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**Tammy Lowery,**  
Clearance Clerk.

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## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36440]

**OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC—Acquisition of Control Exemption—Cimarron Valley Railroad, L.C.; Southwestern Railroad, Inc.; Texas & Eastern Railroad, LLC; Washington Eastern Railroad, LLC; and Wyoming and Colorado Railroad, Inc.**

OPSEU Pension Plan Trust Fund (OP Trust), Jaguar Transport Holdings, LLC (JTH), and Jaguar Rail Holdings, LLC (JRH) (collectively, Jaguar), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of Cimarron Valley Railroad, L.C. (CVRR); Southwestern Railroad, Inc. (SWRR); Texas & Eastern Railroad, LLC (TERR); Washington Eastern Railroad, LLC (WERR); and Wyoming and Colorado Railroad, Inc. (WYCO) (collectively, Western Railroads)<sup>1</sup> each a Class III rail carrier.

The verified notice states that OP Trust invests and manages one of Canada's largest pension funds and indirectly controls JRH and JTH, which in turn controls West Memphis Base Railroad, L.L.C. (WMBR), a Class III rail carrier located in Arkansas. According to the verified notice, pursuant to an as-yet unexecuted Stock and Membership Interest Purchase Agreement among Snowy Range Cattle Company, Inc., and David L. Durbano on behalf of the sellers and JRH as the buyer, JRH will acquire direct control of SWRR, TERR, and WYCO and, through JRH's acquisition of control of WYCO, indirect control of CVRR and WERR.<sup>2</sup>

<sup>1</sup> Jaguar states that CVRR is located in Kansas, Colorado, and Oklahoma; SWRR is located in New Mexico, Texas, and Oklahoma; TERR is located in Texas; WERR is located in Washington; and WYCO is located in Oregon. On October 6, 2020, Jaguar supplemented its verified notice of exemption with a map depicting SWRR's Shattuck Subdivision. According to Jaguar, it learned that SWRR sought and obtained abandonment authority for the Shattuck Subdivision but did not give timely notice of consummation under the Board's regulations, although that trackage has been removed and the corridor sold. (See Verified Notice of Exemption 4 n.2.) Accordingly, Jaguar acknowledges that SWRR maintains a common carrier obligation over the Shattuck Subdivision. *Id.*

<sup>2</sup> Concurrently with its verified notice, Jaguar filed a motion for protective order under 49 CFR

The earliest the transaction may be consummated is October 30, 2020, the effective date of the exemption (30 days after the verified notice was filed).<sup>3</sup>

The verified notice states that: (1) WMBR would not connect with any of the Western Railroads, and none of the Western Railroads connect with each other; (2) the subject acquisition of control is not intended to connect the Western Railroads to one another or with WMBR; and (3) the proposed transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Jaguar states that the proposed transaction will promote Jaguar's investment objectives and sustain the Western Railroads' efficiency, financial strength, and ability to meet the needs of shippers.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 23, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36440, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jaguar's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to Jaguar, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic review under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

1104.14(b), which will be addressed in a separate decision.

<sup>3</sup> Jaguar states that it intends to consummate the proposed transaction on November 1, 2020.

Decided: October 13, 2020.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Kenyatta Clay,**  
Clearance Clerk.

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## DEPARTMENT OF TRANSPORTATION

**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2020-0097]

**Hours of Service (HOS) of Drivers: Small Business in Transportation Coalition (SBTC) Application for Exemption From ELD and Certain HOS Requirements**

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

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

**SUMMARY:** FMCSA announces its decision to deny the Small Business in Transportation Coalition's (SBTC) request for an exemption from the electronic logging device (ELD) requirements for commercial motor vehicle (CMV) drivers traveling with domestic animals in interstate commerce. Additionally, FMCSA denies SBTC's request for an exemption from the hours-of-service (HOS) requirements to allow these drivers to drive up to 13 hours during a work shift and to operate within a 16-hour window within which all driving tasks would be completed. FMCSA has analyzed the exemption application and public comments and has determined that it cannot ensure that granting the requested exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemptions.

**DATES:** FMCSA denies this application for exemption effective October 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ms. La Tonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-9220 Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

### SUPPLEMENTARY INFORMATION:

#### I. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of 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 safety analyses and public comments submitted 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 reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

When the Agency denies a request for an exemption, the applicant may be allowed to resubmit the application if the applicant can reasonably address the basis for denial (49 U.S.C. 31315(b)(3)).

## II. Background

Generally, individuals may not drive a property-carrying CMV more than 11 hours during a work shift, following 10 consecutive hours off duty. Under the current regulations all driving must be completed within 14 hours of the beginning of the work shift, with certain alternatives for drivers who use sleeper berths. Most drivers who are required to prepare and maintain records of duty status (RODS) to document their HOS are subject to the Electronic Logging Devices (ELD) Rule and must use an ELD.

## III. Request for Exemptions

SBTC requests that drivers of property-carrying CMVs, when accompanied by any domestic animal, be exempt from the requirement to use an ELD for their RODS and be allowed to prepare and maintain paper RODS as an alternative.

SBTC also requests that drivers of property-carrying vehicles accompanied by any domestic animal be granted an exemption from 49 CFR 395.3(a)(2) and (3)(i), allowing them to drive up to 13 hours during a work shift, following 10 consecutive hours off-duty. The requested exemption would allow them

a 16-hour driving window within which to use the 13 hours of driving time.

## IV. Methodology To Ensure Safety

To ensure a level of safety that is equivalent to or greater than the level that would be achieved absent such exemptions, SBTC offers the use of paper RODS in lieu of ELDs. SBTC asserts that paper logs provide the level of safety already assured by the pre-existing HOS rule as opposed to using an ELD. SBTC compares the two-hour extension of driving time to the two driving hours allotted for adverse driving conditions. Lastly, SBTC believes its exemption request is no different than the other ELD exemptions FMCSA has granted.

