



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0003]

Hours of Service of Drivers: Application for Exemption; National Electrical Contractors Association

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

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

SUMMARY: FMCSA announces that the National Electrical Contractors Association (NECA) has applied for an exemption from the requirement to use an electronic logging device (ELD) to record driver hours-of-service (HOS) on commercial motor vehicles (CMVs) used by contractors to install, repair, and maintain the infrastructure of electrical utilities. NECA believes the ELD requirement unnecessarily burdens its members' operations. It proposes to continue to use paper to record the HOS of these drivers. NECA states that CMV operations under the exemption would 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 NECA'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-2018-0003 by any of the following methods:

- Federal eRulemaking Portal: 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, 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 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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at 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. 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. If you submit a comment, please include the docket number for this notice (FMCSA-2018-0003), 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 and put the docket number, "FMCSA-2018-0003" 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 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

The HOS rules (49 CFR part 395) prescribe the drive-time limits and rest requirements for interstate drivers of CMVs. The rules also require most drivers of CMVs in interstate commerce, and their motor carriers, to use ELDs -- not handwritten logbooks -- to document their HOS duty status (49 CFR § 395.8(a)(1)(i)).

NECA's 4,000 members are contractors who install, repair and maintain the infrastructure of electrical utilities. The contractors employ line workers who drive utility-service CMVs during their duty day. NECA states that the number of CMV drivers who would be eligible for this exemption is difficult to estimate; it states that the fleet of one "large" contractor consists of 13,766 CMVs.

NECA seeks exemption from the requirement that motor carriers and their CMV drivers use an ELD to record driver HOS. The actual operation of the CMVs by the line workers is so limited that the ELD requirement is triggered infrequently. By this application for exemption, NECA seeks greater "consistency" in the regulatory environment in which its line workers operate. It states that it is "cumbersome" to meet the costs and logistical challenges of recording HOS electronically, and that the resulting safety benefit is negligible given the limited scope of the CMV operations of this industry. NECA states that if provided the exemption, its CMV drivers would remain fully subject to the HOS standards and continue to record their HOS on the customary paper RODS. NECA states that its operations under the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. A copy of NECA's application for exemption is available for review in the docket for this notice.

Issued on: February 7, 2018

Larry W. Minor
Associate Administrator for Policy

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