

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>8</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2023-01 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2023-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2023-01 and should be submitted on or before February 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0139]

#### Hours of Service of Drivers: Application for Exemption; Ronnie Brown III

**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 application from Ronnie Brown III requesting an exemption from five provisions of the Federal hours of service (HOS) regulations and the electronic logging device (ELD) regulations. FMCSA analyzed the application and public comments and determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722 or [richard.clemente@dot.gov](mailto:richard.clemente@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

###### Viewing Comments and Documents

To view comments, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number "FMCSA-2022-0139" in the keyword box, and click "Search." Next,

sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "View Related Comments."

To view documents mentioned in this notice as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number "FMCSA-2022-0139" in the keyword box, click "Search," and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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 Dockets Operations.

##### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain 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 (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

###### Current Regulatory Requirements

To reduce the possibility of driver fatigue, FMCSA's HOS regulations in 49 CFR part 395 place limits on the amount of time drivers of commercial motor vehicles (CMVs) may drive. The HOS regulations in 49 CFR 395.3(a)(1) prohibit an individual from driving again after 11 hours driving or 14 hours on duty until they have been off duty for a minimum of 10 consecutive hours, or

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

the equivalent of at least 10 consecutive hours off duty. Under 49 CFR 395.3(a)(2)—commonly referred to as the 14-hour “driving window”—a driver has 14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours. Section 395.3(b)(1) prohibits drivers for a motor carrier that does not operate CMVs every day of the week from driving a CMV after being on duty for 60 hours during any 7 consecutive days, and section 395.3(b)(2) prohibits drivers for a motor carrier that operates CMVs every day of the week from driving a CMV after being on duty for 70 hours in any 8 consecutive days. The ELD regulations in 49 CFR part 395, subpart B, specify minimum performance and design standards and requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status.

#### *Applicant's Request*

Ronnie Brown III requests a five-year exemption from 49 CFR 395.3(a)(1), section 395.3(a)(3)(i), section 395.3(a)(2), section 395.3(b)(1) and (2), and the ELD regulations in 49 CFR part 395 subpart B. The applicant is a CMV operator who drives for Gray Transportation in Waterloo, Iowa, and has been driving for 15 years. The requested exemption is solely for Mr. Brown. The applicant states that the HOS regulations create “safety concerns” because they do not always coincide with his natural sleep patterns and are a “one size fits all set of rules.” He further adds that he “can safely drive . . . no matter the amount of sleep [he] get[s] or the length of drive time.”

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

The applicant believes that his level of safety under the exemption, if granted, would be better than he could achieve by complying with the HOS and ELD regulations because he will receive the proper rest needed when he needs it. He states that he can safely drive and knows when he is tired and does not push beyond his limits of safety, regardless of the amount of sleep he gets or the length of drive time. He states that he always maintains a safe distance from other vehicles, has an excellent driving record, and has never been involved in a preventable crash.

#### **V. Public Comments**

On August 19, 2022, FMCSA published Mr. Brown's application and requested public comment [87 FR 51189]. The Agency received 1,223 comments, nearly all filed by individual drivers and owner-operators. Of that

total, 587 comments supported the request, 119 opposed it, and another 515 commenters offered no position either for or against the request, but instead submitted general comments on the HOS and ELD regulations. Joint comments in opposition to the exemption were filed by the Truck Safety Coalition, Citizens for Reliable and Safe Highways (CRASH), and Parents Against Tired Truckers (PATT). The AFL-CIO/Transportation Trades Division (TTD) also opposed the exemption request. The Truck Safety Coalition stated: “[we] strongly request this inadequately justified exemption to HOS and ELD requirements be denied in full. Large truck crash fatalities continue to increase at an alarming pace, and it is incumbent on the Department of Transportation and FMCSA to take every measure possible to reverse this trend and affirm life safety as its top priority by denying the request.” The AFL-CIO/TTD urged FMCSA to reject the request, stating, “While we are sensitive to the needs of drivers, it is simply irresponsible to address concerns with HOS and ELD regulations by wholesale exempting particular individuals from these important safeguards.”

Other general “themes” from those who opposed the request included that: (1) there is no data provided for an equivalent level of safety; (2) HOS rules do save lives and are there for everyone's safety; (3) this request cannot be granted for individuals; (4) if the Agency granted this exemption for one individual, then FMCSA must grant it for everyone; and (5) drivers can utilize the provision in 49 CFR 392.3 if they feel ill or fatigued. Many of the commenters said that if the exemption were granted, they and numerous others would apply for a similar exemption. Others provided general comments requesting changes to many facets of the HOS and ELD regulations.

#### **VI. FMCSA Safety Analysis and Decision**

FMCSA evaluated Mr. Brown's application and the public comments and denies the exemption request. Mr. Brown failed to establish that he would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. The Agency established and enforces the HOS regulations to keep fatigued drivers off the public roadways. Research studies demonstrate that long work hours reduce sleep and harm driver health and that crash risk increases with work hours. The HOS regulations impose limits on when and how long an individual may drive to ensure that

drivers stay awake and alert and to reduce the possibility of cumulative fatigue. The Agency agrees with commenters that if it exempts one individual from the HOS regulations, it could open the door for a huge number of similar exemption requests. Such a result would be inconsistent with a primary goal of the HOS regulations.

For the above reasons, FMCSA denies Ronnie Brown's exemption application.

**Robin Hutcherson,**  
*Administrator.*

[FR Doc. 2023-00975 Filed 1-18-23; 8:45 am]

**BILLING CODE 4910-EX-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

[Docket No. MARAD 2023-0010]

#### **Request for Comments on the Approval of a Previously Approved Information Collection: Requirements for Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length to Obtain a Fishery Endorsement**

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** 60-Day Federal Register notice.

**SUMMARY:** The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collection OMB 2133-0530 (Requirements for Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length to Obtain a Fishery Endorsement) is necessary for MARAD to determine if a particular vessel is owned and controlled by United States citizens and is eligible to receive a fishery endorsement to its documentation. A minor change request to include privacy act statements for the collection of personally identifiable information will be added to the affidavits for this collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Comments must be submitted on or before March 20, 2023.

**ADDRESSES:** You may submit comments identified by Docket No. MARAD-2019-0156 through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search using the above DOT docket number and follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.