA request; most of these were “form letter” comments. Primary groups filing in

support included the Power and Communication Contractors Associations (PCCA), American Pipeline Contractors Association, U.S. Pipeline, Inc., and the American Road and Transport Builders Association (ARTBA). The two primary groups filing in opposition were the Advocates for Highway and Auto Safety (Advocates) and the Owner-Operator Independent Driver's Association (OOIDA).

The Advocates expressed concern that the success of the ELD mandate lies in its applicability to all CMVs operated by drivers subject to the HOS and RODS. Despite this, the FMCSA has made great efforts to accommodate various aspects of the industry while maintaining safety. In the present case, despite having an existing exemption in the regulation, PLCA claims that to even comply with the exemption is onerous. The Agency has established a limit on the extent of the exemption which must be enforced, lest the final rule is rendered meaningless.

Advocates further added that PLCA had provided no proof that the requested exemption would ensure safety or address the Agency's concerns regarding noncompliance with the HOS regulations when using paper RODS.

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

FMCSA Decision

When FMCSA published the rule mandating ELDs it relied upon research indicating that the rule improves CMV safety by improving compliance with the HOS

rules. The rule also reduces the overall paperwork burden for both motor carriers and drivers. The primary reason for denying this exemption is that PLCA did not demonstrate how, without using ELDs, they would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

For these reasons, FMCSA denies the applicant's request for exemption.

Issued on: October 16, 2017.

Daphne Y. Jefferson,
Deputy Administrator.

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