



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2017-0054]**

**Parts and Accessories Necessary for Safe Operation; Application for an Exemption From United Parcel Service Inc.**

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

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

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application from United Parcel Service, Inc. (UPS) for exemption from various provisions of the mandate to use electronic logging devices (ELDs). Specifically, UPS is requesting an exemption (1) to allow an alternative ELD phase-in method for fleets using compliant automatic on-board recording devices (AOBRDs); (2) from the requirement that an ELD automatically record certain data elements upon a duty status change when a driver is not in the vehicle; (3) to allow ELDs to be configured with a special driving mode for yard moves that does not require the driver to re-input yard move status every time the tractor is powered off; and (4) to allow vehicle movements of less than one mile on UPS property by non-CDL UPS drivers to be annotated as “on property – other.” UPS believes that the requested temporary exemptions will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

**DATES:** Comments must be received on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2017-0054 using any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- Hand Delivery: Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below.

Note that all comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

*Public participation:* The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site as well as the DOT’s <http://docketsinfo.dot.gov> Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Amina Fisher, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-2782, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must

provide the public with 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 the safety analyses and the public comments 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

### **UPS Application for Exemption**

UPS has applied for an exemption from various provisions of 49 CFR part 395 regarding the use of ELDs. Specifically, UPS has requested a temporary exemption (1) to allow an alternative ELD phase-in method for fleets using compliant automatic on-board recording devices (AOBRDs); (2) from the requirement that an ELD automatically record certain data elements upon a duty status change when a driver is not in the vehicle; (3) to allow ELDs to be configured with a special driving mode for yard moves that does not require the driver to re-input yard move status every time the tractor is powered off; and (4) to allow vehicle movements of less than one mile conducted on UPS property by

non-CDL UPS drivers to be annotated as “on property – other.” A copy of the application is included in the docket referenced at the beginning of this notice.

### **Alternative ELD Phase-In Method**

Subject to limited exceptions, section 395.8(a)(1)(i) of the FMCSRs requires motor carriers to install and use ELDs that comply with the technical specifications prescribed for those devices no later than December 18, 2017. However, section 395.8(a)(1)(ii) allows a motor carrier that installs, and requires its drivers to use, compliant AOBRDs before the December 18, 2017, compliance date to continue to use those AOBRDs until December 16, 2019, thereby providing a 2-year grandfather period for devices installed prior to the compliance date.

In support of its application, UPS states:

UPS firmly believes that the best way to transition its operations from AOBRDs to ELDs will be on a site-by-site basis. UPS currently plans to convert approximately 2800 tractors at approximately 35 sites from AOBRDs to ELDs in 2017, and plans to convert the remaining tractors (at 141 sites) during 2018. Deploying ELDs by site will minimize the significant costs, including training costs, related to moving the fleet and workforce from AOBRDs to ELDs. A site-by-site approach will also minimize the risk of errors and confusion that would be encountered if two different types of devices were used simultaneously at a given location.

The difficulty large motor carriers like UPS face is with FMCSA’s decision to permit grandfathering only on a vehicle, and not a fleet-wide basis. UPS plans to purchase approximately 1530 new tractors in 2018, *i.e.*, after the grandfathering deadline but before the ELD implementation date for grandfathered vehicles. Of these, 1061 will replace existing tractors (the majority of which are currently using AOBRDs) that have reached the end of life, and 469 will be new tractors to accommodate projected growth. These new tractors will be delivered to UPS facilities across the country consistent with operational needs. At a typical location, approximately 12 percent of tractors would be newly purchased.

If no temporary exemption were granted, large carriers would be required to use ELDs in all of the new tractors delivered after 12/18/2017. The result would be

that UPS facilities that had not been converted as of that date would have both vehicles using ELDs at the same time.

It is routine for all UPS drivers at a given location to use multiple tractors in the course of a week or month. If a site had both vehicles using AOBRDs and vehicles using ELDs, under UPS's current business practices, drivers would necessarily be using both types of devices. This would create complex and difficult situations to manage. For example, if a driver used both an AOBRD and an ELD during the course of a week, there would not be a single, complete log reflecting the driver's hours of service. If, on the other hand, each driver at a given location were restricted to only the vehicles at that location using AOBRDs or only the vehicles at that location using ELDs, that would cause significant operational disruption and inefficiency.

