

Because future appropriations levels were not known when the HSPPS final rule was published in September 2016, the final rule provided authority for the Secretary to lower the increased Head Start center-based service duration requirements based on an assessment of available funding closer to the requirement's effective date in order to prevent thousands of disadvantaged children not having access to Head Start.

#### Authority

Section 1302.21(c)(3)(i) of the HSPPS final rule allows the Secretary to lower the required percentage of funded enrollment slots for which programs must provide 1,020 annual hours of planned class operations from the 50 percent required in § 1302.21(c)(2)(iii), on or before February 1, 2018, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment.

#### Funding Assessment

The Secretary has made an assessment that Head Start appropriations are not sufficient to allow the requirement at § 1302.21(c)(2)(iii), for 50 percent of each program's Head Start center-based slots to operate for 1,020 annual hours, to go into effect without resulting in a substantial reduction in funded enrollment.

Prior to publication of the HSPPS final rule, Congress appropriated \$294 million in fiscal year (FY) 2016 to support an increase in hours of program operations across Head Start and Early Head Start. At the time of the FY 2016 funding to support and increased duration, the regulatory requirements were not in effect. Programs that wished to voluntarily increase hours of program operations to 1,020 annual hours for up to 40 percent of their Head Start center-based slots or to 1,380 annual hours for their Early Head Start center-based slots were eligible to submit an application by June 2016 to receive additional funds. Some eligible programs chose not to apply for additional funding. There are programs that currently operate none of their Head Start center-based funded enrollment for 1,020 annual hours. There are also programs that currently operate all of their Head Start center-based funded enrollment for 1,020 hours or longer. These requirements are minimums, and programs could choose to operate some slots longer each day and/or for more days per year.

In the HSPPS final rule, we estimated the cost for programs to implement the

50 percent service duration requirement to be \$535 million. Since the publication of the final rule in September 2016, when Head Start programs were notified of the future requirements to increase center-based service duration to 1,020 annual hours, no additional funds have been appropriated to support increases in service duration. While we requested funds to support additional increases in service duration in FY 2017, Congress did not further increase Head Start appropriations for this purpose.

HHS has conducted an assessment of available funding and the current percentages of slots individual programs currently operate at 1,020 annual hours. Based on this assessment, we estimate that without additional funding, implementation of the requirement at § 1302.21(c)(2)(iii) for each program to operate 50 percent of its Head Start center-based slots for 1,020 annual hours would result in a loss of approximately 41,000 Head Start slots, which represents roughly five percent of existing Head Start slots. The FY 2018 President's Budget did not request an increase in appropriations to support increases in service duration. We do not expect sufficient funding to become available in time for grantees to meet the current HSPPS standard.

#### Conclusion

Under § 1302.21(c)(3)(i), the Secretary has made a determination that there is not sufficient funding available to mitigate a substantial reduction in funded enrollment resulting from the requirement described in § 1302.21(c)(2)(iii), and hereby waives the requirement that 50 percent of a program's Head Start center-based program's funded enrollment that must operate for 1,020 annual hours of planned class operations by August 1, 2019, effectively lowering the percentage to 0. This determination is effective immediately. Because the HSPPS final rule governs the Secretary's discretion in this matter, the public comment process is not required.

The service duration requirements for Head Start center-based programs described in § 1302.21(c)(2)(i) and (ii) remain in effect. Under these requirements, a Head Start center-based program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day. These requirements are minimums, and programs could choose to operate some slots longer each day and/or for more days per year. The Head

Start Act allows programs to request to convert part-day slots to full-day or full-working-day slots. This determination by the Secretary provides local Head Start programs maximum flexibility to determine program schedules that best meet the demonstrated needs in their communities, and ensures low-income children will not lose access to Head Start's comprehensive services and a preschool experience before entering Kindergarten because of a federal requirement. Additionally, the requirement under § 1302.21(c)(1)(i) that Early Head Start programs provide 1,380 annual hours of planned class operations for all center-based enrollment by August 1, 2018 also remains in effect.

The Secretary's determination under § 1302.21(c)(3)(i) does not affect the Secretary's authority to make a separate determination under § 1302.21(c)(3)(ii) on or before February 1, 2020, to maintain or lower the service duration requirement described in § 1302.21(c)(2)(iv) based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment resulting from that requirement.

