

DEPARTMENT OF TRANSPORTATION [4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0298]

Hours of Service of Drivers: Application for Exemption; Motion Picture Association of America

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA grants the Motion Picture Association of America (MPAA) a five-year exemption from the electronic logging device (ELD) requirements for all commercial motor vehicle (CMV) drivers providing transportation to or from a theatrical or television motion picture production site. MPAA requested this exemption to allow these drivers to complete paper records of duty status (RODS) instead of using an ELD device. FMCSA has determined that the unique aspects of these drivers' operations, combined with additional oversight of their paper RODS, is equivalent to that which would result from the use of ELDs for their particular operations, and therefore provides an equivalent level of safety.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires [INSERT DATE 5 YEARS FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: 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

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2017-0298 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 the Docket Management Facility 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., e.t., Monday through Friday, except Federal holidays.

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. Request for Exemption

MPAA requested an exemption from the final rule on ELD requirements published in the **Federal Register** on December 16, 2015 (80 FR 78292). The exemption would allow all drivers of CMVs providing transportation of passengers and property to and from a theatrical or television motion picture production site to complete paper RODS instead of using an ELD device on or after December 18, 2017, the compliance date for the ELD rule. The term of the requested exemption is five years, subject to renewal.

MPAA reported that approximately 6,500 CMV drivers operate CMVs on a full- or part-time basis for the motion picture industry. According to HOS data developed by third party compliance services, these drivers spend on average less than four hours each day driving and drive about 40 miles per day. Their resulting RODs are often very complex, as are the driver HOS records that employing motor carriers must keep. Through close cooperation, the industry has been able to manage the extensive interchange of paper RODs that this work pattern requires. MPAA asserted that industry's success in HOS management is based on a system that is driver-based rather than vehicle-based.

According to MPAA, few production drivers qualify for the short-haul driver exception in 49 CFR 395.1(e)(1)(ii)(A) because they often exceed the 12-hour limit and therefore may be subject to the ELD requirements. Each time a production driver operates a CMV for a different studio or production company, the motor carrier and the driver must reconcile the driver's HOS record for the past week. At present, cooperation between production companies, various Teamsters locals, and drivers can reduce the burden of this detailed reconciliation. And under the current rules, drivers themselves can manage the necessary paper RODS, carry them to each new CMV, and transfer paper copies to each new motor carrier as needed. When a roadside inspection occurs, a driver can produce paper RODS for review by the enforcement official.

MPAA contends that the lack of interoperability among ELD platforms developed by various manufacturers means that motion picture company drivers will not be able to transfer HOS data from one carrier to other carriers.

MPAA states¹ that the motion picture industry (MPI):

“... has developed a comprehensive database that contains HOS data, making it easier for motor carriers to keep track of drivers' cumulative HOS and prevent HOS violations from occurring, all while protecting the confidentiality of each motor carrier's private records. This is true even when the driver has worked for a separate USDOT# within the MPI within the prior 7-day period or same 24-hour period. This same level of safety, compliance, and visibility to the driver's hours of service is **impossible** in the current ELD landscape.

¹ www.regulations.gov, Docket Item FMCSA-2017-0298-0027, Filed by Alicia Leahy for MPAA on November 28, 2017.

“Current regulatory requirements designate that drivers submit logs within 13 days of the 24-hour period to which the record pertains. 49 C.F.R. § 395.8(a)(2)(ii). MPAA Member companies go above and beyond by requiring drivers to submit RODS within 24 hours of the duty period to which the record pertains, which is a 12-day reduction in the timeframe otherwise required.”

“The RODS are then reviewed by third-party auditing companies, resulting in accelerated reporting of HOS compliance and an independent assessment of accuracy. This allows any concerns that may be discovered in the review to be expeditiously addressed by the employing motor carrier that is ultimately responsible for enforcement of the regulations. Member companies' current practices include reviewing driver payroll records and other supporting documentation such as fuel receipts, inspection reports, vehicle records and receipts, expense receipts, schedules, bill of lading, etc. to verify the accuracy of the paper logs” [emphasis in original].

A copy of MPAA's application for exemption is available for review in the docket for this notice.

V. Public Comments

On October 27, 2017, FMCSA published notice of this application and requested public comments (82 FR 49771). The Agency received 29 comments. Eight respondents, including Teamsters Local 399 and the International Brotherhood of Teamsters (IBT), provided support for the exemption. Eleven respondents, including the Advocates for Highway and Auto Safety (Advocates) and the Commercial Vehicle Safety Alliance

(CVSA), opposed the exemption. Ten respondents commented about the ELD rule but did not comment on MPAA's application.