## V. Public Comments

On March 11, 2020, FMCSA published notice of this application and requested public comments (85 FR 14289). The Agency received more than 165 comments, approximately 130 of which favored the exemption. Mr. Jeffrey Anderson said, "I agree with being exempt because I also have a pet onboard and it should be fair for [all]." Ms. Deborah Carly wrote: "I am in favor of this exemption . . . Pets are family. There needs to be consideration for their needs; and currently there is nothing. Pets are, sometimes, the only family drivers have. There needs to be rules in place to make sure their needs are met." Many of the commenters simply wrote, "I support this exemption." Some comments focused more on the HOS rules than the exemption application; a few comments were not germane.

A total of 35 commenters opposed the exemption application, including the American Trucking Associations (ATA), the Commercial Motor Vehicle Safety Alliance (CVSA), and the Truckload Carriers Association (TCA). Ms. Suzanne Pehl wrote the following:

Drivers traveling with pets should [not] be exempt from ELDs or any other regulation. If such an exemption is allowed, drivers will get a pet just to be exempt from regulations. That would create numerous problems for pets as well as safety problems for other drivers on the road. If you keep creating exemptions, there will be no regulations.

ATA wrote the following:

SBTC's application asks FMCSA to extend driver hours-of-service for up to 13 hours during the duty day following ten consecutive hours off duty, and exempt drivers traveling with domestic animals from the ELD mandate. FMCSA approval of this application would, in essence, apply an overbroad category of exempted individuals to an insufficiently defined class of exemption. Despite some research that shows how domestic animals can improve driver feelings of companionship, and, anecdotally,

safety, SBTC's application does not support the agency's obligation of ensuring an equivalent or greater level of safety than exists under the current regulation.

CVSA wrote the following:

In their application, SBTC requests that drivers traveling with pets be exempt from the electronic logging device (ELD) requirement and that they be allowed to extend the 14-hour period to 16 hours and the maximum allowed driving time from 11 hours to 13 hours. If granted, the requested additional driving and on-duty time will expose drivers to a greater risk of fatigue, putting themselves and the public at risk and the ELD exemption would make adherence to the hours-of-service rules much more difficult to verify. The hours-of-service framework is put in place to prevent this type of excessive driving that causes fatigue.

TCA wrote as follows:

We appreciate the immense value these beloved 'family members' bring to those drivers, and we see individual carriers' pet policies as a significant way for them to differentiate themselves and recruit talent which may find that benefit attractive. However, while we are supportive of the driver's right to have a pet in the truck, TCA opposes both exemptions requested by SBTC.

## V. Safety Analysis

When FMCSA published the rule mandating ELDs, it relied upon research indicating that the rule improves CMV safety by improving compliance with the HOS rules. The rule also reduces the overall paperwork burden for both motor carriers and drivers. When the FMCSA established the HOS rules, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive to ensure that drivers stay awake and alert while driving and to help reduce the possibility of driver fatigue. The Agency reaffirmed the "core" HOS provisions in the HOS final rule published on June 1, 2020 [85 FR 33396]. The revisions adopted in that rule do not allow truck drivers any additional driving time beyond the current 11-hour limit, and subject to a limited exception concerning adverse driving conditions, the 14-hour duty day. None of the final rule provisions increases the maximum allowable driving time, as the available data does not support any additional driving time. Based on the current scientific information and its own experience with HOS regulations, the Agency concluded that the changes made by the final rule are safety- and health-neutral.

## VI. FMCSA Decision

FMCSA denies SBTC's application because it does not meet the regulatory standards for an exemption. SBTC failed

to identify an individual or motor carrier that would be responsible for the use or operation of CMVs under the exemptions, as required by 49 CFR 381.310(b)(2). SBTC failed to provide an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemptions, as required by section 381.310(c)(3). Lastly, SBTC proposed no countermeasures to ensure an equivalent or greater level of safety than would be achieved under compliance with the current rules, as required by section 381.310(c)(5).

**James W. Deck,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0150]

#### Owner-Operator Independent Drivers Association, Small Business in Transportation Coalition Petitions for Rulemaking; Transparency in Property Broker Transactions

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

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Federal Motor Carrier Safety Administration extends the comment period for its August 19, 2020, notice requesting comments on the petitions by the Owner-Operator Independent Drivers Association (OOIDA) and the Small Business in Transportation Coalition (SBTC) for rulemaking to amend certain requirements for property brokers. The Agency believes it is appropriate to extend the October 19, 2020, deadline for public comments to provide interested parties additional time to submit their responses to the docket. Therefore, the Agency extends the deadline for the submission of comments until November 18, 2020.

**DATES:** Comments must be submitted by November 18, 2020.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2020-0150 by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). See the *Public Participation and Request for Comments* section below for further information.

- *Mail:* Docket Operations, 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:* Docket Operations, 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.

- *Fax:* (202) 493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Docket Operations, 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., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

**FOR FURTHER INFORMATION CONTACT:** Ms. La Tonya Mimms, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-4001; [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation and Request for Comments**

###### *A. Submitting Comments*

If you submit a comment, please include the docket number FMCSA-2020-150, indicate the specific section of the notice to which each comment applies, and provide a reason for each suggestion or recommendation. 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>, put the docket number, FMCSA-2020-0150, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type

your comment into the text box on 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. Extension of the comment period will ensure a full opportunity for public participation.

#### Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket for this notice. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Any comments FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this notice.

###### *B. Viewing Documents and Comments*

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2020-0150 in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m.