

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 October 20, 2017 and ending October 20, 2022.

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. 31133(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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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0275]

### Hours of Service of Drivers: U.S. Department of Defense (DOD); Application for Renewal of Exemption

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

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the U.S. Department of Defense (DOD) Military Surface Deployment and Distribution Command’s (SDDC) exemption from the minimum 30-minute rest break provision of the Agency’s hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers contracted by SDDC for special activities. SDDC currently holds an exemption valid through October 27, 2018. The exemption renewal is for five years and allows SDDC contracted-drivers to use 30 minutes or more of attendance time to meet the HOS rest break requirements, provided they do not perform any other work during the break. The terms and conditions of the current exemption remain in place for the five-year period.

**DATES:** The renewed exemption is effective through October 21, 2023. Comments must be received on or before November 20, 2017.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2013–0275 by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *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. E.T., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any

personal information provided. Please see the *Privacy Act* heading below.

**Docket:** For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time and in the box labeled "SEARCH for" enter FMCSA–2013–0275 and click on the tab labeled "SEARCH."

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

**Public Participation:** The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

**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: [MCPSPD@dot.gov](mailto:MCPSPD@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–2013–0275), 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 email 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 comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket

number, "FMCSA–2013–0275" 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 continue this exemption or not based on your comments.

##### **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. 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)).

##### **III. Background**

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its HOS regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS regulations including a new provision requiring drivers to take a rest break of at least 30 minutes during the work day under certain circumstances.

FMCSA did not specify when drivers must take the break, but the rule

requires that they wait no longer than 8 hours after the last off-duty period of 30 minutes or more to take it if they want to drive a CMV. Drivers who already take shorter breaks during the work day could comply with the rule by extending one of those breaks to 30 minutes. The new requirement took effect on July 1, 2013.

##### **IV. Application for Renewal Exemption**

The SDDC manages the motor carrier industry contracts for the DOD. Certain motor carriers under contract to the SDDC provide protective services while transporting weapons, munitions, and sensitive/classified cargo.

SDDC's initial exemption application for relief from the HOS rest break requirement was submitted in 2013; a copy of the application is in the docket identified at the beginning of this notice. That application describes fully the nature of the operations of SDDC's contracted drivers. FMCSA published a notice granting the exemption request on October 28, 2013 (effective October 22), and made it valid through October 21, 2015 (78 FR 64265). The Agency renewed the exemption on October 7, 2015 (80 FR 60740), with an expiration date of October 21, 2017. However, section 5206(b)(2)(A) of the Fixing America's Surface Transportation (FAST) Act extended any HOS exemption in effect on the date of enactment of that Act for a period of 5 years from the date the exemption was granted. Because section 1003 of the FAST Act made the provisions of Division A (which includes section 5206) retroactively effective to October 1, 2015, the original SDDC exemption, valid through October 21, 2015, was extended by operation of law for 5 years from the date it was granted, in other words through October 21, 2018.

The SDDC requests renewal of a limited exemption from the HOS regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow SDDC-contracted drivers providing dual driver-protective services to be treated the same as drivers transporting explosives. As provided in § 395.1(q), operators of CMVs carrying Division 1.1, 1.2, or 1.3 explosives subject to the requirement for a minimum 30-minute rest break in Section 395.3(a)(3)(ii) may use 30 minutes or more of "attendance time" to meet the requirement for a rest break.

##### **V. Method To Ensure an Equivalent or Greater Level of Safety**

SDDC states that it requires continuous attendance and surveillance of such shipments until they reach their final destination. SDDC states that it has

instituted several technical and administrative controls to ensure the efficient transportation of cargo requiring protective services, controls that would remain in effect under the requested exemption. They include the following:

- Conducting review of carrier compliance requirements and procedures for moving hazardous cargo.
- Evaluating carrier authority to operate on United States roadways.
- Evaluating carrier compliance with the Federal Motor Carrier Safety Administration's Compliance Safety Accountability Program Safety Measurement System standards.
- Providing over-the-road vehicle surveillance.
- Inspecting carrier facilities and corporate headquarters for compliance with DOD and DOT standards.

Further details regarding SDDC's safety controls can be found in its initial application for exemption. The application can be accessed in the docket identified at the beginning of this notice. SDDC asserts that granting the exemption would allow driver teams to manage their en route rest periods efficiently and also perform mandated shipment security surveillance, resulting in both safe driving performance and greater security of cargo during long-distance trips.

SDDC anticipates no safety impacts from this exemption and believes that its contract employee drivers should be allowed to follow the requirements in § 395.1(q) when transporting shipments of sensitive DOD cargo. SDDC believes that shipments made under the requested exemption would achieve a level of safety and security that is at least equivalent to that which would be obtained by following the normal break requirement in § 395.3(a)(3)(ii).

SDDC indicated that approximately 1,942 power units and 3,000 drivers would be covered by the exemption. The renewed exemption is effective for 5 years, the maximum period allowed by § 381.300.

## VI. Terms of the Exemption

1. Drivers authorized by SDDC to utilize the exemption renewal, must have a copy of the 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.

2. All motor carriers operating under this exemption must have a "Satisfactory" safety rating with FMCSA, or be "unrated;" motor carriers with "Conditional" or "Unsatisfactory"

FMCSA safety ratings are prohibited from using this exemption.

### *Period of the Exemption*

The exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is effective from 12:01 a.m., October 22, 2018, through 11:59 p.m., October 21, 2023.

### *Extent of the Exemption*

The exemption is restricted to SDDC's contract driver-employees transporting security-sensitive materials. This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii) and allows contract driver-employees transporting security-sensitive materials to be treated the same as drivers transporting explosives, as provided in Section 395.1(q). These drivers are required to comply with all other applicable provisions of the FMCSRs.

### *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.

### *FMCSA Accident Notification*

SDDC must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while utilizing this exemption. The notification must be by email to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV), and include the following information:

- a. Name of the Exemption: "SDDC",
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, and which is closest to the scene of the accident,
- d. Driver's name and driver's license State, number, and class,
- e. Co-Driver's name and driver's license State, number, and class,
- f. Vehicle company number and power unit license plate State and 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, or motor carrier safety regulations, and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV) as soon as available.

### *Termination*

The FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: October 16, 2017.

**Daphne Y. Jefferson,**  
*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0406]

### Commercial Driver's License Standards: Application for Exemption; C.R. England

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

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

**SUMMARY:** FMCSA announces its decision to re-affirm renewal of an exemption granted to C.R. England from the regulation that requires a commercial learner's permit (CLP) holder to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways. Under this exemption, a CLP holder who has documentation of passing the CDL skills test may drive a commercial motor vehicle (CMV) for C.R. England without being accompanied by a CDL holder in the front seat of the vehicle. The exemption enables CLP holders to drive as part of a team like other C.R. England team drivers. FMCSA has analyzed the public comments in response to the exemption renewal and has determined that the renewed exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.