In addition to drivers, UPS exempt employees' fuel, shift and work on tractors in the yard. If vehicles using ELDs were deployed to a site where the majority of vehicles still used AOBRDs, these employees would have to be trained to identify ELD tractors and comply with ELD requirements, while simultaneously working with vehicles using AOBRDs. Furthermore, UPS would incur significant cost to train and deploy ELDs for these few exceptions, and the deployment team would also need to return to the site at a later date to finish ELD deployment on the rest of the fleet.

Based on the above, UPS requests an exemption from section 395.8(a)(1)(i) to allow the installation of AOBRDs on new truck tractors delivered to UPS sites after the December 18, 2017 compliance date, where the existing vehicles at that site are equipped with compliant AOBRDs. UPS believes that using a site-based approach, as described above, will (1) eliminate confusion on the part of drivers and other personnel that would result from using both ELDs and AOBRDs at the same location, and (2) avoid operational and potential enforcement issues that could arise from a driver using different types of devices to record hour-of-service over a given period of time. UPS states that under the proposed temporary exemption, all vehicles will be fully ELD-compliant by the expiration date of the AOBRD grandfather period specified in section 395.8(a)((1)(ii), December 16, 2019.

## **Recording of ELD Data Elements**

An ELD is required to automatically record a number of specific data elements at certain events, to include (1) when a driver indicates a change of duty status under section 395.24(b) (see section 395.26(c)), and (2) when an authorized user logs into or out of an ELD (see section 395.26(g)).

In support of its application, UPS states:

All UPS drivers are covered under a bargaining unit agreement between the Teamsters Union and UPS. Under that agreement, UPS drivers are, for the most part, paid by the hour. UPS drivers use electronic devices and punch in for work on those devices while they are still in the dispatch building. They then walk to their vehicle and inspect the vehicle prior to moving the tractor. Upon implementation of the ELD rule UPS will be using FMCSR-compliant portable, driver-based ELD devices.

Similarly, at the end of a work day all UPS drivers walk from their vehicles to a UPS dispatch office and then clock out using the AOBRD devices once all work is done. UPS drivers perform many other duties away from the tractor including training, attending safety meetings and working in the facility. In a typical UPS location, UPS drivers spend an average of 24 minutes prior to entering the vehicle and 22 minutes after exiting the vehicle on the clock. Significantly, in many situations the vehicle an employee will be, or was, using will be occupied by another employee while the employee is still on duty for UPS.

UPS cannot both comply with the requirement that an ELD record tractor data when a driver logs in or out (or otherwise changes duty status while outside of the vehicle) and also comply with our bargaining unit contract and pay guidelines for our drivers.

Based on the above, UPS requests an exemption from the requirement to record the specific data elements identified in sections 395.26(c) and 395.26(g) if the driver is not in the vehicle when (1) the driver indicates a change of duty status, or (2) an authorized user logs into or out of an ELD, respectively. Instead, to assure accurate recording of on-duty, not driving time, UPS proposes that it will “systematically annotate

that the driver was performing other work.” UPS believes that the proposed exemption “will have no impact on the recordation of driving time” as all required vehicle data will be recorded when the driver is in the vehicle, and “the tractor data that would not be recorded when the driver is not in the vehicle is not relevant to assessing the accurate recordation of ‘on-duty, not driving’ time.”

### **Special Driving Mode for Yard Moves**

Section 395.28(a) of the FMCSRs permits a motor carrier to configure an ELD to authorize a driver to indicate that the driver is operating a commercial motor vehicle (CMV) under certain special driving categories, including (1) authorized personal use, and (2) yard moves. Section 395.28(a)(2) requires a driver to select the applicable special driving category on the ELD before the start of the status, and to deselect it when the indicated status ends.

In support of its application, UPS states:

UPS is requesting a temporary exemption to allow a special driving mode for yard moves that will not require a driver to repeatedly indicate that status.

Most of UPS’s feeder drivers are required to complete yard moves as part of their scheduled work. This entails the driver moving trailers that are already sitting uncoupled on a yard as well as coupling or uncoupling inbound and outbound trailers. Not only do feeder drivers perform yard moves at the beginning or end of trips, they sometimes are assigned to yard duty for a portion of their shifts, which can entail moving as many as 10 loads per hour within the yard.

