

certifies that Mr. Zenns understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zenns meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

### III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d).

Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

### IV. Submitting Comments

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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2016–0216 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

### V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2016–0216 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

Issued on: August 1, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0460]

#### Hours of Service of Drivers: Application for Exemption; Farruggio’s Express

**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 Farruggio’s Express (Farruggio), an exemption from the timecard requirements for its drivers who may not meet all of the conditions for use of the logbook exception for operations within a 100 air-mile radius of the normal work reporting location. This exemption enables Farruggio’s drivers who stay within the 100 air-mile radius, but may occasionally exceed the 12 hour limitation, from having to complete a daily record of duty status (RODS). Instead, the drivers would at all times use an electronic logging system called Geotab to track HOS data, including real-time vehicle locations. FMCSA has analyzed the exemption application and the public comments and has determined that the 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.

**DATES:** The exemption is effective from August 10, 2016 through August 10, 2021.

**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](mailto: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. 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

<sup>1</sup> Section 4129(a) refers to the 2003 notice as a “final rule.” However, the 2003 notice did not issue a “final rule” but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

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

Farruggio services railroad ramps and maritime piers in the eastern United States. Its regional programs include truckload and less-than-truckload service (dry van, flat bed and reefers) as well as piggyback and container service. All of Farruggio's drivers—approximately 95 to 100—and CMVs would operate under the terms of the requested exemption.

Virtually all of Farruggio's drivers operate within a 50- to 60-mile radius of their home terminal. They are home every day and for the most part meet the requirements and conditions for the logbook exception in 49 CFR 395.1(e)(1). Some of these drivers record their hours worked, while others record time in and out and total hours worked for the day on a worksheet provided to Farruggio. The company's application would exempt company drivers who stay within the 100 air-mile radius, but who may occasionally exceed the 12-hour limitation, from having to complete a daily RODS. These drivers nonetheless return to the terminal within the normal 14-hour driving window.

While Farruggio meets the requirements of the 100 air-mile radius exception, and believes that its drivers' hours are being recorded accurately, it has adopted a vehicle recording device that it claims exceeds the current HOS logbook recording requirements. Farruggio stated that the use of this device—the Geotab7—increases safety and accurately records all of the drivers' activities, including on-duty and driving time as well as total hours for that day. This device has been installed in all of Farruggio's CMVs, and, according to the applicant, exceeds even the requirements of FMCSA's Electronic Logging Device (ELD) rule. The Geotab 7's global positioning system (GPS) technology allows Farruggio to track vehicles, monitor all vehicle activities through connection to the engine control module, and accurately report

drivers' hours driven and hours worked daily.

Farruggio believes that the use of the Geotab 7 system, along with its increased focus on driver training and education, demonstrates its commitment to more than simple compliance with the Federal regulations. The system has allowed and will continue to allow Farruggio to enhance timely safety oversight and reduce driver fatigue. Farruggio believes that its exemption application incorporates safety technologies that go beyond minimal compliance, and will enable the company to maintain a level of safety that is equivalent to or greater than the level of safety provided under the rule.

### Public Comments

On February 12, 2016, FMCSA published notice of this application and requested public comment (81 FR 7626). The Agency received 17 comments. Supporting the exemption request were four motor carriers (TCW, Inc., Tiger Cool Express, Rail Delivery Services for itself and four other carriers, and Evans Delivery Company), two insurance firms (Baldwin & Lyons and Marsh McLennan Agency), the Intermodal Association of North America, and six individuals (Fred Marsicano, Ron Dorazio, Thomas Michel, Matt Carlton, Charles Bernier, and Val Noel). Opposed were one carrier (Randy Mower) and three individuals (Karl Penner, Lt. Raymond Cook, and Robert Vice).

Those supporting the request believe the ongoing and diligent use of Farruggio's telematics system is superior to a manual "honor system" to record driver work day information because it automates data collection and is therefore more precise and less error prone than a paper RODS system. They further believe the use of the Geotab7 system for safety management through identification of driving events is better at reducing crashes than a system which depends on citations, public reports of reckless driving, or actual crashes as indicators of inappropriate driving behaviors. Farruggio's proposed terms indicate a strong commitment to safety, compliance, and transparency as indicated by its willingness to give FMCSA and our State enforcement partners access to its data to use as a training and monitoring tool. Lastly, the use of this technology will aid Farruggio to proactively identify safety and compliance issues and to address them before they become more serious. ELD technology is a better means to record and maintain driver HOS, as well as the standard FMCSA will soon require motor carriers to meet.

