DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0428]

Hours of Service of Drivers: Application for Exemption; Truck Renting and Leasing Association (TRALA)

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the Truck Renting and Leasing Association (TRALA) a limited exemption from the requirement to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS) no later than December 18, 2017. This limited exemption provides that all drivers of property-carrying commercial motor vehicles (CMVs) rented for 8 days or less, regardless of reason, are not required to use an ELD in the vehicle. While operating under this exemption, drivers will remain subject to the standard hours-of-service (HOS) limits, maintain a paper record of duty status (RODS) if required, and maintain a copy of the rental agreement on the vehicle. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is applicable from October 11, 2017 through October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

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

TRALA is a national trade association of companies whose members engage in commercial truck renting and leasing, vehicle finance leasing, and consumer truck rental. Its membership encompasses major independent firms such as Ryder System, Penske Truck Leasing, U-Haul, Budget, and Enterprise Truck Rental, as well as small and medium-size businesses that generally participate as members of four leasing group systems: Idealease, NationaLease, PACCAR Leasing Company, and Mack Leasing System-Volvo Truck Leasing System. In total, its nearly 500 member companies operate more than 5,000 commercial leasing and rental locations, and more than 20,000 consumer rental locations throughout the United States, Mexico and Canada.

''Renting'' is a term of art in the vehicle leasing industry, generally meaning a transaction granting the exclusive use of a vehicle for 30 days or less, whereas a lease generally means a transaction granting the exclusive use of a vehicle for more than 30 days. TRALA's application is on behalf of all drivers of property-carrying commercial motor vehicles (CMVs) rented for 30 days or less.

While TRALA stated that it fully supports FMCSA's final rule to mandate ELDs, it is concerned about the unintended technical and operational consequences that will unfairly and adversely affect short-term rental vehicles. The commercial vehicle rental industry provides short-term rental services to a large population of drivers on a daily basis. Most of these drivers will normally employ an ELD to comply with the new rule. Considering the significant number of different device platforms and subscription options, it is unlikely that the driver's device would be able to communicate properly with the rental company's telematics platform. TRALA states that while FMCSA recognized during the rulemaking process these issues associated with a lack of interoperability among ELD systems, and required certain technical specifications in the final rule, the Agency stopped short of requiring full interoperability among ELDs.

Many commenters to the proposed ELD rule raised similar interoperability concerns. However, the rule requires only that ELDs can transfer data electronically via either a ''telematics'' approach capable of wireless web service, or a ''local'' method capable of Bluetooth and USB 2.0 transfer. Furthermore, according to TRALA, the Agency decided ''not to require full interoperability between all ELDs,'' reasoning that ''[a]lthough full interoperability would have some benefits, it would also be complicated and costly'' (80 FR 78327, December 16, 2015). According to commenters, the Agency left it to the ELD manufacturers to address many concerns regarding non-interoperability of the various software systems on the market.

TRALA elaborated on its two primary issues of concern relating to the exemption request: (1) Data transfer and, (2) data liability.

TRALA described two potential data transfer problems. First, a customer who is required to use an ELD may rent a truck that has one operating system, while the customer may use another operating system for its drivers; data cannot be transferred from the rental vehicle to the customer's system unless both ELDs are on the same platform. In addition, upon request by an authorized safety official, a driver must produce and transfer the driver's HOS records from an ELD in accordance with 49 CFR 395.24(d). This would include the driver's duty status for the current 24-hour period and the prior seven days. However, if the driver is operating a rental vehicle with an ELD that is not compatible with the driver's normal ELD system, the data will not transfer to the new vehicle's ELD system. TRALA states that scenario would be considered an ''ELD malfunction'' and the driver would be required to reconstruct the RODS for the current 24-hour period and the previous seven consecutive days on graph grid paper logs. TRALA's application requests that drivers of short-term rental vehicles be allowed to avoid the uncertainties of attempting compliance with the HOS rules using non-compatible ELD systems, and instead use paper RODS during the rental period.