As a safety precaution, UPS requires our drivers to remove the keys each time they exit the tractor. Consistent with this requirement, they driver will power the tractor down to couple a trailer and then power the tractor down again to uncouple. An average UPS site has over 100 drivers, with the majority of drivers completing several yard moves in the course of a day. The ELD rule would require drivers to manually change duty status twice for every move they complete in the yard, which could mean entering manual changes as many as 20 times in an hour. The average UPS RODS driver completes a minimum of 9 yard

moves per day. This will impose costs on UPS in time spent by drivers manually inputting the yard move mode. UPS estimates that the yearly cost to UPS for a single button push (.35 sec) at each of these yard move ignition cycles would come to approximately \$460,000. In addition, driver and administrative time would need to be spent reconciling records if drivers fail to appropriately record yard move time.

Based on the above, UPS requests an exemption from section 395.28(a)(2)(i) to allow its drivers to select “yard move” status and remain in that status even if the vehicle’s ignition is cycled off and back on. Under the proposed temporary exemption, and assuming that the driver does not go off duty after performing the yard moves, UPS states that the ELD would switch to a “driving” duty status under section 395.24 if (1) the driver inputs “driving,” (2) the vehicle exceeds 20 mph, or (3) the vehicle exits the geofenced yard. UPS notes that there is a posted speed limit of 15 mph on all of its yards, and that it already uses the proposed 20 mph threshold described above to trigger a designation of “driving” duty status in its AOBRDs as a means to identify drivers that do not manually annotate their departure from a UPS property.

### **Vehicle Use by Exempt Employees Operating on UPS Property**

Section 395.26(h) of the FMCSRs requires an ELD to automatically record certain data elements when a CMV’s engine is powered up or powered down.

In support of its application, UPS states:

In addition to its drivers, UPS currently employs 1434 people that wash or fuel vehicles. In the course of performing their duties, most of these employees operate vehicles in our fleet, but this operation is strictly limited to movements within UPS yards. A fuel employee will fuel as many as 60 vehicles during a shift.

Because they do not operate commercial motor vehicles on highways/public roads, UPS's wash and fuel employees are not "drivers" and, in turn, are not required to comply with the hours of service rules...

The final ELD rule requires that the ELD automatically record certain data when a CMV's engine is powered up or powered down. *See* § 395.26(h). Because UPS will be using portable, driver-based ELDs, there will not be ELDs permanently installed in UPS vehicles. Therefore, insofar as the ELD regulations would require recordation of engine data for in yard operation of UPS vehicles by non-driver employees, that requirement would impose a significant burden on UPS. While it would be possible to provide these employees with portable ELDs to record engine data, doing so would be extremely costly. In addition to purchasing devices for each of these employees, UPS would have to purchase and maintain secure cabinets to store and charge these devices. In addition, UPS would have to develop a solution to reconcile these hours in a live environment. UPS would also have to employ individuals to annotate logs for data that was not reconciled.

UPS's technology group has had several meetings to explore options to account for engine miles and hours for operation of UPS vehicles by non-driver employees. In each solution, an employee would be required to enter a tractor number for each tractor and to log out of each tractor when they are finished even though they would be driving the vehicle less than 1 mile and within the yard. The employees would be doing this for as many as 10 hours a day and on a large number of tractors. When all factors are considered, the expense to account for a very small number of miles is extremely costly. UPS estimates that the cost would exceed \$1,000,000 dollars per year in added equipment and hourly expense.

Based on the above, UPS requests an exemption from section 395.26, and proposes to allow an alternative approach to track vehicle usage by wash and fuel employees on UPS property. Specifically, UPS proposes that vehicle usage of less than 1 mile by these exempt employees, conducted entirely on UPS property, be annotated on an ELD as "on property – other." UPS states that these miles could be easily identified using geo-fencing and time-card information for road drivers and other employees.

As noted in its application, UPS believes that each of the requested exemptions will result in substantial operational efficiencies, and will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemptions.

## **Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on UPS's application for an exemption from 49 CFR part 395. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the "Addresses" section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: June 1, 2017

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Larry W. Minor  
Associate Administrator for Policy

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