Among supporters of the application, Teamsters Local 399, which has 4,500 members in the motion picture and television industry, stated that “[t]he AMPTP [Alliance of Motion Picture and Television Producers], its signatory Studios and Producers spend millions of dollars, year after year, decade after decade, keeping themselves and Teamster drivers in compliance throughout the United States. Paper logs for our industry have been practiced, preached and perfected with safe and accurate results for multiple Studios, Production Companies and thousands of drivers in the motion picture industry that are employed by them.”

Among opponents of the application, Advocates concluded that MPAA “does not meet the statutory and regulatory requirements for the exemption. The Application fails to justify the need for the exemption, provide an analysis of the safety impacts the requested exemption may cause, or provide information on the specific countermeasures to be undertaken to ensure that the exemption will achieve an equivalent or greater level of safety than would be achieved absent the exemption.”

CVSA registered its opposition by noting that “exemptions from federal safety regulations have the potential to undermine safety, while also complicating the enforcement process. The Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations exist to ensure that those operating in the transportation industry are equipped to do it safely.”

VI. FMCSA Response

FMCSA has evaluated MPAA's application and the public comments. The Agency disagrees with commenters' remarks that MPAA has not justified the need for the exemption or provided specific countermeasures. MPAA has outlined their unique operational issues that justify not using ELDs and clearly explained the special handling of their RODs that ensures a high level of accuracy to provide the equivalent level of safety.

We note at the outset that Congress has recognized the unique aspects of the motion picture industry's operations and has provided statutory exceptions from some HOS regulations.² The industry's drivers generally operate short distances and normally spend much of their time off duty. Therefore, Congress has allowed these drivers longer work days and drive time compared to the normal hours-of-service rules.

Because of the nature of their operations, motion picture industry drivers often will continue to use the same paper RODS from one carrier to another. In these unique circumstances, using an ELD system would provide little additional accuracy to the HOS data because most duty status information would be manually entered by the drivers and interoperability between the systems is not required. As MPAA states, the paper log provides continuity for the carrier and enforcement to evaluate compliance, regardless of the number of carriers for which the driver is operating in a given 7-day or even 24-hour period. FMCSA acknowledges that, given the unique arrangements under which drivers in the motion picture industry routinely operate for multiple carriers over brief periods of time, paper RODS may prove more efficient than ELDs.

² See Section 4133 of SAFETEA-LU (119 Stat.1744) (set out as a note to 49 U.S.C.31136).

In addition, MPAA members are required to submit their RODS within 24 hours, rather than waiting for the 13-day period allowed by 49 CFR 395.8. According to MPAA, these “RODS are reviewed by a third-party auditing company, resulting in accelerated reporting of HOS compliance and an independent assessment of accuracy.” In view of the heightened scrutiny of HOS records to which drivers in the motion picture industry are subject to (as described in the MPAA statement in Section III, above), FMCSA believes that drivers operating under this exemption will achieve a level of safety equivalent to or greater than the level of safety that would be achieved through the use of ELDs [49 CFR 381.305(a)].

VII. Decision

For the reasons addressed above, and subject to the terms and conditions set forth in Section VIII, FMCSA grants MPAA’s request for an exemption from the ELD requirement under 49 CFR 395.8(a) .

VIII. Terms and Conditions of the Exemption

1. Drivers operating under the exemption are exempt from the ELD requirement under 49 CFR 395.8(a).
2. The exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and, unless revoked at an earlier date, expires [INSERT DATE 5 YEARS FROM PUBLICATION IN THE FEDERAL REGISTER].
3. Drivers must have a copy of this notice or equivalent signed FMCSA exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

4. Carriers operating under this exemption may not have an “Unsatisfactory” rating with FMCSA or be subject to any imminent hazard or out of service orders.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating in interstate commerce.

Notification to FMCSA

Exempt motor carriers must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of their CMVs operating under the terms of the exemption. The notification must include the following information:

- (a) Name of the exemption: “MPAA,”
- (b) Name of the operating motor carrier,
- (c) Date of the accident,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver’s name and license number,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- (k) The driver’s total driving time and total on-duty time period prior to


the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

Termination

FMCSA does not anticipate the drivers covered by this exemption to experience any deterioration of their safety record. Nevertheless, interested parties or organizations possessing information that would otherwise show that any or all of these motor carriers are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of the exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company or companies and drivers in question.

Issued on: January 12, 2018


Cathy F. Gautreaux
Deputy Administrator