



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0054]

Hours of Service; United Parcel Service Inc. Application for an Exemption from Certain Electronic Logging Device Requirements

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

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant part of United Parcel Service Inc.'s (UPS) application for a limited 5-year exemption from various provisions of the mandate to use electronic logging devices (ELD). FMCSA published a final rule in December 2015 that requires most motor carriers and drivers who are currently required to prepare and retain paper records of duty status (RODS) to use ELDs for hours-of-service (HOS) compliance effective December 18, 2017. Among other things, the December 2015 rule requires (1) certain data elements to be automatically recorded when an authorized user logs in or out of an ELD or changes duty status, and (2) a driver's indication of special driving status to reset to none (except in the case of personal use) if the ELD or commercial motor vehicle's (CMV) engine goes through a power-off cycle. FMCSA grants exemptions to allow (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a CMV and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. The Agency has determined that granting these temporary exemptions would not have an adverse impact on safety, and that a level of safety equivalent to or greater than the level of safety provided by the regulation would be maintained.

FOR FURTHER INFORMATION CONTACT: Mrs. Amina Dines, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-2782, Amina.Dines@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, 112 Stat. 107, 401, June 9, 1998] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with 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(a)).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must 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 381.315(c) and 49 CFR 381.300(b)).

UPS Application for Exemption

UPS applied for an exemption from various provisions of 49 CFR part 395 regarding the use of ELDs. Specifically, UPS requested a temporary exemption (1) to allow an alternative ELD phase-in method for fleets using compliant automatic on-board recording devices (AOBRDs); (2) from the requirement that an ELD automatically record certain data elements upon a duty-status change when a driver is not in the vehicle; (3) to allow ELDs to be configured with a special driving mode for yard moves that does not require the driver to re-input yard move status every time the tractor is powered off; and (4) to allow vehicle movements of less than one mile on UPS property by non-CDL UPS drivers to be annotated as “on property – other.”

On June 9, 2017, FMCSA published notice of the UPS application and requested public comment (82 FR 26832). FMCSA received 55 comments, most of which opposed the exemption on the ground that UPS should comply with the ELD rule which it had actively supported. Where comments focused on a particular issue, they are addressed in the discussions below.

1. Alternative Method of ELD Phase-In

Background

Subject to limited exceptions, section 395.8(a)(1)(i) of the FMCSRs requires motor carriers to install and use ELDs that comply with the technical specifications prescribed for those devices no later than December 18, 2017. However, section 395.8(a)(1)(ii) allows a motor carrier that installs, and requires its drivers to use, compliant AOBRDs before the December 18, 2017, compliance date to continue to use those AOBRDs until December 16, 2019, thereby providing a 2-year grandfather period for devices installed prior to the compliance date.

UPS Request

In its application, UPS states:

UPS firmly believes that the best way to transition its operations from AOBRDs to ELDs will be on a site-by-site basis. UPS currently plans to convert approximately 2800 tractors at approximately 35 sites from AOBRDs to ELDs in 2017, and plans to convert the remaining tractors (at 141 sites) during 2018. Deploying ELDs by site will minimize the significant costs, including training costs, related to moving the fleet and workforce from AOBRDs to ELDs. A site-by-site approach will also minimize the risk of errors and confusion that would be encountered if two different types of devices were used simultaneously at a given location.

The difficulty large motor carriers like UPS face is with FMCSA's decision to permit grandfathering only on a vehicle, and not a fleet-wide basis. UPS plans to purchase approximately 1530 new tractors in 2018, *i.e.*, after the grandfathering deadline but before the ELD implementation date for grandfathered vehicles. Of these, 1061 will replace existing tractors (the majority of which are currently using AOBRDs) that have reached the end of life, and 469 will be new tractors to accommodate projected growth. These new tractors will be delivered to UPS facilities across the country consistent with operational needs. At a typical location, approximately 12 percent of tractors would be newly purchased.

If no temporary exemption were granted, large carriers would be required to use ELDs in all of the new tractors delivered after 12/18/2017. The result would be that UPS facilities that had not been converted as of that date would have both vehicles using AOBRDs and vehicles using ELDs at the same time.