In addition, the Secretary's determination under § 1302.21(c)(3)(i) does not change or affect current processes that allow grantees to request to serve children for longer service duration within existing funding levels as part of the grantee's annual service and enrollment negotiations with the Office of Head Start.

Dated: January 16, 2018.

**Eric D. Hargan,**

*Acting Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 395

#### Hours of Service of Drivers; Electronic Logging Devices; Limited 90-Day Waiver for Old Dominion and Other Motor Carriers Experiencing Problems Integrating PeopleNet ELD System Updates Into Their Fleet Management Systems

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

**ACTION:** Grant of waiver.

**SUMMARY:** FMCSA grants a limited 90-day waiver from the Federal hours-of-service (HOS) regulations pertaining to electronic logging devices (ELDs) for Old Dominion Freight Lines, Inc. (Old Dominion) and other motor carriers in similar situations due to issues concerning the integration of PeopleNet's ELD software into fleet management systems. The Agency has initiated this action in response to a waiver request from Old Dominion.

**DATES:** This waiver is effective December 18, 2017, and expires on March 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). Phone: (614) 942-6477.

**SUPPLEMENTARY INFORMATION:** Old Dominion has asked for relief from the grandfather provision of the ELD regulations, allowing them to add vehicles to their fleet using software that is not fully compliant with the ELD rule, provided the conditions specified in the waiver are met. FMCSA has determined that granting this waiver to Old Dominion, as well as other similarly situated carriers, is in the public interest and will likely achieve a level of safety that is equivalent to the level that would be achieved absent the waiver, based on the terms and conditions imposed in this document.

### Legal Basis

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. 31136, to a person(s) seeking regulatory relief. (49 U.S.C. 31136(e), 31315(a)). The Secretary must make a determination that the waiver is in the public interest and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may be granted only for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR

1.87(e) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapter I and III, relating to commercial motor vehicle programs and safety regulations.

### Background

Old Dominion began equipping its commercial motor vehicles with PeopleNet AOBDRs in 2010, and by 2011 its entire fleet was equipped with devices which meet the requirements of 49 CFR 395.15. Data from the AOBDRs is transferred directly into the company's fleet management and safety systems, enabling its dispatchers to know precisely where every driver is at any given time and how many hours he/she has available under the Federal hours-of-service rules. This functionality is not required by the AOBDR rules under 49 CFR 395.15 or the ELD requirements under Subpart B of 49 CFR part 395.

Old Dominion explained that PeopleNet's AOBDR and ELD hardware currently installed in its vehicles, and the systems that will be installed in the near future, will satisfy the ELD mandate after the company implements the transition to PeopleNet's December 15, 2017, software release. However, the new PeopleNet release does not include the necessary means to integrate into Old Dominion's fleet management and safety software.

Currently, the PeopleNet AOBDR software allows carriers to configure certain sessions. If the settings were not adjustable, the PeopleNet AOBDR would be similar to, but not identical to the FMCSA's ELD technical specifications. Although Old Dominion has configured its settings in the PeopleNet AOBDRs it uses, certain AOBDR software changes must be made by PeopleNet, including:

- Eliminating the "skip" feature;
- Limiting the auto-duty driving status change threshold to 5 miles; and
- Limiting geo-fencing of yards to a 0.5-mile radius.

When these changes are fully implemented, and the operational controls are in place, the PeopleNet system used by Old Dominion will provide an equivalent level of safety while the integration of the ELD software is completed.

### Old Dominion's Request

Old Dominion requested a 90-day waiver to permit the company to install and use ELD hours-of-service recording devices (*i.e.*, hardware) running PeopleNet's automatic on-board recording device (AOBRD) software that meets the requirements of 49 CFR 395.15, rather than ELD software that

meets the requirements of subpart B to part 395, for any truck added to its fleet on or after December 18, 2017, until the company's fleet management software can be fully integrated with PeopleNet's ELD software. The integration of the hours-of-service data with the fleet management and safety systems will enable the company to achieve a high level of safety oversight of its drivers.

### FMCSA Determination

Based on the information presented in Old Dominion's request, FMCSA believes it is appropriate to grant a limited 90-day waiver from 49 CFR 395.8(a)(1)(i) and subpart B of 49 CFR part 395, Electronic Logging Devices. The Agency has determined, as required by 49 U.S.C. 31315(a) and the implementing regulations under 49 CFR part 381, that the waiver is in the public interest and that the waiver is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.