Commenters opposing the request stated that extending the work day for a local or regional driver but not an over-the-road driver does not improve safety, as these rules are in place for safety reasons, not for convenience. Others said that studies consistently point to driver fatigue as a major safety concern because it contributes to a significant percentage of fatal truck crashes in this country. The HOS rules are designed to prevent crashes and save lives. Motor carriers across the country face wait times at rail yards, warehouses, and other locations, and each has found ways to adjust its operations in anticipation of these expected operational delays. Granting Farruggio's request would establish a bad precedent and necessitate the extension of this recordkeeping relief to others. Therefore, granting this or any other exemption to the HOS rules only serves to diminish their efficacy.

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

### FMCSA Decision

FMCSA has evaluated Farruggio's application for exemption and the public comments and decided to grant the exemption. The Agency believes that Farruggio's overall safety performance as reflected in its Safety Management System (SMS) ratings and its adoption of several fatigue and crash counter-measures, will enable it 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)).

FMCSA believes that Farruggio's use of the Geotab 7 system raises the company's efforts to more than basic compliance. With the use of the electronic system, Farruggio's management is notified of safety-critical events as they occur so that they can take immediate corrective action.

This exemption would not extend the driving window beyond the basic limit of 14 hours. It substitutes a technological HOS recordkeeping system for a system using only time cards, and provides additional safety measures stated in the terms of the exemption. FMCSA has therefore decided to grant the exemption, subject to the terms and conditions outlined below.

### Terms and Conditions of the Exemption

#### *Terms of the Exemption*

- Farruggio's drivers who stay within the 100 air-mile radius, but may occasionally exceed the 12 hour limitation are exempt from having to complete a daily record of duty status

(RODS) at those times if, at all times, their hours of service data is being recorded by the Geotab system.

- This exemption does not permit driving past the 14-hour limit.
- The exemption is contingent upon Farruggio maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA.

- 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.

- Farruggio must have a “Satisfactory” safety rating with FMCSA, or be “unrated.” (Void if FMCSA discontinues this type of ratings.)

- Farruggio must not have an “alert” in the SMS “BASIC” for HOS, as displayed at <http://ai.fmcsa.dot.gov/sms/>.

- Drivers operating under the exemption must comply with all other applicable provisions of the FMCSRs, including those pertaining to Automatic Onboard Recording Devices and Electronic Logging Devices.

#### *Period of the Exemption*

This exemption from the requirements of 49 CFR 395.1(e)(1) is effective from August 10, 2016 through August 10, 2021.

#### *Extent of the Exemption*

This exemption is limited to the provisions of 49 CFR 395.1(e)(1) (Short haul operations; 100 air-mile radius driver). These drivers must comply with all other applicable provisions of the FMCSRs, including those pertaining to Automatic Onboard Recording Devices and Electronic Logging Devices.

#### *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*

Under this exemption, Farruggio 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:

- Identity of Exemption: “FARRUGGIO”
- Date of the accident,
- City or town, and State, in which the accident occurred, or closest to the accident scene,
- Driver’s name and license number,
- Co-driver’s name and license number,
- Vehicle number and State license number,
- Number of individuals suffering physical injury,
- Number of fatalities,
- The police-reported cause of the accident,
- Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- The total driving time and total on-duty time period prior to the accident.

Accident notifications shall be emailed to [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

#### *Termination*

FMCSA believes that Farruggio’s drivers 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 revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: July 29, 2016.

**T.F. Scott Darling, III,**  
*Administrator.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket No. FRA-2000-7257, Notice No. 82]**

#### **Railroad Safety Advisory Committee; Notice of Meeting**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation.

**ACTION:** Announcement of Railroad Safety Advisory Committee (RSAC) meeting.

**SUMMARY:** FRA announces the fifty-sixth meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks

from the FRA Administrator and the Associate Administrator for Railroad Safety and Chief Safety Officer. The Remote Control Locomotive, Track Standards, Hazardous Materials Issues, and Rail Integrity Working Groups, and Engineering Task Force will provide status reports. Informational presentations will be provided on the high-speed passenger rail equipment (Tier III) rulemaking; the System Safety Plan rulemaking; the status of Positive Train Control implementation; the Maintenance-of-Way, Drug and Alcohol, and Roadway Worker Protection final rules; and the potential certification of dispatchers and signal maintainers. This agenda is subject to change, including the adding more proposed tasks.

**DATES:** The RSAC meeting is scheduled to commence at 9:30 a.m. on Thursday, September 15, 2016, and will adjourn by 4:30 p.m.

**ADDRESSES:** The RSAC meeting will be held at the National Association of Home Builders, National Housing Center, located at 1201 15th Street NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Kenton Kilgore, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493-6286; or Robert Lauby, Associate Administrator for Railroad Safety and Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493-6474.

**SUPPLEMENTARY INFORMATION:** Under Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 59 voting representatives from 38 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the RSAC ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at <http://rsac.fra.dot.gov/>. Please refer to the notice published in the **Federal**