

the parameters that Arca and BZX use to derive and expand their respective MWCB auction collars? Are there any specific data, statistics, or studies to support the Exchange's belief that (1) the wider parameters proposed for MWCB Auction Collars are set at appropriate levels that would allow the Exchange to re-open trading in securities more quickly while still reducing the potential to re-open at a price that is significantly away from the last traded price of the security and (2) the wider parameters are appropriate because the Exchange has traditionally been a listing venue for equity stocks as contrasted with Arca and BZX which have traditionally listed more ETFs, which can mute the effect of price volatility?<sup>18</sup>

3. Is it appropriate for the Exchange to not adjust the MWCB Auction Collar prices past 50% of the Auction Reference Price for any security during any Extended Display Only Period? Are there any specific data, statistics, or studies to support the Exchange's belief that (1) without this limitation, there is potential for extreme volatility resulting in trades at prices far away from a security's fundamental value, ultimately harming investors that are party to the trade and (2) it may be more appropriate to continue adjusting price collars in the context of LULD where trading is halted due to a period of extraordinary volatility in a single security because there may be instances of a discrete event that ultimately impacts the value of the individual security and that an MWCB Halt will be triggered during a period of significant volatility across markets that may not correlate to the fundamental value of a single security?<sup>19</sup>

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://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-NASDAQ-2019-057 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-NASDAQ-2019-057. 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 (<http://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 10:00 a.m. and 3:00 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-NASDAQ-2019-057 and should be submitted on or before November 19, 2019. Rebuttal comments should be submitted by December 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0239]

#### Hours of Service of Drivers: Application for Exemption; Small Business in Transportation Coalition

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

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Small Business in Transportation Coalition (SBTC) seeks reconsideration of its application for exemption from the

electronic logging device (ELD) rule that was denied by the Agency on July 17, 2019. SBTC has resubmitted its application for exemption from the ELD requirements for all motor carriers with fewer than 50 employees, including, but not limited to, one-person private and for-hire owner-operators of commercial motor vehicles used in interstate commerce. SBTC believes that the exemption would not have any adverse impacts on operational safety as motor carriers and drivers would remain subject to the hours-of-service (HOS) regulations as well as the requirements to maintain paper records of duty status (RODs). FMCSA requests public comment on SBTC's application for reconsideration.

**DATES:** Comments must be received on or before November 29, 2019.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2019-0239 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 Management Facility, 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:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

• 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 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. The on-line FDMS is available 24 hours each day, 365 days each year.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records

<sup>18</sup> See Notice, *supra* note 3, at 35902.

<sup>19</sup> See *id.* at 35903.

<sup>20</sup> 17 CFR 200.30-3(a)(57).

notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlle Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4325; 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. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA-2019-0239), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2019-0239" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in 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 and may grant or not grant this application based on your comments.

**II. 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)).

**III. Background**

On December 16, 2015, FMCSA published the Electronic Logging Devices and Hours of Service Supporting Documents final rule (80 FR 78292). The ELD rule applies to most motor carriers and drivers who are required to keep RODS. The compliance date for the ELD requirement was December 18, 2017.

On June 5, 2018, FMCSA published SBTC's application for exemption and requested public comment (83 FR 26140). SBTC reports it is a non-profit trade organization with more than 8,000 members. SBTC states that it "represents, promotes, and protects the interest of small businesses in the transportation industry. Through the exemption application, SBTC sought relief from the ELD requirements for small private, common and contract motor carriers with fewer than 50 employees." SBTC argued:

"[T]he ELD rule is not a "safety regulation" per se as the FMCSA has concluded. Rather it is a mechanism intended to enforce a safety regulation by regulating the manner in which a driver records and communicates his compliance. That is, it is merely a tool to determine compliance with an existing rule that regulates over-the-road drivers' driving and on duty time, namely the actual safety regulation: the [hours-of-service] regulations codified at 49 CFR 395.3 and 395.5. However, the ELD rule is not a safety regulation itself. Therefore, it is our position that this rule does *not* itself impact safety, and that the level of safety will not change based on whether or not our exemption application is approved. That would require a change to the [hours-of-service rules]."

On July 9, 2018, FMCSA extended the public comment period at the request of the SBTC (83 FR 31836). The Agency received more than 1,900 comments to the docket [Docket No. FMCSA-2018-0180]. Most of the comments favored granting the exemption. On July 17, 2019, the Agency published notice of its decision to deny SBTC's application for exemption (84 FR 34250) and listed the following reasons for the denial:

- Failing to provide the name of the individual or motor carrier that would be responsible for the use or operation of CMVs under the exemption [49 CFR 381.310(b)(2)];
- Failing to provide an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption [§ 381.310(c)(3)]; and
- Failing to explain how an equivalent level of safety would be achieved [§ 381.310(c)(5)].