TRALA contends that CMVs are more prone to break-downs than non-CMVs because of their heavy use. When CMVs

break-down, they are often replaced temporarily by short-term rental vehicles until the original truck can be repaired. TRALA claims that these repairs can take days, if not several weeks, to complete. More often than not, replacement vehicles come from a third-party rental company, which increases the likelihood that the replacement truck would have a different ELD operating system than the vehicle it is replacing, thus impeding data transfer.

TRALA's second primary issue involves data liability concerns. TRALA states that it has been suggested that rental companies should be able to collect and report ELD data to customers, allowing customers to access the data seamlessly. However, the final rule does not require ELDs to be capable of reading and combining exported data from other providers. Furthermore, lessors do not have the ability to combine data from different devices into one report. Requiring lessors to bear the burden of safeguarding the data for each renter would expose the rental company to tremendous risk with respect to data security and protection. All parties involved in the business transaction would probably reject rental companies' assumption of these risks on behalf of their customers.

Public Comments

On March 22, 2017, FMCSA published notice of this application and requested public comment (82 FR 14789). The Agency received 429 docket comments, over 95% supporting the TRALA request. Among those in favor of the exemption were the following industry trade associations: The American Trucking Associations, Inc. (ATA); the National Association of Chemical Distributors (NACD), National Tank Truck Carriers (NTTC), National Private Truck Council (NPTC), Truckload Carriers Association (TCA), and the National Automobile Dealership Association (NADA). The fireworks industry, including the American Pyrotechnics Association (APA), filed 30 comments in support of the request. Principal opponents of the exemption were the Advocates for Highway and Auto Safety (Advocates) and the Owner-Operator Independent Driver's Association (OOIDA).

Commenters gave three primary reasons in support of the request. First, they believe there is currently a significant technology gap that will not allow different ELD systems to communicate and share information with each other. As many rental companies must individually collect their own data to comply with the International Fuel Tax Agreement (IFTA) and International Registration Plan, the interoperability of ELD technology will create more challenges than solutions for the short-term rental market as compared to the vast majority of trucks that are owned or leased.

Further, all ELDs must be capable of exporting data in a standard file format to facilitate importing by other systems. However, devices and systems are not required to be capable of importing these records. This means that transferring data, whether through ''memory sticks'' or other applications, will not work with the technology currently available. TRALA states that several ELD manufacturers have already commented that ''plug and play'' devices are years away from being operational; and given the small percentage of trucks that would be impacted by these efforts, it is unlikely that major technological advances will occur in the next few years.

Another benefit of a short-term rental exemption would be a simpler roadside inspection process since short-term rentals of 30 days or less do not require a truck to display the user's U.S. DOT number. The continued use of paper logs would alleviate any confusion in the inspection process since a law enforcement officer would immediately recognize a short-term rental vehicle when handed the rental agreement. That consistency would speed up the process and create less confusion. This current rule also requires that a rental contract of 30 days or less be carried in the truck at all times. This existing requirement can allow authorities to confirm the short-term nature of the rental.

Those opposing the TRALA request commented that the application does not meet the statutory and regulatory requirements for the exemption. It fails to consider practical alternatives, justify the need for the exemption, provide an analysis of the safety impacts the requested exemption may cause, and provide information on the specific countermeasures to be undertaken to ensure that the exemption will achieve an equivalent or greater level of safety than would be achieved absent the exemption.

A second comment in opposition noted that TRALA cites technical concerns regarding interoperability of data between devices, truck break-downs, and data transfer and liability concerns as reasons why their vehicles should be exempted from the ELD mandate. While these points are legitimate, the commenter argued that they are not limited to the truck renting and leasing industry. Carriers of all sizes will encounter these same problems, along with ELD manufacturers and law enforcement agencies. Exempting one segment of the trucking industry will not change that.