Based on the above, UPS requests an exemption from section 395.8(a)(1)(i) to allow the installation of AOBRDs on new truck tractors delivered to UPS sites after the December 18, 2017 compliance date, where the existing vehicles at that site are equipped with compliant AOBRDs. UPS believes that using a site-based approach, as described above, will (1) eliminate confusion on the part of drivers and other personnel that would result from using both ELDs and AOBRDs at the same location, and (2) avoid operational and potential enforcement issues that could arise from a driver using different types of devices to record hours of service over a given period of time. UPS states that under the proposed temporary exemption, all vehicles will be

fully ELD-compliant by the expiration date of the AOBRD grandfather period specified in section 395.8(a)(1)(ii), December 16, 2019.

Public Comments

The Agency received four comments, two supporting the proposed alternative method of ELD phase-in and two opposing it.

Saucon Technologies (Saucon), an ELD developer, states that “[c]ompanies who have been using AOBRD devices for years before the ELD final rule was published have been operating ‘ahead of the safety curve,’ using technology identified by FMCSA as a safety enhancer, before being required to do so. Requiring these early adopters of safety technology to have a ‘mixed fleet’ of AOBRD and ELD will present a hardship to these operators.”

Specifically, Saucon contends that for fleets required to operate with both AOBRDs and ELDs, ensuring (1) that drivers are properly trained on both systems, and (2) that administrators properly manage the auditing of logs on both systems “creates a burden for these operators with little to no additional safety benefit resulting from that burden.”

Saucon also states that since ELD manufacturers not only provide the product (AOBRD and ELD), but also the back-office system support for operators transitioning to using ELDs in a compliant manner, “[h]aving to support the same customer through two regulations within their fleet would burden ELD manufacturers as much as the operators.”

Both Saucon and YRC Worldwide (YRCW), a holding company for a portfolio of less-than-truckload companies including YRC Freight, YRC Reimer, Holland, Reddaway, and New Penn, commented that allowing a complete transition from AOBRDs to ELDs will provide for more operational accuracy than having drivers operate some vehicles equipped with AOBRDs and others equipped with ELDs.

The Owner-Operator Independent Drivers Association (OOIDA), a trade association representing the views of small-business truckers and professional truck drivers in all 50 states and Canada, stated that UPS's proposed alternative phase-in period "is a drastic change from their 2011 comments that believed, 'a single compliance date is superior to any phase-in schedule because it minimizes the potential for confusion.'" However, OOIDA states that UPS raised "a credible concern involving drivers that will be forced to use different vehicles with both Automatic On-Board Recorders (AOBR) and ELDs," and that the "lack of specifics regarding interoperability is leading to great uncertainty among all stakeholders and will cause confusion during roadside inspections for drivers, enforcement, and ELD and AOBRD vendors." Despite the above, OOIDA states that "UPS does not explicitly explain how they would 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," and that "[a]n exemption should not be granted merely because it is inconvenient or it puts a burden on the petitioner."

An individual noted that UPS should have better prepared for this deadline, especially since it is the largest trucking entity in the United States, and has been aware of this mandate since its inception.

FMCSA Decision

Section 395.8(a)(1)(ii) of the FMCSRs states, "A motor carrier that installs and requires a driver to use an automatic on-board recording device in accordance with § 395.15 before December 18, 2017 may continue to use the compliant automatic on-board recording device no later than December 16, 2019." FMCSA has published a series of frequently asked questions (FAQ) on its website intended to provide plain language information regarding the December 2015 ELD rule. These FAQs do not modify or replace applicable FMCSA regulations or

standards. Specifically with respect to the UPS request for an alternative phase-in for fleets using compliant AOBDRs, Question 7 of the “Voluntary Usage and Compliance Phases” section of the FAQs states:

Question: According to § 395.8, if a motor carrier “installs and requires a driver to use an AOBDR...before December 18, 2017 they may continue to use the AOBDR until December 16, 2019.” Does this mean I can move an AOBDR from one vehicle to another after December 18, 2017?

Response: If your operation uses AOBDRs before December 18, 2017, and you replace vehicles in your fleet you can install an AOBDR that was used in the previous CMV. However, you may not purchase and install a new AOBDR in a vehicle after December 18, 2017.

