

CANCELLATION: The December 4, 2003 meeting announced in the **Federal Register** has been canceled. The revised date and location, if any, will be announced later.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

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Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2003-15818]

Exemption To Allow Werner Enterprises, Inc. To Use Global Positioning System (GPS) Technology To Monitor and Record Drivers' Hours of Service

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

ACTION: Notice of intent to grant exemption; request for comments.

SUMMARY: FMCSA proposes to grant an exemption to Werner Enterprises, Inc. (Werner) from the requirement that drivers of commercial motor vehicles (CMVs) operating in interstate commerce prepare handwritten records of duty status (RODS). Werner would instead document its drivers' hours of service through the use of GPS technology and complementary computer software programs. Werner has used GPS technology manufactured by Qualcomm, Inc. and computer software programs to manage and record its drivers' duty status since June 10, 1998, when it entered into a Memorandum of Understanding (MOU) with the agency. The MOU was based on the agency's April 6, 1998, notice of interpretation concerning the use of such technology. Werner and FMCSA revised the MOU in March 2002. The agency proposes that the terms and conditions for the exemption be the same as those contained in the revised MOU, with a few exceptions based on recent discussions between FMCSA and Werner. FMCSA has monitored closely Werner's use of the GPS technology since June 1998. Based on this experience, the agency believes that the terms and conditions of the exemption

would achieve a level of safety equivalent to, or greater than, that provided by complying with the current RODS requirements.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-2003-15818 by any of the following methods:

- Web site: <http://dms.dot.gov>.
- Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1-202-493-2251.
 - Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
 - Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
 - Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> and/or Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division (MC-PSV), (202) 366-4009, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1998, FMCSA published a notice of interpretation (63 FR 16697,

Apr. 6, 1998) requesting motor carriers to participate in a "pilot demonstration project" (the Project). The Project was a voluntary program under which motor carriers with GPS technology and related safety management computer systems could enter into an agreement with the agency to use such systems to record and monitor drivers' hours of service in lieu of complying with the handwritten records of duty status (RODS) requirement of 49 CFR 395.8. The agency indicated that it believes GPS technology and many of the complementary safety management computer systems being used by the motor carrier industry provide at least the same degree of monitoring accuracy as automatic on-board recorders allowed by 49 CFR 395.15. The original deadline for submitting applications was October 5, 1998, with subsequent extensions to June 30, 1999 (63 FR 71791, Dec. 30, 1998), and December 31, 1999 (64 FR 37689, Jul. 13, 1999). The extensions were provided because numerous motor carriers contacted the agency to express an interest in participating in the Project. Although participation in the Project was open to all interested motor carriers, Werner was the only company to sign a memorandum of understanding (MOU) with the agency to allow the use of GPS technology.

Status of Werner's Participation in the Project

On June 10, 1998, Werner entered into an MOU with the agency to use GPS technology and related safety management computer systems as an alternative to handwritten driver RODS. A copy of the MOU is included in the docket referenced at the beginning of this notice. Over the course of the pilot demonstration project, FMCSA conducted onsite reviews and investigated a complaint. The reviews and complaint investigation identified potential improvements to Werner's system that would increase the accuracy of the electronic RODS and thereby raise the level of hours-of-service compliance.

In March 2002, Werner and FMCSA entered into a revised MOU to amend the terms of the June 1998 agreement. A copy of the revised MOU is in the docket referenced at the beginning of this notice. The revised MOU contains specific provisions related to system modifications and internal hours-of-service compliance monitoring reports agreed to by Werner and FMCSA. The March 2002 MOU states:

At the end of the 18-month period of this agreement, an assessment will be made to consider making this pilot program permanent. The FMCSA will automatically extend the agreement period beyond 18

months if the assessment has not been completed, or if an agency decision regarding permanency has not been rendered. If determined not to be permanent, this agreement may be extended, by mutual agreement of both parties, beyond the 18 months specified until the FMCSA establishes a uniform standard for Electronic On-Board Recording.

The current MOU with Werner was to expire in September 2003 but has been extended to December 31, 2003, because the assessment was not complete by the scheduled expiration date. Werner has indicated that it would like to make its current program permanent rather than continue in a pilot demonstration status.