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

FMCSA Decision

FMCSA has evaluated TRALA's application and the public comments and decided to grant a limited exemption for the driver and carrier of a CMV rented for 8 days or fewer, regardless of reason. FMCSA has determined that an exemption period of up to 30 days, as requested, is unnecessarily long given the importance of ELDs to ensure the accuracy of HOS records. One condition of the exemption is that a copy of the rental agreement must be carried on the vehicle and made available to law enforcement. Another is that the driver must possess copies of his or her RODS for the current and prior 7 days, if required on those days.

A high proportion of the comments supported the exemption. The Agency believes that an exemption period of up to 8 days for drivers of rental CMVs would give most carriers sufficient time to repair or replace their usual vehicles while minimizing any temptation to extend non-ELD operations. The use of paper records of duty status (RODS) will not create an undue risk of non-compliance when limited to this short period. An 8-day exemption period coincides with 49 CFR 395.34(d), which provides that a motor carrier that receives or discovers information about an ELD malfunction must correct it within 8 days. During that 8-day malfunction window, the driver must reconstruct the RODS for the current 24-hour period, and the previous seven consecutive days. The 8-day exemption for rental CMVs would follow that pattern. The exempt driver must have a copy of his/her RODS for the current day and the prior seven days. Under these conditions, FMCSA believes that exempt drivers and carriers—like those operating under section 395.34(d)—are likely to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). In addition, the 2014 ''The Rental Truck Safety Study Report to Congress,'' prepared by FMCSA,[1] found no problem with rental trucks. In the period 2005–2010, the Trucks Involved in Fatal Accidents (TIFA) database recorded no instances in which the critical reason

[1] *www.fmcsa.dot.gov/mission/policy/rental-truck-safety-study-report.*

for the crash was assigned to the rental truck driver.

Terms and Conditions of the Exemption

Terms of the Exemption

- This exemption from the requirements of 49 CFR 395.8(a)(1)(i) is effective from October 11, 2017 through October 11, 2022.
- This exemption covers a rental period of 8 days or fewer, regardless of reason for the rental. Evidence that a carrier has replaced one rental CMV with another on 8-day cycles or attempted to renew a rental agreement for the same CMV for an additional 8 days will be regarded as a violation of the exemption and subject the carrier to the penalties for failure to use an ELD.
- Drivers must have a copy of this notice or equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- Drivers must have a copy of the rental agreement in the CMV, and make it available to law enforcement officers on request. The agreement must clearly identify the parties to the agreement, the vehicle, and the dates of the rental period.
- Driver must possess copies of their RODS for the current day and the prior 7 days, if required on those days.

Preemption

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

Notification to FMCSA

Carriers operating under this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's drivers operating under the terms of this exemption. The notification must include the following information:

(a) Identity of Exemption: ''TRALA''

(b) Date of the accident,

(c) City or town, and State, in which the accident occurred, or closest to the accident scene,

(d) Driver's name and license number,

(e) Co-driver's name and license number,

(f) Vehicle number and State license number,

(g) Number of individuals suffering physical injury,

(h) Number of fatalities,

(i) The police-reported cause of the accident,

(j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and

(k) The total driving time and total on-duty time period prior to the accident.

Accident notifications shall be emailed to *MCPSD@dot.gov*.

Termination

FMCSA believes that drivers of short-term rental vehicles will continue to maintain their previous safety record while operating under this exemption. However, should problems occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. FMCSA will immediately restrict participation in the exemption for failure to comply with its terms and conditions.

Issued on: September 28, 2017.

Daphne Y. Jefferson,

Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0038]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 47 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on August 29, 2017. The exemptions expire on August 29, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or 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., e.t., Monday through Friday, except Federal holidays.

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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On July 27, 2017, FMCSA published a notice announcing receipt of applications from 47 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 35033). The public comment period ended on August 28, 2017, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received two comments in this proceeding. Givonna Hymel stated that she believes the exemption application process should be shortened, and that the program in its current form is unfair and