Thus, the 1,061 new tractors that UPS plans to purchase after the December 18, 2017 “grandfathering” deadline to replace existing tractors that are currently equipped with AOBDRs will be permitted to utilize the AOBDRs from the replaced vehicles until December 16, 2019. However, the remaining 469 new tractors that will be purchased to accommodate projected growth will be required to be equipped with ELDs in accordance with section 395.8(a)(1)(i).

FMCSA decided not to require full interoperability between all ELDs (and AOBDRs) in the final rule because while full interoperability would have some benefits, it would also be complicated and costly. FMCSA recognizes that a motor carrier, including UPS, may need to support a mix of both AOBDR and ELD systems within its fleet for a limited time until the carrier can fully implement ELDs in all its vehicles. As noted in the final rule, if a driver uses multiple ELD or AOBDR systems that are not compatible (e.g., the data file from one system cannot be uploaded into the other system), the driver must either manually enter the missing duty status information or provide a printout from the other system so that an accurate accounting of the duty status for the current and previous 7 days is available for authorized safety officials.

Based on the above, FMCSA denies UPS's request to allow an alternative ELD phase-in method for fleets using compliant AOBDRDs.

2. *Recording of Data Elements When a Driver Has a Change in Duty Status or Logs In/Logs Out of an ELD While Outside the Vehicle*

Background

An ELD automatically records the following data elements: (1) Date; (2) Time; (3) CMV geographic location information; (4) Engine hours; (5) Vehicle miles; (6) Driver or authenticated user identification data; (7) Vehicle identification data; and (8) Motor carrier identification data. In addition, an ELD is required to automatically record a number of the data elements specified above at certain events, to include (1) when a driver indicates a change of duty status under section 395.24(b) (see section 395.26(c)), and (2) when an authorized user logs into or out of an ELD (see section 395.26(g)).

UPS Request

In its application, UPS states:

All UPS drivers are covered under a bargaining unit agreement between the Teamsters Union and UPS. Under that agreement, UPS drivers are, for the most part, paid by the hour. UPS drivers use electronic devices and punch in for work on those devices while they are still in the dispatch building. They then walk to their vehicle and inspect the vehicle prior to moving the tractor. Upon implementation of the ELD rule UPS will be using FMCSR-compliant portable, driver-based ELD devices.

Similarly, at the end of a work day all UPS drivers walk from their vehicles to a UPS dispatch office and then clock out using the AOBDRD devices once all work is done. UPS drivers perform many other duties away from the tractor including training, attending safety meetings and working in the facility. In a typical UPS location, UPS drivers spend an average of 24 minutes prior to entering the vehicle and 22 minutes after exiting the vehicle on the clock. Significantly, in many situations the vehicle an employee will be, or was, using will be occupied by another employee while the employee is still on duty for UPS.

UPS cannot both comply with the requirement that an ELD record tractor data when a driver logs in or out (or otherwise changes duty status while outside of the vehicle) and also comply with our bargaining unit contract and pay guidelines for our drivers.

UPS requests an exemption from the requirement to record the specific data elements identified in sections 395.26(c) and 395.26(g) if the driver is not in the vehicle when (1) the driver indicates a change of duty status, or (2) an authorized user logs into or out of an ELD, respectively. Instead, to assure accurate recording of on-duty, not driving time, UPS proposes that it will “systematically annotate that the driver was performing other work.” UPS believes that the proposed exemption “will have no impact on the recordation of driving time” as all required vehicle data will be recorded when the driver is in the vehicle, and “the tractor data that would not be recorded when the driver is not in the vehicle is not relevant to assessing the accurate recordation of ‘on-duty, not driving’ time.”

Public Comments

The Agency received one comment in support of allowing motor carriers that use portable, driver-based ELDs to record engine data only while the driver is in a CMV. YRCW stated that “[s]imilar to UPS, drivers at our operating companies are covered by a collective bargaining agreement. Our drivers perform a variety of other duties as they begin and end their day at a company terminal. We support the UPS request for an annotation ‘driver was performing other work.’”

FMCSA Decision

Because the December 2015 rule provides a performance-based standard for ELDs, motor carriers have a number of options to choose from the market place of ELD providers. This includes portable units that stay with the driver, as well as units that are installed in and stay with the vehicle. In its application, UPS notes that “[u]pon implementation of the ELD rule UPS will be using FMCSR-compliant portable, driver-based ELD devices.”