Proposed Terms and Conditions for the Exemption

FMCSA believes that it is appropriate to make a transition from a pilot demonstration project to an exemption, as authorized by 49 U.S.C. 31315(b) and the implementing regulations under 49 CFR part 381. Although Werner has expressed an interest in using GPS technology and complementary computer systems to monitor and record its drivers' duty status on a permanent basis, FMCSA cannot permit this without initiating a notice-and-comment rulemaking proceeding to amend 49 CFR 395.8. The agency does not believe that it is appropriate to amend the safety regulations based on a technology that is currently being used by only one motor carrier. Therefore, the agency proposes to exercise its authority under 49 U.S.C. 31315(b) to make a transition from the Project to an exemption that can be renewed every two years, through a notice-and-comment process. The agency proposes that the terms and conditions for the exemption be the same as those used for the Project, with a few exceptions based on recent discussions between FMCSA and Werner. FMCSA has made a preliminary determination that, used in lieu of the "record of duty status" required by 49 CFR 395.8, Werner's GPS technology and complementary safety management computer systems would achieve the requisite level of safety under 49 U.S.C. 31315(b), provided the following conditions are satisfied:

System Operation

(a) System defaults must record truck stationary time as "on duty, not driving."

(b) Movements of the vehicle greater than two miles must be recorded as driving time.

(c) Speed (which is determined by time and distance between truck location updates) that is calculated to be below 10 miles per hour (mph) may be

considered invalid. In these instances, distance traveled may be divided by average driver mph or average State-to-State mph to derive a rough estimate of the driving time. Werner must discontinue the use of driving time modeling entirely if Qualcomm improves the satellite positioning frequency or incorporates other technology that makes the modeling unnecessary.

(d) With the exception of automatically recording the driver's status as "on duty, not driving" when drivers' fuel cards are inserted into the card reader, no system defaults are authorized for routine stops (*i.e.*, deliveries, pickups, rest). Drivers must make the correct duty status entry into the electronic system.

(e) The system must not allow drivers to manipulate the system to conceal driving hours.

The automatic recording of movements of two miles or more as driving time differs from the MOU in that the memorandum uses a criterion of one mile. Werner has advised FMCSA that lowering the vehicle movement threshold to one mile has resulted in a substantial number of errors in documenting driver duty status that require correction by company management. Therefore, Werner has requested that it be allowed to continue using its two-mile criterion rather than risk a significant increase in errors.

In addition, the system operation provision concerning default duty status would differ from the current MOU in that fuel stops would be covered by an automatic default. Werner has informed FMCSA that its drivers generally are unable to enter duty status information during refueling because the canopy structures at most fuel stops interfere with the satellite communications equipment on their vehicles. FMCSA responded that it is permissible under the current MOU to automatically place drivers in an on-duty, not-driving status when drivers' fuel cards are inserted into a card reader. The proposed exemption would explicitly allow the default duty status for refueling. FMCSA requests comments on these proposed differences between the MOU and the terms and conditions of the exemption.

Documentation of System Failures

Werner must require each driver to note immediately any failure of the GPS technology or complementary safety management computer systems, and to immediately begin preparing hard-copy driver logs during the period that the technology is inoperative. Werner must maintain a centralized record of each separate failure, including the date, time

periods, individual driver or operating division(s) impacted, and type of failure. Upon request by Federal or State enforcement officials, Werner must provide facsimile copies of its records of duty status for the current day and the previous seven days for the driver(s) affected by the failure. In the event that Werner is unable to produce these facsimile copies within two hours, the driver(s) must manually prepare a driver record of duty status for the current day and reconstruct his or her duty hours for the previous seven (7) days. When the system becomes operational, a fax of the missing records of duty status must be forwarded to the agreed-upon site as soon as possible. Failure to produce either of these two types of documents within two hours constitutes a violation of this exemption and 49 CFR 395.8(a).

Information Required on All CMVs Operated by Werner

Werner would be required to ensure that each commercial motor vehicle it operates has on board and available for review by Federal or State enforcement personnel an information packet containing the following three items:

(a) An instruction sheet describing in detail how hours-of-service data may be retrieved from the on-board GPS equipment;

(b) A supply of blank record of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip; and

(c) A copy of the exemption issued by FMCSA authorizing Werner to use GPS technology and complementary computer software programs in lieu of the "record of duty status" required by 49 CFR 395.8.