### Public Interest

FMCSA believes the granting of the waiver is in the public interest, given the scope of Old Dominion's and other companies' operations and their role in delivering cargo that ultimately benefit consumers. In the case of Old Dominion, the company has 228 service centers located throughout the Nation and operates a fleet of more than 8,500 power units. The company employs more than 10,000 company drivers. It is in the public interest to avoid disruptions to Old Dominion and other carriers' operations and, subsequently, a disruption to the movement of a significant amount of freight.

### Safety Equivalency

FMCSA has determined that the electronic system that Old Dominion will use to monitor its drivers' hours of service during the period of the waiver will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. The company will not only electronically capture the duty status information for all its drivers, it will also monitor the real-time status of its drivers' compliance with the hours-of-service regulations so that supervisors and dispatchers may intervene immediately if a driver is about to run out of driving or on-duty time.

Also, with the AOBDR settings outlined in the waiver request, which exceed the minimum required by 49 CFR 395.15, and the commitment by PeopleNet to make associated software

changes in its ELD software to disable the “skip feature,” limit the auto-duty driving status change threshold to 5 miles or less, limit the geofencing of yard moves to a 0.5-mile radius or less, and maintaining the Auto-Duty Status Change functions outlined in its petition, we believe the requisite level of safety will be provided during the waiver period. In addition, Old Dominion will continue to compel its short haul drivers that are not required to maintain records of duty status to use the existing AOBDR platform.

#### *Unique Circumstances*

Consistent with the statutory requirements for waivers, this relief is for a period not in excess of 3 months and is limited in scope and circumstances. FMCSA finds that the challenges Old Dominion described in achieving compliance with the ELD requirements while integrating the PeopleNet ELD software into existing fleet management systems is a unique situation for Old Dominion and other carriers facing similar challenges integrating PeopleNet software into their fleet management systems.

For the reasons cited above, FMCSA grants Old Dominion, and other motor carriers facing similar challenges integrating PeopleNet ELD software into fleet management systems, a limited three-month waiver from the ELD requirements, subject to the terms and conditions provided below.

#### **Terms and Conditions of the Waiver**

This waiver covers Old Dominion Inc. and other motor carriers experiencing similar challenges resulting from PeopleNet’s software for the period beginning at 12:01 a.m. (ET) on

December 18, 2017, continuing through 11:59 p.m. on March 18, 2018.

#### **Regulatory Provisions Waived**

This waiver is limited strictly to 49 CFR 395.8(a)(1)(i) and subpart B of 49 CFR part 395, Electronic Logging Devices. Old Dominion and other motor carriers with similar situations related to PeopleNet’s recent software release, must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 350–399).

#### **Restrictions**

Each motor carrier operating under this waiver must ensure that drivers required to maintain a record of duty status (ROD) must do so with a device that meets the requirements of 49 CFR 395.15 concerning automatic on-board recording devices (AOBRDs):

1. During the waiver period, vehicles may be added to the fleet *only if* the vehicle is equipped with ELD hardware, capable of running the PeopleNet ELD Software.
2. The AOBRD must transfer data directly into the motor carrier’s fleet management and safety systems, allowing its dispatchers to know precisely where the drivers are at any given time and how many hours he/she has available under the Federal hours-of-service rules.
3. The motor carrier will use the AOBRD settings similar to those outlined in Old Dominion’s waiver request.
4. PeopleNet system must be modified to disable or adjust the settings as outlined below.
  - a. Eliminate the “skip feature”;

- b. Limit the auto-duty driving status change threshold to 5 miles or less; and
- c. Limit the geo-fencing yard time limit to a 0.5-mile radius or less.

If it is determined that this software has not been changed, this waiver does not apply.

#### **Notification to FMCSA of Accidents**

Each motor carrier must notify FMCSA within 5 business days of an accident (as defined in 49 CFR 390.5), involving any commercial motor vehicles operating under the terms of this waiver. The notification must include the following information:

- 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,
- Vehicle number and State license number,
- Number of individuals suffering physical injury,
- Number of fatalities,
- The police-reported cause of the accident, and
- Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations.

Notification shall be by email to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

#### **Preemption of State Requirements**

Consistent with 49 U.S.C. 31315(d), this waiver preempts inconsistent State or local requirements applicable to interstate commerce.

Issued on: January 11, 2018.

**Cathy F. Gautreaux,**  
*Deputy Administrator.*

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