The ELD functions required by the rule are limited to automatically recording all driving time, and intermittently recording certain other information – including recording specified data elements when a driver changes duty status (section 395.26(c)) and logs in/logs out of an ELD (section 395.26(g)). For ELDs that are physically installed in a vehicle, drivers typically log in/log out of the ELD or change duty status while the vehicle is powered, and the required data elements in section 395.26 are readily recorded by the ELD because the ELD is synchronized with the engine’s electronic control module (ECM). However, in situations where a driver is using a portable, driver-based ELD, a driver will typically log in/log out or change duty status in the ELD at a location away from the vehicle (i.e., in the dispatch office as described by UPS), prior to preparing to drive the vehicle and without the vehicle being powered. In these situations, FMCSA agrees that it is not practicable for the ELD to automatically record the data elements required by section 395.26(c) and section 395.26(g), as the ELD is not synchronized with the engine’s ECM at that point. In the final rule, FMCSA stated “FMCSA clarifies that the ECM data or ECM connectivity data must only be captured when the engine is powered, but the ELD is not prohibited from recording information, if desired, when the engine is off.”

Based on the above, FMCSA agrees that it is not necessary for portable, driver-based ELDs to record the data elements required in section 395.26(c) and section 395.26(g) when the driver is not in the CMV, with the engine powered. In instances where a driver using a portable, driver-based ELD logs in/logs out or changes duty status away from the vehicle and without the vehicle powered, the driver will simply annotate the ELD record to indicate the appropriate duty status in accordance with section 395.30. Any time the driver is in the vehicle and the vehicle is powered, the portable, driver-based ELD is required to automatically record the data elements specified in section 395.26. FMCSA agrees that safety will not be diminished because (1) there

will be no impact on the recordation of driving time, and (2) the data elements that will not be recorded by the ELD at a change of duty status or log on/log out of the ELD while away from the vehicle are not critical if the driver properly annotates the ELD record to indicate the proper duty status as required.

3. Special Driving Mode for Yard Moves

Background

Section 395.28(a) of the FMCSRs permits a motor carrier to configure an ELD to authorize a driver to indicate that the driver is operating a CMV under certain special driving categories, including (1) authorized personal use, and (2) yard moves. Section 395.28(a)(2) requires a driver to select the applicable special driving category on the ELD before starting operations in that status, and to deselect it when the indicated status ends. Section 4.3.2.2.2(e) of Appendix A to Subpart B of part 395 requires a driver to reset his/her yard-move status to none if the ELD or CMV's engine goes through a power-off cycle (ELD or CMV's engine turns off and then on).

UPS Request

In its application, UPS states:

UPS is requesting a temporary exemption to allow a special driving mode for yard moves that will not require a driver to repeatedly indicate that status.

Most of UPS's feeder drivers are required to complete yard moves as part of their scheduled work. This entails the driver moving trailers that are already sitting uncoupled on a yard as well as coupling or uncoupling inbound and outbound trailers. Not only do feeder drivers perform yard moves at the beginning or end of trips, they sometimes are assigned to yard duty for a portion of their shifts, which can entail moving as many as 10 loads per hour within the yard.

As a safety precaution, UPS requires our drivers to remove the keys each time they exit the tractor. Consistent with this requirement, they driver will power the tractor down to couple a trailer and then power the tractor down again to uncouple. An average UPS site has over 100 drivers, with the majority of drivers completing several yard moves in the

course of a day. The ELD rule would require drivers to manually change duty status twice for every move they complete in the yard, which could mean entering manual changes as many as 20 times in an hour. The average UPS RODS driver completes a minimum of 9 yard moves per day. This will impose costs on UPS in time spent by drivers manually inputting the yard move mode. UPS estimates that the yearly cost to UPS for a single button push (.35 sec) at each of these yard move ignition cycles would come to approximately \$460,000. In addition, driver and administrative time would need to be spent reconciling records if drivers fail to appropriately record yard move time.

