



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0180]

Hours of Service of Drivers: Application for Exemption; Small Business in Transportation Coalition

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

ACTION: Application for exemption; final determination.

SUMMARY: FMCSA announces its decision to deny the application of the Small Business in Transportation Coalition (SBTC) for an exemption from the electronic logging device (ELD) requirements for all motor carriers with fewer than 50 employees, including, but not limited to, one-person private and for-hire owner-operators of commercial motor vehicles (CMVs) used in interstate commerce. FMCSA has analyzed the exemption application and public comments, and has determined that it cannot ensure that granting for the requested exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. LaTonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4024. 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 and the reasons for denying an application must be published in the **Federal Register** (49 CFR 381.315(b)).

On December 16, 2015 (80 FR 78292), FMCSA published a final rule requiring most drivers then required to prepare hours-of-service (HOS) records of duty status (RODS) to use electronic logging devices (ELDs) instead of the previous paper logs to document their RODS. The compliance date for the ELD requirement was December 18, 2017.

III. Request for Exemption

The Small Business in Transportation Coalition (SBTC) is a non-profit trade organization with more than 8,000 members. SBTC stated that it “represents, promotes, and protects the interest of small businesses in the transportation industry. Through the exemption application, SBTC seeks relief from the ELD requirements for small private, common and contract motor carriers with fewer than 50 employees.” SBTC contends that:

“[T]he ELD rule is not a ‘safety regulation’ per se as the FMCSA has concluded. Rather it is a mechanism intended to enforce a safety regulation by regulating the manner in which a driver records and communicates his compliance. That is, it is merely a tool to determine compliance with an existing rule that regulates over-the-road drivers’ driving and on duty time, namely the actual safety regulation: the [HOS] regulations codified at 49 CFR 395.3 and 395.5. However, the ELD rule is not a safety regulation itself. Therefore, it is our position that this rule does *not* itself impact safety, and that the level of safety will not change based on whether or not our exemption application is approved. That would require a change to the [hours-of-service rules].”

SBTC asserts that the exemption would not have any adverse impacts on operational safety, as motor carriers and drivers would remain subject to the HOS regulations in 49 CFR 395.3, as well as the requirements to maintain a paper RODS under 49 CFR 395.8. The applicant argues that the requested exemption would allow motor carriers with fewer than 50 employees to maintain their current practices that have resulted in a proven safety record. A copy of SBTC’s application for exemption is available for view in the docket for this rulemaking.

Public Comments

On June 5, 2018, FMCSA published SBTC’s application for exemption and requested public comment (83 FR 26140). The Agency received more than 1,900 comments. Although some comments focused more on the HOS rules than the exemption application and others were simply unclassifiable, the Agency estimates that over 95

percent of the comments favored the exemption, while more than 4 percent were opposed.

FMCSA Decision

For the reasons given below, FMCSA denies the SBTC application for exemption. The SBTC application does not meet the regulatory standards for an exemption. SBTC failed to provide “[t]he name of the individual or motor carrier that would be responsible for the use or operation of CMVs” under the exemption [49 CFR 381.310(b)(2)]. SBTC did not provide the name of a single motor carrier. SBTC failed to “[p]rovide[] an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption” [§ 381.310(c)(3)]. Instead, SBTC said “we defer to FMCSA to determine the total number of drivers and CMVs that would be operated under the exemption.” SBTC failed to “[e]xplain[] how you would ensure that you could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation” [§ 381.310(c)(5)]. The application said “we believe the level of safety is already assured by the pre-existing Hours of Service rule as opposed to this ELD enforcement mechanism rule.”

Nor did SBTC meet the statutory requirement in 49 U.S.C. 31315(b)(5)(D) to describe “[t]he specific countermeasures the person would undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.” SBTC proposed no countermeasures at all.

For all of these reasons, FMCSA denies SBTC’s request for exemption.

Issued on: July 9, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019-15206 Filed: 7/16/2019 8:45 am; Publication Date: 7/17/2019]