

months if the assessment has not been completed, or if an agency decision regarding permanency has not been rendered. If determined not to be permanent, this agreement may be extended, by mutual agreement of both parties, beyond the 18 months specified until the FMCSA establishes a uniform standard for Electronic On-Board Recording.

The current MOU with Werner was to expire in September 2003 but has been extended to December 31, 2003, because the assessment was not complete by the scheduled expiration date. Werner has indicated that it would like to make its current program permanent rather than continue in a pilot demonstration status.

### **Proposed Terms and Conditions for the Exemption**

FMCSA believes that it is appropriate to make a transition from a pilot demonstration project to an exemption, as authorized by 49 U.S.C. 31315(b) and the implementing regulations under 49 CFR part 381. Although Werner has expressed an interest in using GPS technology and complementary computer systems to monitor and record its drivers' duty status on a permanent basis, FMCSA cannot permit this without initiating a notice-and-comment rulemaking proceeding to amend 49 CFR 395.8. The agency does not believe that it is appropriate to amend the safety regulations based on a technology that is currently being used by only one motor carrier. Therefore, the agency proposes to exercise its authority under 49 U.S.C. 31315(b) to make a transition from the Project to an exemption that can be renewed every two years, through a notice-and-comment process. The agency proposes that the terms and conditions for the exemption be the same as those used for the Project, with a few exceptions based on recent discussions between FMCSA and Werner. FMCSA has made a preliminary determination that, used in lieu of the "record of duty status" required by 49 CFR 395.8, Werner's GPS technology and complementary safety management computer systems would achieve the requisite level of safety under 49 U.S.C. 31315(b), provided the following conditions are satisfied:

#### *System Operation*

(a) System defaults must record truck stationary time as "on duty, not driving."

(b) Movements of the vehicle greater than two miles must be recorded as driving time.

(c) Speed (which is determined by time and distance between truck location updates) that is calculated to be below 10 miles per hour (mph) may be

considered invalid. In these instances, distance traveled may be divided by average driver mph or average State-to-State mph to derive a rough estimate of the driving time. Werner must discontinue the use of driving time modeling entirely if Qualcomm improves the satellite positioning frequency or incorporates other technology that makes the modeling unnecessary.

(d) With the exception of automatically recording the driver's status as "on duty, not driving" when drivers' fuel cards are inserted into the card reader, no system defaults are authorized for routine stops (*i.e.*, deliveries, pickups, rest). Drivers must make the correct duty status entry into the electronic system.

(e) The system must not allow drivers to manipulate the system to conceal driving hours.

The automatic recording of movements of two miles or more as driving time differs from the MOU in that the memorandum uses a criterion of one mile. Werner has advised FMCSA that lowering the vehicle movement threshold to one mile has resulted in a substantial number of errors in documenting driver duty status that require correction by company management. Therefore, Werner has requested that it be allowed to continue using its two-mile criterion rather than risk a significant increase in errors.

In addition, the system operation provision concerning default duty status would differ from the current MOU in that fuel stops would be covered by an automatic default. Werner has informed FMCSA that its drivers generally are unable to enter duty status information during refueling because the canopy structures at most fuel stops interfere with the satellite communications equipment on their vehicles. FMCSA responded that it is permissibly under the current MOU to automatically place drivers in an on-duty, not-driving status when drivers' fuel cards are inserted into a card reader. The proposed exemption would explicitly allow the default duty status for refueling. FMCSA requests comments on these proposed differences between the MOU and the terms and conditions of the exemption.

#### *Documentation of System Failures*

Werner must require each driver to note immediately any failure of the GPS technology or complementary safety management computer systems, and to immediately begin preparing hard-copy driver logs during the period that the technology is inoperative. Werner must maintain a centralized record of each separate failure, including the date, time

periods, individual driver or operating division(s) impacted, and type of failure. Upon request by Federal or State enforcement officials, Werner must provide facsimile copies of its records of duty status for the current day and the previous seven days for the driver(s) affected by the failure. In the event that Werner is unable to produce these facsimile copies within two hours, the driver(s) must manually prepare a driver record of duty status for the current day and reconstruct his or her duty hours for the previous seven (7) days. When the system becomes operational, a fax of the missing records of duty status must be forwarded to the agreed-upon site as soon as possible. Failure to produce either of these two types of documents within two hours constitutes a violation of this exemption and 49 CFR 395.8(a).

#### *Information Required on All CMVs Operated by Werner*

Werner would be required to ensure that each commercial motor vehicle it operates has on board and available for review by Federal or State enforcement personnel an information packet containing the following three items:

(a) An instruction sheet describing in detail how hours-of-service data may be retrieved from the on-board GPS equipment;

(b) A supply of blank record of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip; and

(c) A copy of the exemption issued by FMCSA authorizing Werner to use GPS technology and complementary computer software programs in lieu of the "record of duty status" required by 49 CFR 395.8.

#### *Quarterly Reports*

Werner would be required to prepare a compliance report every three months following the effective date of the exemption. The reports must be maintained for six months from the date of preparation and must be made available to FMCSA upon request. The reports must identify:

(a) Driver training and internal audit procedures employed by Werner to ensure the accuracy of the electronic hours-of-service records;

(b) The percent of driver logs in each Werner operating division found through internal auditing to be in violation of the maximum driving time limitations set forth in 49 CFR 395.3(a) and 395.3(b); and

(c) The number of drivers in each Werner operating division, the number of drivers by operating division audited for hours-of-service record accuracy,