**IV. Request for Reconsideration of Agency Decision**

Through this application SBTC is requesting FMCSA to reconsider its denial of the exemption from the ELD rule. SBTC provided responses to each of FMCSA's reasons for denying its application. According to SBTC the reason for not providing an estimate of the number of drivers and CMVs that would be operating under the exemption is that SBTC is a trade group, not a single carrier. SBTC argues that a trade group would not know the number of employees eligible for the exemption. SBTC deferred that question to the Agency because FMCSA is the custodian of MCS-150 industry data. SBTC believes that it has identified the percentage of carriers that would be affected by the exemption but does not know a way to extrapolate the number of drivers from the estimated 3.5 million truck drivers in the U.S. without deferring to FMCSA for that information.

A copy of SBTC's application for reconsideration of the Agency's denial is available for review in the docket for this notice.

**V. Equivalent Level of Safety**

To ensure an equivalent level of safety, SBTC suggests a return to paper logs. According to SBTC, "Paper logs were deemed sufficient to ensure adequate levels of safety for generations, more than 80 years. And the FMCSA has already issued numerous exemptions that require carriers to revert to tracking their hours of service using paper logs in lieu of ELDs . . ." SBTC supports its argument with the belief that ELDs have caused reckless

speeding and pose national security threats. SBTC urges FMCSA to look carefully at the unintended consequences of the ELD rule when deciding whether or not to grant the exemption. SBTC also suggests that FMCSA temporarily grant the exemption “if for no other reason than to press the pause button while [FMCSA] studies these unintended consequences and their adverse effects on safety. We contend this would indeed achieve a greater level of overall safety than the current status quo.”

Issued on: October 23, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019-23561 Filed 10-28-19; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0102]

#### Agency Information Collection Activities; Renewal of a Currently-Approved Collection: Driver Qualification Files

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to revise and renew an ICR titled “Driver Qualification Files,” OMB Control Number 2126-0004. The ICR estimates the burden commercial motor vehicle (CMV) drivers and motor carriers incur to comply with the reporting and recordkeeping tasks required for motor carriers to maintain driver qualification (DQ) files. The Agency’s regulations pertaining to maintaining DQ files are unchanged and impose no increased information collection (IC) burden on individual drivers and motor carriers. However, the Agency increases its estimate of the total IC burden of these regulations primarily because both the number of CMV drivers and the frequency of their hiring have increased since the Agency’s 2016 estimate of this burden.

**DATES:** Please send your comments by November 29, 2019. OMB must receive your comments by this date in order to act on the ICR.

All comments should reference Federal Docket Management System Docket Number FMCSA-2019-0102. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov), faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlle Robinson, FMCSA Driver and Carrier Operations Division Department of Transportation, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202-366-4325. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Driver Qualification Files.

*OMB Control Number:* 2126-0004.

*Type of Request:* Renewal and revision of a currently-approved information collection.

*Respondents:* CMV motor carriers and drivers.

*Estimated Number of Respondents:* 6.89 million (6.35 million drivers + 0.54 million motor carriers).

*Expiration Date:* January 31, 2020.

*Frequency of Response:* The information on some DQ documents is only provided one time, such as that furnished at the time the individual applies for employment as a driver. Other information must be obtained by the motor carrier within 30 days of the date the driver begins to drive a CMV for the employer. Other information, such as the driver’s motor vehicle record, is only updated once a year.

*Estimated Total Annual Burden:* 12.26 million hours.

#### Background

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2834 (October 30, 1984)) requires the Secretary of Transportation to issue regulations pertaining to commercial motor vehicle (CMV) safety. Part 391 of volume 49 of the Code of Federal Regulations (CFR) contains the

minimum qualifications of drivers of CMVs in interstate commerce.

Motor carriers may not require or permit an unqualified driver to operate a CMV. The foremost proof of driver qualification is the information that part 391 requires be collected and maintained in the driver qualification file (DQ file) (49 CFR 391.51). Motor carriers must obtain this information from sources specified in the regulations, such as the driver, previous employers of the driver, and officials of the State of driver licensure. Motor carriers are not required to forward DQ information to FMCSA, but must maintain the information in a DQ file and make it available to State and Federal safety investigators on demand.

Through this ICR, FMCSA is asking OMB’s approval to renew and revise its estimate of the paperwork burden imposed by its DQ file regulations. The regulations have not been amended; the IC burden imposed on individual drivers and motor carriers by the regulations is unchanged. The current IC burden estimate approved by OMB is 10.21 million hours. The Agency has increased its estimate of the total IC burden from 10.21 million hours to 12.26 million hours. The increase in burden hours is primarily the result of a larger driver population and a higher driver turnover rate, both of which affect the volume of documents produced and filed in DQ files. This revised ICR removes the medical examiner’s certificate recordkeeping requirement from the estimate of burden hours and cost to eliminate double counting. Although the currently approved ICR did not monetize driver and motor carrier burden hours, the revised ICR monetizes such burden.

On June 10, 2019, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on this ICR. There were no comments submitted to the docket in response to that notice.

#### Public Comments Invited

FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB’s clearance of this information collection.