



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**[Docket No. FMCSA-2017-0336]**

**Hours of Service of Drivers: Application for Exemption; Agricultural Retailers Association**

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

**ACTION:** Application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Agricultural Retailers Association (ARA) has requested an exemption on behalf of its members from the requirement that motor carriers and their drivers of commercial motor vehicles (CMVs) use an electronic logging device (ELD) to record the driver hours-of-service (HOS). ARA states that the ELD requirement imposes undue economic and other burdens on its member retailers and distributors of farm-related products and services. It asserts that ELDs fail to properly record the complex HOS data, are not properly certified by the FMCSA, and do not provide appropriate cyber-security safeguards. ARA also asserts that ELDs will not function properly in many locations in rural America because of poor internet and cellular connectivity. ARA states that the operations of its members under exemption from the ELD requirements will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. FMCSA requests public comment on ARA's application for exemption.

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

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0336 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 notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**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](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-2017-0336), 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 e-mail 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-2017-0336” 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.

## **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 document 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**

The hours of service (HOS) rules (49 CFR part 395) prescribe the duty-time limits and rest requirements for interstate drivers of commercial motor vehicles (CMVs), and provide various exceptions to the HOS rules for CMV drivers engaged in certain agricultural operations. Beginning December 18, 2017, most motor carriers and drivers of CMVs in interstate commerce will be required to use electronic logging devices (ELDs), not handwritten logbooks, to document their HOS duty status (49 CFR 395.8(a)(1)(i)). The HOS rules and the various agricultural exceptions will not change – only the manner of recording compliance with them.

ARA applies for exemption from the ELD requirement on behalf of its member retailers and distributors of farm-related products and services. ARA members rely on CMVs to deliver their products and services to farms. ARA does not estimate the number of drivers that would be exempt if its application would be granted.

ARA asserts that its members are not fully prepared to meet the December 18, 2017 deadline. It seeks exemption to obtain a postponement of the approaching deadline. ATA recommends that the time created by the postponement be used by FMCSA to correct what ARA perceives to be shortcomings of the ELD rule. ARA states that its members need additional information and guidance about the ELD rule, but also asserts that the ELD rule as currently constituted is unduly burdensome for its members. It asserts that ELD vendors and manufacturers do not offer ELD products that address the needs of ARA members. ARA explains that the ELD systems being offered do not accommodate the various exceptions from the HOS rules that agricultural drivers routinely employ. ARA also believes that FMCSA has complicated the search for quality

ELDs by allowing ELD manufacturers to certify their products themselves; ARA believes the FMCSA should be certifying ELD devices.

ARA asserts that poor internet and cellular service in certain parts of the country calls the technological feasibility of ELDs in the agriculture industry into question. In addition, ARA is concerned that ELDs are vulnerable to both cybersecurity attack and illicit monitoring of the movements of member CMVs, some of which transport hazardous materials. ARA also asserts that ELDs contribute to driver distraction and thus negatively affect safety. A copy of ARA's application for exemption is available for review in the docket for this notice.

ARA states that its application will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption.

**Issued on:** December 14, 2017

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Larry W. Minor  
Associate Administrator for Policy

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