Quarterly Reports

Werner would be required to prepare a compliance report every three months following the effective date of the exemption. The reports must be maintained for six months from the date of preparation and must be made available to FMCSA upon request. The reports must identify:

(a) Driver training and internal audit procedures employed by Werner to ensure the accuracy of the electronic hours-of-service records;

(b) The percent of driver logs in each Werner operating division found through internal auditing to be in violation of the maximum driving time limitations set forth in 49 CFR 395.3(a) and 395.3(b); and

(c) The number of drivers in each Werner operating division, the number of drivers by operating division audited for hours-of-service record accuracy,

and the percent of driver logs by operating division found to be in violation of 49 CFR 395.8(e).

Furthermore, the support systems must provide a complete audit trail of edits (changes) made to "driving" time shown on driver duty status records.

FMCSA Access to Safety Management Information System

Werner must allow FMCSA personnel reasonable access to its safety management information system(s). If FMCSA requests access to the system(s), agency personnel will determine the scope and nature of the assessment. At a minimum, access to records will include:

- (a) Driver records of duty status created by Werner's GPS and related safety management computer systems;
- (b) Driver-dispatch "message histories" and detailed position histories associated with driver records of duty status;
- (c) Driver payroll records associated with the driver records of duty status;
- (d) Driver shipping document records; and
- (e) Miscellaneous trip expense records.

Reporting of Violations of Hours-of-Service Rules

Werner must furnish FMCSA, upon request, a driver-specific report of violations of the requirements related to maximum driving time rules (49 CFR 395.3). With regard to falsification of records of duty status, information must be provided on violations of 49 CFR 395.8(e) for each individual driver requested. Werner must also agree to furnish upon request information indicating what disciplinary and/or remedial action, if any, was taken as a result of a driver's violation of rules set forth in 49 CFR 395.3 and 49 CFR 395.8(e).

Reporting of Corrections or Amendments to Records

Werner must agree to furnish, upon request, information indicating the number of times the "driving" time on driver records of duty status was changed for each driver, and identifying who authorized each altered record.

Documenting Distance Traveled

Werner would be required to ensure that the system for monitoring and recording drivers' hours of service has a means of determining that the mileage each driver travels is based on data from the vehicle's electronic control module or other on-board vehicle system, rather than on less accurate methods such as GPS-based (point-to-point) calculations

that may underestimate the distance traveled.

Enforcement of Hours of Service While the Exemption Is in Effect

Under the terms and conditions of this exemption, Werner may require its drivers to use the company's GPS technology and complementary safety management computer systems to record their hours of service in lieu of complying with the requirements of 49 CFR 395.8. FMCSA would, to the greatest extent practicable, communicate with State, Provincial, and local enforcement agencies regarding the terms and conditions of the exemption, if granted. FMCSA would continue its policy of not divulging to any third party proprietary information related to Werner's GPS technology or related safety management computer systems.

In the event that FMCSA conducts a compliance review or any other type of motor carrier safety management investigation of Werner, FMCSA would review, using its automated hours-of-service assessment system, 100 percent of the applicable operating division's hours-of-service records for compliance with the maximum driving time limitations set forth in 49 CFR 395.3. The 100 percent sampling would not extend to any other portion of the regulations reviewed. With respect to the investigation of the accuracy of hours-of-service records (49 CFR 395.8(e)), FMCSA would reserve the right to conduct a sampling of records in accordance with FMCSA policies applicable to all motor carriers, and Werner would retain the right to contest the validity of the sampling used.

Notwithstanding the additional recordkeeping requirements of the quarterly compliance reports that Werner must prepare (see *Quarterly Reports* above), the agency would not hold Werner to a higher standard of compliance than the rest of the industry, nor would it treat Werner differently in conducting investigations of complaints or other types of investigations. At any time during the exemption period, FMCSA may conduct compliance reviews of Werner, consistent with standard operating policies applicable to all motor carriers. These compliance reviews would result in the assignment of a safety rating, and the agency could initiate enforcement action against Werner for serious violations.

Werner's drivers and vehicles would continue to be subject to roadside inspections conducted by FMCSA or State enforcement personnel during the period of the exemption. Werner must ensure that its drivers cooperate with

Federal and State enforcement personnel who request information, during roadside inspections, concerning its drivers' hours of service.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA is requesting public comment from all interested persons on the agency's intent to grant Werner an exemption to allow the use of GPS technology and related safety management computer systems to document its drivers' hours of service. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and considered to the extent practicable, but FMCSA may grant or deny the exemption at any time after the close of the comment period. In addition to late comments, FMCSA also will continue to file in the public docket any relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; 49 CFR 1.73.

Issued on: December 5, 2003.

Annette M. Sandberg,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than February 9, 2004.