Based on the above, UPS requests an exemption from section 395.28(a)(2)(i) to allow its drivers to select “yard move” status and remain in that status even if the vehicle’s ignition is cycled off and back on. Under the proposed temporary exemption, and assuming that the driver does not go off duty after performing the yard moves, UPS states that the ELD would switch to a “driving” duty status under section 395.24 if (1) the driver inputs “driving,” (2) the vehicle exceeds 20 mph, or (3) the vehicle exits the geo-fenced yard. UPS notes that there is a posted speed limit of 15 mph on all of its yards, and that it already uses the proposed 20 mph threshold described above to trigger a designation of “driving” duty status in its AOBDRs as a means to identify drivers who do not manually annotate their departure from a UPS property.

Public Comments

The Agency received three comments, two supporting and one opposing the yard-move exemption.

Saucon stated that “[m]any motor coach operators have also requested to be able to use Yard Move within a geo-fenced area, then ‘automatically’ ending that yard move once the vehicle has left the area, and changing the driver's status to driving. We agree that this would help motor carriers manage Yard Moves.” Saucon agreed “that it would be wise to consider alternative ways to allow motor carriers to manage yard move, without relying on drivers to push the button to end it,” but noted that it did not necessarily fully agree with the solutions proposed by UPS.

YRCW “supports the UPS request to allow drivers to select ‘yard move’ status and stay in that mode even if the vehicle is cycled off or if the driver changes yard vehicles. This will eliminate unnecessary multiple entries as drivers have duties to couple and uncouple trailers in company yards that sometimes involve vehicle shut downs or vehicle changes.”

OOIDA opposed all elements of the exemption request, including the yard-moves provision, but it agreed that the ELD rule imposes unnecessary costs and burdens on all drivers and carriers, not just on UPS.

FMCSA Decision

The yard-moves issue was raised by Omnitracs in comments to the supplemental notice of proposed rulemaking that preceded the December 2015 ELD final rule. While Omnitracs agreed with resetting the special driving situation to “none” if the ELD or CMV’s engine goes through a power-off cycle, it suggested that the same confirmation be allowed during yard driving that is allowed for authorized personal use of the CMV. Omnitracs stated that doing so would enable the driver to turn off the engine when connecting or disconnecting a trailer when operating within a company’s facility without the requirement to re-enter the annotation of yard driving each time the engine goes through a power cycle. In response, FMCSA stated “The Agency feels that the allowance of multiple power off cycles would not provide a substantive reduction in inputs required by the driver during yard moves. In addition, this may create a potential for misuse of the off-duty yard-move status.”

In its application, UPS stated that the *average* UPS RODS driver completes a *minimum* of 9 yard moves per day, and given that a driver is required to manually enter the beginning and end of each yard move on the ELD, a driver could be required to enter manual changes of duty status as many as 20 times in an hour. Based on the information provided by UPS, and despite

the Agency's response to Omnitrac's comment in the December 2015 final rule, FMCSA believes that allowing multiple power-off cycles for yard moves can substantially reduce the inputs required by the driver in certain operations. Further, UPS provided a series of proposed controls to ensure that the ELD will switch from "yard move" status to "driving" status; namely, if (1) the driver inputs the "driving" mode; (2) the vehicle exceeds a speed of 20 mph; or (3) the vehicle exits the geo-fenced UPS yard. Implementation and adherence to these controls will help ensure that there is no misuse of the off-duty yard-move status.

Based on the above, FMCSA agrees that permitting all motor carriers to configure ELDs with a yard-move mode that does not require a driver to re-input yard move status every time the tractor is powered off will ensure that drivers operating under the yard-move status will achieve a level of safety that is equivalent to or greater than the level that would be obtained under the regulation. Allowing multiple power-off cycles for yard moves is consistent with what is currently permitted for the other special driving category, personal conveyance.

4. Exempt Employees Operating CMVs while on Motor Carrier Property

Background

Section 395.26(h) of the FMCSRs requires an ELD to automatically record certain data elements when a CMV's engine is powered on or off.

UPS Request

In its application, UPS states:

In addition to its drivers, UPS currently employs 1434 people that wash or fuel vehicles. In the course of performing their duties, most of these employees operate vehicles in our fleet, but this operation is strictly limited to movements within UPS yards. A fuel employee will fuel as many as 60 vehicles during a shift.

Because they do not operate commercial motor vehicles on highways/public roads, UPS's wash and fuel employees are not "drivers" and, in turn, are not required to comply with the hours of service rules...

The final ELD rule requires that the ELD automatically record certain data when a CMV's engine is powered up or powered down. *See* § 395.26(h). Because UPS will be using portable, driver-based ELDs, there will not be ELDs permanently installed in UPS vehicles. Therefore, insofar as the ELD regulations would require recordation of engine data for in yard operation of UPS vehicles by non-driver employees, that requirement would impose a significant burden on UPS. While it would be possible to provide these employees with portable ELDs to record engine data, doing so would be extremely costly. In addition to purchasing devices for each of these employees, UPS would have to purchase and maintain secure cabinets to store and charge these devices. In addition, UPS would have to develop a solution to reconcile these hours in a live environment. UPS would also have to employ individuals to annotate logs for data that was not reconciled.

UPS requests an exemption from section 395.26, and proposes to allow an alternative approach to track vehicle usage by wash and fuel employees on UPS property. Specifically, UPS proposes that vehicle movements of less than 1 mile by these exempt employees, entirely on UPS property, be annotated on an ELD as “on property – other.” UPS states that these miles could be easily identified using geo-fencing and time-card information for road drivers and other employees.

Public Comments

The Agency received one comment in support of an alternative approach to tracking vehicle usage by non-driver employees when the company uses portable, driver-based ELDs.

YRCW stated that “[s]imilar to UPS, YRCW companies have exempt employees who move vehicles short distances for fueling, washing and maintenance. As UPS notes these miles are within a company facility and could easily be captured by geo-fencing applications.”

FMCSA Decision

Because UPS wash and fuel employees do not operate CMVs on public roads they are not subject to the HOS regulations. Accordingly, the UPS wash and fuel employees do not need to use ELDs, and no temporary exemption is necessary.

Terms and Conditions for the Exemptions

Based on its evaluation of the UPS application for exemption, FMCSA has decided to grant the following exemptions:

1. All motor carriers and drivers using portable, driver-based ELDs are exempt from the requirements of section 395.26(c) and section 395.26(g) unless the driver is in the CMV with the engine powered. When a driver using a portable, driver-based ELD changes duty status or logs in/logs out of the ELD away from the vehicle and without the vehicle powered, the driver is required to annotate the ELD record to indicate the appropriate duty status in accordance with section 395.30. When the driver is in the CMV, and the CMV is powered, the portable, driver-based ELD is required to automatically record the data elements specified in section 395.26.

2. A motor carrier is permitted to configure an ELD so that a driver can select “yard moves” in accordance with section 395.28(a)(1)(ii) without complying with Section 4.3.2.2.2(e) of Appendix A to Subpart B of part 395, which requires a driver’s yard-move status to reset to none if the ELD or CMV’s engine goes through a power-off cycle (ELD or CMV’s engine turns off and then on). However, the ELD must switch from “yard move” status to “driving” status if (1) the driver inputs the “driving” mode; (2) the vehicle exceeds a speed of 20 mph; or (3) the vehicle exits a geo-fenced motor carrier facility. For the reasons discussed above, FMCSA believes that the level of safety that will be achieved with the exemptions will likely be equivalent to, or greater than, the level of safety achieved without the exemptions.

FMCSA hereby grants the exemptions for a 5-year period, beginning [INSERT DATE OF PUBLICAITON IN THE FEDERAL REGISTER] and ending [INSERT DATE 5 YEARS AFTER DATE OF PUBLICAITON IN THE FEDERAL REGISTER].

The exemptions will be valid for five years unless rescinded earlier by FMCSA. The exemptions will be rescinded if: (1) Motor carriers and/or drivers fail to comply with the terms and conditions of the exemptions; (2) the exemptions have resulted in a lower level of safety than was maintained before they were granted; or (3) continuation of the exemptions would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31135(b).

Interested parties possessing information that would demonstrate that motor carriers or drivers participating in either of the exemptions are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31135(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period these exemptions are in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with the exemptions with respect to a firm or person operating under the exemptions. States may, but are not required to, adopt the same exemptions with respect to operations in intrastate commerce.

Issued on: September 29, 2017.

Daphne Y. Jefferson,
Deputy Administrator.

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